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FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1651

Aged Beneficiary Designation Forms

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Final rule.

SUMMARY: The Federal Retirement Thrift Investment Board (Agency) amends its regulations to provide that a beneficiary designation form is valid only if it is received by the TSP record-keeper not more than one year after the date of the participant's signature.

DATES: This rule is effective on July 14, 2014.

FOR FURTHER INFORMATION CONTACT: Laurissa Stokes at 202–942–1645.

SUPPLEMENTARY INFORMATION: The Agency administers the Thrift Savings Plan (TSP), which was established by the Federal Employees' Retirement System Act of 1986 (FERSA), Public Law 99–335, 100 Stat. 514. The TSP provisions of FERSA are codified, as amended, largely at 5 U.S.C. 8351 and 8401–79. The TSP is a tax-deferred retirement savings plan for Federal civilian employees and members of the uniformed services. The TSP is similar to cash or deferred arrangements established for private-sector employees under section 401(k) of the Internal Revenue Code (26 U.S.C. 401(k)).

Background

Prior to 1995, active Federal employees submitted TSP beneficiary designation forms to the personnel office at their employing agency. Upon a participant's death or separation from service, the employing agency would forward the participant's beneficiary designation form to the TSP record-keeper.

Beginning on January 1, 1995, the Agency required all TSP participants to mail or fax beneficiary designation forms directly to the TSP record-keeper. In addition to requiring all participants to submit beneficiary designation forms directly to the TSP record-keeper, the new policy of direct receipt by the TSP record-keeper required employing agencies to search their personnel records and forward all beneficiary designation forms then in their possession to the TSP record-keeper immediately. The TSP communicated the new policy in two bulletins sent to agency representatives and in three separate mailings sent directly to participants.

The TSP codified the policy of direct receipt by the TSP record-keeper in regulations on June 13, 1997 (62 FR 32426). All beneficiary designation forms in an employing agency's possession should have been forwarded to the TSP record-keeper before June 13, 1997. Nevertheless, employing agencies continue to forward to the TSP record-keeper beneficiary designation forms that are sometimes decades old.

These aged forms often do not reflect the participant's current intent. Under the current regulations, the Agency must honor these aged forms if they are otherwise valid. When the Agency processes these forms, participants often become confused and believe their accounts have been accessed fraudulently. Further, if a participant passes away after the Agency has received an aged beneficiary designation form but prior to clarifying his/her current intent, the Agency must honor the old form even though it may not reflect the participant's current intent.

On September 20, 2013, the Agency published a proposal to amend its regulations to provide that a beneficiary designation form is valid only if it is received by the TSP record-keeper not more than 365 calendar days after the date of the participant's signature on the form. 78 FR 57807 (September 20, 2013). The Agency received no comments. Therefore, the Agency is publishing the proposed rule as final without change except for a minor clarification. The Agency is clarifying that, in the event that a beneficiary designation form contains multiple participant signatures with different dates, the TSP will rely on the most recently dated signature to determine whether 365 days have passed since the participant signed the form.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation will affect Federal employees and members of the uniformed services who participate in the Thrift Savings Plan, which is a Federal defined contribution retirement savings plan created under the Federal Employees' Retirement System Act of 1986 (FERSA), Public Law 99–335, 100 Stat. 514, and which is administered by the Agency.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act.

Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 602, 632, 653, 1501–1571, the effects of this regulation on state, local, and tribal governments and the private sector have been assessed. This regulation will not compel the expenditure in any one year of $100 million or more by state, local, and tribal governments, in the aggregate, or by the private sector. Therefore, a statement under § 1532 is not required.

Submission to Congress and the General Accounting Office

Pursuant to 5 U.S.C. 810(a)(1)(A), the Agency submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States before publication of this rule in the **Federal Register**. This rule is not a major rule as defined at 5 U.S.C. 804(2).

List of Subjects in 5 CFR Part 1651

Claims, Government employees, Pensions, Retirement.

Gregory T. Long,

Executive Director, Federal Retirement Thrift Investment Board.

For the reasons stated in the preamble, the Agency amends 5 CFR chapter VI as follows:

PART 1651—Death Benefits

■ 1. The authority citation for part 1651 continues to read as follows:

Authority: 5 U.S.C. 8351, 8433, 8434, 8435, 8474(b)(5), 8474(c)(1), and Sec. 109,

Pub. L. 11–31,123 Stat. 1176 (5 U.S.C. 8433(e)).

■ 2. Amend § 1651.3 by:
■ a. Amending paragraph (c)(6) to remove ''and'';
■ b. Amending paragraph (c)(7) to remove the period and add ''; and''; and
■ c. Adding paragraph (c)(8) to read as follows:

§ 1651.3 Designation of beneficiary.

* * * * *

(c) * * *

(8) Be received by the TSP record-keeper not more than 365 calendar days after the date of the participant's most recent signature.

* * * * *

[FR Doc. 2014–16043 Filed 7–8–14; 8:45 am]

BILLING CODE 6760–01–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 247

RIN 0584–AE31

Commodity Supplemental Food Program (CSFP): Implementation of the Agricultural Act of 2014

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations for the Commodity Supplemental Food Program (CSFP) to phase out the eligibility of women, infants, and children, in accordance with the amendments made by the Agricultural Act of 2014 (the 2014 Farm Bill). Under amendments made to the Agriculture and Consumer Protection Act of 1973 by Section 4102 of the 2014 Farm Bill, women, infants, and children who apply to participate in CSFP on February 7, 2014, or later cannot be certified to participate in the program. Under these amendments the population served by CSFP will only be low-income elderly persons at least 60 years of age. However, Section 4102 also included amendments for a phase-out provision, which requires State and local agencies to continue providing assistance to all women, infants, and children who were certified and receiving CSFP benefits as of February 6, 2014. Those individuals can continue to receive assistance until they are no longer eligible under the program rules in effect on February 6, 2014.

DATES: *Effective Date:* This rule will become effective on August 8, 2014, without further notice.

FOR FURTHER INFORMATION CONTACT: Erica Antonson, Program Analyst, Policy Branch, Food Distribution Division, Food and Nutrition Service, 3101 Park Center Drive, Room 500, Alexandria, Virginia 22302, or by telephone (703) 305–2662.

SUPPLEMENTARY INFORMATION:

I. Background

The Food and Nutrition Service (FNS) is amending CSFP regulations at 7 CFR part 247 to incorporate the requirements of the Agricultural Act of 2014 (Pub. L. 113–79, the 2014 Farm Bill). Prior to enactment of the 2014 Farm Bill on February 7, 2014, the Agriculture and Consumer Protection Act of 1973, 7 U.S.C. 612c note, provided for the eligibility of women, infants, and children in CSFP.

Amendments made by Section 4102 of the 2014 Farm Bill phase out the participation of women, infants, and children in CSFP and transition it to a low-income, elderly-only program. The participation of elderly persons in CSFP began as a pilot program at limited sites in the early 1980s, following which the Food Security Act of 1985 (Pub. L. 99–198) provided for the provision of benefits to the elderly at all CSFP sites, provided that all eligible women, infants, and children were already served. The Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246), eliminated the priority status given to women, infants, and children effective October 1, 2008.

FNS issued a policy memorandum on March 10, 2014, implementing the amendments made by Section 4102; the memorandum is available on the FNS Web site at *http://www.fns.usda.gov/sites/default/files/CSFP_Farm_Bill_Implementation_Memo.pdf.* As a result of the change, no women, infants, or children applicants are eligible to be newly certified to participate in CSFP. However, women, infants, and children who were certified and receiving CSFP benefits as of February 6, 2014, the day before enactment of the 2014 Farm Bill, remain eligible for CSFP benefits until such time as they are no longer eligible to receive assistance under the program rules in effect on that date. As stated in the implementing memorandum, prospective applicants who are no longer eligible for CSFP participation as a result of the 2014 Farm Bill provisions should be referred to other nutrition programs such as the Supplemental Nutrition Assistance Program (SNAP) and the Special Supplemental Nutrition Assistance Program for Women, Infants and Children (WIC).

The number of women, infants, and children participating in CSFP has declined steadily in recent years. In Fiscal Year (FY) 1998, 34 percent of CSFP participants were women, infants, or children and 66 percent were low-income elderly persons. In FY 2013, only three percent of CSFP participants were women, infants, or children and 97 percent of participants were elderly. At the same time, with WIC serving as an alternative to CSFP for eligible women, infants, and children, and due to greater demand for WIC benefits nationally, WIC participation increased by approximately 1.3 million over that same period.

The 2014 Farm Bill amendments recognize the participation trend and the fact that most women, infants, and children who are eligible to participate in CSFP could alternatively participate in WIC, which provides nutrition services to eligible pregnant, post-partum and breastfeeding women, infants, and children up to the age of five. WIC operates in all areas that CSFP serves and provides nutrition assistance benefits, as well as nutrition education and health referrals.

II. Discussion of the Final Rule

A. Eligibility of Women, Infants, and Children for CSFP

In this final rule, we amend several sections of 7 CFR part 247 to establish that new applications from women, infants, and children are not eligible for certification on or after February 7, 2014. References to women, infants, and children are removed from the regulations, except where they are necessary for the continued provision of benefits to those individuals still eligible for CSFP under the phase-out provision. Conforming amendments are made where necessary to clarify that these remaining regulatory provisions apply only to this limited group of women, infants, and children.

Amendments to 7 CFR part 247 are summarized as follows:

1. Section 247.2 describes the purpose and scope of CSFP. This section is revised to state that the population served by CSFP is elderly, low-income individuals 60 years of age or older, but includes a limited group of women, infants, and children who were certified for CSFP and receiving benefits as of February 6, 2014.

2. Sections 247.5 and 247.19 describe State and local agency responsibilities and dual participation, respectively. These sections are amended to clarify that coordination between CSFP State and local agencies and State WIC agencies on the detection and prevention of dual participation is required only when women, infants, or

children remain enrolled in CSFP in the State.

3. Section 247.6 describes the requirements for State Plans. This section is amended to remove the recommendation that State agencies collaborate with WIC agencies in the development of State Plans. This recommendation is no longer relevant because women, infants, and children will not be served by States who join CSFP in the future. Existing State Plans are considered permanent. These plans will already reflect needed collaboration and will continue to apply in States with women, infant, or children participants until they are phased out of the program. This section is additionally amended to clarify that several requirements specific to women, infant, and children participants only pertain where applicable.

4. Section 247.9 describes the eligibility requirements for participation in CSFP. The eligibility requirements for women, infants, and children are retained in this rulemaking as they will continue to be necessary for the administration of the program until the Section 4102 phase-out is complete. However, language is added to this section to clarify that the eligibility requirements for women, infants, and children apply only to individuals who were certified and receiving CSFP benefits as of February 6, 2014.

5. Section 247.16 describes certification periods. This section is amended to clarify that the certification period for women, infants, and children applies only to the recertification of individuals who remain eligible under the Section 4102 phase-out provision.

6. Sections 247.8, 247.12, 247.14, 247.18, 247.20, 247.21, 247.30 and 247.33, are amended to make conforming revisions to wording specific to women, infants and children.

B. Corrections and Updated Reporting Requirements

A correction is made to the regulatory citation in § 247.9(e)(3) and outdated reporting requirements are updated in § 247.29.

III. Procedural Matters

Executive Order 12866 and 13563

This final rule has been determined to be not significant and was not reviewed by the Office of Management and Budget (OMB) in conformance with Executive Order 12866.

Regulatory Impact Analysis

This rule has been designated as not significant by the Office of Management and Budget, therefore, no Regulatory Impact Analysis is required.

Regulatory Flexibility Act

This final rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). It has been certified that this action will not have a significant impact on a substantial number of small entities. Although State and local agencies administering CSFP will be affected by this rulemaking, the economic effect will not be significant.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under Section 202 of the UMRA, the Department generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local or Tribal governments, in the aggregate, or the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, Section 205 of the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the most cost effective or least burdensome alternative that achieves the objectives of the rule.

This final rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local and Tribal governments or the private sector of $100 million or more in any one year. Thus, the rule is not subject to the requirements of Sections 202 and 205 of the UMRA.

Executive Order 12372

CSFP is listed in the Catalog of Federal Domestic Assistance under 10.565. For the reasons set forth in the final rule in 7 CFR part 3015, Subpart V and related Notice (48 FR 29114, June 24, 1983), the donation of foods in such programs is included in the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Federalism Summary Impact Statement

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under Section (6)(b)(2)(B) of Executive Order 13121. FNS has considered the impact of this rule on State and local governments and has determined that this rule does not have federalism implications.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have a preemptive effect with respect to any State or local laws, regulations, or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted.

Civil Rights Impact Analysis

FNS has reviewed this final rule in accordance with the Department Regulation 4300–4, ''Civil Rights Impact Analysis,'' to identify and address any major civil rights impacts the rule might have on minorities, women, and persons with disabilities. While this rule does impact the eligibility of women, a protected group, for CSFP, the rule's intention is not to exclude, limit, or otherwise disadvantage any group or class of person in one or more of the prohibited bases from receiving federal nutrition assistance. This change is mandated by statute.

After a careful review of the rule's intent and provisions, the Department has determined that this final rule will not otherwise limit or reduce the ability of participants to receive the benefits of USDA Foods in food distribution programs on the basis of an individual's or group's race, color, national origin, sex, age, political beliefs, religious creed, or disability. The Department found no factors that would negatively affect any group of individuals.

Executive Order 13175

The Programs affected by the provisions in this final rule are all State or Tribally administered federally funded programs. FNS' national and regional offices have formal and informal discussions with State agency officials and representatives on an ongoing basis regarding program issues relating to CSFP. Additionally, FNS meets periodically throughout the year with the National CSFP Association to discuss issues relating to the program. The changes in this final rulemaking are required by federal law. This rulemaking was the subject of formal consultation in May 2014. Reports from the consultation session will be made part of the USDA annual reporting on Tribal Consultation and Collaboration.

USDA will respond in a timely and meaningful manner to all additional Tribal government requests for consultation concerning this final rule and will provide additional venues, such as webinars and teleconferences, to periodically host collaborative conversations with Tribal leaders and their representatives concerning ways to improve regulations in Indian country.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; see 5 CFR part 1320) requires the Office of Management and Budget (OMB) approve all collections of information by a Federal agency before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number. This rule does not contain new information collection requirements subject to approval by OMB under the Paperwork Reduction Act of 1995. Existing information collection requirements associated with this rule have been approved by OMB under OMB #0584–0025, 0584–0067, and 0584–0293.

E-Government Act Compliance

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

Final Action

This action is being finalized without prior notice or public comment under the authority of 5 U.S.C. 553(a)(2). Section 4102 of the 2014 Farm Bill amends Section 5 of the Agriculture and Consumer Protection Act of 1973 (7 U.S.C. 612c note) to phase out the eligibility of women, infants, and children in CSFP. Existing CSFP regulations are therefore inconsistent with Section 5 of the Agriculture and Consumer Protection Act of 1973. The 2014 Farm Bill language is clear and mandatory, leaving no room for discretion.

List of Subjects in 7 CFR Part 247

Education, Food assistance programs, Grant programs-health, Grant programs—social programs, Indians, Infants and children, Investigations, Maternal and child health, Nutrition, Reporting and recordkeeping requirements, Surplus agricultural commodities, Women.

Accordingly, 7 CFR part 247 is amended as follows:

PART 247—COMMODITY SUPPLEMENTAL FOOD PROGRAM

■ 1. The authority citation for 7 CFR part 247 is revised to read as follows:

Authority: Sec. 5, Pub. L. 93–86, 87 Stat. 249, as added by Sec. 1304(b)(2), Pub. L. 95–113, 91 Stat. 980 (7 U.S.C. 612c note); sec. 1335, Pub. L. 97–98, 95 Stat. 1293 (7 U.S.C. 612c note); sec. 209, Pub. L. 98–8, 97 Stat. 35 (7 U.S.C. 612c note); sec. 2(8), Pub. L. 98–92, 97 Stat. 611 (7 U.S.C. 612c note); sec. 1562, Pub. L. 99–198, 99 Stat. 1590 (7 U.S.C. 612c note); sec. 101(k), Pub. L. 100–202; sec. 1771(a), Pub. L. 101–624, 101 Stat. 3806 (7 U.S.C. 612c note); sec 402(a), Pub. L. 104–127, 110 Stat. 1028 (7 U.S.C. 612c note); sec. 4201, Pub. L. 107–171, 116 Stat. 134 (7 U.S.C. 7901 note); sec. 4221, Pub. L. 110–246, 122 Stat. 1886 (7 U.S.C. 612c note); sec. 4221, Pub. L. 113–79, 7 U.S.C. 612c note).

■ 2. In § 247.2, revise paragraph (a) to read as follows:

§ 247.2 The purpose and scope of CSFP.

(a) *How does CSFP help participants?* Through CSFP, the Department provides nutritious commodities to help State and local agencies meet the nutritional needs of low-income elderly persons. CSFP also helps State and local agencies meet the nutritional needs of women, infants, and children who were certified and receiving CSFP benefits as of February 6, 2014. Through local agencies, each participant receives a monthly package of commodities, based on food package guide rates developed by FNS, with input from State and local agencies. Food packages include such nutritious foods as canned fruits and vegetables, canned meat, poultry and other protein items, and grain products such as pasta, as well as other foods. Participants are offered the opportunity to receive nutrition education.

* * * * *

■ 3. In § 247.5, revise paragraph (b)(8) to read as follows:

§ 247.5 State and local agency responsibilities.

* * * * *

(b) * * *

(8) Developing a plan for the detection and prevention of dual participation, in coordination with CSFP local agencies and with the WIC State agency, unless no women, infants, and children remain enrolled in CSFP in the State;

* * * * *

■ 4. In § 247.6:

■ a. Revise paragraph (a);

■ b. In paragraph (c)(2) add ''if applicable,'' after ''children,'';

■ c. In paragraph (c)(4), remove ''women, infants, children, and elderly'';

■ d. In paragraph (c)(5), remove ''women, infants, children, and'';

■ e. In paragraph (c)(8), add '', if applicable,'' after the word ''including'' and remove the comma after ''collaboration with the State WIC agency'';

■ f. In paragraph (d), remove the phrase ''women, infants, children, and the elderly'' and add in its place ''participants''.

The revision reads as follows:

§ 247.6 State Plan.

(a) *What is the State Plan?* The State Plan is a document that describes how the State agency will operate CSFP and the caseload needed to serve eligible applicants. The State agency must submit the State Plan to FNS for approval. Once submitted and approved, the State Plan is considered permanent, with amendments submitted at the State agency's initiative, or at FNS request. All amendments are subject to FNS approval. The State Plan may be submitted in the format provided in FNS guidance, in an alternate format, or in combination with other documents required by Federal regulations. The State Plan must be signed by the State agency official responsible for program administration. A copy of the State Plan must be kept on file at the State agency for public inspection.

* * * * *

■ 5. In § 247.8:

■ a. In paragraph (a) introductory text, revise the first sentence;

■ b. In paragraph (a)(4), remove ''or pregnancy, as applicable'';

■ b. In paragraph (b), revise the second and third sentences.

The revisions read as follows:

§ 247.8 Individuals applying to participate in CSFP.

(a) * * * To apply for CSFP benefits, the applicant or caretaker of the applicant must provide the following information on the application: * * *

(b) * * * After informing the applicant or caretaker of the applicant of his or her rights and responsibilities, in accordance with § 247.12, the local agency must ensure that the applicant or caretaker signs the application form beneath the following pre-printed statement. The statement must be read by, or to, the applicant or caretaker before signing. * * *

■ 6. In § 247.9:

■ a. Revise paragraph (a);

■ b. Add a new paragraph (b)(4);

■ c. In paragraph (d), revise the last sentence;

■ d. In paragraph (e)(3), remove the regulatory citation ''§ 246.7(d)(2)(iv)(C)'' and add in its place ''§ 246.7(d)(2)(iv)(D)''.

The revisions and addition read as follows:

§ 247.9 Eligibility requirements.

(a) *Who is eligible for CSFP?* To be eligible for CSFP, individuals must be at least 60 years of age and meet the income eligibility requirements outlined in paragraph (c) of this section; or the individual must be a woman, infant, or child who was certified and receiving CSFP benefits as of February 6, 2014, and whose enrollment in CSFP has continued without interruption.

(b) * * *

(4) The eligibility requirements in this section apply only to women, infants, and children who were certified and receiving CSFP benefits as of February 6, 2014, and whose enrollment has continued without interruption. Effective February 7, 2014, no new applications from women, infants, or children may be approved.

* * * * *

(d) * * * However, for the recertification of women, infants, and children, the State agency must implement the adjusted guidelines at the same time that the WIC agency implements the adjusted guidelines in WIC.

* * * * *

■ 7. In § 247.12, revise paragraph (a)(2) to read as follows:

§ 247.12 Rights and responsibilities.

(a) * * *

(2) The local agency will make nutrition education available to all adult participants, and, if applicable, to parents or caretakers of infant and child participants, and will encourage them to participate; and

* * * * *

■ 8. In § 247.14(a), revise the paragraph heading to read as follows:

§ 247.14 Other public assistance programs.

(a) *What information on other public assistance programs must the local agency provide to women, infants, and children applying for recertification?* * * *

* * * * *

■ 9. In § 247.16:

■ a. In paragraph (a)(1), add a new final sentence;

■ b. Revise paragraph (b);

■ c. In paragraph (c), revise the second sentence.

The revisions and addition read as follows:

§ 247.16 Certification period.

(a) * * *

(1) * * * This paragraph only applies to the recertification of women, infants, and children who were certified and receiving CSFP benefits as of February 6, 2014, and whose enrollment in CSFP has continued without interruption.

* * * * *

(b) *On what day of the final month does the certification period end?* The certification period extends to the final day of the month in which eligibility expires.

(c) * * * The State agency must ensure that local agencies serve a CSFP participant who moves from another area to an area served by CSFP and whose certification period has not expired. * * *

* * * * *

■ 10. In § 247.18, revise paragraph (c) to read as follows:

§ 247.18 Nutrition education.

* * * * *

(c) *To whom must local agencies provide nutrition education?* The local agency must make nutrition education available to all adult participants and, if applicable, to parents or caretakers of infant and child participants. Local agencies are encouraged to make nutrition education available to children, where appropriate.

* * * * *

■ 11. In § 247.19:

■ a. Revise paragraph (a);

■ b. In paragraph (b), revise the fourth sentence.

The revisions read as follows:

§ 247.19 Dual participation.

(a) *What must State and local agencies do to prevent and detect dual participation?* Unless no women, infants, or children remain enrolled in the program, the State agency must work with the State WIC agency to develop a plan to prevent and detect dual participation, in accordance with an agreement signed by both agencies. The State agency must work with local agencies to prevent and detect dual participation. In accordance with § 247.8(a)(1), the local agency must check the identification of all applicants when they are certified or recertified. In accordance with § 247.8(b), the local agency must ensure that the applicant or caretaker of the applicant signs an application form which includes a statement advising the applicant that he or she may not receive CSFP benefits at more than one CSFP site at the same time.

(b) * * * In accordance with § 247.20(b), if the dual participation resulted from the participant or caretaker of the participant making false or misleading statements, or intentionally withholding information, the local agency must disqualify the participant from CSFP, unless the local agency determines that disqualification would result in a serious health risk. * * *

§ 247.20 [Amended]

■ 12. In § 247.20, remove ''or the parents'' in each place it occurs.

■ 13. In § 247.21:

■ a. Revise the paragraph heading and first sentence of paragraph (a)(3);

■ b. Remove the phrase ''women, infants, children, and the elderly,'' from the last sentence of paragraph (c) and add in its place the word ''participants''.

The revision reads as follows:

§ 247.21 Caseload assignment.

(a) * * *

(3) *New caseload.* Each State agency requesting to begin participation in the program, and with an approved State Plan, may receive caseload to serve the elderly, as requested in the State Plan. * * *

* * * * *

■ 14. In § 247.29:

■ a. Revise the paragraph heading and first sentence of (b)(1);

■ b. Remove paragraph (d).

The revision reads as follows:

§ 247.29 Reports and recordkeeping.

* * * * *

(b) * * *

(1) *SF–425, Federal Financial Report.* The State agency must submit the SF–425, Federal Financial Report, to report the financial status of the program at the close of the fiscal year. * * *

* * * * *

■ 15. In § 247.30(c), remove '', or the parent'' where it occurs and remove the comma before ''fraudulently'' in the first sentence.

■ 16. In § 247.33, revise the sentence following the heading of paragraph (c) to read as follows:

§ 247.33 Fair hearings.

* * * * *

(c) * * * An individual or an individual's caretaker may request a fair hearing by making a clear expression, verbal or written, to a State or local agency official that an appeal of the adverse action is desired.

* * * * *

Dated: July 2, 2014.

Audrey Rowe,

Administrator, Food and Nutrition Service.

[FR Doc. 2014–16055 Filed 7–8–14; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 56, 145, 146, and 147

[Docket No. APHIS–2011–0101]

RIN 0579–AD83

National Poultry Improvement Plan and Auxiliary Provisions

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the National Poultry Improvement Plan (NPIP, the Plan) and its auxiliary provisions by removing the descriptions of specific tests and sanitation procedures from the regulations. Instead, we will require tests to be performed and sanitation to be maintained in a manner approved by the Administrator. Approved procedures will be listed in an NPIP Program Standards document, which we are making available on the NPIP Web site. In addition, we are establishing new compartment classifications for defined subpopulations of primary breeding turkeys, primary egg-type chickens, and primary meat-type chickens. We are also providing new or modified sampling and testing procedures for Plan participants and participating flocks. The changes in this final rule were voted on and approved by the voting delegates at the Plan's 2010 and 2012 National Plan Conferences. These changes will streamline the provisions of the Plan, keep those provisions current with changes in the poultry industry, and provide for the use of new sampling and testing procedures.

DATES: *Effective Date:* August 8, 2014.

FOR FURTHER INFORMATION CONTACT: Dr. Denise Brinson, DVM, Director, National Poultry Improvement Plan, VS, APHIS, USDA, 1506 Klondike Road, Suite 101, Conyers, GA 30094–5104; (770) 922–3496.

SUPPLEMENTARY INFORMATION:

Background

The National Poultry Improvement Plan (NPIP, also referred to below as ''the Plan'') is a cooperative Federal-State-industry mechanism for controlling certain poultry diseases. The Plan consists of a variety of programs intended to prevent and control poultry diseases. Participation in all Plan programs is voluntary, but breeding flocks, hatcheries, and dealers must first qualify as ''U.S. Pullorum-Typhoid Clean'' as a condition for participating in the other Plan programs.

The Plan identifies States, flocks, hatcheries, dealers, and slaughter plants that meet certain disease control standards specified in the Plan's various programs. As a result, customers can buy poultry that has tested clean of certain diseases or that has been produced under disease-prevention conditions.

The regulations in 9 CFR parts 145, 146, and 147 (referred to below as the regulations) contain the provisions of the Plan. The Animal and Plant Health Inspection Service (APHIS, also referred to as ''the Service'') of the U.S. Department of Agriculture (USDA, also referred to as ''the Department'') amends these provisions from time to time to incorporate new scientific information and technologies within the Plan.

On January 28, 2014, we published in the **Federal Register** (79 FR 4538–4567, Docket No. APHIS–2011–0101) a proposal [1] to amend the regulations by removing tests and detailed testing procedures, as well as sanitation procedures, from part 147, and making these available in an NPIP Program Standards document. In addition, we proposed to establish U.S. H5/H7 Avian Influenza Clean Compartment and U.S. Avian Influenza Clean Compartment classifications for defined subpopulations of primary breeding turkeys, primary egg-type breeding chickens, and primary meat-type breeding chickens. We also proposed several other changes.

We solicited comments concerning our proposal for 60 days ending March 31, 2014. We received 11 comments by that date. They were from producers, poultry associations, and the general public. Of the 11 comments we received, 7 directly addressed the proposed rule. These comments are discussed below.

Part 146 of the regulations contains the NPIP provisions for commercial poultry. Currently, the only disease addressed in this part is H5/H7 low pathogenic avian influenza; under part 146, table-egg layer flocks, meat-type chicken slaughter plants, meat-type turkey slaughter plants, and certain types of game birds and waterfowl may participate in U.S. H5/H7 Avian Influenza Monitored classifications.

Section 146.11 sets out the audit process for participating slaughter plants. Paragraph (b) states that flocks slaughtered at a slaughter plant will be considered to be not conforming to the required protocol of the classifications if there are no test results available, if the flock was not tested within 21 days before slaughter, or if the test results for the flocks were not returned before slaughter. We proposed to amend paragraph (b) to refer to samples being collected and tested and to results being returned prior to movement to slaughter.

The seven commenters who addressed the rule opposed this change. They stated that requiring testing prior to slaughter, rather than prior to movement to slaughter, allows companies that have been sampling flocks at processing to continue doing so. It also allows producers whose flocks were inadvertently not sampled in the field to be tested at the slaughter plant and remain compliant.

They also stated that the proposed requirement to test prior to movement to slaughter would inadvertently combine the different testing requirements for participating slaughter plants in each subpart in part 146 into one set of testing requirements. This would prevent the different types of participating slaughter plants from setting different testing requirements. One commenter stated that the change would limit the flexibility of Official State Agencies and industry to develop alternative testing protocols in which the same number of birds are tested, as allowed under the regulations.

We believe it is important to have the test results for a flock returned prior to movement to slaughter to prevent potentially diseased birds from being exposed to other, healthy birds and possibly requiring cleaning and disinfection at the slaughter plant. The NPIP General Conference voted to approve this change at the 2012 Biennial Conference, reflecting the general consensus of NPIP participants. However, we are postponing the finalization of this change until an alternative proposal put forward by the commenters can be voted on during the 2014 NPIP Biennial Conference, which is scheduled to take place in Charlotte, NC, from July 10 through 12, 2014. Based on that vote, we will either retain this change in a stand-alone final rule or make alterations to the testing requirements in a separate proposed rule.

We are making a minor change and two corrections to the proposal in this final rule. Paragraph (a)(1)(i) of the proposed compartmentalization sections in §§ 145.45, 145.74, and 145.84 indicated that the company applying for compartmentalization would have to, upon request, work with the Official State Agency to provide data on the

[1] To view the proposed rule and the comments we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0101.*

incidence of notifiable avian influenza (NAI) for bird populations outside of the proposed compartment in the State. However, Official State Agencies are focused on commercial poultry populations and may not have data on the NAI status of backyard birds or migratory birds. In addition, while compartments may trade with other commercial bird populations, they should be secured against any disease risk posed by backyard birds or migratory birds. Therefore, we are changing each of these proposed paragraphs to indicate that the Official State Agency may provide data on the NAI status of other commercial poultry populations located in the State, upon request.

Paragraph (a)(1)(v) of the proposed compartmentalization sections contained a grammatical redundancy, which we have removed in this final rule.

We also requested comment on the new Program Standards document. We did not receive any comments. However, one of the approved tests listed in the Program Standards document, the Rapid Chek© Select™ Salmonella Test Kit, is now produced by Romer Labs. We have updated the Program Standards document accordingly.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the changes discussed in this document.

Executive Order 12866 and Regulatory Flexibility Act

This final rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities. The analysis is summarized below. Copies of the full analysis are available on the Regulations.gov Web site (see footnote 1 in this document for a link to Regulations.gov) or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

The establishments that will be affected by the rule—principally entities engaged in poultry production and processing—are predominantly small by Small Business Administration standards. In those instances in which an addition or modification could potentially result in a cost to certain entities, we do not expect the costs to be significant. This rule embodies changes decided upon by the NPIP's General Conference Committee on behalf of Plan members, that is, changes recognized by the poultry industry as in their interest. We note that NPIP membership is voluntary.

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

Executive Order 12372

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

Executive Order 12988

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

Paperwork Reduction Act

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

List of Subjects

9 CFR Part 56

Animal diseases, Indemnity payments, Low pathogenic avian influenza, Poultry.

9 CFR Parts 145, 146, and 147

Animal diseases, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, we are amending 9 CFR parts 56, 145, 146, and 147 as follows:

PART 56—CONTROL OF H5/H7 LOW PATHOGENIC AVIAN INFLUENZA

■ 1. The authority citation for part 56 continues to read as follows:

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

■ 2. Section 56.1 is amended as follows:
■ a. By revising the definition of *H5/H7 low pathogenic avian influenza (LPAI).*
■ b. In paragraph (1)(iii) of the definition of *H5/H7 LPAI virus infection (infected),* by adding the words ''the Cooperating State Agency, the Official State Agency, and'' before the word ''APHIS''.

The revision reads as follows:

§ 56.1 Definitions.

* * * * *

H5/H7 low pathogenic avian influenza (LPAI). An infection of poultry caused by an influenza A virus of H5 or H7 subtype that has an intravenous pathogenicity index in 6-week-old chickens less than or equal to 1.2 or causes less than 75 percent mortality in 4- to 8-week-old chickens infected intravenously, or an infection with influenza A viruses of H5 or H7 subtype with a cleavage site that is not consistent with a previously identified highly pathogenic avian influenza virus.

* * * * *

■ 3. Section 56.4 is amended by adding a new paragraph (d) to read as follows:

§ 56.4 Determination of indemnity amounts.

* * * * *

(d) *Requirements for compliance agreements.* The compliance agreement is a comprehensive document that describes the depopulation, disposal, and cleaning and disinfection plans for poultry that were infected with or exposed to H5/H7 LPAI, or a premises that contained such poultry. The compliance agreement sets out APHIS responsibilities, owner responsibilities, and Cooperating State Agency responsibilities. The compliance agreement must include the owner's name and the name and address of the affected premises. The compliance agreement must have signatories that include, but are not necessarily limited to, the owner, the grower (if applicable), the Cooperating State Agency representative, the State veterinarian, and the APHIS area supervisor. In addition, the compliance agreement must contain a flock plan with estimated cost breakdowns that include labor, materials, personal protective equipment, travel expenses for personnel involved, and any additional information deemed necessary by the Service. A signed compliance agreement is required before beginning any work for which indemnity funds will be requested. Once work associated with the compliance agreement is completed, receipts and documentation detailing the activities specified in the agreement should be forwarded to APHIS for review, approval, and final payment. This documentation should be submitted to APHIS no later than 30 days after the quarantine release of the affected or exposed premises.

* * * * *

■ 4. Section 56.5 is amended as follows:
■ a. By revising paragraph (c)(1)(i).

■ b. By adding paragraphs (c)(1)(iii) and (c)(1)(iv).
■ c. By revising paragraphs (d)(1)(i) and (d)(1)(iii).
■ d. By removing paragraph (d)(1)(iv).
■ e. By removing the second, third, and fourth sentences after the heading of paragraph (d)(2)(i) and adding five sentences in their place.
■ f. By revising the first sentence after the heading of paragraph (d)(3).

The revisions and additions read as follows:

§ 56.5 Destruction and disposal of poultry and cleaning and disinfection of premises, conveyances, and materials.

* * * * *

(c) * * *

(1) * * *

(i) Poultry infected with or exposed to H5/H7 LPAI must not be transported to a market for controlled marketing until approved by the Cooperating State Agency in accordance with the initial State response and containment plan described in § 56.10.

* * * * *

(iii) Routes to slaughter must avoid other commercial poultry operations whenever possible. All load-out equipment, trailers, and trucks used on premises that have housed poultry that were infected with or exposed to H5/H7 LPAI must be cleaned and disinfected and not enter other poultry premises or facilities for 48 hours after removing such poultry from their premises.

(iv) Flocks moved for controlled marketing must be the last poultry marketed during the week they are marketed.

* * * * *

(d) * * *

(1) * * *

(i) Secure all feathers and debris that might blow around outside the house in which the infected or exposed poultry were held by gathering and pushing the material into the house;

* * * * *

(iii) Close the house in which the poultry were held, maintaining just enough ventilation to remove moisture. Leave the house undisturbed for a minimum of 72 hours.

(2) * * *

(i) * * * Compost manure, debris, and feed by windrowing in the house if possible. If this is not possible, set up a system for hauling manure, debris, and feed to an approved site for burial, piling, or composting. Manure, debris, and feed may be removed from the house or premises and disposed of by composting it on site, leaving it in a undisturbed pile on site, or removing it from the site in covered vehicles. Land application of manure, debris, and feed should only be performed in accordance with the initial State response and containment plan described in § 56.10. Clean out the house or move or spread litter as determined by the Cooperating State Agency and in accordance with the initial State response and containment plan. * * *

* * * * *

(3) * * * Premises should remain empty until testing provides negative virus detection results and checked by the Cooperating State Agency in accordance with the initial State response and containment plan described in § 56.10. * * *

* * * * *

PART 145—NATIONAL POULTRY IMPROVEMENT PLAN FOR BREEDING POULTRY

■ 5. The authority citation for part 145 continues to read as follows:

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

■ 6. Section 145.1 is amended as follows:
■ a. In the definition of *authorized agent,* by removing the words ''as described in §§ 147.1(a) and 147.12'' and adding the words ''in accordance with part 147'' in their place.
■ b. In the definition of *authorized laboratory,* by removing the citation ''§ 147.51'' and adding the citation ''§ 147.52'' in its place; and by removing the words ''the assays described in'' and adding the words ''assays in accordance with'' in their place.
■ c. In the definition of *authorized testing agent,* by removing the words ''as described in §§ 147.1(a) and 147.12'' and adding the words ''in accordance with part 147'' in their place.
■ d. By adding, in alphabetical order, definitions of *H5/H7 low pathogenic avian influenza (LPAI)* and *NPIP Program Standards.*
■ e. In the definition of *reactor,* by removing the words ''parts 145 or 147 of this chapter'' and adding the words ''this part or in accordance with part 147 of this subchapter'' in their place.
■ f. In the definition of *Senior Coordinator,* in paragraph (4), by removing the citation ''§ 147.51'' and adding the citation ''§ 147.52'' in its place.

The additions read as follows:

§ 145.1 Definitions.

* * * * *

H5/H7 low pathogenic avian influenza (LPAI). An infection of poultry caused by an influenza A virus of H5 or H7 subtype that has an intravenous pathogenicity index in 6-week-old chickens less than or equal to 1.2 or causes less than 75 percent mortality in 4- to 8-week-old chickens infected intravenously, or an infection with influenza A viruses of H5 or H7 subtype with a cleavage site that is not consistent with a previously identified highly pathogenic avian influenza virus.

* * * * *

NPIP Program Standards. A document that contains tests and sanitation procedures approved by the Administrator in accordance with § 147.53 of this subchapter for use under this subchapter. This document may be obtained from the NPIP Web site at *http://www.aphis.usda.gov/animal_health/animal_dis_spec/poultry/* or by writing to the Service at National Poultry Improvement Plan, APHIS, USDA, 1506 Klondike Road, Suite 101, Conyers, GA 30094.

* * * * *

§ 145.2 [Amended]

■ 7. In § 145.2, paragraph (e) is amended by removing the words ''follow the laboratory protocols outlined in part 147 of this chapter'' and adding the words ''conduct tests in accordance with part 147 of this subchapter'' in their place.

■ 8. Section 145.3 is amended as follows:
■ a. In paragraph (c), second sentence, by removing the word ''He'' and adding the words ''The participant'' in its place; and by adding the word ''and'' before the word ''cassowaries,''.
■ b. By redesignating paragraphs (d) and (e) as paragraphs (e) and (f), respectively.
■ c. By adding a new paragraph (d).

The addition reads as follows:

§ 145.3 Participation.

* * * * *

(d) To ensure that Plan diseases are not spread, flocks must be qualified for their intended Plan classifications before being moved into breeder production facilities.

* * * * *

§ 145.5 [Amended]

■ 9. Section 145.5 is amended as follows:
■ a. In paragraph (a), by removing the words ''as recommended in §§ 147.21 and 147.22 (a) and (e) of this chapter'' and adding the words ''in accordance with part 147 of this subchapter'' in their place.
■ b. In paragraph (c), by removing the words ''or F'' and adding the words ''F, G, H, or I'' in their place.
■ 10. Section 145.6 is amended as follows:

■ a. By revising the second sentence in paragraph (a) introductory text.
■ b. In paragraphs (a)(1), (a)(2), (a)(3), and (a)(4), by removing the words ''as outlined in § 147.24 of this chapter'' and adding the words ''in accordance with part 147 of this subchapter'' in their place.

The revision reads as follows:

§ 145.6 Specific provisions for participating hatcheries.

(a) * * * The sanitary procedures outlined in the NPIP Program Standards, or other procedures approved by the Administrator in accordance with § 147.53(d), will be considered as a guide in determining compliance with this provision. * * *

* * * * *

■ 11. Section 145.10 is amended as follows:
■ a. In paragraph (b) introductory text, by removing the words ''and 145.63(a)'' and adding the words ''145.63(a), 145.73(b), 145.83(b), and 145.93(b)'' in their place.
■ b. By revising paragraph (c) introductory text, paragraph (g) introductory text, paragraph (m) introductory text, paragraph (o) introductory text, and paragraph (t) introductory text.

The revisions read as follows:

§ 145.10 Terminology and classification; flocks, products, and States.

* * * * *

(c) *U.S. M. Gallisepticum Clean.* (See §§ 145.23(c), 145.23(f), 145.33(c), 145.33(f), 145.43(c), 145.53(c), 145.73(c), and 145.83(c).)

* * * * *

(g) *U.S. Pullorum-Typhoid Clean State.* (See §§ 145.24(a), 145.34(a), 145.44(a), 145.54(a), and 145.94(a).)

* * * * *

(m) *U.S. S. Enteritidis Clean.* (See §§ 145.23(d), 145.73(d), and 145.83(e).)

* * * * *

(o) *U.S. Salmonella Monitored.* (See §§ 145.53(f), 145.83(f), and 145.93(d).)

* * * * *

(t) *U.S. H5/H7 Avian Influenza Clean.* (See §§ 145.43(g), 145.53(e), and 145.93(c).)

* * * * *

■ 12. Section 145.14 is amended as follows:
■ a. In paragraph (a)(1), by revising the second sentence.
■ b. In paragraph (a)(6)(ii), by revising the third sentence.
■ c. In paragraph (b)(1), by adding a sentence after the second sentence.
■ d. By revising paragraph (b)(3).
■ e. By revising paragraph (d)(1)(ii)(C).
■ f. In paragraph (d)(2)(i)(A), by removing the word ''(AVPR01510)''.
■ g. By revising paragraph (d)(2)(ii)(B).

The revisions and addition read as follows:

§ 145.14 Testing.

(a) * * *

(1) * * * Official blood tests must be conducted in accordance with part 147 of this subchapter or according to literature provided by the producer. * * *

* * * * *

(6) * * *

(ii) * * * Bacteriological examination must be conducted in accordance with part 147 of this subchapter. * * *

* * * * *

(b) * * *

(1) * * * Tests must be conducted in accordance with this paragraph (b) and in accordance with part 147 of this subchapter. * * *

* * * * *

(3) When reactors to the test for which the flock was tested are submitted to a laboratory as prescribed by the Official State Agency, the final status of the flock will be determined in accordance with part 147 of this subchapter.

* * * * *

(d) * * *

(1) * * *

(ii) * * *

(C) The AGID test for avian influenza must be conducted in accordance with part 147 of this subchapter. The test can be conducted on egg yolk or blood samples. The AGID test is not recommended for use in waterfowl.

* * * * *

(2) * * *

(ii) * * *

(B) Chicken and turkey flocks that test positive on the ACIA must be further tested using the RRT–PCR or virus isolation. Positive results from the RRT–PCR or virus isolation must be further tested by Federal Reference Laboratories using appropriate tests for confirmation. Final judgment may be based upon further sampling and appropriate tests for confirmation.

* * * * *

■ 13. In § 145.22, paragraph (b) is revised to read as follows:

§ 145.22 Participation.

* * * * *

(b) Hatching eggs produced by multiplier breeding flocks should be nest clean. They may be fumigated in accordance with part 147 of this subchapter or otherwise sanitized.

* * * * *

■ 14. Section 145.23 is amended as follows:
■ a. In paragraph (b) introductory text, by removing the citation ''(5)'' and adding the citation ''(4)'' in its place.
■ b. In paragraph (c)(1) introductory text, by removing the words ''in compliance with the provisions of § 147.26 of this chapter'' and adding the words ''in accordance with part 147 of this subchapter with respect to Mycoplasma isolation, sanitation, and management'' in their place.
■ c. In paragraph (c)(1)(ii)(C), by removing the words ''§ 147.8 of this chapter'' and adding the words ''part 147 of this subchapter'' in their place.
■ d. In paragraph (c)(3), by removing the words ''as described in § 147.24(a) of this chapter'' and adding the words ''in accordance with part 147 of this subchapter'' in their place.
■ e. In paragraph (d)(1)(iv), by removing the words ''in compliance with §§ 147.21, 147.24(a), and 147.26 of this chapter'' and adding the words ''in accordance with part 147 of this subchapter with respect to flock sanitation, cleaning and disinfection, and Salmonella isolation, sanitation, and management'' in their place.
■ f. In paragraph (d)(1)(v), by removing the words ''as described in § 147.12 of this chapter'' and adding the words ''in accordance with part 147 of this subchapter'' in their place.
■ g. In paragraph (d)(1)(vii), by removing the words ''as described in § 147.11 of this chapter'' and adding the words ''in accordance with part 147 of this subchapter'' in their place.
■ h. By revising paragraphs (d)(1)(viii) and (d)(1)(ix).
■ i. In paragraph (d)(2), by removing the words ''as described in § 147.11(a) of this chapter'' and adding the words ''in accordance with part 147 of this subchapter'' in their place.
■ j. In paragraph (e)(1) introductory text, by removing the words ''in compliance with the provisions of § 147.26 of this chapter'' and adding the words ''in accordance with part 147 of this subchapter with respect to Mycoplasma isolation, sanitation, and management'' in their place.
■ k. In paragraph (e)(1)(ii)(B), by removing the words ''§ 147.8 of this chapter'' and adding the words ''part 147 of this subchapter'' in their place.
■ l. In paragraph (e)(3), by removing the words ''as described in § 147.24(a) of this chapter'' and adding the words ''in accordance with part 147 of this subchapter'' in their place.
■ m. In paragraph (f)(3), by removing the words ''in compliance with the provisions of § 147.26 of this chapter'' and adding the words ''in accordance with part 147 of this subchapter with respect to Mycoplasma isolation,

sanitation, and management'' in their place.

■ n. In paragraph (f)(5), by removing the words ''as described in § 147.24(a) of this chapter'' and adding the words ''in accordance with part 147 of this subchapter'' in their place.

■ o. In paragraph (g)(3), by removing the words ''in compliance with the provisions of § 147.26 of this chapter'' and adding the words ''in accordance with part 147 of this subchapter with respect to Mycoplasma isolation, sanitation, and management'' in their place.

■ p. In paragraph (g)(5), by removing the words ''as described in § 147.24(a) of this chapter'' and adding the words ''in accordance with part 147 of this subchapter'' in their place.

■ q. In paragraph (h)(1) introductory text, by adding the words ''and found'' before the word ''negative'' and by removing the words ''for antibodies''.

The revisions read as follows:

§ 145.23 Terminology and classification; flocks and products.

* * * * *

(d) * * *

(1) * * *

(viii) Hatching eggs are collected as quickly as possible, and their sanitation is maintained in accordance with part 147 of this subchapter.

(ix) Hatching eggs produced by the flock are incubated in a hatchery whose sanitation is maintained in accordance with part 147 of this subchapter and sanitized either by a procedure approved by the Official State Agency or in accordance with part 147 of this subchapter.

* * * * *

■ 15. In § 145.32, paragraph (b) is revised to read as follows:

§ 145.32 Participation.

* * * * *

■ (b) Hatching eggs produced by multiplier breeding flocks should be nest clean. They may be fumigated in accordance with part 147 of this subchapter or otherwise sanitized.

* * * * *

■ 16. Section 145.33 is amended as follows:

■ a. In paragraph (b) introductory text, by removing the citation ''(5)'' and adding the citation ''(4)'' in its place.

■ b. In paragraph (c)(1) introductory text, by removing the words ''in compliance with the provisions of § 147.26 of this chapter'' and adding the words ''in accordance with part 147 of this subchapter with respect to Mycoplasma isolation, sanitation, and management'' in their place.

■ c. In paragraph (c)(1)(ii)(C), by removing the words ''§ 147.8 of this chapter'' and adding the words ''part 147 of this subchapter'' in their place.

■ d. In paragraph (c)(2), by removing the words ''(see §§ 147.22, 147.23, and 147.24)'' and by adding the words ''and in accordance with part 147 of this subchapter'' before the period at the end of the paragraph.

■ e. In paragraph (c)(3), by removing the words ''as described in § 147.24(a) of this chapter'' and adding the words ''in accordance with part 147 of this subchapter'' in their place.

■ f. In paragraph (c)(4), by removing the words ''approved by the Department'' and adding the words ''in accordance with part 147 of this subchapter'' in their place.

■ g. In paragraph (d)(1)(ii), by removing the words ''in compliance with §§ 147.21, 147.24(a), and 147.26 of this chapter'' and adding the words ''in accordance with part 147 of this subchapter with respect to flock sanitation, cleaning and disinfection, and Salmonella isolation, sanitation, and management'' in their place.

■ h. By revising paragraph (d)(1)(vi).

■ i. In paragraph (d)(1)(vii), by removing the words ''as described in § 147.12 of this chapter'' and adding the words ''in accordance with part 147 of this subchapter'' in their place.

■ j. By revising paragraph (d)(2).

■ k. In paragraph (e)(1) introductory text, by removing the words ''in compliance with the provisions of § 147.26 of this chapter'' and adding the words ''in accordance with part 147 of this subchapter with respect to Mycoplasma isolation, sanitation, and management'' in their place.

■ l. In paragraph (e)(1)(ii)(B), by removing the words ''§ 147.8 of this chapter'' and adding the words ''part 147 of this subchapter'' in their place.

■ m. In paragraph (e)(3), by removing the words ''as described in § 147.24(a) of this chapter'' and adding the words ''in accordance with part 147 of this subchapter'' in their place.

■ n. In paragraph (e)(4), by removing the words ''approved by the Department'' and adding the words ''in accordance with part 147 of this subchapter'' in their place.

■ o. In paragraph (f)(3), by removing the words ''in compliance with the provisions of § 147.26 of this chapter'' and adding the words ''in accordance with part 147 of this subchapter with respect to Mycoplasma isolation, sanitation, and management'' in their place.

■ p. In paragraph (f)(5), by removing the words ''as described in § 147.24(a) of this chapter'' and adding the words ''in accordance with part 147 of this subchapter'' in their place.

■ q. In paragraph (g)(3), by removing the words ''in compliance with the provisions of § 147.26 of this chapter'' and adding the words ''in accordance with part 147 of this subchapter with respect to Mycoplasma isolation, sanitation, and management'' in their place.

■ r. In paragraph (g)(5), by removing the words ''as described in § 147.24(a) of this chapter'' and adding the words ''in accordance with part 147 of this subchapter'' in their place.

■ s. In paragraph (j)(2), by removing the words ''paragraph (c)(1)(i) of this section'' and adding the words ''§ 145.83(c)(1)(i)'' in their place.

■ t. In paragraphs (j)(3) and (k)(3), by removing the words ''as described in § 147.24(a) of this chapter'' and adding the words ''in accordance with part 147 of this subchapter'' in their place.

■ u. In paragraph (k)(2), by removing the words ''paragraph (e)(1)(i) of this section'' and adding the words ''§ 145.83(d)(1)(i)'' in their place.

■ v. In paragraph (l)(1) introductory text, by adding the words ''using an approved test as described in § 145.14'' after the word ''influenza''.

■ w. By adding paragraph (m).

The revisions and addition read as follows:

§ 145.33 Terminology and classification; flocks and products.

* * * * *

(d) * * *

(1) * * *

(vi) Chicks shall be hatched in a hatchery whose sanitation is maintained in accordance with part 147 of this subchapter and sanitized or fumigated in accordance with part 147 of this subchapter;

* * * * *

(2) The Official State Agency may monitor the effectiveness of the sanitation practices in accordance with part 147 of this subchapter.

* * * * *

(m) *U.S. Salmonella Enteritidis Monitored.* This classification is intended for multiplier meat-type breeders wishing to monitor their breeding flocks for *Salmonella enteritidis.*

(1) A flock and the hatching eggs and chicks produced from it shall be eligible for this classification if they meet the following requirements, as determined by the Official State Agency:

(i) The flock originated from a U.S. S. Enteritidis Clean primary meat-type breeding flock.

(ii) The flock is maintained in accordance with part 147 of this

subchapter with respect to Salmonella isolation, sanitation, and management.

(iii) Environmental samples are collected from the flock in accordance with part 147 of this subchapter at 16–18 and 40–45 weeks of age. The samples shall be examined bacteriologically for group D Salmonella at an authorized laboratory, and cultures from group D positive samples shall be serotyped.

(2) The following actions must be taken with respect to the test results that are generated from this *S. enteritidis* monitoring program:

(i) If *S. enteritidis* is isolated from an environmental sample collected from the flock in accordance with paragraph (m)(1)(iii) of this section, a thorough evaluation of the practices and programs associated with the sampled flock shall be conducted with the goal of ascertaining the reason(s) for the positive finding.

(ii) The test results and the results of any evaluations performed in accordance with paragraph (m)(2)(i) of this section will be reported on a quarterly basis to the Official State Agency and the NPIP Senior Coordinator.

(iii) Participating broiler integrators shall combine their respective test results (and the results of any associated evaluations) to help guide their decisionmaking regarding programs and practices to implement or maintain to address *S. enteritidis.*

(iv) Aggregate data regarding the prevalence of *S. enteritidis* in participating U.S. meat-type parent breeding flocks shall be made available to the U.S. Poultry and Egg Association and the National Chicken Council.

(3) This classification may be revoked by the Official State Agency if the participant fails to comply with the requirements of this classification. The Official State Agency shall not revoke the participant's classification until the participant has been given an opportunity for a hearing in accordance with rules of practice adopted by the Official State Agency.

* * * * *

§ 145.42 [Amended]

■ 17. In § 145.42, paragraph (b) is amended by removing the words ''(see § 147.25 of this chapter)'' and adding the words ''in accordance with part 147 of this subchapter'' after the word ''sanitized''.

■ 18. Section 145.43 is amended as follows:

■ a. In paragraph (c)(1), by removing the words ''in accordance with the conditions and procedures described in § 147.26 of this chapter'' and adding the words ''in accordance with part 147 of this subchapter with respect to Mycoplasma isolation, sanitation, and management'' in their place.

■ b. In paragraph (c)(2), by removing the words ''applicable conditions outlined in § 147.26 of this chapter are being met'' and adding the words ''flock is being maintained in accordance with part 147 of this subchapter with respect to Mycoplasma isolation, sanitation, and management'' in their place.

■ c. By adding a sentence at the end of paragraph (e)(1).

■ d. In paragraph (e)(2), by removing the words '' § 147.6 of this chapter'' and by adding the words '' part 147 of this subchapter'' in their place.

■ e. By removing paragraph (e)(3).

■ f. In paragraph (f) introductory text, by removing the words ''as described in subpart C of part 147 of this chapter'' and adding the words ''in accordance with part 147 of this subchapter'' in their place.

■ g. In paragraphs (f)(2), (f)(4), and (f)(6), by removing the words '', as described in § 147.12 of this chapter'' and adding the words ''in accordance with part 147 of this subchapter'' in their place.

■ h. By revising paragraph (g)(3).

The addition and revision read as follows:

§ 145.43 Terminology and classification; flocks and products.

* * * * *

(e) * * *

(1) * * * It is recommended that any birds that are showing clinical signs of *M. synoviae* infection be included in samples taken.

* * * * *

(g) * * *

(3) All spent fowl being marketed for meat from flocks that have been tested as required by this paragraph shall be tested at a rate of 6 birds per flock within 21 days prior to movement to slaughter.

* * * * *

■ 19. Section 145.45 is added to subpart D to read as follows:

§ 145.45 Terminology and classification; compartments.

(a) *U.S. H5/H7 Avian Influenza Clean Compartment.* This program is intended to be the basis from which the primary turkey breeding-hatchery industry may demonstrate the existence and implementation of a program that has been approved by the Official State Agency and the Service to establish a compartment consisting of a primary breeding-hatchery company that is free of H5/H7 avian influenza (AI), also referred to as notifiable avian influenza (NAI). This compartment has the purpose of protecting the defined subpopulation and avoiding the introduction and spread of NAI within that subpopulation by prohibiting contact with other commercial poultry operations, other domestic and wild birds, and other intensive animal operations. The program shall consist of the following:

(1) *Definition of the compartment.* Based on the guidelines established by the World Organization for Animal Health (OIE) in the Terrestrial Animal Health Code and the guidelines in this paragraph (a), the primary breeder company will define the compartment with respect to NAI. Specifically, the company will use a comprehensive biosecurity program to define the compartment as a subpopulation of poultry with a health status for NAI that is separate from birds and poultry outside the compartment. The Official State Agency and the Service must approve all documentation submitted to substantiate the defined compartment as adequate to qualify for epidemiological separation from other potential sources of infection of NAI. Guidelines for the definition of the compartment include:

(i) *Definition and description of the subpopulation of birds and their health status.* All birds included in the compartment must be U.S. H5/H7 Avian Influenza Clean in accordance with § 145.43(g). The poultry must also be located in a State that has an initial State response and containment plan approved by APHIS under § 56.10 of this chapter and that participates in the diagnostic surveillance program for H5/H7 low pathogenicity AI as described in § 145.15. Within the compartment, all official tests for AI, as described in § 145.14(d), must be conducted in State or Federal laboratories or in NPIP authorized laboratories that meet the minimum standards described in § 147.52 of this subchapter. In addition, the company must provide to the Service upon request any relevant historical and current NAI-related data for reference regarding surveillance for the disease within the compartment. Upon request, the Official State Agency may provide such data for other commercial poultry populations located in the State.

(ii) *Description of animal identification and traceability processes.* The primary breeder company must also include a description of its animal identification and traceability records, including examples of Veterinary Services (VS) Form 9–5, ''Report of Hatcheries, Dealers and Independent Flocks''; VS Form 9–2, ''Flock Selection and Testing Report''; VS Form 9–3, ''Report of Sales of Hatching Eggs,

Chicks and Poults''; VS Form 9–9, '' Hatchery Inspection Report''; set and hatch records; egg receipts; and egg/chick invoices for the subpopulation. Documentation must also include breed identification (NPIP stock code). The Service should ensure that an effective flock identification system and traceability system are in place.

(iii) *Definition and description of the physical components or establishments of the defined compartment.* The primary breeder company must provide documentation establishing that the defined compartment is epidemiologically separated from other poultry and bird populations. The documentation must be approved by the Official State Agency and the Service as indicating adequate epidemiological separation to maintain the compartment's separate health status with respect to NAI. The documentation should include descriptions of:

(A) The physical and spatial factors that separate the compartment from surrounding bird populations and affect the biosecurity status of the compartment.

(B) Relevant environmental factors that may affect exposure of the birds to AI.

(C) The functional boundary and fencing that are used to control access to the compartment.

(D) Facilities and procedures to prevent access by wild birds and to provide separation from other relevant hosts.

(E) The relevant infrastructural factors that may affect exposure to AI, including the construction and design of buildings or physical components, cleaning and disinfection of buildings and physical components between production groups with quality assurance verification, cleaning and disinfection of equipment, and introduction of equipment or material into the compartment.

(iv) *Definition and description of the functional relationships between components of the defined compartment.* Functional relationships between components of the compartment include traffic movement and flow at and among premises, personnel movement at and among premises, exposure to live bird populations, and any other factors that could affect biosecurity of the compartment. All physical components of the compartment must be maintained in compliance with hygiene and biosecurity procedures for poultry primary breeding flocks and hatcheries in accordance with part 147 of this subchapter. In addition, the company must provide a biosecurity plan for the compartment and all included components. The biosecurity plan should include:

(A) Requirements that company employees and contract growers limit their contact with live birds outside the compartment.

(B) An education and training program for company employees and contractors.

(C) Standard operating procedures for company employees, contractors, and outside maintenance personnel.

(D) Requirements for company employees and non-company personnel who visit any premises within the compartment.

(E) Company veterinary infrastructure to ensure flock monitoring and disease diagnosis and control measures.

(F) Policies for management of vehicles and equipment used within the compartment to connect the various premises.

(G) Farm site requirements (location, layout, and construction).

(H) Pest management program.

(I) Cleaning and disinfection process.

(J) Requirements for litter and dead bird removal and/or disposal.

(v) *Description of other factors important for maintaining the compartment.* The company veterinary infrastructure will assess sanitary measures, environmental risk factors, and management and husbandry practices that relate to the separation of the compartment and the health status of the birds contained within the compartment that may affect risk of exposure to NAI. This assessment must include a description of internal monitoring and auditing systems (e.g., quality assurance and quality control programs) to demonstrate the effectiveness of the compartment. Upon request, the Service will provide the company with information on the epidemiology of NAI and the associated risk pathways in which the components of the compartment are located.

(vi) *Approval or denial.* Based on this documentation provided under this paragraph (a)(1), as well as any other information the Service and the Official State Agency determine to be necessary, the Service and the Official State Agency will approve or deny the classification of the compartment as U.S. H5/H7 Avian Influenza Clean.

(2) *Company activities for maintenance of the compartment.* (i) The primary breeder company's management of biosecurity, surveillance, and disease control efforts must be uniform and equivalent among all components that are a part of the compartment. Oversight and inspection of these management practices must be conducted by the company's licensed, accredited veterinarians.

(ii) Veterinary staff from the Official State Agency and NPIP staff will work in partnership with licensed, accredited veterinarians to train and certify auditors through Service-approved workshops. The trained auditors will conduct biosecurity and operational audits at least once every 2 years to ensure the integrity of the compartment. These audits will include evaluation of the critical control points and standard operating practices within the compartment, verification of the health status of the flock(s) contained within the compartment, and examination of the biosecurity and management system of the integrated components of the compartment.

(iii) In addition, the company must demonstrate compliance with paragraph (a)(1) of this section for remaining in the U.S. H5/H7 Avian Influenza Clean classification, surveillance for NAI within the compartment, and conducting tests in State or Federal laboratories or in NPIP authorized laboratories. Accredited veterinarians are responsible for the enforcement of active and passive surveillance of NAI in primary breeder flocks. Baseline health status must be maintained for all flocks or subpopulations within the compartment, indicating the dates and negative results of all avian influenza surveillance and monitoring testing, the dates and history of last disease occurrence (if any), the number of outbreaks, and the methods of disease control that were applied.

(iv) Documentation will be maintained in the company's database and will be verified as required by the Service and/or the Official State Agency.

(3) *Service and Official State Agency activities for maintenance of the compartment.* The Service will work in cooperation with the Official State Agencies to ensure the continued integrity of any recognized compartments. Activities will include:

(i) Oversight of the establishment and management of compartments;

(ii) Establishment of effective partnerships between the Service, the Plan, and the primary breeder industry;

(iii) Approval or denial of classification of compartments as U.S. H5/H7 Avian Influenza Clean Compartments under paragraph (a)(1) of this section;

(iv) Official certification of the health status of the compartment, and commodities that may be traded from it through participation in the Plan for avian diseases, including the U.S. H5/H7 Avian Influenza Clean program as

described in § 145.43(g) and diagnostic surveillance for H5/H7 low pathogenicity AI as described in § 145.15;

(v) Conducting audits of compartments at least once every 2 years to:

(A) Confirm that the primary breeding company's establishments are epidemiologically distinct and pathways for the introduction of disease into the compartment are closed through routine operational procedures; and

(B) Evaluate and assess the management and husbandry practices relating to biosecurity to determine whether they are in compliance with hygiene and biosecurity procedures for poultry primary breeding flocks and hatcheries in accordance with part 147 of this subchapter;

(vi) Providing, upon request, model plans for management and husbandry practices relating to biosecurity in accordance with part 147 of this subchapter, risk evaluations in conjunction with the primary breeder industry (including disease surveillance such as VS Form 9–4, ''Summary of Breeding Flock Participation''), and diagnostic capability summaries and systems for initial State response and containment plans in accordance with § 56.10 of this chapter; and

(vii) Publicizing and sharing compartment information with international trading partners, upon request, to establish approval and recognition of the compartment, including timeliness and accuracy of disease reporting and surveillance measures as described in §§ 145.15 and 145.43(g).

(4) *Emergency response and notification.* In the case of a confirmed positive of NAI in the subpopulation of the compartment, the management of the compartment must notify the Service. The Service will immediately suspend the status of the compartment. A compartment will be eligible to resume trade with importing countries only after the compartment has adopted the necessary measures to reestablish the biosecurity level and confirm that NAI is not present in the compartment and the Service has reevaluated the management and biosecurity measures of the compartment and approved said compartment for trade.

(b) [Reserved]

■ 20. Section 145.52 is amended as follows:

■ a. In paragraph (b), by removing the words ''(see § 147.25 of this chapter)'' and adding the words ''in accordance with part 147 of this subchapter'' after the word ''sanitized''.

■ b. By redesignating paragraphs (c) and (d) as paragraphs (d) and (e), respectively.

■ c. By adding a new paragraph (c).

The addition reads as follows:

§ 145.52 Participation.

* * * * *

(c) It is recommended that waterfowl flocks and gallinaceous flocks in open-air facilities be kept separate.

* * * * *

■ 21. Section 145.53 is amended as follows:

■ a. In paragraph (c)(1) introductory text, by removing the words ''in compliance with the provisions of § 147.26 of this chapter'' and adding the words ''in accordance with part 147 of this subchapter with respect to Mycoplasma isolation, sanitation, and management'' in their place.

■ b. In paragraph (c)(3), by removing the words ''as described in § 147.24(a) of this chapter'' and adding the words ''in accordance with part 147 of this subchapter'' in their place.

■ c. In paragraph (d)(1) introductory text, by removing the words ''in compliance with the provisions of § 147.26 of this chapter'' and adding the words ''in accordance with part 147 of this subchapter with respect to Mycoplasma isolation, sanitation, and management'' in their place.

■ d. In paragraph (d)(1)(ii)(B), by removing the words ''§ 147.8 of this chapter'' and adding the words ''part 147 of this subchapter'' in their place.

■ e. In paragraph (d)(3), by removing the words ''as described in § 147.24(a) of this chapter'' and adding the words ''in accordance with part 147 of this subchapter'' in their place.

■ f. By revising paragraphs (e)(1) introductory text and (e)(2) introductory text.

■ g. In paragraphs (e)(1)(i) and (e)(1)(ii), by removing the number ''90'' and adding the number ''180'' in its place.

■ h. By revising paragraph (e)(3).

■ i. By adding paragraph (f).

The revisions and addition read as follows:

§ 145.53 Terminology and classification; flocks and products.

* * * * *

(e) * * *

(1) It is a primary breeding flock in which a minimum of 30 birds has been tested negative to the H5 and H7 subtypes of avian influenza as provided in § 145.14(d) when more than 4 months of age; *Provided,* that waterfowl flocks may test a minimum of 30 cloacal swabs for virus isolation. To retain this classification:

* * * * *

(2) It is a multiplier breeding flock in which a minimum of 30 birds has been tested negative to the H5 and H7 subtypes of avian influenza as provided in § 145.14(d) when more than 4 months of age; *Provided,* that waterfowl flocks may test a minimum of 30 cloacal swabs for virus isolation. To retain this classification:

* * * * *

(3) A sample of at least 30 birds must be tested and found negative to H5/H7 avian influenza within 21 days prior to movement to slaughter.

(f) *U.S. Salmonella Monitored.* This program is intended to be the basis from which the hatching industry may conduct a program for the prevention and control of salmonellosis. It is intended to reduce the incidence of *Salmonella* organisms in day-old poultry through an effective and practical sanitation program in the hatchery. This will afford other segments of the poultry industry an opportunity to reduce the incidence of *Salmonella* in their products. The following requirements must be met for a flock to be of this classification:

(1) An Authorized Agent shall collect a minimum of five environmental samples, e.g., chick papers, hatching trays, and chick transfer devices, from the hatchery at least every 30 days. Testing must be performed at an authorized laboratory.

(2) To claim products are of this classification, all products shall be derived from a hatchery that meets the requirements of the classification.

(3) This classification may be revoked by the Official State Agency if the participant fails to follow recommended corrective measures.

* * * * *

§ 145.62 [Amended]

■ 22. In § 145.62, paragraph (b) is amended by removing the words ''(see § 147.22 of this chapter)'' and adding the words ''in accordance with part 147 of this subchapter'' in their place.

■ 23. In § 145.72, paragraph (b) is revised to read as follows:

§ 145.72 Participation.

* * * * *

(b) Hatching eggs produced by primary breeding flocks should be nest clean. They may be fumigated in accordance with part 147 of this subchapter or otherwise sanitized.

* * * * *

■ 24. Section 145.73 is amended as follows:

■ a. In paragraph (c)(1) introductory text, by removing the words ''in compliance with the provisions of

§ 147.26 of this subchapter'' and adding the words ''in accordance with part 147 of this subchapter with respect to Mycoplasma isolation, sanitation, and management'' in their place.

■ b. In paragraph (c)(3), by removing the words ''as described in § 147.24(a)'' and adding the words ''in accordance with part 147'' in their place.

■ c. In paragraph (d)(1)(iv), by removing the words ''in compliance with §§ 147.21, 147.24(a), and 147.26 of this subchapter'' and adding the words ''in accordance with part 147 of this subchapter with respect to flock sanitation, cleaning and disinfection, and Salmonella isolation, sanitation, and management'' in their place.

■ d. In paragraph (d)(1)(v), by removing the words ''as described in § 147.12'' and adding the words ''in accordance with part 147'' in their place.

■ e. In paragraph (d)(1)(vii), by removing the words ''as described in § 147.11'' and adding the words ''in accordance with part 147'' in their place.

■ f. By revising paragraph (d)(1)(ix).

■ g. In paragraph (d)(2), by removing the words ''as described in § 147.11(a)'' and adding the words ''in accordance with part 147'' in their place.

■ h. In paragraph (e)(1) introductory text, by removing the words ''in compliance with the provisions of § 147.26 of this subchapter'' and adding the words ''in accordance with part 147 of this subchapter with respect to Mycoplasma isolation, sanitation, and management'' in their place.

■ i. In paragraph (e)(3), by removing the words ''as described in § 147.24(a)'' and adding the words ''in accordance with part 147'' in their place.

■ j. In paragraph (f)(1) introductory text, by adding the words ''and found'' before the word ''negative'' and by removing the words ''antibodies to''.

■ k. By revising paragraph (f)(2).

The revisions read as follows:

§ 145.73 Terminology and classification; flocks and products.

* * * * *

(d) * * *

(1) * * *

(ix) Hatching eggs produced by the flock are incubated in a hatchery whose sanitation is maintained in accordance with part 147 of this subchapter and sanitized either by a procedure approved by the Official State Agency or in accordance with part 147 of this subchapter.

* * * * *

(f) * * *

(2) A sample of at least 11 birds must be tested and found negative for avian influenza within 21 days prior to movement to slaughter.

■ 25. Section 145.74 is added to subpart G to read as follows:

§ 145.74 Terminology and classification; compartments.

(a) *U.S. Avian Influenza Clean Compartment.* This program is intended to be the basis from which the primary egg-type chicken breeding-hatchery industry may demonstrate the existence and implementation of a program that has been approved by the Official State Agency and the Service to establish a compartment consisting of a primary breeding-hatchery company that is free of H5/H7 avian influenza (AI), also referred to as notifiable avian influenza (NAI). This compartment has the purpose of protecting the defined subpopulation and avoiding the introduction and spread of NAI within that subpopulation by prohibiting contact with other commercial poultry operations, other domestic and wild birds, and other intensive animal operations. The program shall consist of the following:

(1) *Definition of the compartment.* Based on the guidelines established by the World Organization for Animal Health (OIE) in the Terrestrial Animal Health Code and the guidelines in this paragraph (a), the primary breeder company will define the compartment with respect to NAI. Specifically, the company will use a comprehensive biosecurity program to define the compartment as a subpopulation of poultry with a health status for NAI that is separate from birds and poultry outside the compartment. The Official State Agency and the Service must first approve all documentation submitted by the company to substantiate the defined compartment as adequate to qualify for epidemiological separation from other potential sources of infection of NAI. Guidelines for the definition of the compartment include:

(i) *Definition and description of the subpopulation of birds and their health status.* All birds included in the compartment must be U.S. Avian Influenza Clean in accordance with § 145.73(f). The poultry must also be located in a State that has an initial State response and containment plan approved by APHIS under § 56.10 of this chapter and that participates in the diagnostic surveillance program for H5/H7 low pathogenicity AI as described in § 145.15. Within the compartment, all official tests for AI, as described in § 145.14(d), must be conducted in State or Federal laboratories or in NPIP authorized laboratories that meet the minimum standards described in § 147.52 of this subchapter. In addition, the company must provide to the Service upon request any relevant historical and current NAI-related data for reference regarding surveillance for the disease within the compartment. Upon request, the Official State Agency may provide such data for other commercial poultry populations located in the State.

(ii) *Description of animal identification and traceability processes.* The primary breeder company must also include a description of its animal identification and traceability records, including examples of Veterinary Services (VS) Form 9–5, ''Report of Hatcheries, Dealers and Independent Flocks''; VS Form 9–2, ''Flock Selection and Testing Report''; VS Form 9–3, ''Report of Sales of Hatching Eggs, Chicks and Poults''; VS Form 9–9, '' Hatchery Inspection Report''; set and hatch records; egg receipts; and egg/chick invoices for the subpopulation. Documentation must also include breed identification (NPIP stock code). The Service should ensure that an effective flock identification system and traceability system are in place.

(iii) *Definition and description of the physical components or establishments of the defined compartment.* The primary breeder company must provide documentation establishing that the defined compartment is epidemiologically separated from other poultry and bird populations. The documentation must be approved by the Official State Agency and the Service as indicating adequate epidemiological separation to maintain the compartment's separate health status with respect to NAI. The documentation should include descriptions of:

(A) The physical and spatial factors that separate the compartment from surrounding bird populations and affect the biosecurity status of the compartment.

(B) Relevant environmental factors that may affect exposure of the birds to AI.

(C) The functional boundary and fencing that are used to control access to the compartment.

(D) Facilities and procedures to prevent access by wild birds and to provide separation from other relevant hosts.

(E) The relevant infrastructural factors that may affect exposure to AI, including the construction and design of buildings or physical components, cleaning and disinfection of buildings and physical components between production groups with quality assurance verification, cleaning and disinfection of equipment, and introduction of equipment or material into the compartment.

(iv) *Definition and description of the functional relationships between components of the defined compartment.* Functional relationships between components of the compartment include traffic movement and flow at and among premises, personnel movement at and among premises, exposure to live bird populations, and any other factors that could affect biosecurity of the compartment. All physical components of the compartment must be maintained in compliance with hygiene and biosecurity procedures for poultry primary breeding flocks and hatcheries in accordance with part 147 of this subchapter. In addition, the company must provide a biosecurity plan for the compartment and all included components. The biosecurity plan should include but not be limited to:

(A) Requirements that company employees and contract growers limit their contact with live birds outside the compartment.

(B) An education and training program for company employees and contractors.

(C) Standard operating procedures for company employees, contractors, and outside maintenance personnel.

(D) Requirements for company employees and non-company personnel who visit any premises within the compartment.

(E) Company veterinary infrastructure to ensure flock monitoring and disease diagnosis and control measures.

(F) Policies for management of vehicles and equipment used within the compartment to connect the various premises.

(G) Farm site requirements (location, layout, and construction).

(H) Pest management program.

(I) Cleaning and disinfection process.

(J) Requirements for litter and dead bird removal and/or disposal.

(v) *Description of other factors important for maintaining the compartment.* The company veterinary infrastructure will assess sanitary measures, environmental risk factors, and management and husbandry practices that relate to the separation of the compartment and the health status of the birds contained within the compartment that may affect risk of exposure to NAI. This assessment must include a description of internal monitoring and auditing systems (e.g., quality assurance and quality control programs) to demonstrate the effectiveness of the compartment. Upon request, the Service will provide the company with information on the epidemiology of NAI and the associated risk pathways in which the components of the compartment are located.

(vi) *Approval or denial.* Based on the documentation provided under this paragraph (a)(1), as well as any other information the Service and the Official State Agency determine to be necessary, the Service and the Official State Agency will approve or deny the classification of the compartment as U.S. Avian Influenza Clean.

(2) *Company activities for maintenance of the compartment.* (i) The primary breeder company's management of biosecurity, surveillance, and disease control efforts must be uniform and equivalent among all components that are a part of the compartment. Oversight and inspection of these management practices must be conducted by the company's licensed, accredited veterinarians.

(ii) Veterinary staff from the Official State Agency and NPIP staff will work in partnership with licensed, accredited veterinarians to train and certify auditors through Service-approved workshops. The trained auditors will conduct biosecurity and operational audits at least once every 2 years to ensure the integrity of the compartment. These audits will include evaluation of the critical control points and standard operating practices within the compartment, verification of the health status of the flock(s) contained within the compartment, and examination of the biosecurity and management system of the integrated components of the compartment.

(iii) In addition, the company must demonstrate compliance with paragraph (a)(1) of this section for remaining in the U.S. Avian Influenza Clean classification, surveillance for NAI within the compartment, and conducting tests in State or Federal laboratories or in NPIP authorized laboratories. Accredited veterinarians are responsible for the enforcement of active and passive surveillance of NAI in primary breeder flocks. Baseline health status must be maintained for all flocks or subpopulations within the compartment, indicating the dates and negative results of all avian influenza surveillance and monitoring testing, the dates and history of last disease occurrence (if any), the number of outbreaks, and the methods of disease control that were applied.

(iv) Documentation will be maintained in the company's database and will be verified as required by the Service and/or the Official State Agency.

(3) *Service and Official State Agency activities for maintenance of the compartment.* The Service will work in cooperation with the Official State Agencies to ensure the continued integrity of any recognized compartments. Activities include:

(i) Oversight of the establishment and management of compartments;

(ii) Establishment of effective partnerships between the Service, the Plan, and the primary breeder industry;

(iii) Approval or denial of classification of compartments as U.S. Avian Influenza Clean Compartments under paragraph (a)(1) of this section;

(iv) Official certification of the health status of the compartment, and commodities that may be traded from it through participation in the Plan for avian diseases, including the U.S. Avian Influenza Clean program as described in § 145.73(f) and diagnostic surveillance for H5/H7 low pathogenicity AI as described in § 145.15;

(v) Conducting audits of compartments at least once every 2 years to:

(A) Confirm that the primary breeding company's establishments are epidemiologically distinct and pathways for the introduction of disease into the compartment are closed through routine operational procedures; and

(B) Evaluate and assess the management and husbandry practices relating to biosecurity to determine whether they are in compliance with hygiene and biosecurity procedures for poultry primary breeding flocks and hatcheries in accordance with part 147 of this subchapter;

(vi) Providing, upon request, model plans for management and husbandry practices relating to biosecurity in accordance with part 147 of this subchapter, risk evaluations in conjunction with the primary breeder industry (including disease surveillance such as VS Form 9–4, ''Summary of Breeding Flock Participation''), and diagnostic capability summaries and systems for initial State response and containment plans in accordance with § 56.10 of this chapter; and

(vii) Publicizing and sharing compartment information with international trading partners, upon request, to establish approval and recognition of the compartment, including timeliness and accuracy of disease reporting and surveillance measures as described in §§ 145.15 and 145.73(f).

(4) *Emergency response and notification.* In the case of a confirmed positive of NAI in the subpopulation of the compartment, the management of the compartment must notify the Service. The Service will immediately suspend the status of the compartment.

A compartment will be eligible to resume trade with importing countries only after the compartment has adopted the necessary measures to reestablish the biosecurity level and confirm that NAI is not present in the compartment and the Service has reevaluated the management and biosecurity measures of the compartment and approved said compartment for trade.

(b) [Reserved]

■ 26. In § 145.82, paragraph (b) is revised to read as follows:

§ 145.82 Participation.

* * * * *

(b) Hatching eggs produced by primary breeding flocks should be nest clean. They may be fumigated in accordance with part 147 of this subchapter or otherwise sanitized.

* * * * *

■ 27. Section 145.83 is amended as follows:

■ a. In paragraph (c)(1) introductory text, by removing the words ''in compliance with the provisions of § 147.26 of this subchapter'' and adding the words ''in accordance with part 147 of this subchapter with respect to Mycoplasma isolation, sanitation, and management'' in their place.

■ b. In paragraph (c)(3), by removing the words ''as described in § 147.24(a)'' and adding the words ''in accordance with part 147'' in their place.

■ c. In paragraph (d)(1) introductory text, by removing the words ''in compliance with the provisions of § 147.26 of this subchapter'' and adding the words ''in accordance with part 147 of this subchapter with respect to Mycoplasma isolation, sanitation, and management'' in their place.

■ d. In paragraph (d)(3), by removing the words ''as described in § 147.24(a)'' and adding the words ''in accordance with part 147'' in their place.

■ e. By revising paragraphs (e)(1) and (e)(3).

■ f. In paragraph (e)(6) introductory text, by removing the words ''or great-grandparent'' and adding the words ''great-grandparent, or grandparent'' in their place.

■ g. In paragraph (e)(6)(i)(B), by removing the words ''as described in § 147.12(a)'' and adding the words ''in accordance with part 147'' in their place.

■ h. In paragraph (e)(6)(i)(C), by removing the words ''as described in § 147.11'' and adding the words ''in accordance with part 147'' in their place.

■ i. In paragraph (e)(6)(i)(D), by removing the words ''as specified in § 147.12(a)'' and adding the words ''in accordance with part 147'' in their place.

■ j. In paragraph (f)(1)(i), by removing the words ''in compliance with §§ 147.21, 147.24(a), and 147.26 of this subchapter'' and adding the words ''in accordance with part 147 of this subchapter with respect to flock sanitation, cleaning and disinfection, and Salmonella isolation, sanitation, and management'' in their place.

■ k. By revising paragraph (f)(1)(iv).

■ l. In paragraph (f)(1)(vi), by removing the words ''as described in § 147.12'' and adding the words ''in accordance with part 147'' in their place.

■ m. By revising paragraph (f)(2).

■ n. In paragraph (g)(1) introductory text, by adding the words ''using an approved test as described in § 145.14'' after the word ''influenza''.

The revisions read as follows:

§ 145.83 Terminology and classification; flocks and products.

* * * * *

(e) * * *

(1) A flock and the hatching eggs and chicks produced from it shall be eligible for this classification if they meet the following requirements, as determined by the Official State Agency:

(i) The flock originated from a U.S. S. Enteritidis Clean flock, or one of the following samples has been examined bacteriologically for *S. enteritidis* at an authorized laboratory in accordance with part 147 of this subchapter and any group D Salmonella samples have been serotyped:

(A) A sample of chick papers, hatcher tray swabs, or fluff collected and cultured in accordance with part 147 of this subchapter; and

(B) Samples of intestinal and liver or spleen tissues from a minimum of 30 chicks that died within 7 days after hatching and have been preserved daily by freezing prior to shipment to an authorized laboratory.

(ii) The flock is maintained in compliance with isolation, sanitation, and management procedures for Salmonella in accordance with part 147 of this subchapter.

(iii) Environmental samples are collected from the flock by or under the supervision of an Authorized Agent, in accordance with part 147 of this subchapter, when the flock reaches 4 months of age and every 30 days thereafter. Once the flock is in egg production and chicks are hatching from it, the samples must include at least 4 individual test assay results every 30 days in flocks of more than 500 birds or 2 individual assays per month in flocks of 500 birds or fewer. One of these results must come from samples collected from hatched chicks at a participating hatchery derived from said flock. These individual test assays may be derived from pooled samples from the farm or hatchery in accordance with part 147 of this subchapter, but must be run as separate test assays in the laboratory. The environmental samples shall be examined bacteriologically for group D Salmonella at an authorized laboratory, and cultures from group D positive samples shall be serotyped.

(iv) Blood samples from 300 birds from the flock are officially tested with pullorum antigen when the flock is at least 4 months of age. All birds with positive or inconclusive reactions, up to a maximum of 25 birds, shall be submitted to an authorized laboratory and examined for the presence of group D Salmonella in accordance with part 147 of this subchapter. Cultures from group D positive samples shall be serotyped.

(v) Hatching eggs produced by the flock are collected as quickly as possible and their sanitation is maintained in accordance with part 147 of this subchapter.

(vi) Hatching eggs produced by the flock are incubated in a hatchery whose sanitation is maintained in accordance with part 147 of this subchapter, and the hatchery must have been sanitized either by a procedure approved by the Official State Agency or by fumigation in accordance with part 147 of this subchapter.

* * * * *

(3) If SE is isolated from an environmental sample collected from the flock in accordance with paragraph (e)(1)(iii) of this section, an additional environmental sampling and 25 live cull birds or fresh dead birds (if present), or other randomly selected live birds if fewer than 25 culls can be found in the flock, must be bacteriologically examined for SE in accordance with part 147 of this subchapter. If only 1 bird from the 25-bird sample is found positive for SE., the participant may request bacteriological examination of a second 25-bird sample from the flock. In addition, if the flock with the SE isolation is in egg production and eggs are under incubation, the next four consecutive hatches shall be examined bacteriologically in accordance with part 147 of this subchapter. Samples shall be collected from all of the hatching unit's chick trays and basket trays of hatching eggs, or from all chick box papers from the flock, and tested, pooling the samples into a minimum of 10 separate assays. Any followup hatchery-positive SE isolations shall result in discontinuation of subsequent

hatches until the flock status is determined by bird culture. The flock will be disqualified for the U.S. S. Enteritidis Clean classification if a bird or subsequent flock environmental assay results in isolation of SE.

* * * * *

(f) * * *

(1) * * *

(iv) Chicks shall be hatched in a hatchery whose sanitation is maintained in accordance with part 147 of this subchapter and sanitized or fumigated in accordance with part 147 of this subchapter.

* * * * *

(2) The Official State Agency may monitor the effectiveness of the sanitation practices in accordance with part 147 of this subchapter.

* * * * *

■ 28. Section 145.84 is added to subpart H to read as follows:

§ 145.84 Terminology and classification; compartments.

(a) *U.S. Avian Influenza Clean Compartment.* This program is intended to be the basis from which the primary meat-type chicken breeding-hatchery industry may demonstrate the existence and implementation of a program that has been approved by the Official State Agency and the Service to establish a compartment consisting of a primary breeding-hatchery company that is free of H5/H7 avian influenza (AI), also referred to as notifiable avian influenza (NAI). This compartment has the purpose of protecting the defined subpopulation and avoiding the introduction and spread of NAI within that subpopulation by prohibiting contact with other commercial poultry operations, other domestic and wild birds, and other intensive animal operations. The program shall consist of the following:

(1) *Definition of the compartment.* Based on the guidelines established by the World Organization for Animal Health (OIE) in the Terrestrial Animal Health Code and the guidelines in this paragraph (a), the primary breeder company will define the compartment with respect to NAI. Specifically, the company will use a comprehensive biosecurity program to define the compartment as a subpopulation of poultry with a health status for NAI that is separate from birds and poultry outside the compartment. The Official State Agency and the Service must first approve all documentation submitted by the company to substantiate the defined compartment as adequate to qualify for epidemiological separation from other potential sources of infection of NAI. Guidelines for the definition of the compartment include:

(i) *Definition and description of the subpopulation of birds and their health status.* All birds included in the compartment must be U.S. Avian Influenza Clean in accordance with § 145.83(g). The poultry must also be located in a State that has an initial State response and containment plan approved by APHIS under § 56.10 of this chapter and that participates in the diagnostic surveillance program for H5/H7 low pathogenicity AI as described in § 145.15. Within the compartment, all official tests for AI, as described in § 145.14(d), must be conducted in State or Federal laboratories or in NPIP authorized laboratories that meet the minimum standards described in § 147.52 of this subchapter. In addition, the company must provide to the Service upon request any relevant historical and current NAI-related data for reference regarding surveillance for the disease and the health status of the compartment. Upon request, the Official State Agency may provide such data for other commercial poultry populations located in the State.

(ii) *Description of animal identification and traceability processes.* The primary breeder company must also include a description of its animal identification and traceability records, including examples of Veterinary Services (VS) Form 9–5, ''Report of Hatcheries, Dealers and Independent Flocks''; VS Form 9–2, ''Flock Selection and Testing Report''; VS Form 9–3, ''Report of Sales of Hatching Eggs, Chicks and Poults''; VS Form 9–9, '' Hatchery Inspection Report''; set and hatch records; egg receipts; and egg/chick invoices for the subpopulation. Documentation must also include breed identification (NPIP stock code). The Service should ensure that an effective flock identification system and traceability system are in place.

(iii) *Definition and description of the physical components or establishments of the defined compartment.* The primary breeder company must provide documentation establishing that the defined compartment is epidemiologically separated from other poultry and bird populations. The documentation must be approved by the Official State Agency and the Service as indicating adequate epidemiological separation to maintain the compartment's separate health status with respect to NAI. The documentation should include descriptions of:

(A) The physical and spatial factors that separate the compartment from surrounding bird populations and affect the biosecurity status of the compartment.

(B) Relevant environmental factors that may affect exposure of the birds to AI.

(C) The functional boundary and fencing that are used to control access to the compartment.

(D) Facilities and procedures to prevent access by wild birds and to provide separation from other relevant hosts.

(E) The relevant infrastructural factors that may affect exposure to AI, including the construction and design of buildings or physical components, cleaning and disinfection of buildings and physical components between production groups with quality assurance verification, cleaning and disinfection of equipment, and introduction of equipment or material into the compartment.

(iv) *Definition and description of the functional relationships between components of the defined compartment.* Functional relationships between components of the compartment include traffic movement and flow at and among premises, personnel movement at and among premises, exposure to live bird populations, and any other factors that could affect biosecurity of the compartment. All physical components of the compartment must be maintained in compliance with hygiene and biosecurity procedures for poultry primary breeding flocks and hatcheries in accordance with part 147 of this subchapter. In addition, the company must provide a biosecurity plan for the compartment and all included components. The biosecurity plan should include but not be limited to:

(A) Requirements that company employees and contract growers limit their contact with live birds outside the compartment.

(B) An education and training program for company employees and contractors.

(C) Standard operating procedures for company employees, contractors, and outside maintenance personnel.

(D) Requirements for company employees and non-company personnel who visit any premises within the compartment.

(E) Company veterinary infrastructure to ensure flock monitoring and disease diagnosis and control measures.

(F) Policies for management of vehicles and equipment used within the compartment to connect the various premises.

(G) Farm site requirements (location, layout, and construction).

(H) Pest management program.

(I) Cleaning and disinfection process.

(J) Requirements for litter and dead bird removal and/or disposal.

(v) *Description of other factors important for maintaining the compartment.* The company veterinary infrastructure will assess sanitary measures, environmental risk factors, and management and husbandry practices that relate to the separation of the compartment and the health status of the birds contained within the compartment that may affect risk of exposure to NAI. This assessment must include a description of internal monitoring and auditing systems (e.g., quality assurance and quality control programs) to demonstrate the effectiveness of the compartment. Upon request, the Service will provide the company with information on the epidemiology of NAI and the associated risk pathways in which the components of the compartment are located.

(vi) *Approval or denial.* Based on the documentation provided under this paragraph (a)(1), as well as any other information the Service and the Official State Agency determine to be necessary, the Service and the Official State Agency will approve or deny the classification of the compartment as U.S. Avian Influenza Clean.

(2) *Company activities for maintenance of the compartment.* (i) The primary breeder company's management of biosecurity, surveillance, and disease control efforts must be uniform and equivalent among all components that are a part of the compartment. Oversight and inspection of these management practices must be conducted by the company's licensed, accredited veterinarians.

(ii) Veterinary staff from the Official State Agency and NPIP staff will work in partnership with licensed, accredited veterinarians to train and certify auditors through Service-approved workshops. The trained auditors will conduct biosecurity and operational audits at least once every 2 years to ensure the integrity of the compartment. These audits will include evaluation of the critical control points and standard operating practices within the compartment, verification of the health status of the flock(s) contained within the compartment, and examination of the biosecurity and management system of the integrated components of the compartment.

(iii) In addition, the company must demonstrate compliance with paragraph (a)(1) of this section for remaining in the U.S. Avian Influenza Clean classification, surveillance for NAI within the compartment, and conducting tests in State or Federal laboratories or in NPIP authorized laboratories. Accredited veterinarians are responsible for the enforcement of active and passive surveillance of NAI in primary breeder flocks. Baseline health status must be maintained for all flocks or subpopulations within the compartment, indicating the dates and negative results of all avian influenza surveillance and monitoring testing, the dates and history of last disease occurrence (if any), the number of outbreaks, and the methods of disease control that were applied.

(iv) Documentation will be maintained in the company's database and will be verified as required by the Service and/or the Official State Agency.

(3) *Service and Official State Agency activities for maintenance of the compartment.* The Service will work in cooperation with the Official State Agencies to ensure the continued integrity of any recognized compartments. Activities include:

(i) Oversight of the establishment and management of compartments;

(ii) Establishment of effective partnerships between the Service, the Plan, and the primary breeder industry;

(iii) Approval or denial of classification of compartments as U.S. Avian Influenza Clean Compartments under paragraph (a)(1) of this section;

(iv) Official certification of the health status of the compartment, and commodities that may be traded from it through participation in the Plan for avian diseases, including the U.S. Avian Influenza Clean program as described in § 145.83(g) and diagnostic surveillance for H5/H7 low pathogenicity AI as described in § 145.15;

(v) Conducting audits of compartments at least once every 2 years to:

(A) Confirm that the primary breeding company's establishments are epidemiologically distinct and pathways for the introduction of disease into the compartment are closed through routine operational procedures; and

(B) Evaluate and assess the management and husbandry practices relating to biosecurity to determine whether they are in compliance with hygiene and biosecurity procedures for poultry primary breeding flocks and hatcheries in accordance with part 147 of this subchapter;

(vi) Providing, upon request, model plans for management and husbandry practices relating to biosecurity in accordance with part 147 of this subchapter, risk evaluations in conjunction with the primary breeder industry (including disease surveillance such as VS Form 9–4, ''Summary of Breeding Flock Participation''), and diagnostic capability summaries and systems for initial State response and containment plans in accordance with § 56.10 of this chapter; and

(vii) Publicizing and sharing compartment information with international trading partners, upon request, to establish approval and recognition of the compartment, including timeliness and accuracy of disease reporting and surveillance measures as described in §§ 145.15 and 145.83(g).

(4) *Emergency response and notification.* In the case of a confirmed positive of NAI in the subpopulation of the compartment, the management of the compartment must notify the Service. The Service will immediately suspend the status of the compartment. A compartment would be eligible to resume trade with importing countries only after the compartment has adopted the necessary measures to reestablish the biosecurity level and confirm that NAI is not present in the compartment and the Service has reevaluated the management and biosecurity measures of the compartment and approved said compartment for trade.

(b) [Reserved]

§ 145.92 [Amended]

■ 29. In § 145.92, paragraph (b) is amended by removing the words ''(see § 147.25 of this chapter)'' and adding the words ''in accordance with part 147 of this subchapter'' after the word ''sanitized''.

■ 30. Section 145.93 is amended as follows:

■ a. By revising paragraph (c)(3).

■ b. By adding paragraph (d).

The revision and addition read as follows:

§ 145.93 Terminology and classification; flocks and products.

* * * * *

(c) * * *

(3) A sample of at least 30 birds must be tested and found negative to H5/H7 avian influenza within 21 days prior to movement to slaughter.

(d) *U.S. Salmonella Monitored.* This program is intended to be the basis from which the breeding-hatching industry may conduct a program for the prevention and control of salmonellosis. It is intended to reduce the incidence of *Salmonella* organisms in hatching eggs and day-old waterfowl through an effective and practical sanitation program at the breeder farm and in the hatchery. This will afford other segments of the poultry industry an

opportunity to reduce the incidence of Salmonella in their products.

(1) A flock and the hatching eggs and day-old waterfowl produced from it must meet the following requirements, as determined by the Official State Agency, to be eligible for this classification:

(i) The flock is maintained in compliance with isolation, sanitation, and management procedures for Salmonella in accordance with part 147 of this subchapter.

(ii) If feed contains animal protein, the protein products must have been heated throughout to a minimum temperature of 190 °F or above, or to a minimum temperature of 165 °F for at least 20 minutes, or to a minimum temperature of 184 °F under 70 lbs. pressure during the manufacturing process.

(iii) Feed shall be stored and transported in a manner that prevents contamination.

(iv) Waterfowl shall be hatched in a hatchery whose sanitation is maintained in accordance with part 147 of this subchapter and sanitized or fumigated in accordance with part 147 of this subchapter.

(v) An Authorized Agent shall take environmental samples from the hatchery every 30 days, i.e., meconium or box liner paper. An authorized laboratory for Salmonella shall examine the samples bacteriologically.

(vi) An Authorized Agent shall take environmental samples in accordance with part 147 of this subchapter from each flock at 4 months of age and every 30 days thereafter. An authorized laboratory for Salmonella shall examine the environmental samples bacteriologically.

(vii) Flocks may be vaccinated with a paratyphoid vaccine: *Provided,* that a sample of at least 100 birds will be segregated and shall remain unvaccinated until the flock reaches at least 4 months of age.

(2) The Official State Agency may monitor the effectiveness of the egg sanitation practices in accordance with part 147 of this subchapter.

(3) To claim products are of this classification, all products shall be derived from a hatchery and flock that meet the requirements of the classification.

(4) This classification may be revoked by the Official State Agency if the participant fails to follow recommended corrective measures.

PART 146—NATIONAL POULTRY IMPROVEMENT PLAN FOR COMMERCIAL POULTRY

■ 31. The authority citation for part 146 continues to read as follows:

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

■ 32. Section 146.1 is amended as follows:

■ a. By revising the definition of *authorized laboratory.*

■ b. In the definition of *commercial meat-type flock,* by adding the words ''spent fowl,'' after the word ''chickens,''.

■ c. In the definition of *H5/H7 low pathogenic avian influenza (LPAI),* by adding the words ''or equal to'' before the number ''1.2'' and by adding the word ''causes'' before the words ''less than 75''.

■ d. In paragraph (1)(iii) of the definition of *H5/H7 LPAI virus infection (infected),* by adding the words ''the Cooperating State Agency, the Official State Agency, and'' before the word ''APHIS''.

The revision reads as follows:

§ 146.1 Definitions.

* * * * *

Authorized laboratory. An authorized laboratory is a laboratory that meets the requirements of § 147.52 and is thus qualified to perform the assays in accordance with part 147 of this subchapter.

* * * * *

§ 146.2 [Amended]

■ 33. In § 146.2, paragraph (e) is amended by removing the words ''follow the laboratory protocols outlined in part 147 of this chapter'' and adding the words ''conduct tests in accordance with part 147 of this subchapter'' in their place.

§ 146.3 [Amended]

■ 34. Section 146.3 is amended as follows:

■ a. In paragraph (c), by adding the words '', spent fowl,'' after the word ''chicken''.

■ b. By removing paragraph (e).

§ 146.5 [Amended]

■ 35. In § 146.5, paragraph (b) is amended by removing the words ''as recommended in § 147.21(c)'' and adding the words ''in accordance with part 147'' in their place.

■ 36. Section 146.13 is amended as follows:

■ a. In paragraph (a)(1), by removing the words ''the requirements in § 147.8'' and adding the words ''part 147'' in their place.

■ b. By revising paragraph (b)(1)(ii)(C).

■ c. In paragraph (b)(2)(i), by removing the word ''(AVPR01510)''.

■ d. By revising paragraph (b)(2)(ii)(B).

The revisions read as follows:

§ 146.13 Testing.

* * * * *

(b) * * *

(1) * * *

(ii) * * *

(C) The AGID test for avian influenza must be conducted in accordance with part 147 of this subchapter. The test can be conducted on egg yolk or blood samples. The AGID test is not recommended for use in waterfowl.

* * * * *

(2) * * *

(ii) * * *

(B) Chicken and turkey flocks that test positive on the ACIA must be retested using the RRT–PCR or virus isolation. Positive results from the RRT–PCR or virus isolation must be further tested by Federal Reference Laboratories using appropriate tests for confirmation. Final judgment may be based upon further sampling and appropriate tests for confirmation.

* * * * *

■ 37. Section 146.23 is amended by revising the heading of paragraph (a), removing the introductory text of paragraph (a), and revising the introductory text of paragraphs (a)(1), and (a)(2) to read as follows:

§ 146.23 Terminology and classification; flocks and products.

* * * * *

(a) *U.S. H5/H7 Avian Influenza Monitored*—(1) *Table-egg layer pullet flocks.* This program is intended to be the basis from which the table-egg layer industry may conduct a program to monitor for the H5/H7 subtypes of avian influenza. It is intended to determine the presence of the H5/H7 subtypes of avian influenza in table-egg layer pullets through routine surveillance of each participating commercial table-egg layer pullet flock. A flock will qualify for this classification when the Official State Agency determines that it has met one of the following requirements:

* * * * *

(2) *Table-egg layer flocks.* This program is intended to be the basis from which the table-egg layer industry may conduct a program to monitor for the H5/H7 subtypes of avian influenza. It is intended to determine the presence of the H5/H7 subtypes of avian influenza in table-egg layer through routine surveillance of each participating commercial table-egg layer flock. A flock will qualify for this classification

when the Official State Agency determines that it has met one of the following requirements:

* * * * *

■ 38. Section 146.31 is amended by adding, in alphabetical order, a definition of *spent fowl* to read as follows:

§ 146.31 Definitions.

* * * * *

Spent fowl. Domesticated poultry that were in production of hatching eggs or commercial table eggs and have been removed from such production.

■ 39. Section 146.32 is amended by adding a new paragraph (c) to read as follows:

§ 146.32 Participation.

* * * * *

(c) If spent fowl are slaughtered at meat-type chicken slaughter plants that participate in the Plan, they may participate in the Plan through the provisions of this subpart C.

§ 146.33 [Amended]

■ 40. In § 146.33, paragraph (a)(1) is amended by removing the words ''antibodies to''.

■ 41. In § 146.43, paragraph (a)(1) is revised to read as follows:

§ 146.43 Terminology and classification; meat-type turkey slaughter plants.

* * * * *

(a) * * *

(1) It is a meat-type turkey slaughter plant that accepts only meat-type turkeys from flocks where a minimum of 6 samples per flock have been collected no more than 21 days prior to movement to slaughter and tested negative with an approved test for type A avian influenza, as provided in § 146.13(b). It is recommended that samples be collected from flocks over 10 weeks of age with respiratory signs such as coughing, sneezing, snicking, sinusitis, or rales; depression; or decreases in food or water intake.

* * * * *

PART 147—AUXILIARY PROVISIONS ON NATIONAL POULTRY IMPROVEMENT PLAN

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

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

■ 43. Section 147.1 is revised to read as follows:

§ 147.1 Blood testing procedures.

Blood testing must be conducted in a manner approved by the Administrator. Approved blood testing procedures are listed in the NPIP Program Standards, as defined in § 147.51. Blood testing procedures may also be approved by the Administrator in accordance with § 147.53(d)(1).

(Approved by the Office of Management and Budget under control number 0579–0007)

§§ 147.2 through 147.9 [Removed and Reserved]

■ 44. Sections 147.2 through 147.9 are removed and reserved.

■ 45. Section 147.10 is revised to read as follows:

§ 147.10 Bacteriological examination procedures.

Bacteriological examination must be conducted in a manner approved by the Administrator. Approved bacteriological examination procedures are listed in the NPIP Program Standards, as defined in § 147.51. Bacteriological examination procedures may also be approved by the Administrator in accordance with § 147.53(d)(1).

§§ 147.11 through 147.17 [Removed and Reserved]

■ 46. Sections 147.11 through 147.17 are removed and reserved.

■ 47. Section 147.21 is revised to read as follows:

§ 147.21 Sanitation procedures.

Sanitation must be maintained in a manner approved by the Administrator. Approved procedures for maintaining sanitation are listed in the NPIP Program Standards, as defined in

§ 147.51 Sanitation procedures may also be approved by the Administrator in accordance with § 147.53(d)(2)

(Approved by the Office of Management and Budget under control number 0579–0007)

§§ 147.22 through 147.27 [Removed and Reserved]

■ 48. Sections 147.22 through 147.27 are removed and reserved.

■ 49. Section 147.30 is revised to read as follows:

§ 147.30 Molecular examination procedures.

Molecular examination must be conducted in a manner approved by the Administrator. Approved molecular examination procedures are listed in the NPIP Program Standards, as defined in § 147.51. Molecular examination procedures may also be approved by the Administrator in accordance with § 147.53(d)(1).

§ 147.31 [Removed and Reserved]

■ 50. Section 147.31 is removed and reserved.

■ 51. In § 147.41, a new definition of *NPIP Technical Committee* is added, in alphabetical order, to read as follows:

§ 147.41 Definitions.

* * * * *

NPIP Technical Committee. A committee made up of technical experts on poultry health, biosecurity, surveillance, and diagnostics. The committee consists of representatives from the poultry and egg industries, universities, and State and Federal governments and is appointed by the Senior Coordinator and approved by the General Conference Committee.

* * * * *

§ 147.44 [Amended]

■ 52. In § 147.44, paragraph (b) is amended by removing the citation ''§ 147.43(d)(2)'' and adding the citation ''§ 147.43(d)(4)'' in its place.

■ 53. In part 147, subpart F is revised to read as follows:

Subpart F—Authorized Laboratories and Approved Tests and Sanitation Procedures

Sec.
147.51 Definitions.
147.52 Authorized laboratories.
147.53 Approved tests and sanitation procedures.
147.54 Approval of diagnostic test kits not licensed by the Service.

Subpart F—Authorized Laboratories and Approved Tests and Sanitation Procedures

§ 147.51 Definitions.

The following definitions apply in this subpart:

Administrator. The Administrator, Animal and Plant Health Inspection Service, or any other employee of the Animal and Plant Health Inspection Service delegated to act in the Administrator's stead.

Animal and Plant Health Inspection Service (APHIS, the Service). The Animal and Plant Health Inspection Service of the U.S. Department of Agriculture.

NPIP or Plan. The National Poultry Improvement Plan.

NPIP Program Standards. A document that contains tests and sanitation procedures approved by the Administrator under § 147.53 for use under this subchapter. This document may be obtained from the NPIP Web site at *http://www.poultryimprovement.org/* or by writing to the Service at National Poultry Improvement Plan, APHIS, USDA, 1506 Klondike Road, Suite 101, Conyers, GA 30094.

NPIP Technical Committee. A committee made up of technical experts on poultry health, biosecurity, surveillance, and diagnostics. The committee consists of representatives from the poultry and egg industries, universities, and State and Federal governments and is appointed by the Senior Coordinator and approved by the General Conference Committee.

§ 147.52 Authorized laboratories.

These minimum requirements are intended to be the basis on which an authorized laboratory of the Plan can be evaluated to ensure that official Plan assays are performed in accordance with the NPIP Program Standards or other procedures approved by the Administrator in accordance with § 147.53(d)(1) and reported as described in paragraph (f) of this section. A satisfactory evaluation will result in the laboratory being recognized by the NPIP office of the Service as an authorized laboratory qualified to perform the assays provided for in this part.

(a) *Check-test proficiency.* The NPIP will serve as the lead agency for the coordination of available check tests from the National Veterinary Services Laboratories. The authorized laboratory must use a regularly scheduled check test for each assay that it performs.

(b) *Trained technicians.* The testing procedures at the laboratory must be run or overseen by a laboratory technician who has attended and satisfactorily completed Service-approved laboratory workshops for Plan-specific diseases within the past 4 years.

(c) *Laboratory protocol.* Official Plan assays must be performed and reported as described in the NPIP Program Standards or in accordance with other procedures approved by the Administrator in accordance with § 147.53(d)(1). Assays must be performed using control reagents approved by the Plan or the reagent manufacturer.

(d) *State site visit.* The Official State Agency will conduct a site visit and recordkeeping audit annually. This will include, but may not be limited to, review of technician training records, check test proficiency, and test results. The information from the site visit and recordkeeping audit will be made available to the NPIP upon request.

(e) *Service review.* Authorized laboratories will be reviewed by the Service (NPIP staff) every 3 years. The Service's review may include, but will not necessarily be limited to, checking records, laboratory protocol, check-test proficiency, technician training, and peer review.

(f) *Reporting.* (1) A memorandum of understanding or other means shall be used to establish testing and reporting criteria to the Official State Agency, including criteria that provide for reporting H5 and H7 low pathogenic avian influenza directly to the Service.

(2) *Salmonella pullorum* and *Mycoplasma* Plan disease reactors must be reported to the Official State Agency within 48 hours.

(g) *Verification.* Random samples may also be required to be submitted for verification as specified by the Official State Agency.

§ 147.53 Approved tests and sanitation procedures.

(a)(1) All tests that are used to qualify flocks for NPIP classifications must be approved by the Administrator as effective and accurate at determining whether a disease is present in a poultry flock or in the environment.

(2) All sanitation procedures performed as part of qualifying for an NPIP classification must be approved by the Administrator as effective at reducing the risk of incidence of disease in a poultry flock or hatchery.

(b) Tests and sanitation procedures that have been approved by the Administrator may be found in the NPIP Program Standards. In addition, all tests that use veterinary biologics (e.g., antiserum and other products of biological origin) that are licensed or produced by the Service and used as described in the NPIP Program Standards are approved for use in the NPIP.

(c) New tests and sanitation procedures, or changes to existing tests and sanitation procedures, that have been approved by the NPIP in accordance with the process described in subpart E of this part are subject to approval by the Administrator. NPIP participants may submit new tests and sanitation procedures, or changes to current tests and sanitation procedures, through that process.

(d)(1) Persons who wish to have a test approved by the Administrator as effective and accurate at determining whether a disease is present in a flock or in the environment may apply for approval by submitting the test, along with any supporting information and data, to the National Poultry Improvement Plan, APHIS, USDA, 1506 Klondike Road, Suite 101, Conyers, GA 30094. Upon receipt of such an application, the NPIP Technical Committee will review the test and any supporting information and data supplied with the application. If the NPIP Technical Committee determines the test to be of potential general use, the test will be submitted for consideration by the General Conference Committee of the NPIP in accordance with subpart E of this part, and the Administrator will respond with approval or denial of the test.

(2) Persons who wish to have a sanitation procedure approved by the Administrator as effective at reducing the risk of incidence of disease in a poultry flock or hatchery may apply for approval by submitting the sanitation procedure, along with any supporting information and data, to the National Poultry Improvement Plan, APHIS, USDA, 1506 Klondike Road, Suite 101, Conyers, GA 30094. Upon receipt of such an application, the NPIP Technical Committee will review the sanitation procedure and any supporting information and data supplied with the application. If the NPIP Technical Committee determines the sanitation procedure to be of potential general use, the sanitation procedure will be submitted for consideration by the General Conference Committee of the NPIP in accordance with subpart E of this part, and the Administrator will respond with approval or denial of the test.

(e)(1) When the Administrator approves a new test or sanitation procedure or a change to an existing test or sanitation procedure, APHIS will publish a notice in the **Federal Register** making available the test or sanitation procedure. The notice will also provide for a public comment period.

(2)(i) After the close of the public comment period, APHIS will publish a notice in the **Federal Register** indicating that the test or sanitation procedure will be added to the NPIP Program Standards, or that the NPIP Program Standards will be updated to reflect changes to an existing test or sanitation procedure, if:

(A) No comments were received on the notice;

(B) The comments on the notice supported the action described in the notice; or

(C) The comments on the notice were evaluated but did not change the Administrator's determination that approval of the test or sanitation procedure is appropriate based on the standards in paragraph (a) of this section.

(ii) If comments indicate that changes should be made to the test or sanitation procedure as it was made available in the initial notice, APHIS will publish a notice in the **Federal Register** indicating that changes were made to the initial test or sanitation procedure.

(iii) Whenever APHIS adds or makes changes to tests or sanitation

procedures, APHIS will make available a new version of the NPIP Program Standards that reflects the additions or changes.

(iv) If comments present information that causes the Administrator to determine that approval of the test or sanitation procedure would not be appropriate, APHIS will publish a notice informing the public of this determination after the close of the comment period.

§ 147.54 Approval of diagnostic test kits not licensed by the Service.

Diagnostic test kits that are not licensed by the Service (e.g., bacteriological culturing kits) may be approved through the following procedure:

(a) The sensitivity of the kit will be estimated in at least three authorized laboratories selected by the Service by testing known positive samples, as determined by the official NPIP procedures found in the NPIP Program Standards or through other procedures approved by the Administrator. If certain conditions or interfering substances are known to affect the performance of the kit, appropriate samples will be included so that the magnitude and significance of the effect(s) can be evaluated.

(b) The specificity of the kit will be estimated in at least three authorized laboratories selected by the Service by testing known negative samples, as determined by tests conducted in accordance with the NPIP Program Standards or other procedures approved by the Administrator in accordance with § 147.53(d)(1). If certain conditions or interfering substances are known to affect the performance of the kit, appropriate samples will be included so that the magnitude and significance of the effect(s) can be evaluated.

(c) The kit will be provided to the cooperating laboratories in its final form and include the instructions for use. The cooperating laboratories must perform the assay exactly as stated in the supplied instructions. Each laboratory must test a panel of at least 25 known positive clinical samples supplied by the manufacturer of the test kit. In addition, each laboratory will be asked to test 50 known negative clinical samples obtained from several sources, to provide a representative sampling of the general population. The identity of the samples must be coded so that the cooperating laboratories are blinded to identity and classification. Each sample must be provided in duplicate or triplicate, so that error and repeatability data may be generated.

(d) Cooperating laboratories will submit to the kit manufacturer all raw data regarding the assay response. Each sample tested will be reported as positive or negative, and the official NPIP procedure used to classify the sample must be submitted in addition to the assay response value.

(e) The findings of the cooperating laboratories will be evaluated by the NPIP Technical Committee, and the Technical Committee will make a recommendation regarding whether to approve the test kit to the General Conference Committee. If the Technical Committee recommends approval, the final approval will be granted in accordance with the procedures described in §§ 147.46 and 147.47.

(f) Diagnostic test kits that are not licensed by the Service (e.g., bacteriological culturing kits) and that have been approved for use in the NPIP in accordance with this section are listed in the NPIP Program Standards.

Done in Washington, DC, this 3rd day of July 2014.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2014–16037 Filed 7–7–14; 4:15 pm]

BILLING CODE 3410–34–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 140

[NRC–2013–0072]

RIN 3150–AJ25

Inflation Adjustments to the Price-Anderson Act Financial Protection Regulations; Corrections

AGENCY: Nuclear Regulatory Commission.

ACTION: Correcting amendments.

SUMMARY: The U.S. Regulatory Commission (NRC) published a final rule in the **Federal Register** on July 12, 2013, to amend its regulations to satisfy a statutory requirement to adjust the maximum total and annual standard deferred premiums specified in the Price-Anderson Act for inflation at least once during each 5-year period following August 20, 2003. This correcting amendment makes a necessary conforming change to a concomitant NRC regulation.

DATES: This rule is effective on July 9, 2014.

ADDRESSES: Please refer to Docket ID NRC–2013–0072 when contacting the NRC about the availability of information for this final rule. You may obtain publicly-available information related to this final rule by any of the following methods:

- Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0072. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov*. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this final rule.
- NRC's Agencywide Documents Access and Management System (ADAMS): You may 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.
- 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: Michael Purdie, Office of the Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001, telephone 301–415–0244, email: *Michael.Purdie@nrc.gov*.

SUPPLEMENTARY INFORMATION: The NRC published a final rule in the **Federal Register** on July 12, 2013 (78 FR 41835), that amended its regulations at part 140 of Title 10 of the *Code of Federal Regulations* (10 CFR) to satisfy the requirement in section 170t., ''Inflation Adjustment,'' of the Atomic Energy Act of 1954, as amended, to adjust the maximum total and annual standard deferred premiums specified in the Price-Anderson Act for inflation at least once during each 5-year period following August 20, 2003. The final rule amended the numerical dollar amounts of the deferred premiums listed in 10 CFR 140.11(a)(4). A concomitant NRC regulation at 10 CFR 140.21 also states the numerical dollar amount of the deferred premium, but was not amended in the final rule. The regulations at 10 CFR 140.21 should cross-reference the deferred premium as stated at 10 CFR 140.11(a)(4). This

amendment corrects the final rule by making the conforming change.

Rulemaking Procedure

Under the Administrative Procedure Act (5 U.S.C. 553(b)), an agency may waive the normal notice and comment requirements if it finds, for good cause, that they are impracticable, unnecessary, or contrary to the public interest. As authorized by 5 U.S.C. 553(b)(3)(B), the NRC finds good cause to waive notice and opportunity for comment on the amendments because they will have no substantive impact and are of a minor and administrative nature dealing with corrections to certain CFR sections related only to management, organization, procedure, and practice. Specifically, these amendments are to make a conforming change to the regulations to comply with a mandatory statutory requirement. These amendments do not require action by any person or entity regulated by the NRC. Also, this document does not change the substantive responsibilities of any person or entity regulated by the NRC. Furthermore, for the reasons stated, the NRC finds, in accordance with 5 U.S.C. 553(d)(3), that good cause exists to make this rule effective upon publication of this notice.

List of Subjects in 10 CFR Part 140

Criminal penalties, Extraordinary nuclear occurrence, Insurance, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following correcting amendments to 10 CFR part 140.

PART 140—FINANCIAL PROTECTION REQUIREMENTS AND INDEMNITY AGREEMENTS

■ 1. The authority citation for part 140 continues to read as follows:

Authority: Atomic Energy Act secs. 161, 170, 223, 234 (42 U.S.C. 2201, 2210, 2273, 2282); Energy Reorganization Act secs. 201, as amended, 202 (42 U.S.C. 5841, 5842); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. 109–58, 119 Stat. 594 (2005).

■ 2. Revise the introductory text of § 140.21 to read as follows:

§ 140.21 Licensee guarantees of payment of deferred premiums.

Each licensee required to have and maintain financial protection for each nuclear reactor as determined in § 140.11(a)(4) shall at the issuance of the license and annually, on the anniversary of the date on which the indemnity agreement is effective, provide evidence to the Commission that it maintains one of the following types of guarantee of payment of deferred premium in the amount specified in § 140.11(a)(4) for each reactor it is licensed to operate:

* * * * *

Dated at Rockville, Maryland, this 2nd day of July, 2014.

For the Nuclear Regulatory Commission.

Cindy Bladey,

Chief, Rules, Announcements, and Directives Branch. Office of Administration.

[FR Doc. 2014–15985 Filed 7–8–14; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 8

[Docket ID. OCC–2014–0009]

RIN 1557–AD82

Assessment of Fees

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is adopting a final rule to increase assessments for national banks and Federal savings associations (FSAs) with assets of more than $40 billion. The increase will range between 0.32 percent and approximately 14 percent, depending on the total assets of the institution as reflected in its June 30, 2014, Consolidated Report of Condition and Income (Call Report). The average increase in assessments for affected banks and FSAs will be 12 percent. The final rule will not increase assessments for banks or FSAs with $40 billion or less in total assets. The OCC will implement the increase in assessments by issuing an amended Notice of Office of the Comptroller of the Currency Fees and Assessments (Notice of Fees), which will become effective as of the semiannual assessment due on September 30, 2014. In conjunction with the increase in assessments, the final rule updates the OCC's assessment rule to conform with section 318 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act), which reaffirmed the authority of the Comptroller of the Currency (the Comptroller) to set the amount of, and methodology for, assessments. The final rule also makes technical and conforming changes to the assessment rule.

DATES: Effective August 8, 2014.

FOR FURTHER INFORMATION CONTACT: Gary Crane, Deputy Chief Financial Officer, Financial Management, (202) 649–5540, or Mitchell Plave, Special Counsel, or Henry Barkhausen, Attorney, Legislative and Regulatory Activities Division, (202) 649–5490, for persons who are deaf or hard of hearing, TTY, (202) 649–5597.

SUPPLEMENTARY INFORMATION:

I. Background

The National Bank Act [1] and the Home Owners' Loan Act [2] authorize the Comptroller to recover the costs of the OCC's operations through assessments, fees, and other charges on national banks and FSAs.[3] The Comptroller sets assessments, fees, and other charges to meet the OCC's expenses in carrying out its supervisory activities.[4] In setting assessments, the Comptroller has broad authority to consider variations among institutions, including the nature and scope of the activities of the entity, the amount and type of assets that the entity holds, the financial and managerial condition of the entity, and any other factor the Comptroller determines is appropriate.[5]

The OCC collects assessments from national banks and FSAs in accordance with 12 CFR part 8. Under part 8, the base assessment for banks and FSAs is calculated using a table with eleven categories, or brackets, each of which comprises a range of asset-size values. The assessment for each bank and FSA is the sum of a base amount, which is the same for every national bank and FSA in its asset-size bracket, plus a marginal amount, which is computed by applying a marginal assessment rate to the amount in excess of the lower boundary of the asset-size bracket.[6] The marginal assessment rate declines as asset size increases, reflecting economies of scale in bank examination and supervision.

The OCC's annual Notice of Fees sets forth the marginal assessment rates applicable to each asset-size bracket for

[1] Revised Statutes of the United States, Title LXII, 12 U.S.C. 1 *et seq.*

[2] The Home Owners' Loan Act, 12 U.S.C. 1461 *et seq.*

[3] 12 U.S.C. 16, 481, 482, 1467.

[4] 12 U.S.C. 16, 482.

[5] 12 U.S.C. 16. *See also* 12 U.S.C. 1467 (providing that the Comptroller has the authority to recover costs of examination of FSAs ''as the Comptroller deems necessary or appropriate.'').

[6] 12 CFR 8.2(a).

each year, as well as other assessment components and fees.[7] Under part 8, the OCC may adjust the marginal rates to account for inflation.[8] The OCC may issue an interim or amended Notice of Fees if the Comptroller determines that it is necessary to meet the OCC's supervisory obligations.[9]

In recent years, marginal assessment rates for most national banks have been relatively stable.[10] Since the enactment of the Dodd-Frank Act,[11] however, the OCC's responsibilities have expanded and changed in several important ways. These include assuming responsibility for the supervision of FSAs and the need to devote appropriate resources to the implementation of the Dodd-Frank Act, as well as supervising compliance with its requirements. The Dodd-Frank Act and other post-crisis reforms have also increased the level and complexity of OCC supervisory activities, especially with respect to large institutions. We have recently reviewed the marginal rates applicable to national banks and FSAs with over $40 billion in assets and believe that an adjustment beyond an increase for inflation is appropriate in light of our increased supervisory responsibilities.

II. Description of the Proposed Rule and Comments Received

Increase in marginal rates. The OCC published a proposed rule in the **Federal Register** on April 28, 2014 to amend 12 CFR part 8 and increase assessments through an amended Notice of Fees.[12] The proposal called for the marginal assessment rate for banks and FSAs with more than $40 billion in assets to increase by 14.5 percent, beginning September 30, 2014. Under the proposal, the effective increase in assessments for banks and FSAs with more than $40 billion in assets would range from 0.32 percent to 14 percent, depending on the total assets of the institution as reflected on its June 30, 2014, Call Report, with an average increase in assessments for affected banks and FSAs of 12 percent. As proposed, the rule would not increase assessment rates for banks and FSAs with $40 billion or less in total assets. Most banks and FSAs have assets of $40 billion or less and, therefore, would not be affected by the increase in assessments.

The proposed increase in marginal assessment rates primarily reflects changes in the OCC's supervisory responsibilities arising out of the Dodd-Frank Act, which generally requires additional OCC supervisory resources for large banks and FSAs. The proposed increase for large banks and FSAs also reflects the fact the OCC did not raise marginal rates on the assets of large banks and FSAs in excess of $40 billion between 1995 and 2013.[13] In addition, the proposed increase for large banks and FSAs represents a relatively small percentage of return on assets (ROA) that the increase in assessments would represent for these institutions. Finally, the proposal reflects the OCC's supervisory judgment that a rate increase would strain the limited resources of community banks and FSAs and would be unwarranted for these smaller institutions, in light of the fact that many of the OCC's enhanced responsibilities are directed toward large institutions.

Conforming amendments to part 8. The proposal included a conforming amendment to 12 CFR part 8 to make it consistent with the proposed increase in assessments and an amendment to part 8 to add a reference to section 318 of the Dodd-Frank Act, which reaffirmed the Comptroller's broad discretion to set assessments and to determine the assessment methodology. The proposal also included an update to 12 CFR 8.8 to reflect the current title of the Notice of Fees.

Comments on the proposed rule. The OCC received two comments on the proposed rule. The first commenter, a trade association for community banks, supported the proposed rule and commended the OCC for focusing the increase in assessments on large banks and FSAs. In this commenter's opinion, it is appropriate for larger and more complex banks and FSAs to bear the burden of the higher assessments, given that the supervision of those institutions, particularly with respect to Dodd-Frank Act implementation, is more resource intensive than supervision of community banks. The commenter also stated that a rate increase for community banks would strain the limited resources of those institutions.

The second commenter, a trade association for midsize banks, which the commenter defined as banks with between $10 billion and $50 billion in assets, agreed that the proposed increase in assessments focused appropriately on large banks and FSAs, but urged the OCC to make changes to the final rule. Specifically, the commenter suggested that the threshold for the increase in assessments be raised from $40 billion to $50 billion to avoid raising assessments for banks the commenter considers midsize. The commenter also suggested that the OCC consider alternative metrics for assessments, such as the complexity of a bank or FSA's operations, and the costs of regulatory compliance, particularly with the Dodd-Frank Act, as a percentage of a bank's ROA. The OCC will consider whether these alternative metrics would be appropriate components of the assessment structure in future reviews of the assessment system.

The final rule retains the $40 billion threshold for the assessment increase for several reasons. First, banks and FSAs with more than $40 billion in assets typically have complex banking operations and therefore require significant supervisory resources.[14] Second, the assessment increase for banks and FSAs between $40 billion and $50 billion is relatively small, with a range of .20% for a $41 billion asset institution to 1.77% for a $50 billion asset institution.[15] This is because, with asset-size brackets, fees increase with asset size. Third, the great majority of midsize banks and FSAs has assets

[7] 12 CFR 8.8(a) (providing for the Notice of Fees). Under part 8, the OCC also collects assessments from Federal branches and Federal agencies.

[8] 12 CFR 8.2(a)(4).

[9] 12 CFR 8.8(b).

[10] The marginal rates on the assets of large banks and FSAs in excess of $40 billion in asset size were not increased between 1995 and 2013. In the 1994 Notice of Fees, the OCC increased the marginal rates for all asset brackets, including the bracket that applied to assets above $40 billion. From 1995 through 2013, the marginal rate for that asset bracket did not increase. The OCC first assessed FSAs in 2011, after the functions of the Office of Thrift Supervision (OTS) were assigned to the OCC under the Dodd-Frank Act. Since September 2012, the OCC has applied the same assessment schedule to national banks and FSAs. Therefore, when the OCC implemented full inflation indexation in 2014, that adjustment applied to FSAs.

[11] Pub. L. 111–203, 124 Stat. 1376 (2010).

[12] 79 FR 23297 (April 28, 2014).

[13] The OCC did not increase the marginal rates for FSAs after the OCC became the supervisor of those entities on July 21, 2011, although the actual assessment rates for particular FSAs may have increased or decreased when the OCC applied the OCC's assessment structure to FSAs.

[14] The commenter notes that some rulemakings required by the Dodd-Frank Act, including the OCC's stress testing rule, use a $50 billion asset threshold, and therefore suggests that the $50 billion threshold apply to the assessments increase. The OCC, however, has not treated the $50 billion threshold as the only basis for dividing midsize and large institutions. The OCC divides supervision into three programs (community, midsize, and large) and the divisions among these programs are based only partially on size. Some institutions with less than $50 billion in assets are classified as large while some institutions with more than $50 billion are classified as midsize, with the classification based on the complexity of the institution and other factors. The assessment fee schedule (with eleven asset brackets) reflects this more graduated distinction, rather than a hard $50 billion distinction between large and midsize banks and FSAs.

[15] The proposed rule provided a table of proposed assessment increases by sample asset size. *See* 79 FR at 23299. The increase in assessments for a specific institution within this range depends on the total assets of the institution.

under $40 billion, and therefore will not be affected by the assessment increase.[16] For these reasons, the OCC continues to view the $40 billion threshold as an appropriate proxy for increased supervisory costs and an appropriate threshold for increased assessments.

III. Description of the Final Rule

The final rule adopts the proposed increase to marginal rates without change. Under the final rule, marginal assessment rates for national banks and FSAs with assets of more than $40 billion will increase by 14.5 percent and will be effective for the assessment due on September 30, 2014. Marginal rates for banks and FSAs with $40 billion or less in assets will remain the same as set out in the 2014 Notice of Fees, published on December 12, 2013. The final rule continues the OCC's present assessment methodology and does not change the asset bracket table in 12 CFR 8.2(a). The revised marginal rates for national banks and FSAs with over $40 billion in assets are reflected in the following table:

REVISED GENERAL ASSESSMENT FEE SCHEDULE

If the amount of total balance-sheet assets (consolidated domestic and foreign subsidiaries) is (millions):		The semiannual assessment will be:		
Over	But not over	This amount	Plus	Of excess over (millions)
Column A	Column B	Column C	Column D	Column E
$ 0	$ 2	$ 5,997	0.000000000	$ 0
2	20	5,997	0.000236725	2
20	100	10,258	0.000189379	20
100	200	25,408	0.000123092	100
200	1,000	37,717	0.000104156	200
1,000	2,000	121,041	0.000085218	1,000
2,000	6,000	206,259	0.000075749	2,000
6,000	20,000	509,255	0.000064454	6,000
20,000	40,000	1,411,611	0.000048553	20,000
40,000	250,000	2,382,671	0.000037936	40,000
250,000	.....	10,349,260	0.000037556	250,000

The final rule amends 12 CFR part 8 to make it consistent with the proposal to increase the marginal assessment rates. Specifically, the final rule revises 12 CFR 8.2(a)(4) to recognize that the OCC may increase the marginal rates in amounts that exceed the rate of inflation, as under the current proposal. In addition, the final rule revises 12 CFR 8.2 to reflect section 318 of the Dodd-Frank Act, which reaffirmed the Comptroller's broad discretion to set assessments and to determine the assessment methodology. The final rule also updates 12 CFR 8.8 to make a technical change to reflect the current title of the notice of fees.

IV. Regulatory Analysis

Paperwork Reduction Act

Under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501–3520), 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. This final rule amends part 8, which has an approved information collection under the PRA (OMB Control No. 1557–0223). The final rule does not introduce any new collections of information, nor does it amend part 8 in a way that modifies the collection of information that OMB has approved. Therefore, no PRA submission to OMB is required.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.,* requires generally that, in connection with a rulemaking, an agency prepare and make available for public comment a regulatory flexibility analysis that describes the impact of a rule on small entities. However, the regulatory flexibility analysis otherwise required under the RFA is not required if an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities (defined in regulations promulgated by the Small Business Administration (SBA) to include banking organizations with total assets of less than or equal to $500 million) and publishes its certification and a brief explanatory statement in the **Federal Register** together with the rule.

As of December 31, 2013, the OCC supervised 1,741 banks (1,135 commercial banks, 66 trust companies, 492 Federal savings associations, and 48 branches or agencies of foreign banks). Approximately 1,231 of OCC-supervised institutions are small entities based on the SBA's definition of small entities for RFA purposes. As discussed in the **SUPPLEMENTARY INFORMATION** above, the increase in assessments will only affect institutions with more than $40 billion in total assets. As such, pursuant to section 605(b) of the RFA, the OCC certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act

The OCC has analyzed the final rule under the factors in the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1532). Under this analysis, the OCC considered whether the final 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 has determined that this final rule will not result in expenditures by State, local, and tribal governments, or the private sector, of $100 million or more in any one year. Accordingly, this final rule is not subject to section 202 of the Unfunded Mandates Act.

Section 302 of the Riegle Community Development and Regulatory Improvement Act

Section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C.

[16] The number of OCC-supervised institutions in the $40 and $50 billion asset range is small.

4802) requires that, subject to certain exceptions, regulations issued by the Federal banking agencies that impose additional reporting, disclosure, or other requirements on insured depository institutions, take effect on the first day of the calendar after publication of the final rule. This effective date requirement does not apply if the issuing agency finds for good cause that the regulation should become effective before such time. 12 U.S.C. 4802.

The OCC finds there is good cause for this final rule to become effective before the first day of a calendar quarter. The basis for this finding is that the final rule does not impose any new reporting or disclosure burdens on banks and FSAs. While certain banks and FSAs will pay a higher assessment, the additional assessment does not require any changes to systems or procedures. For these reasons, the final rule will become effective on August 8, 2014.

List of Subjects in 12 CFR Part 8

Assessments, National banks, Savings associations, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set forth in the preamble, the OCC amends 12 CFR part 8 as follows:

PART 8—ASSESSMENT OF FEES

■ 1. The authority citation for part 8 continues to read as follows:

Authority: 12 U.S.C. 16, 93a, 481, 482, 1467, 1831c, 1867, 3102, 3108, and 5412(b)(1)(B); and 15 U.S.C. 78c and 78*l*.

■ 2. Section 8.2 is amended by revising paragraphs (a) introductory text (preceding the table) and (a)(4) to read as follows:

§ 8.2 Semiannual assessment.

(a) Each national bank and each Federal savings association shall pay to the Comptroller of the Currency a semiannual assessment fee, due by March 31 and September 30 of each year, for the six-month period beginning on January 1 and July 1 before each payment date. The Comptroller of the Currency will calculate the amount due under this section and provide a notice of assessments to each national bank and each Federal savings association no later than 7 business days prior to collection on March 31 and September 30 of each year. In setting assessments, the Comptroller of the Currency may take into account the nature and scope of the activities of a national bank or Federal savings association, the amount and type of assets that the entity holds, the financial and managerial condition of the entity, and any other factor the Comptroller of the Currency determines is appropriate, as provided by 12 U.S.C. 16. The semiannual assessment will be calculated as follows:

* * * * *

(4) Each year, the OCC may index the marginal rates in Column D to adjust for the percent change in the level of prices, as measured by changes in the Gross Domestic Product Implicit Price Deflator (GDPIPD) for each June-to-June period. The OCC may at its discretion adjust marginal rates by amounts other than the percentage change in the GDPIPD. The OCC will also adjust the amounts in Column C to reflect any change made to the marginal rate.

* * * * *

■ 3. Section 8.8 is revised to read as follows:

§ 8.8 Notice of Comptroller of the Currency Fees.

(a) *December notice of fees.* A ''Notice of Office of the Comptroller of the Currency Fees and Assessments'' (Notice of Fees) shall be published no later than the first business day in December of each year for fees to be charged by the OCC during the upcoming year. These fees will be effective January 1 of that upcoming year.

(b) *Interim and amended notice of fees.* The OCC may issue a notice of ''Interim Office of the Comptroller of the Currency Fees and Assessments'' or a notice of ''Amended Office of the Comptroller of the Currency Fees and Assessments'' from time to time throughout the year as necessary. Interim or amended notices will be effective 30 days after issuance.

Dated: July 2, 2014.

Thomas J. Curry,

Comptroller of the Currency.

[FR Doc. 2014–16017 Filed 7–8–14; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2013–0859; Airspace Docket No. 13–AWA–4]

RIN 2120–AA66

Modification of Class B Airspace; Salt Lake City, UT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the description of Area C and Area O of the Salt Lake City Class B airspace area by raising the floor of a small portion of Class B airspace between the Salt Lake City Class B surface area and the Hill Air Force Base (AFB) Class D airspace area. This action raises the Class B airspace floor in the northeast corner of Area C from 6,000 feet mean seal level (MSL) to 7,500 feet MSL, and redefines the new boundary segment using the power lines underlying the area. This action enhances the safety and flow of Visual Flight Rules (VFR) aircraft transitioning north and south through the Salt Lake Valley over Interstate 15.

DATES: *Effective Date:* 0901 UTC, October 16, 2014. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Colby Abbott, Airspace Policy and Regulations Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

On December 19, 2013, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to modify areas C and O of the Salt Lake City, UT, Class B airspace area (78 FR 76781). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received in response to the NPRM.

The Rule

The FAA is amending Title 14 of the Code of Federal Regulations (14 CFR) part 71 by modifying the Salt Lake City Class B airspace area. This action raises the floor of a portion of Class B airspace in the northeast corner of Area C from 6,000 feet MSL to 7,500 feet MSL. The portion of Class B airspace raised lies northeast of the power lines running northwest and southeast under Area C and is incorporated into the description of Area O, which has a 7,500 foot MSL Class B airspace floor. The power lines under Area C are used to visually define the new shared boundary between Area C and Area O in that area. These modifications enhance the safety and flow of VFR aircraft transitioning north and south in the Salt Lake Valley by following I–15, while continuing to support containment of large turbine-

powered aircraft flying instrument procedures within Class B airspace.

The Salt Lake City Class B airspace Areas A, B, and D through N subareas are unchanged. The modifications to the Salt Lake City Class B airspace Area C and Area O subareas are outlined below.

Area C. Area C includes the airspace extending upward from 6,000 feet MSL to 12,000 feet MSL. The northeast boundary of Area C is defined by a line drawn west of and parallel to the power lines that run northwest and southeast between the Wasatch VHF Omni-directional Range/Tactical Air Navigation (VORTAC) (TCH) 006° radial 9.5-mile Distance Measuring Equipment (DME) at lat. 41°00′28″ N., long. 111°57′36″ W., and the TCH 016° radial 8.1-mile DME at lat. 40°58′48″ N., long. 111°55′58″ W. The floor of Class B airspace located immediately northeast of the power lines just described is raised from 6,000 feet MSL to 7,500 feet MSL and incorporated into the adjacent Area O subarea. The remainder of Area C is unchanged.

Area O. Area O includes the airspace extending upward from 7,500 feet MSL to 12,000 feet MSL. The boundary of the area is realigned to match the segment of the power lines that run northwest and southeast between the TCH 006° radial 9.5-mile DME at lat. 41°00′28″ N., long. 111°57′36″ W., and the TCH 016° radial 8.1-mile DME at lat. 40°58′48″ N., long. 111°55′58″ W. used to define the northeast boundary of Area C. The portion of Class B airspace incorporated into Area O raises the floor of Class B airspace in that area from 6,000 feet MSL to 7,500 feet MSL. The remainder of Area O is unchanged.

All radials listed in this Salt Lake City Class B airspace area modification are stated in degrees relative to True North. All geographic coordinates are stated in degrees, minutes, and seconds based on North American Datum 83.

Implementation of the modification to the Salt Lake City Class B airspace area continues to ensure containment of large turbine-powered aircraft within Class B airspace as required by FAA directive. Additionally, this action allows VFR aircraft to transition east/west, north of the Salt Lake City Class B surface area, and north/south, to and from Salt Lake City Airport, using I–15 as an easily identifiable visual landmark outside of Class B airspace below 7,500 feet MSL. This modification enhances the safety and efficient management of aircraft operations in the Salt Lake City, UT, terminal area.

Class B airspace areas are published in paragraph 3000 of FAA Order 7400.9X, Airspace Designations and Reporting Points, dated August 7, 2013, and effective September 15, 2013, which is incorporated by reference in 14 CFR 71.1. The Class B airspace area listed in this document will be published subsequently in the Order.

Regulatory Evaluation Summary

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 and Executive Order 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this proposed rule.

Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a proposed or final rule does not warrant a full evaluation, this order permits that a statement to that effect and the basis for it to be included in the preamble if a full regulatory evaluation of the cost and benefits is not prepared. Such a determination has been made for this final rule. The reasoning for this determination follows:

This final rule has the following benefits.

This final rule will improve the flow of air traffic, enhance safety, and reduce the potential for midair collision in the Salt Lake City Class B airspace.

Implementation of the modification to the Salt Lake City Class B airspace area will continue to ensure containment of large turbine-powered aircraft within Class B airspace as required by FAA directive. Additionally, this action will allow VFR aircraft to transition east/west, north of the Salt Lake City Class B surface area, and north/south, to and from Salt Lake City Airport, using I–15 as an easily identifiable visual landmark outside of Class B airspace below 7,500 feet MSL. This modification will enhance the safety and efficient management of aircraft operations in the Salt Lake City, UT terminal area.

The FAA stated in the notice of proposed rulemaking the FAA belief that this final rule will result in minimal costs. We received no comments regarding this determination and therefore accept that this rule will result in minimal costs.

The FAA has, therefore, determined that this final rule is not a ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866, and is not ''significant'' as defined in DOT's Regulatory Policies and Procedures.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation.'' To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.'' The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA believes the rule will not have a significant economic impact on a substantial number of small entities as the economic impact is expected to be minimal. We received no comments regarding this determination in the notice of proposed rulemaking. As a

result we accept our determination of minimal cost.

If an agency determines that a rulemaking will not result in a significant economic impact on a substantial number of small entities, the head of the agency may so certify under section 605(b) of the RFA. Therefore, as provided in section 605(b), the head of the FAA certifies that this rulemaking will not result in a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

The FAA has assessed the potential effect of this final rule and determined that it will enhance safety and will not be considered an unnecessary obstacle to trade.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $151 million in lieu of $100 million.

This final rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures,'' paragraph 311a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p.389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9X, Airspace Designations and Reporting Points, dated August 7, 2013, and effective September 15, 2013, is amended as follows:

Paragraph 3000 Subpart B—Class B Airspace.

* * * * *

ANM UT B Salt Lake City, UT [Amended]

Salt Lake City International Airport (Primary Airport)
(Lat. 40°47′18″ N., long. 111°58′40″ W.)
Wasatch VORTAC (TCH)
(Lat. 40°51′01″ N., long. 111°58′55″ W.)
Hill AFB (HIF)
(Lat. 41°07′26″ N., long. 111°58′23″ W.)

Boundaries.

By removing the current descriptions of Area C and Area O, and adding in its place:

Area C. That airspace extending upward from 6,000 feet MSL to and including 12,000 feet MSL, within an area bounded by a line beginning at the TCH 316° radial 11.6-mile DME at lat. 40°59′21″ N., long. 112°09′33″ W.; thence east to a point west of the power lines at the TCH 006° radial 9.5-mile DME at lat. 41°00′28″ N., long. 111°57′36″ W.; thence southeast to a point west of the power lines at the TCH 016° radial 8.1-mile DME at lat. 40°58′48″ N., long. 111°55′58″ W.; thence south to the TCH 020° radial 6.6-mile DME at lat. 40°57′13″ N., long. 111°55′56″ W.; thence west to a point southeast of Seagull Point on Antelope Island at the TCH 304° radial 9.3-mile DME at lat. 40°56′13″ N., long. 112°09′05″ W.; thence north to the point of beginning.

Area O. That airspace extending upward from 7,500 feet MSL to and including 12,000 feet MSL, within an area bounded by a line beginning at the intersection of U.S. Highway 89 and a 4.3-mile radius from Hill AFB at the TCH 014° radial 13.6-mile DME at lat. 41°04′11″ N., long. 111°54′39″ W.; thence clockwise along the 4.3-mile radius from Hill AFB to 1700 South St. at the TCH 347° radial 14.7-mile DME at lat. 41°05′20″ N., long. 112°03′21″ W.; thence west along W. 1700 South St. to the TCH 329° radial 16.8-mile DME at lat. 41°05′22″ N., long. 112°10′20″ W.; thence south to the TCH 316° radial 11.6-mile DME at lat. 40°59′21″ N., long. 112°09′33″ W.; thence east to a point west of the power lines at the TCH 006° radial 9.5-mile DME at lat. 41°00′28″ N., long. 111°57′36″ W.; thence southeast to a point west of the power lines at the TCH 016° radial 8.1-mile DME at lat. 40°58′48″ N., long. 111°55′58″ W.; thence south to the TCH 020° radial 6.6-mile DME at lat. 40°57′13″ N., long. 111°55′56″ W.; thence south to the intersection of Redwood Rd. and W. 500 South St. at the TCH 049° radial 3.1-mile DME at lat. 40°53′02″ N., long. 111°55′48″ W.; thence south to Center St. at the TCH 102° radial 2.3-mile DME at lat. 40°50′32″ N., long. 111°55′57″ W.; thence east along Center St. to I–15 at the TCH 099° radial 3-mile DME at lat. 40°50′32″ N., long. 111°54′56″ W.; thence north along I–15 to U.S. Highway 89 at the TCH 024° radial 9-mile DME at lat. 40°59′14″ N., long. 111°54′05″ W.; thence north along U.S. Highway 89 to the point of beginning.

Issued in Washington, DC, on July 1, 2014.

Gary A. Norek,

Manager, Airspace Policy and Regulations Group.

[FR Doc. 2014–15914 Filed 7–8–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. FAA–2014–0389; Airspace Docket No. 14–ASO–6]

RIN 2120–AA66

Amendment of Time of Designation for Restricted Area R–3002G; Fort Benning, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; technical amendment.

SUMMARY: This action amends the time of designation for restricted area R–3002G at Fort Benning, GA, by removing the words ''local time'' and adding the words ''Eastern time'' to the published time of designation. The majority of the R–3002 complex (i.e., R–3002A through F) lies within the Eastern time zone. However, R–3002G is a small segment that is in the Central time zone. Since the Eastern time zone is predominant and is used for scheduling activities in the entire complex, the time of

designation for R–3002G is amended to avoid confusion.

DATES: Effective date 0901 UTC, September 18, 2014.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace Policy and Regulations Group, AJV–11, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

The Fort Benning, GA, restricted area complex consists of seven subareas designated R–3002A through G. Restricted areas R–3002A through F lie within the Eastern time zone, while R–3002G is a small segment that lies within the Central time zone. Normally, the times listed in the ''time of designation'' for a restricted area include the qualifier ''local time'' in the description. However, when a complex overlaps more than one time zone, the predominant time zone is specified in the time of designation for the lesser subarea even though that area extends into an adjacent time zone. In this case, all R–3002 subareas, except area G, lie within the Eastern time zone and the using agency schedules activation of the entire area based on Eastern time. Therefore, to avoid possible confusion, ''Eastern time'' is being added to the time of designation for R–3002G.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 73 by removing the words ''local time'' from the time of designation for restricted area R–3002G, Fort Benning, GA, and inserting the words ''Eastern time.'' Since all R–3002 subareas, except area G, lie within the Eastern time zone, the Eastern time zone is predominant and is used for scheduling the activation of all subareas (A through G).

Because this amendment is simply an editorial change that does not affect the boundaries, designated altitudes, or activities conducted within the restricted area, notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

The FAA has determined that this action only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with 311d., FAA Order 1050.1E, Environmental Impacts: Policies and Procedures. This airspace action is an administrative change to the description of restricted area R–3002G to clarify the time zone used in scheduling activation of the airspace. It does not alter the dimensions, altitudes, or activities conducted within the airspace; therefore, it is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exists that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 73

Airspace, Prohibited areas, Restricted areas.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73, as follows:

PART 73—SPECIAL USE AIRSPACE

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 73.30 [Amended]

■ 2. Section 73.30 is amended as follows:

* * * * *

R–3002G Fort Benning, GA [Amended]

By removing the current time of designation and adding the following:

Time of designation. Intermittent, 0600–0200 Eastern time daily; other times by NOTAM 6 hours in advance.

* * * * *

Issued in Washington, DC, on July 2, 2014.

Gary A. Norek,

Manager, Airspace Policy and Regulations Group.

[FR Doc. 2014–16061 Filed 7–8–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2013–0103]

RIN 1625–AA08

Regattas and Marine Parades; Great Lakes Annual Marine Events

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce various special local regulations for annual regattas and marine parades in the Captain of the Port Detroit zone from 9 a.m. on June 27, 2014 through 6 p.m. on August 10, 2014. Enforcement of these regulations is necessary and intended to ensure safety of life on the navigable waters immediately prior to, during, and immediately after these regattas or marine parades. During the aforementioned period, the Coast Guard will enforce restrictions upon, and control movement of vessels in a specified area immediately prior to, during, and immediately after regattas or marine parades.

DATES: The regulations in 33 CFR 100.914, 100.915, 100.918, 100.919, and 100.920 will be enforced at dates and times specified in this document from June 27, 2014, through August 10, 2014.

FOR FURTHER INFORMATION CONTACT: If you have questions on this document, call or email LT Adrian Palomeque, Prevention Department, U.S. Coast Guard Sector Detroit, 110 Mount Elliot Ave., Detroit, MI 48207; telephone (313) 568–9508, email *Adrian.F.Palomeque@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the following special local regulations listed in 33 CFR Part 100, Safety of Life on Navigable Waters, on the following dates and times, which are listed in chronological order:

(1) *§ 100.919 International Bay City River Roar, Bay City, MI.*

This special local regulation will be enforced from 9 a.m. to 6 p.m. on June 27, 28, and 29, 2014. A regulated area is established to include all waters of the Saginaw River bounded on the north by the Liberty Bridge, located at 43°36.3′ N, 083°53.4′ W, and bounded on the south by the Veterans Memorial Bridge, located at 43°35.8′ N, 083°53.6′ W.

(2) *§ 100.920 Tug Across the River, Detroit, MI.*

This special local regulation will be enforced from 6 p.m. to 6:45 p.m. on

July 11, 2014. A regulated area is established to include all waters of the Detroit River, Detroit, Michigan, bounded on the south by the International boundary, on the west by 083°03′ W, on the east by 083°02′ W, and on the north by the U.S. shoreline (DATUM: NAD 83). This position is located on the Detroit River in front of Hart Plaza, Detroit, MI.

(3) *§ 100.918 Detroit APBA Gold Cup, Detroit MI.*

This special local regulation will be enforced from 7 a.m. to 7 p.m. on July 11, 12, and 13, 2014. A regulated area is established to include all waters of the Detroit River, Belle Isle, Michigan, bound on the west by the Belle Isle Bridge (position 42°20′20″ N, 083°00′00″ W to 42°20′24″ N, 083°59′45″ W), and on the east by a north-south line drawn through Waterworks Intake Crib Light (Light List Number 8350; position 42°21′06″ N, 082°58′00″ W).

(4) *§ 100.914 Trenton Rotary Roar on the River, Trenton, MI.*

This special local regulation will be enforced from 8 a.m. to 8 p.m. on July 18, 19, and 20, 2014. The regulated area is established to include all waters of the Detroit River, Trenton, Michigan, bounded by an east/west line beginning at a point of land at the northern end of Elizabeth Park in Trenton, MI, located at position 42°8.2′ N; 083°10.6′ W, extending east to a point near the center of the Trenton Channel located at position 42°8.2′ N; 083°10.4′ W, extending south along a north/south line to a point at the Grosse Ile Parkway Bridge located at position 42°7.7′ N; 083°10.5′ W, extending west along a line bordering the Grosse Ile Parkway Bridge to a point on land located at position 42°7.7′ N; 083°10.7′ W, and along the shoreline to the point of origin. This area is in the Trenton Channel between Trenton and Grosse Isle, MI.

(5) *§ 100.915 St. Clair River Classic Offshore Race, St. Clair, MI.*

This special local regulation will be enforced from 10 a.m. to 6 p.m. on August 8, 9, and 10, 2014. A regulated area is established to include all waters of the St. Clair River, St. Clair, Michigan, bounded by latitude 42°52′00″ N to the north; latitude 42°49′00″ N to the south; the shoreline of the St. Clair River on the west; and the international boundary line on the east.

These five special local regulation sections apply regulations in § 100.901. Entry into, transiting, or anchoring within these regulated areas is prohibited unless authorized by the Coast Guard patrol commander (PATCOM). The PATCOM may restrict vessel operation within the regulated area to vessels having particular operating characteristics.

Vessels permitted to enter this regulated area must operate at a no wake speed and in a manner that will not endanger race participants or any other craft.

The PATCOM may direct the anchoring, mooring, or movement of any vessel within this regulated area. A succession of sharp, short signals by whistle or horn from vessels patrolling the area under the direction of the PATCOM shall serve as a signal to stop. Vessels so signaled shall stop and shall comply with the orders of the PATCOM. Failure to do so may result in expulsion from the area, a Notice of Violation for failure to comply, or both.

If it is deemed necessary for the protection of life and property, the PATCOM may terminate at any time the marine event or the operation of any vessel within the regulated area.

In accordance with the general regulations in § 100.35, the Coast Guard will patrol the regatta area under the direction of a designated Coast Guard Patrol Commander (PATCOM). The PATCOM may be contacted on Channel 16 (156.8 MHz) by the call sign ''Coast Guard Patrol Commander.''

The rules in § 100.901 do not apply to vessels participating in the event or to government vessels patrolling the regulated area in the performance of their assigned duties.

This document is issued under authority of 33 CFR 100.35 and 5 U.S.C. 552 (a). If the Captain of the Port determines that any of these special local regulations need not be enforced for the full duration stated in this document, he or she may suspend such enforcement and notify the public of the suspension via a Broadcast Notice to Mariners.

Dated: June 24, 2014.

S.B. Lemasters,

Captain, U.S. Coast Guard, Captain of the Port Detroit.

[FR Doc. 2014–16067 Filed 7–8–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2014–0359]

RIN 1625–AA00

Safety Zone; Bullhead City River Regatta; Bullhead City, AZ

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the navigable waters of the Colorado River in Bullhead City, AZ in support of the 2014 Bullhead City River Regatta. This temporary safety zone is necessary to provide for the safety of the participants, crew, spectators, sponsor vessels, and other users of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative.

DATES: This rule is effective from 6 a.m. to 6 p.m. on August 9, 2014.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2014–0359]. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Commander John Bannon, Waterways Management, U.S. Coast Guard Sector San Diego, Coast Guard; telephone 619–278–7261, email *John.E.Bannon@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR **Federal Register**
NPRM Notice of Proposed Rulemaking
TFR Temporary Final Rule
LNM Local Notice to Mariners

A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule after publishing an NPRM on May 20, 2014, that provided a 30 day public comment period. The Coast Guard received no comments on the NPRM for this rule, and as such, no changes have been made to the safety zone. This temporary safety zone is established to support an annual marine event listed in 33 CFR 100.1102, Table 1, item 16.

B. Basis and Purpose

The legal basis and authorities for this rule are found in 33 U.S.C. 1231, 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Public Law 107–295, 116 Stat. 2064; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to propose, establish, and define regulatory safety zones.

Bullhead City, AZ is sponsoring the 2014 annual River Regatta, a permitted Coast Guard marine event, held on the navigable waters of the Colorado River in Bullhead City, AZ.

The temporary safety zone established by this rule supports that marine event. This recurring marine event is listed in 33 CFR 100.1102, Table 1, item 16.

This temporary safety zone is necessary to provide for the safety of the participants, crew, spectators, sponsor vessels, and other users of the waterway throughout this popular annual event. This event involves participants floating down the river on inflatable rafts, inner tubes, and floating platforms as part of the organized marine event. The size and types of floats will vary. Approximately 25,000 people are expected to participate in this event. The sponsor will provide over 32 patrol and rescue boats to help facilitate the event, make certain participants are wearing personal floatation devices, and ensure overall public safety. As the participants conclude each section of the river, the COTP will disestablish the associated safety zone for that section of the river as soon as it is safe to do so.

C. Discussion of Comments, Changes and the Final Rule

The Coast Guard received 0 comments on the NPRM for this rule, and as such, no changes have been made to the final rule.

Because the safety zone is being established to help support Bullhead City officials with event safety and to ensure a safe area for this widely attended event, the safety zone is necessary for this one-day event. Although the Coast Guard did not receive any official comments on the rulemaking, prior to publishing the NPRM, on April 28, 2014, Coast Guard Sector San Diego did receive an email notice from the Nevada Department of Wildlife (NDOW) concerning the safety of the event. Although this comment was not submitted officially to the NPRM docket, it does warrant recognition as it relates to the safety of the event and the establishment of a temporary safety zone that will limit public access to the waterway. NDOW stated a concern about the inability of event sponsors to enforce life jacket usage throughout the river float. NDOW estimates that less than 20% of event participants wear a life jacket throughout the entire six mile event. The Coast Guard recognizes that the sponsor of the event has trouble enforcing this rule in shallow water that involves approximately 25,000 participants. This year, additional life guard staffing and law enforcement presence will address this concern, including removal of participants at appropriate times for failing to wear their life jackets. Wearing a life jacket is a condition of participation.

In addition, NDOW discussed the lack of a comprehensive event evacuation plan, specifically throughout the six mile river route that includes private property shoreline and inaccessible shoreline to roads and parks. Event organizers do, however, address this concern in the Bullhead City Police Department event Incident Action Plan (IAP). The IAP will account for extreme weather, such as lightning, that will call for either temporarily or completely halting the event and removing participants from the waterway as safely and efficiently as possible.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. This determination is based on the size and location of the safety zone. The safety zone will encompass all navigable waters in the vicinity of Davis Camp to Rotary Park in Bullhead City, AZ. Vessels may transit through the safety zone during the specified times if they request and receive permission from the Captain of the Port or his designated representative, on a case by case basis. And, as soon as possible, the waterway will be reopened in phases as the event winds down.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard received no comments from the Small Business Administration on this rule and the impact of a temporary one day closure of the portion of the Colorado River for this annual event. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which might be small entities: The owners or operators of private, commercial vessels or for hire vessels, intending to transit or anchor in a portion of the waters of the Colorado River between Davis Camp to Rotary Park in Bullhead City, Arizona from 6 a.m. to 6 p.m. on August 9, 2014. Because this is a popular annual event supported by neighboring municipalities from Arizona and Nevada with in-depth planning, very few small businesses are impacted.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. Although the safety zone would apply to the entire width of the river, traffic would be allowed to pass through the zone with the permission of the Captain of the Port, or his designated representative. This popular annual event is advertised extensively in the area. Before the effective period, the Coast Guard will publish a Local Notice to Mariners. And, just prior to the event, the Coast Guard will notify on-water users of the restriction to the waterway. Furthermore, many personal watercraft businesses are able to rent their equipment to event sponsors for event support. And, alternate waterway use locations exist above and beyond the affected six mile portion of the Colorado River, as well as Lake Mohave, located immediately adjacent to the waterway. This event is the only event throughout the year that limits full use of the navigable waterway and it is well advertised.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement

Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above.

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

4. Collection of Information

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

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

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

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children

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

11. Indian Tribal Governments

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

12. Energy Effects

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

13. Technical Standards

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

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves establishment of a temporary safety zone on the navigable waters of the Colorado River. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T11–644 to read as follows:

§ 165.T11–644 Safety Zone; Bullhead City River Regatta, Bullhead City, AZ.

(a) *Location.* This temporary safety zone includes six miles of navigable waters of the Colorado River between Davis Camp and Rotary Park in Bullhead City, AZ.

(b) *Enforcement Period.* The zone described in paragraph (a) of this section will be enforced from 6 a.m. to 6 p.m. on August 9, 2014. Before the effective period, the Coast Guard will publish a Local Notice to Mariners (LNM). If the event concludes prior to the scheduled termination time, the Captain of the Port will cease enforcement of this safety zone and will announce that fact via Broadcast Notice to Mariners.

(c) *Definitions.*

The following definition applies to this section: *designated representative,* means any commissioned, warrant, or petty officer of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, or local, state, and federal law enforcement vessels who have been authorized to act on the behalf of the Captain of the Port.

(d) *Regulations.*

(1) In accordance with general regulations in 33 CFR part 165, Subpart

C, entry into, transit through or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port of San Diego or his designated representative.

(2) The safety zone is closed to all vessel traffic, except as may be permitted by the COTP or a designated representative.

(3) Mariners requesting permission to transit through the safety zone may request authorization to do so from the Captain of the Port designated representative.

(4) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or his designated representative.

(5) Upon being hailed by U.S. Coast Guard or designated patrol personnel by siren, radio, flashing light or other means, the operator of a vessel shall proceed as directed.

(6) The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in the patrol and notification of the regulation.

Dated: June 24, 2014.

J.A. Janszen,

Commander, U.S. Coast Guard, Acting Captain of the Port San Diego.

[FR Doc. 2014–16073 Filed 7–8–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF EDUCATION

34 CFR Chapter III

[Docket ID ED–2014–OSERS–0018; CFDA Number: 84.133E–4]

Final Priority; National Institute on Disability and Rehabilitation Research—Rehabilitation Engineering Research Centers

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 under the Disability and Rehabilitation Research Projects and Centers Program administered by the National Institute on Disability and Rehabilitation Research (NIDRR). Specifically, we announce a priority for a Rehabilitation Engineering Research Center (RERC) on Improving the Accessibility, Usability, and Performance of Technology for Individuals who are Deaf or Hard of Hearing. 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 improving the accessibility, usability, and performance of technology for individuals who are deaf or hard of hearing.

DATES: *Effective Date:* This priority is effective August 8, 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. The program is also intended to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended (Rehabilitation Act).

Rehabilitation Engineering Research Centers

The purpose of NIDRR's RERCs program, which is funded through the Disability and Rehabilitation Research Projects and Centers Program, is to improve the effectiveness of services authorized under the Rehabilitation Act. It does so by conducting advanced engineering research, developing and evaluating innovative technologies, facilitating service delivery system changes, stimulating the production and distribution of new technologies and equipment in the private sector, and providing training opportunities. RERCs seek to solve rehabilitation problems and remove environmental barriers to improvements in employment, community living and participation, and health and function outcomes of individuals with disabilities.

The general requirements for RERCs are set out in subpart D of 34 CFR part 350 (What Rehabilitation Engineering Research Centers Does the Secretary Assist?).

Additional information on the RERCs program can be found at: *http://www2.ed.gov/programs/rerc/index.html#types*.

Program Authority: 29 U.S.C. 762(g) and 764(b)(3).

Applicable Program Regulations: 34 CFR part 350.

We published a notice of proposed priority for this program in the **Federal Register** on April 16, 2014 (79 FR 21418). That notice contained background information and our reasons for proposing the particular priority.

There are differences between the proposed priority and this final priority as discussed in the *Analysis of Comments and Changes* section of this notice.

Public Comment: In response to our invitation in the notice of proposed priority, four parties submitted comments on 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 observed that NIDRR RERC priorities have typically included a requirement that RERCs develop and implement a plan to ensure that technologies developed by the RERC are made available to the public. This commenter suggested that this requirement should be included in the priority.

Discussion: We agree that this requirement would help ensure that technologies resulting from research and development conducted by the RERC would be made available to the public.

Changes: New paragraph (e) has been added to the priority requiring the RERC to develop and implement a plan for transferring technologies developed by the RERC to the public.

Comment: One commenter recommended specific changes to paragraph (a) of the priority, which focuses on improving technological and design features to maximize the adoption and use of auditory devices. This commenter suggested that the RERC should focus its research and development activities on open fit hearing aids, as well as other technological and design features that improve individuals' ability to hear in noisy environments.

Discussion: We agree that research on open fit hearing aids and design features that improve individuals' ability to hear in noisy environments are important areas to consider for research and development. Nothing in the priority prohibits an applicant from proposing to focus on one or both of these topics. We do not, however, want to limit

applicants' ability to focus on other approaches by requiring a focus on these specific topics. The peer review process will determine the merits of each proposal.

Changes: None.

Comment: One commenter suggested that affordability is a critical factor in determining rates of adoption and use of auditory enhancement devices. The commenter recommended that NIDRR specifically require, in paragraph (a) of the priority, a focus on affordability when addressing factors that promote adoption and use.

Discussion: We agree that affordability is important to consider when seeking to maximize the adoption and use of auditory enhancement devices.

Changes: We have revised paragraph (a) of the priority to include affordability in the list of examples.

Comment: One commenter supported the emphasis on improving the compatibility of auditory enhancement technologies with other technologies in paragraph (b) of the proposed priority. The commenter recommended that we require the RERC to, among other things, improve: (1) Listening systems for use in large meeting rooms such as theaters, movies, and places of worship; (2) technologies that improve signal-to-noise ratio; (3) technologies that use open source wireless connectivity; (4) wide-band audio technologies to increase the intelligibility of cell phone signals; (5) induction loop systems; (6) telecoil positioning; and (7) conference call technology.

Discussion: We agree that these are important areas to consider for research and development. Nothing in the priority prohibits an applicant from proposing to focus on one or more of these topics. We do not, however, want to limit applicants' ability to focus on other auditory enhancement technologies by requiring a focus on any specifically named technology. The peer review process will determine the merits of each proposal.

Changes: None.

Comment: One commenter suggested that we revise paragraph (b) to include research and development on interoperability, and not just compatibility, of auditory enhancement technologies.

Discussion: We agree that interoperability is an important concept to consider for this requirement. However, we believe that the requirement that there be compatibility supports this concept. Nothing in the priority prohibits an applicant from addressing interoperability in its proposed approach.

Changes: None.

Comment: Two commenters supported the emphasis on improving the performance of auditory enhancement devices and other access-promoting technology in social environments in paragraph (c) of the proposed priority. One commenter recommended that the RERC focus its research and development activities on: (1) Universal platforms for connectivity to assistive listing devices; (2) smart phones/tablets/computers that work with hearing aids as assistive listening devices; (3) interactive variable message signs; and (4) speech-to-text methodologies. The other commenter suggested that the RERC focus on improving access through design of the architectural environment, for example, acoustics, lighting, and control of ambient noise and vibrations.

Discussion: We agree that these are important areas to consider for research and development. Nothing in the priority prohibits an applicant from proposing to focus on one or more of these topics. We do not, however, want to limit applicants' ability to focus on other potential solutions by requiring applicants to focus on a specific approach. The peer review process will determine the merits of each proposal.

Changes: None.

Comment: One commenter recommended that the environments named in paragraphs (c) and (d) of the priority be expanded to include ''health care environments,'' because of the importance of the interaction between health care service providers and individuals who are deaf and hard-of-hearing.

Discussion: We agree that the interaction between health care service providers and individuals who are deaf and hard-of-hearing is important to these individuals, and we believe that this addition would be helpful in addressing the broad needs of individuals who are the focus of the RERC.

Changes: We have added health care environments to the examples of environments that are in paragraphs (c) and (d).

Comment: Two commenters supported the emphasis on enhancing aural rehabilitation and consumer involvement strategies in paragraph (d) of the proposed priority, but suggested that the requirements in paragraph (d) focus more on training. Specifically, one of these commenters recommended that paragraph (d) require the RERC to focus on: (1) Hearing assistive technology trainings; (2) online training and webinars; (3) focus groups, surveys, and consumer beta testing and review of products; and (4) encouraging young people with hearing loss to pursue careers in engineering.

Discussion: The suggested training approaches proposed by the commenters have merit, and we agree that consumer training is a key strategy in improving consumer knowledge and utilization of hearing enhancement technology. We do not, however, wish to limit applicants' ability to propose potential training methods and audiences by requiring a specific focus or approach. The peer review process will determine the merits of each proposal.

Changes: We are revising paragraph (d) of the priority to include general consumer training as one of the required methods of improving consumer knowledge and utilization of hearing enhancement technology.

Comment: One commenter noted that consumer input is not considered sufficiently and suggested that the priority require the involvement of consumer organizations.

Discussion: We agree that consumer involvement should be more explicitly required in the priority.

Changes: We have modified paragraph (d) of the priority to clarify that key stakeholders must include consumers, as well as consumer groups for individuals, who are deaf or hard of hearing.

Comment: One commenter suggested that there is a need to find other kinds of technologies or new ways to enhance older technologies to benefit people with hearing loss.

Discussion: We agree with this suggestion, but believe that the priority as written allows applicants to pursue these options.

Changes: None.

Comment: One commenter wrote in support of the priority, and suggested that the RERC focus its research and development activities on the following areas: (1) Video conferencing technologies; (2) remote communication services; (3) individuals who are deaf or hard of hearing and also have other disabilities; and (4) speech recognition and translation technologies.

Discussion: We agree that these are important areas to consider for research and development. Nothing in the priority prohibits an applicant from proposing to focus on one or more of these topics. We do not, however, want to limit applicants' ability to focus on other potential solutions by requiring research and development on specific technologies or topics. The peer review process will determine the merits of each proposal.

Changes: None.

Comment: One commenter suggested that we frame the priority to support technological alternatives that allow improved access through both physiological enhancements via technology (e.g., cochlear implants) and modifications of the environment (e.g., relay telephone services or captioning services). The commenter also recommended that NIDRR revise the priority to recognize the diversity of consumers of hearing technology and to support the rights of the consumer to select physiological enhancements or environmental modifications.

Discussion: NIDRR agrees that the diversity of consumer needs and preferences should be recognized in the RERC's research and development work. Nothing in the priority prohibits applicants from proposing research and development on physiological enhancements, environmental modifications and related technologies, or both.

Changes: None.

Comment: One commenter suggested that the priority require the RERC to conduct research regarding psycho-social factors, such as stigma influence acceptability, that may affect the utilization of auditory enhancement devices.

Discussion: While we agree that psycho-social factors may be an important consideration in designing auditory enhancement devices, nothing in the priority prohibits an applicant from including this consideration in its proposed approach. We have no evidence to support our making this an absolute requirement of the priority.

Changes: None.

Final Priority

Improving the Accessibility, Usability, and Performance of Technology for Individuals Who Are Deaf or Hard of Hearing

The Assistant Secretary for Special Education and Rehabilitative Services establishes a priority for a RERC on Improving the Accessibility, Usability, and Performance of Technology for Individuals who are Deaf or Hard of Hearing. The RERC must focus on innovative technological solutions, new knowledge, and concepts that will improve the lives of individuals who are deaf or hard of hearing.

Under this priority, the RERC must research, develop, and evaluate technologies, methods, and systems that will improve the accessibility, usability, and performance of technologies that benefit individuals who are deaf or hard of hearing. This includes:

(a) Improving technological and design features (e.g., device fit and comfort, ease of control, affordability) in order to maximize adoption and use of auditory enhancement devices;

(b) Improving the compatibility of auditory enhancement technologies with other technologies such as mobile devices, telephones, televisions, and other media devices);

(c) Improving the performance of auditory enhancement devices and other access-promoting technology (e.g., voice to sign computer, smart phone applications, or portable real-time captioning applications) in social environments (e.g., school, work, recreation, health care, and entertainment); and

(d) Enhancing aural rehabilitation, consumer involvement strategies (e.g., online access to peer and expert input on auditory technologies and communication strategies, consumer focus groups and surveys, and consumer beta testing and review of products), and consumer training to maximize access to auditory information in a variety of settings (e.g., educational, recreational, community, health care, and workplace). The RERC must involve key stakeholders in the design and implementation of RERC activities. These stakeholders must include individuals who are deaf or hard of hearing and consumer groups who represent them.

(e) Increasing the transfer of RERC-developed technologies to the marketplace for widespread testing and use by developing and implementing a plan to ensure that technologies developed by the RERC are made available to the public or to service delivery systems that serve the public. This technology transfer plan must be developed in the first year of the project period in consultation with the NIDRR-funded Center on Knowledge Translation for Technology Transfer.

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 RERC would generate, disseminate, and promote the use of new information that is intended to improve outcomes for individuals with disabilities in the areas of community living and participation, employment, and health and function.

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: July 3, 2014.

Michael K. Yudin,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2014–16089 Filed 7–8–14; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

34 CFR Chapter III

[ED–2014–OSERS–0047]

Final Priority; National Institute on Disability and Rehabilitation Research—Rehabilitation Research and Training Centers

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Final priority.

[CFDA Number: 84.133B–8.]

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 Family Support. 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 for individuals with disabilities and family members who provide assistance to them.

DATES: *Effective Date:* This priority is effective August 8, 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 as specified by NIDRR. 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#types*.

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 24, 2014 (79 FR 15928). That notice contained background information and our reasons for proposing the particular priority.

There are differences between the proposed priority and this final priority as discussed in the *Analysis of Comments and Changes* section.

Public Comment: In response to our invitation in the notice of proposed priority, 16 parties submitted comments.

Generally, we do not address technical and other minor changes.

Analysis of Comments and Changes: An analysis of the comments and of any changes in the priority since publication of the notice of proposed priority follows.

Comment: One commenter requested that NIDRR modify the priority to require the RRTC to address how families of people with disabilities can better support the adoption and use of new technologies by their family members who have disabilities.

Discussion: Nothing in the priority precludes an applicant from proposing to focus on ways that families of people with disabilities can better support the adoption and use of new technologies by individuals with disabilities. However, NIDRR does not wish to further specify the research requirements in the way suggested by the commenter and thereby 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 asked about the intended duration of research under this RRTC, and when the products of the research will be available for use by family caregivers.

Discussion: NIDRR plans to fund this RRTC for a total of five years. NIDRR allows applicants to propose their timeline of activities within the five-year period, and so the timeline for the availability of research-based tools has not yet been established. However, typically RRTCs disseminate their research-based tools and products in their fourth and fifth years. NIDRR will work with the RRTC to ensure that research-based tools and informational products are disseminated in a timely fashion.

Changes: None.

Comment: One commenter asked whether the RRTC would be conducting case studies, and whether case studies would include middle-class families as well as families in underserved communities.

Discussion: This priority does not specify the research methods to be used by the RRTC and does not require case studies. Applicants have the latitude to specify the research methods that they plan to employ. The priority also does not specify the socioeconomic background of research participants. The peer review process will determine the merits of each proposal.

Changes: None.

Comment: One commenter asked whether unspecified regional centers will be a mechanism for disseminating the products of the RRTC under paragraph (f). Four other commenters recommended that NIDRR expand its list of technical assistance network members in paragraph (f) to include a number of specific organizations, including University Centers for Excellence in Developmental Disabilities, Area Agencies on Aging, State Agencies on Aging, Lifespan Respite Grantees, the Long-Term Quality Alliance, Eldercare Workforce Alliance, and the National Coalition on Care Coordination.

Discussion: Paragraph (f) of the priority specifies a number of organizations that the RRTC should include in its network of technical assistance providers and advocacy entities. However, NIDRR has clearly stated that the RRTC's network is not limited to the organizations highlighted in paragraph (f). Nothing in the priority precludes applicants from proposing to include other organizations in its network. The peer review process will determine the merits of each proposal.

Changes: None.

Comment: One commenter asked whether NIDRR intends the work of this RRTC to influence laws and policies related to family caregiving, including the Family and Medical Leave Act.

Discussion: As stated in the opening paragraph of the priority, NIDRR does intend the RRTC's work to inform the design, implementation, and improvement of Federal and State policies and programs related to assisting families in support, assistance, and nurturing of family members with disabilities. The RRTC's work may be relevant to the Family and Medical Leave Act, but the priority for the RRTC does not require a focus on this specific law.

Changes: None.

Comment: Two commenters expressed support for the priority's research and data analysis aims, but asked for clarification about how the RRTC will translate the research findings into services and support for families, and for how long.

Discussion: As stated in the opening paragraph of the priority, the RRTC will serve families of individuals with disabilities by providing them with information to guide their informed choice of community- and family-based services. NIDDR also believes that these families will benefit from the work of the RRTC that is used to inform and improve policies and programs that provide assistance to individuals with disabilities and their families. The RRTC will translate its research findings into these services and supports for families by fulfilling the information dissemination, technical assistance, and training requirements found in paragraphs (e), (f), and (g). Applicants have the latitude to specify the dissemination, technical assistance, and training methods that they plan to employ. While NIDRR plans to support this RRTC for five years, we anticipate that the RRTC's products will continue to inform policy and practice beyond the five-year life of the grant.

Changes: None.

Comment: One commenter noted that the well-being of caregivers directly contributes to the outcomes of the individuals with disabilities to whom they provide support. This commenter suggested that NIDRR modify the priority to require research to identify best practices in interventions for caregivers. The commenter also noted that research focused on aging populations has led to specific interventions for caregivers, and that this priority could be modified to require the RRTC to transfer knowledge of these interventions to family caregivers of younger individuals with disabilities.

Discussion: NIDRR agrees with the commenter that the RRTC should conduct research to identify and evaluate existing practices for serving and supporting the well-being of family caregivers of individuals with disabilities, as reflected in the proposed and final priority. For example, paragraph (c) of the priority requires the RRTC to identify and evaluate well-designed, effective State or local family support programs. NIDRR agrees that the RRTC could look to previous research conducted on aging populations to identify promising support services for families of younger individuals with disabilities. However, we do not want to preclude applicants from proposing other options for identifying promising practices by requiring all applicants to use this particular strategy. The peer review

process will determine the merits of each proposal.

Changes: None.

Comment: One commenter suggested that the priority be revised to require the RRTC to engage people with disabilities and their families, national caregiving advocacy organizations, and home-and community-based service providers. The commenter makes this recommendation to maximize the relevance of the RRTC's research.

Discussion: Proposed and final paragraph (d) provides a list of stakeholder groups that must be included in the RRTC's activities to maximize the relevance and usefulness of the RRTC's products, including individuals with disabilities and their families and service providers. Although paragraph (d) does not explicitly include national caregiving advocacy organizations, NIDRR has clearly stated in this paragraph that the RRTC's network of stakeholders is not limited to the organizations listed in paragraph (d). Each applicant may propose and justify the composition of its stakeholder network. The peer review process will determine the merits of each proposal.

Changes: None.

Comment: One commenter recommended that NIDRR specify whether it intends for the RRTC to have a diversity of disability types in its target population, or whether there is a particular disability population that the RRTC should focus on. This commenter stated a preference for having the RRTC conduct its activities across disability categories and age groups.

Discussion: NIDRR agrees with the commenter that the RRTC's target population should be across disability categories. Family support is important to all people with disabilities, and we want the work of the RRTC to be widely applicable across disability categories.

Changes: NIDRR has revised the opening paragraph of the priority to require that the RRTC's work be across disability categories, including physical, sensory, intellectual and developmental, and psychiatric disabilities.

Comment: Three commenters noted that the field of family caregiving research has historically been divided, with researchers in the field of aging being unfamiliar with the work of researchers in the disability field, and vice versa. These commenters noted that the RRTC priority is an opportunity to bridge this divide and to establish a unified framework and research agenda on family support. These commenters recommended that NIDRR modify the priority to make it explicitly inclusive of individuals with disabilities of all ages, and to require the RRTC to conduct research and related activities ''across the lifespan.''

Discussion: NIDRR agrees with the commenter that the RRTC should be inclusive of individuals with disabilities of all ages. This will help to establish a unified framework and research agenda on family support and ensure that the RRTC's work is widely applicable to individuals with disabilities of all ages.

Changes: NIDRR has revised the introductory paragraph of the priority to require the RRTC's work to be inclusive of individuals with disabilities of all ages.

Comment: One commenter suggested that the priority require inclusion of families of veterans and military members with disabilities, including aging and older veterans with disabilities.

Discussion: NIDRR encourages the inclusion of veterans with disabilities, as well as their family members who may have disabilities. Nothing in the priority precludes applicants from including particular subpopulations of individuals with disabilities, including veterans. However, we do not want to limit the target populations that can be proposed by applicants by requiring all applicants to do so.

Changes: None.

Comment: Four commenters noted that the experiences and perspectives of racial and ethnic minorities are typically not included in research on family support. These commenters recommended that NIDRR modify the priority to require the RRTC to include a focus on underserved racial and ethnic families in all of its activities.

Discussion: The regulations that govern NIDRR's administration of the RRTC program require applicants to demonstrate how they will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds. NIDRR describes this requirement in the notice inviting applications that accompanies this final priority. To emphasize the importance of this requirement, we have also revised the opening paragraph of the priority to include a focus on racial and ethnic minority families with disabilities.

Changes: NIDRR has modified the opening paragraph of the priority to require that applicants include a focus on racial and ethnic minority families with disabilities.

Comment: One commenter noted that paragraph (c)(ii) of the proposed priority stated that the RRTC may use National Core Indicators as a means of monitoring, tracking, and evaluating States' approaches to supporting family caregivers. This commenter asked whether this data is readily available and whether there is a cost associated with its use.

Discussion: The National Association of State Directors of Developmental Disabilities Services (NASDDS) maintains the National Core Indicators database and makes the data available to researchers upon request, following submission of a research protocol. There is a fee of $250 for processing such data requests. The NASDDS provides information about, and reports generated from, the National Core Indicators on the following Web site: *www.nationalcoreindicators.org/.*

Changes: None.

Comment: One commenter noted that the proposed priority does not require the RRTC to conduct research on the outcomes of family support for individuals with disabilities and their families. This commenter and one other recommended that NIDRR modify the priority to require research on the long-term outcomes associated with receiving family support services.

Discussion: The priority requires the RRTC to identify and evaluate promising practices under paragraph (c). These activities could involve the RRTC conducting this outcomes research. The end of paragraph (c)(ii) states that the RRTC may identify and assess methods for evaluating the outcomes for individuals and families receiving family support services. Nothing in the priority precludes the RRTC from conducting outcomes research to carry out these activities. However, we do not want to preclude applicants from proposing other means to fulfill this requirement, by requiring all applicants to conduct outcomes research. The peer review process will determine the merits of each proposal.

Changes: None.

Comment: One commenter requested that NIDRR broaden the definition of ''family caregiver'' provided in the background section of the NPP to include all family caregiving populations, regardless of family relationship. This commenter also requested that NIDRR expand the list of family members that are provided as examples in proposed paragraph (d) to include spouses, partners, other relatives, and friends who have significant relationships with, and who provide a broad range of assistance for, a person with a disability.

Discussion: NIDRR agrees that the concept of family member should be broadened to allow for research on any caregivers who have a family relationship with the individual with disability. We believe that a definition

that is more inclusive of individuals who function as family members would help clarify the meaning of family. Within this broad and flexible framework, applicants are free to define and justify their target population of family caregivers.

Changes: We have added a definition of family member at the beginning of the priority paragraph that a clarifies that a family member may be any individual related by blood or affinity whose close association with an individual is the equivalent of a family relationship and can be considered a family caregiver.

Comment: One commenter recommended expanding the list of topics in proposed paragraph (e) to include the development and testing of family caregiver assessment tools, development of training for health care professionals on the needs of family caregivers, and research on interactions between healthcare professionals and family caregivers.

Discussion: NIDRR does not intend the list of topics in paragraph (e) to be comprehensive. The priority specifically states that the topics are not limited to those listed in paragraph (e). Nothing in the priority precludes applicants from proposing to address the topics described by the commenters. However, NIDRR does not want to preclude applicants from proposing and justifying other topics to be addressed under this paragraph by creating a large number of required topics.

Changes: None.

Comment: Two commenters stated that respite care is an important family support service and suggested that NIDRR revise the priority to require research and training related to this topic.

Discussion: NIDRR agrees with the commenters about the importance of respite care as a family support service. Paragraph (b) requires research on the extent to which family caregivers receive assistance, including respite care. Applicants are free to plan and conduct research on respite care under paragraphs (a), (b), and (c) of this priority and to provide training to respite care providers under paragraph (g) of this priority. However, NIDRR does not want to preclude applicants from proposing and justifying other topics to be addressed by requiring all applicants to focus on respite care.

Changes: None.

Comment: One commenter noted that the proposed activities of the RRTC could complement the Administration For Community Living's (ACL) Community of Practice (CoP) on Life Span Supports for Self-Advocates and their Families, and encouraged NIDRR to ensure that the RRTC will work with the CoP. This commenter also suggested that the RRTC could emphasize the importance of future planning for individuals with disabilities, who often outlive their parental caregivers.

Discussion: NIDRR agrees that the RRTC could work with ACL's CoP on Life Span Supports. NIDRR will work closely with ACL in administering this RRTC and ensuring that the two efforts are complementary. In regard to the commenter's second suggestion, nothing in the priority precludes applicants from focusing their research, training, technical assistance, or related activities on future planning for individuals with disabilities and their families. However, NIDRR does not wish to further specify the requirements in the way suggested by the commenter and thereby limit the breadth of applications submitted under this priority. The peer review process will determine the merits of each proposal.

Changes: None.

Comment: Two commenters emphasized the importance of relationships between individuals with disabilities and their siblings. One commenter requested that NIDRR modify the priority to emphasize the importance of including siblings of individuals with disabilities in the RRTC's work.

Discussion: NIDRR agrees that the relationship between individuals with disabilities and their siblings is important. Consistent with the proposed priority, paragraph (d) of the final priority lists siblings in the list of key stakeholders who must be included in the research and research planning activities of the RRTC. Nothing in the priority precludes applicants from including a focus on siblings in other RRTC activities as well.

Changes: None.

Final Priority

Family Support

The Assistant Secretary for Special Education and Rehabilitative Services establishes a priority for an RRTC on Family Support. For purposes of this priority, family member is defined as any individual related by blood or affinity whose close association with an individual is the equivalent of a family relationship. The RRTC's work is intended to inform the design, implementation, and continuous improvement of Federal and State policies and programs related to assisting families in support, assistance, and nurturing of family members with disabilities. The RRTC will also identify and develop information for individuals with disabilities and their family members to guide their informed choice of community and family-based service and support options that best meet their needs. The RRTC's work must be conducted in a manner that takes the needs and experiences of multiple disability groups and their families into consideration. These broad disability groups, as described in NIDRR's Long-Range Plan, include physical disabilities, sensory disabilities, intellectual and developmental disabilities, and psychiatric disabilities. The RRTC's work must also be inclusive of individuals with disabilities of all ages, and the RRTC's research and related activities must be conducted in a manner that addresses the needs and experiences of people with disabilities and their families across the lifespan. The RRTC's work must include a focus on the family support needs and experiences of racial and ethnic minority families who support family members with disabilities.

The RRTC must be designed to contribute to better understanding of the phenomenon of family support; to improved community living and participation, health and function, and employment outcomes of individuals with disabilities supported by family members; and to effective support of family caregivers by—

(a) Developing and implementing a project research plan to identify the key elements of family support and family support programs and policy. This plan, once implemented by the grantee, must contribute to identification or development of relevant and high-quality data and information that will serve as an empirical foundation for improving assistance to families in support roles and to family support policies and programs. This task includes:

(i) Developing a conceptual framework for research on family support that includes both individual and societal level characteristics that influence provision of family support, considering existing knowledge about family support barriers in other populations.

(ii) Developing and prioritizing a list of research questions and evaluation topics that, when addressed, will lead to research-based information that can be used to improve family support policies, practices, programs, communications, and outcomes.

(iii) Working with NIDRR and Administration For Community Living (ACL) to identify relevant data sets and informational resources that can be analyzed to address the questions and topics in the research plan; and

(iv) Working with NIDRR and ACL to identify gaps in data and information resources that are available to address the questions and topics in the research plan and to identify strategies to fill those gaps.

(b) Conducting research and research syntheses to describe the nature and extent of support that is being provided to individuals with disabilities by family members, and the extent to which the family caregivers themselves receive assistance in the form of education/training, counseling/psychosocial support, personal care, homemaker services, respite care, and other relevant supports, as well as the amounts of assistance received and the private and public sources of payment for such assistance;

(c) Conducting research and research syntheses to identify and evaluate promising practices that States have used and could be adopted in other States to improve long-term services and supports for families of individuals with disabilities. This task includes—

(i) Identifying components of well-designed, effective State or local family support programs; and

(ii) Identifying and assessing methods for monitoring, tracking, and evaluating States' approaches to supporting families, which may include, but are not limited to, methods for monitoring the experiences of individuals and costs for recipients of family support services within broader existing long-term services and supports evaluation programs, such as the National Core Indicators or Participant Experience Survey; methods for understanding, monitoring, and responding to the unique needs of individual families, including the family members with and without disabilities; and methods for evaluating the outcomes for individuals and families receiving family support services.

(d) Identifying and involving key stakeholders in the research and research planning activities conducted under paragraphs (a), (b), and (c) to maximize the relevance and usefulness of the research products being developed. Stakeholders must include, but are not limited to, individuals with disabilities and their families (including, but not limited to, parents, siblings, and sons/daughters); national, State, and local-level policymakers; service providers; and relevant researchers in the field of disability and rehabilitation research;

(e) Identifying, evaluating, and disseminating accessible information at the national, State, service provider, and individual levels on topics of importance to sustaining and developing appropriate and effective family support services, practices, policies, and programs. These topics include, but are not limited to: Usefulness and effectiveness of current family support resources for families of differing circumstances; the roles of, and impact upon, families in the transitions from fee-for-service to integrated/managed long-term service and support systems; the roles and responsibilities of individuals with disabilities and their family members in the transition from agency-directed to consumer-directed services; best practices in supporting families both within and outside of disability services; accessing and coordinating community supports; the role of family-to-family and peer-to-peer support systems and other social networks; and other topics to be determined in collaboration with key stakeholders, NIDRR, and ACL representatives;

(f) Establishing a network of technical assistance providers and advocacy entities to assist in synthesizing and disseminating information related to implementing high-quality family support policies, programs, and practices for individuals with disabilities. Network members should include, but are not limited to: The Aging and Disability Resource Centers, the State Councils on Developmental Disabilities; Parent Training and Information Centers; Protection and Advocacy Client Assistance Programs; Centers for Independent Living; and private sector organizations that are recognized as national leaders in promoting family support policies, programs, and research; and

(g) Serving as a national resource center related to family support by—

(i) Providing information and technical assistance to individuals with disabilities, family members, service providers, policymakers, and other key stakeholders;

(ii) Providing training to facilitate understanding of the effective use of private and public options for the provision of supports to families, including training at the graduate, pre-service, and in-service levels, and to individuals with disabilities, families, and rehabilitation and other service providers. This training may be provided through conferences, workshops, public education programs, in-service training programs, and similar activities; and

(iii) Collaborating as appropriate with NIDRR's RRTC on Community Living Policy.

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, disseminate, and promote the use of new information that will improve outcomes for individuals with disabilities in the areas of community living and participation, employment, and health and function.

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: July 3, 2014.

Michael K. Yudin,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2014–16085 Filed 7–8–14; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2014–0310; FRL–9913–30–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Low Emission Vehicle Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the State of Maryland. This revision pertains to Maryland's incorporation by reference of the most recent amendments to California's Low Emission Vehicle (LEV) program. The Clean Air Act (CAA) contains authority by which other states may adopt new motor vehicle emissions standards that are identical to California's standards. Maryland has adopted by reference California's light and medium-duty vehicle emissions and fuel standards, and consistent with California, submits amendments to these standards as revisions to the State's SIP. In this SIP revision, Maryland is updating its Low Emissions Vehicle Program regulation to adopt by reference California's Advanced Clean Car Program. This action is being taken under the CAA.

DATES: This rule is effective on September 8, 2014 without further notice, unless EPA receives adverse written comment by August 8, 2014. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2014–0310 by one of the following methods:

A. *www.regulations.gov*. Follow the on-line instructions for submitting comments.

B. *Email: Fernandez.cristina@epa.gov*.

C. *Mail:* EPA–R03–OAR–2014–0310, Cristina Fernandez, Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2014–0310. 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 information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. 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.

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 during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

FOR FURTHER INFORMATION CONTACT: Emlyn Vélez-Rosa (215) 814–2038, or by email at *velez-rosa.emlyn@epa.gov*.

SUPPLEMENTARY INFORMATION: On August 1, 2013, the Maryland Department of the Environment (MDE) submitted a revision to its SIP amending Maryland's Low Emissions Vehicle Program regulation, COMAR 26.11.34, to adopt California's Advanced Clean Cars Program, also referred to as the CA LEV III program. The Maryland Low Emissions Vehicle Program requires all new 2011 and subsequent model year passenger cars, light trucks, and medium-duty vehicles having a gross vehicle weight rating (GVWR) of 14,000 pounds or less that are sold in Maryland to meet California's vehicle standards.

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I. Background

A. Maryland's Air Quality With Respect to the Ozone National Ambient Air Quality Standard (NAAQS)

Ozone is formed in the atmosphere by photochemical reactions between volatile organic compounds (VOCs), nitrogen oxides (NO_X), and carbon monoxide (CO) in the presence of sunlight. In order to reduce ozone concentrations in the ambient air, the CAA requires all nonattainment areas to apply controls on VOCs and NO_X emission sources to achieve emission reductions.

On July 18, 1997 (62 FR 38856), EPA promulgated an 8-hour ozone NAAQS, at 0.08 parts per million (ppm) averaged over an 8-hour time frame. On April 30, 2004 (69 FR 23951), EPA finalized designations for areas across the country with respect to the 1997 8-hour ozone NAAQS, which became effective on June 15, 2004. In this rulemaking action, EPA designated for the 1997 8-hour ozone NAAQS three separate nonattainment areas containing eleven counties and the City of Baltimore in Maryland: (1) The Baltimore, Maryland moderate nonattainment area (hereafter the Baltimore Area), consisting of the counties of Ann Arundel, Baltimore, Carroll, Harford, and Howard, and the City of Baltimore in Maryland; (2) the Washington, DC-MD-VA moderate nonattainment area (hereafter the Washington Area), whose Maryland's portion consists of the counties of Calvert, Charles, Frederick, Montgomery, and Prince George's; and (3) the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE moderate nonattainment area (hereafter the Philadelphia Area), whose Maryland's portion consists of Cecil County. *See* 40 CFR 81.321. Upon designation, these 1997 8-hour ozone moderate nonattainment areas had an attainment date of no later than June 15, 2010.

Two of Maryland's ozone nonattainment areas have attained the 1997 8-hour ozone NAAQS. On February 28, 2012 (77 FR 11739), EPA determined that the Washington Area attained the 1997 8-hour ozone NAAQS by its June 15, 2010 attainment date. On January 21, 2011 (76 FR 3840), EPA issued a 1-year attainment date extension (i.e., from June 15, 2010 to June 15 2011) for the Philadelphia Area. On March 26, 2012 (77 FR 17341), EPA determined that the Philadelphia Area attained the 1997 8-hour ozone NAAQS by its June 15, 2011 attainment date.

On March 11, 2011 (76 FR 13289), EPA issued a 1-year attainment date extension (i.e., from June 15, 2010 to June 15, 2011) for the Baltimore Area. On February 1, 2012 (77 FR 4901), EPA made a determination that the Baltimore Area did not attain the 1997 8-hour ozone NAAQS by its June 15, 2011 attainment date, based on quality assured, quality controlled, and certified ambient air monitoring data for 2008–2010. As a result, in this same rulemaking action EPA reclassified the Baltimore Area from moderate to serious nonattainment for the 1997 8-hour ozone NAAQS.

On March 27, 2008 (73 FR 16436), EPA revised the level of the 8-hour ozone NAAQS from 0.08 ppm to 0.075 ppm. EPA also strengthened the secondary 8-hour ozone standard to the level of 0.075 ppm making it identical to the revised primary standard. On May 21, 2012 (77 FR 30088), EPA finalized designations for the 2008 8-hour ozone NAAQS, that became effective on July 20, 2012. The 2008 8-hour ozone designations included the same three nonattainment areas previously designated for the 1997 8-hour ozone NAAQS, but with different classifications. The Washington Area and the Philadelphia-Wilmington-Atlantic City Area were classified as marginal nonattainment and the Baltimore Area was classified as moderate nonattainment.

B. Federal Vehicle Standards

Vehicles sold in the United States are required by the CAA to be certified to meet the Federal emission standards or California's emission standards. States are forbidden from adopting their own standards, but may adopt California's emission standards for which EPA has

granted a waiver of preemption. Specifically, section 209 of the CAA prohibits states from adopting or enforcing standards relating to the control of emissions from new motor vehicles or new motor vehicle engines. However, EPA may waive that prohibition to any state that adopted its own vehicle emission standards prior to March 30, 1966. As California was the only state to do so, California has authority under the CAA to adopt its own motor vehicle emissions standards. California must demonstrate to EPA that its newly adopted standards will be ''. . . in the aggregate, at least as protective of public health and welfare as applicable Federal standards.'' EPA then must grant a waiver of preemption for California's standards, unless the demonstration fails to meet specific requirements set forth in section 209 of the CAA applicable to such a waiver demonstration.

Section 177 of the CAA authorizes other states to adopt California's standards in lieu of Federal vehicle standards, provided the state adopting California's standards does so at least two years prior to the model year in which they become effective and that EPA has issued a waiver of preemption to California for such standards. California emission standards have been traditionally more stringent than the EPA requirements, but their structure is similar to that of the Federal programs.

On February 10, 2000 (65 FR 6698), EPA adopted the second tier of Federal motor vehicle standards (Federal Tier 2 standards) enacted under the CAA. The Federal Tier 2 standards included tailpipe emissions standards for passenger vehicles and light duty trucks and gasoline sulfur standards. The standards were phased-in between the 2004 and 2007 model years, except in states that had formally adopted California's emission standards in lieu of the Federal standards.

On May 7, 2010 (75 FR 25324), EPA and the National Highway Traffic Safety Administration (NHTSA), an agency under the Department of Transportation (DOT), established a national program consisting of new standards for light-duty motor vehicles to reduce greenhouse gases (GHG) emissions and to improve fuel economy. This program affected new passenger cars, light-duty trucks, and medium-duty passenger vehicles sold in model years 2012 through 2016. EPA adopted the GHG emissions standards under the CAA, while NHTSA, as part of DOT, adopted standards related to fuel economy, the Corporate Average Fuel Economy (CAFE) standards, under the Energy Policy and Conservation Act (EPCA). Under this national program, adopted in coordination with California, automobile manufacturers face a single set of national emissions standards to meet both Federal and California emissions requirements.

On October 15, 2012 (77 FR 62624), EPA and NHTSA issued a joint final rule to further reduce GHG emissions and improve fuel economy for light-duty vehicles for model years 2017 and beyond. This rule extended the previous national program beyond 2016 by tightening GHG for model years 2017 to 2025 and the CAFE standards between model years 2017 and 2021. The rule continued to apply to passenger cars, light-duty trucks, and medium-duty passenger vehicles sold in the applicable model years.

EPA's GHG standards are based on carbon dioxide (CO_2) emissions-footprint curves, where each vehicle has a different CO_2 emissions compliance target depending on its footprint value (related to the size of the vehicle). Generally, the larger the vehicle footprint, the higher the corresponding vehicle CO_2 emissions target. As a result, the burden of compliance was distributed across all vehicles and all manufacturers. The CAFE program required vehicle manufacturers to comply with the gas mileage, or fuel economy, standards set by the DOT.

On March 3, 2014, EPA signed a final rule adopting Tier 3 Motor Vehicle Emission and Fuel Standards. The Federal Tier 3 program establishes more stringent Federal vehicle emissions standards and lowers the sulfur content of gasoline for new cars in states subject to the Federal program, beginning in model year 2017. The Federal Tier 3 vehicle program will reduce both tailpipe and evaporative emissions from passenger cars, light-duty trucks, medium-duty passenger vehicles, and some heavy-duty vehicles. The gasoline sulfur standard will enable more stringent vehicle emissions standards and will make emissions control systems more effective. The tailpipe standards include different phase-in schedules that vary by vehicle class but generally phase in between model years 2017 and 2025. The Tier 3 standards are closely harmonized with California LEV Tier III standards as well as with Federal and California GHG emission standards for light-duty vehicles.

C. California's Vehicle Standards

In 1990, California's Air Resources Board (CARB) adopted its first generation of LEV standards applicable to light and medium duty vehicles. California's vehicle emission standards program is referred to as the California Low Emissions Vehicle Program (CA LEV program). These LEV standards were phased-in beginning in model year 1994 through model year 2003. In 1999, California adopted a second generation of CA LEV standards, known as CA LEV II. CA LEV II was phased-in beginning with model year 2004 through model year 2010. EPA granted a Federal preemption waiver for CA LEV II program on April 22, 2003 (68 FR 19811).

In December 2000, CARB modified the CA LEV II program to take advantage of some elements of the Federal Tier 2 regulations to ensure that only the cleanest vehicle models would continue to be sold in California. In 2006, CARB adopted technical amendments to its CA LEV II program that amended the evaporative emission test procedures, onboard refueling vapor recovery and spitback test procedures, exhaust emission test procedures, and vehicle emission control label requirements. These technical amendments aligned each of California's test procedures and label requirements with its Federal counterpart, in an effort to streamline and harmonize the California and Federal Tier 2 programs and to reduce manufacturer testing burdens and increase in-use compliance. On July 30, 2010 (75 FR 44948), EPA published a **Federal Register** notice confirming that CARB's 2006 technical amendments were within-the-scope of existing waivers of preemption for the CA LEV II program.

The CA LEV II program reduces emissions in a similar manner to the Federal Tier 2 program by use of declining fleet average non-methane organic gas (NMOG) emission standards, applicable to each vehicle manufacturer each year. Separate fleet average standards are not established for NO_X, CO, particulate matter (PM), or formaldehyde as these emissions are controlled as a co-benefit of the NMOG fleet average (fleet average values for these pollutants are set by the certification standards for each set of California prescribed certification standards.) These allowable sets of standards range from LEV standards (the least stringent standard set) to Zero Emission Vehicle (ZEV) standards (the most stringent standard set). In between, the CA LEV II program establishes various other standards: The Ultra-Low Emission Vehicles (ULEV), Super-Ultra Low Emission Vehicles (SULEV), Partial Zero Emission Vehicles (PZEV), and Advanced Technology-Partial Zero Emission Vehicles (AT–PZEV). Each manufacturer may comply by selling a mix of vehicles meeting any of these standards, as long as their sales-

weighted, overall average of the various standard sets meets the overall fleet average and ZEV requirements.

In January 2012, California approved a new emissions-control program for model years 2017 through 2025, called the Advanced Clean Cars Program, or the CA LEV III program. The program combines the control of smog, soot, and GHG and requirements for greater numbers of ZEV vehicles into a single package of standards. The regulations apply to light duty vehicles, light duty trucks, and medium duty passenger vehicles. Under the Advanced Clean Cars Program, manufacturers can certify vehicles to the standards before model year 2015. Beginning with model year 2020, all vehicles must be certified to CA LEV III standards. The ZEV amendments add flexibility to California's existing ZEV program for 2017 and earlier model years, and establish new sales and technology requirements starting with the 2018 model year. The CA LEV III amendments establish more stringent criteria and GHG emission standards starting with the 2015 and 2017 model years, respectively. The California GHG standards are almost identical in stringency and structure to the Federal GHG standards for model years from 2017 to 2025. Additionally, on December 2012, California adopted a ''deemed to comply'' regulation that enables manufacturers to show compliance with California GHG standards by demonstrating compliance with Federal GHG standards. On June 9, 2013 (78 FR 2112), EPA granted a Federal preemption waiver for California's Advanced Clean Cars Program. California's LEV Program is contained in the California Code of Regulations (CCR), Title 13 ''Motor Vehicles,'' Division 3 ''Air Resources Board.''

D. Maryland's Low Emissions Vehicle Program

In order to address ambient air quality in the State, Maryland's legislature adopted and the Governor signed the Maryland Clean Cars Act of 2007, the purpose of which was to implement California's motor vehicle emission standards. This statute compelled the adoption by MDE on November 19, 2007 of a rule to implement CA LEV II standards. This rule established Maryland regulatory chapter COMAR 26.11.34, entitled ''Low Emission Vehicle Program'' (also referred to as Maryland Clean Car Program), which became effective in Maryland on December 17, 2007. Since originally adopted, Maryland has revised its LEV program in 2009 and 2011 to reflect updates by California to the CA LEV II program. Maryland submitted these changes to EPA as SIP revisions, which EPA approved into Maryland's SIP. *See* 78 FR 34911 (June 11, 2013).

The Maryland Clean Car Program has two objectives. The first is to reduce emissions of NO_X and VOCs, as precursors of ground level ozone, from new motor vehicles sold in Maryland. The second objective of the program is to reduce GHG emissions from motor vehicles. The Maryland Clean Car Program requires all 2011 and newer model year passenger cars, light-duty trucks, and medium-duty vehicles having a GVWR of 14,000 pounds or less that are sold as new cars or are transferred in Maryland to meet the applicable California emissions standards. For purposes of the Maryland Clean Car Program, transfer means to sell, import, deliver, purchase, lease, rent, acquire, or receive a motor vehicle for titling or registration in Maryland.

II. Summary of SIP Revision

Since Maryland last adopted California's vehicle standards in 2011, California has updated its rules to adopt its Advanced Clean Cars Program. As mentioned previously, on June 9, 2013 (78 FR 2112), EPA granted a Federal preemption waiver for California's Advanced Clean Cars Program. Maryland adopted California's updates to portions of CCR Title 13, Division 3 by amending COMAR 26.11.34.02 on February 6, 2013 (40:4 Md R. 347), as proposed on November 30, 2012 (39:24 Md. R. 1587–1590). These amendments became state-effective on March 4, 2013.

On August 1, 2013, Maryland submitted as a SIP revision the state-adopted amendments to the Maryland LEV Program rule, with exception of CCR, Title 13, Division 3, Section 2030 ''Liquefied Petroleum Gas or Natural Gas Retrofit Systems,'' effective on February 13, 2010. The purpose of this SIP revision is for Maryland to update its incorporation by reference provisions, under COMAR 26.11.34.02, to adopt the CA LEV III program. This SIP revision will replace in its entirety the existing regulation COMAR 26.11.34.02 as approved in the SIP on June 11, 2013. *See* 78 FR 34911. A list of California's regulations being incorporated by reference is included as part of Maryland's notice of proposed action dated November 30, 2012 (39:24 Md. R. 1587–1590), which is included in the State submittal and available online at *www.regulations.gov,* Docket ID No. EPA–R03–OAR–2014–0310.

The proposed SIP revision includes Maryland's revised Clean Car Program rules that adopt by reference California's Advanced Clean Car Program approved by CARB in 2012. These amendments are important for purposes of making sure Maryland's rules are consistent with those of California, and thus in compliance with Maryland's requirement under section 177 of the CAA.

As explained earlier, the California Advanced Clean Cars Program includes changes to CA LEV II, GHG, and ZEV standards, all of which have been adopted by Maryland. The California Advanced Clean Cars Program regulates criteria pollutants, and requires that all new 2017 and subsequent model year vehicles transferred (including titled and registered) in the State of Maryland be certified to meet the new California emission standards. The CA LEV III emission standards will be phased-in from 2017–2025. Maryland's update to its Clean Car Program will result in a further reduction of ozone precursors emissions of NO_X and VOCs, as well as air toxic and GHG emissions beyond the State's current, SIP-approved program.

III. Final Action

EPA is approving a SIP revision submitted by Maryland on August 1, 2013. The SIP revision amends the Maryland Low Emission Vehicle Program, in regulation COMAR 26.11.34.02, to incorporate by reference California's Advanced Clean Car Program. Maryland's adoption of California's vehicle standards is authorized by section 177 of the CAA, and will ensure that Maryland's Low Emission Vehicle Program continues to be the same as California's Low Emission Vehicle program. EPA is publishing this rule without prior proposal because EPA views this as a noncontroversial amendment and anticipates no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on September 8, 2014, without further notice unless EPA receives adverse comment by August 8, 2014. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments 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 at this time.

IV. Statutory and Executive Order Reviews

A. General Requirements

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 8, 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 action. This rulemaking action to revise the Maryland Low Emissions Vehicle Program 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, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: June 13, 2014.

W.C. Early,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart V—Maryland

■ 2. In § 52.1070, the table in paragraph (c) is amended by revising the entry for COMAR 26.11.34.02. to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED REGULATIONS, TECHNICAL MEMORANDA, AND STATUTES IN THE MARYLAND SIP

Code of Maryland Administrative Regulations (COMAR) citation	Title/subject	State effective date	EPA approval date	Additional explanation/citation at 40 CFR 52.1100
*	*	*	*	*
26.11.34 Low Emissions Vehicle Program				
*	*	*	*	*
26.11.34.02 with exception	Incorporation by Reference	03/04/13	07/09/14 [***Insert Federal Register citation***].	Update to incorporate by reference California's Advanced Clean Car Program rules, with exception of Title 13, California Code of Regulations (CCR), Division 3, Chapter 2, Article 5, § 2030.
*	*	*	*	*

* * * * *

[FR Doc. 2014–15886 Filed 7–8–14; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 595

[Docket No. NHTSA–2014–0069]

RIN 2127–AL17

Make Inoperative Exemptions; Vehicle Modifications To Accommodate People With Disabilities; Ejection Mitigation; Lamps, Reflective Devices, and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule, technical correction.

SUMMARY: This final rule amends NHTSA regulations to include a new exemption relating to the Federal motor vehicle safety standard for ejection mitigation, and to correct a reference regarding the standard for lamps, reflective devices and associated equipment. The exemptions facilitate the mobility of physically disabled drivers and passengers.

DATES: *Effective date:* The date on which this final rule amends the CFR is September 8, 2014.

Petitions for Reconsideration: Petitions for reconsideration of this final rule must be received at the address below by August 25, 2014.

ADDRESSES: If you wish to petition for reconsideration of this rule, submit your petition to the following address so that it is received by NHTSA by the date above: Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., West Building, Washington, DC 20590. You should refer in your petition to the docket number of this document. The petition will be placed in the docket. Note that all submissions received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

FOR FURTHER INFORMATION CONTACT: Christopher J. Wiacek, NHTSA Office of Crash Avoidance Standards, NVS–123 (telephone 202–366–4801), or Deirdre Fujita, NHTSA Office of Chief Counsel, NCC–112 (telephone 202–366–2992). The mailing address for these officials is: National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: In response to a petition for rulemaking from Bruno Independent Living Aids (Bruno), this final rule amends 49 CFR Part 595, Subpart C, ''Make Inoperative Exemptions, Vehicle Modifications to Accommodate People With Disabilities,'' to include a new exemption relating to FMVSS No. 226, ''Ejection mitigation.'' This document also corrects a reference in the part to FMVSS No. 108, ''Lamps, reflective devices and associated equipment.'' The notice of proposed rulemaking (NPRM) preceding this final rule was published on October 26, 2012 (77 FR 65352).

Background

The National Traffic and Motor Vehicle Safety Act (49 U.S.C. Chapter 301) (''Safety Act'') and NHTSA's regulations require vehicle manufacturers to certify that their vehicles comply with all applicable Federal motor vehicle safety standards (FMVSSs) (*see* 49 U.S.C. 30112; 49 CFR part 567) at the time of manufacture. A vehicle manufacturer, distributor, dealer, or repair business, except as indicated below, may not knowingly make inoperative any part of a device or element of design installed in or on a motor vehicle in compliance with an applicable FMVSS (*see* 49 U.S.C. 30122). NHTSA has the authority to issue regulations that exempt regulated entities from the ''make inoperative'' provision (49 U.S.C. 30122(c)). The agency has used that authority to promulgate 49 CFR part 595, ''Make Inoperative Exemptions.''

49 CFR part 595, subpart C, sets forth exemptions from the make inoperative provision to permit, under limited circumstances, vehicle modifications that take the vehicles out of compliance with certain FMVSSs when the vehicles are modified to be used by persons with disabilities after the first retail sale of the vehicle for purposes other than resale. The regulation was promulgated to facilitate the modification of motor vehicles so that persons with disabilities can drive or ride in them. The regulation involves information and disclosure requirements and limits the extent of modifications that may be made. Details of the regulation are described in the October 26, 2012 NPRM.

FMVSS No. 226, ''Ejection Mitigation''

On January 19, 2011,[1] the agency published a final rule establishing FMVSS No. 226, ''Ejection Mitigation,'' to reduce the partial and complete ejection of vehicle occupants through side windows in crashes, particularly rollover crashes. The standard applies to passenger cars, and to multipurpose passenger vehicles, trucks and buses with a gross vehicle weight rating of 4,536 kg (10,000 pounds) or less.[2]

To assess compliance with FMVSS No. 226, an impactor is propelled from inside a test vehicle toward the windows. The ejection mitigation safety system is required to prevent the impactor from moving more than a specified distance beyond the plane of a window. In the test, the countermeasure must retain the linear travel of the impactor such that the impactor must not travel 100 millimeters beyond the location of the inside surface of the vehicle glazing. This displacement limit serves to control the size of any gaps forming between the countermeasure (e.g., the ejection mitigation side curtain air bag) and the window opening, thus reducing the potential for both partial and complete ejection of an occupant.

The agency believes that vehicle manufacturers will meet the standard by means of side curtain air bag technology, and possibly supplement the technology with advanced glazing. Existing side impact air bag curtains (installed pursuant to FMVSS No. 214, ''Side impact protection'') will be made larger so that they cover more of the window opening, made more robust to remain inflated longer, and made to deploy in both side impacts and in rollovers using sensor technology.[3]

FMVSS No. 226 is a new regulation and currently, 49 CFR Part 595 does not provide for an exemption for vehicles that are modified to accommodate people with disabilities.

NPRM

On October 26, 2012, NHTSA published an NPRM[4] in the **Federal Register** responding to a petition for rulemaking from Bruno requesting NHTSA to amend § 595.7 to include an exemption from the requirements of FMVSS No. 226. The NPRM granted the petition and proposed to amend the regulation.

Bruno manufactures a product line it calls ''Turning Automotive Seating (TAS),'' which replaces the seat installed by the original equipment manufacturer (OEM). In its petition, Bruno states that the purpose of TAS is

[1] 76 FR 3212; response to petitions for reconsideration, 78 FR 55138 (September 9, 2013).

[2] Certain vehicles are excluded from the standard.

[3] NHTSA estimates the new FMVSS No. 226 requirements will save 373 lives and prevent 476 serious injuries per year. The final rule adopted a phase-in of the new requirements, which started September 1, 2013.

[4] 77 FR 65352, October 26, 2012.

''to provide safe access to private motor vehicles for mobility-impaired drivers or passengers, semi-ambulatory or transferring from a wheelchair. The Bruno TAS replaces the OEM seat in a sedan, minivan, van, pickup, or SUV.'' A detailed description of the TAS system can be found in the NPRM.

In its petition, Bruno referred to another NHTSA rulemaking (that has since resulted in a final rule [5]) amending the part 595 regulation, pertaining to the moving deformable barrier (MDB) and pole tests of FMVSS No. 214 (§ 595.7(c)(15)). The final rule provided an exemption from the MDB and pole test requirements as applied to a designated seating position that is modified by changing the restraint system and/or seat at that position to accommodate a person with a disability. Bruno states in its current petition that FMVSS No. 226 will enhance the side air bag technology of FMVSS No. 214, and that these enhanced side air bags present much of the same difficulties when accommodating the transportation needs of mobility impaired persons as the difficulties discussed in the rulemaking for FMVSS No. 214.

In the October 26, 2012 NPRM, NHTSA proposed to amend § 595.7(c) to add an exemption for FMVSS No. 226.[6] However, we indicated in the preamble that the agency did not fully agree with Bruno's statements about the need for an exemption from ejection mitigation requirements when the vehicle's OEM seat was replaced by a TAS seat. In NHTSA's view, FMVSS No. 226 is not affected by torso air bags or seat components, so the fact that the OEM seat would be replaced did not seem germane. NHTSA did not understand why removing the original seat and replacing it with a TAS seat would negatively impact the performance of the curtain air bags certified as meeting FMVSS No. 226.

Nonetheless, the agency did acknowledge in the NPRM that the side impact sensing and electronic architecture system could be integrated with that of the ejection mitigation rollover protection system. Thus, NHTSA acknowledged the possibility that, in the process of modifying or replacing a seat to accommodate a person with a disability, the FMVSS No. 214 side impact air bag system could be deactivated, which could tangentially deactivate the FMVSS No. 226 rollover ejection mitigation system. Thus, NHTSA stated, for vehicles in which the seat is modified or replaced, it may not be practical to exempt them from the side impact requirements and not from ejection mitigation requirements. In the NPRM, NHTSA sought comment on the need for the requested exemption, and asked questions as to whether deactivating the side impact protection system would also deactivate the ejection mitigation system, and whether an exemption could only be for the ejection mitigation countermeasure (curtains) on the side of the vehicle affected by the modification, rather than for both sides.

Response to the NPRM

The agency received one comment on the NPRM. The comment was from the National Mobility Equipment Dealers Association (NMEDA),[7] which supports the proposed FMVSS No. 226 exemption. NMEDA states that aftermarket seats differ in dimension/geometry from the original equipment seat and may be positioned differently in the vehicle. The commenter states that a wider or higher aftermarket seat, or seat placement, could hinder the deployment of the ejection mitigation side curtain air bags. NMEDA also states that some modifiers move the vehicle seat outward to provide more center row space for a wheelchair. The commenter states that since relocating the seat in this way may affect the proper deployment of the curtain air bag, some modifiers deactivate the air bag on the affected side of the vehicle. NMEDA states: ''Deactivation of side curtain airbags is often done by removing the airbag and installing a Shunt that provides the proper feedback to the 214 control module.'' (A shunt is a device that allows electric current to pass around another point in the circuit by creating a low resistance path.)

NMEDA also states that some modifications involve modifying the occupant restraint system (seat belt) for a seating position, such as when the original restraint system is integrated into the OEM seat and the OEM seat is removed. The commenter states that modifiers have to mount a new restraint system to the upper side roof rail of the vehicle, which ''could affect the deployment of a 226 airbag [sic].''

Additionally, NMEDA states: ''Since the technical specifications of the OEM 226 control modules are not available to modifiers, a modifier would not know whether the deactivation of one side of the vehicle's curtain airbags also deactivates the other side.''

Agency Decision

The agency has determined that there is merit to Bruno's request to amend § 595.7 to add an exemption from the ejection mitigation requirements and thus has decided to adopt the proposed amendment. NMEDA's comment indicates that it is common for modifiers to deactivate or remove the side curtain air bag that is packaged in the headliner roof rail to make modifications to the seat belt to accommodate a disabled driver or passenger or to install a new seating system. To date, the side curtain air bag is the primary OEM countermeasure installed to meet FMVSS No. 226. Since the countermeasure would be deactivated or removed, an exemption from FMVSS No. 226 is warranted to facilitate transportation of people with disabilities. Further, modifiers are permitted by § 595.7 (see § 595.7(c)(15)) to deactivate or remove the OEM side curtain air bag installed in compliance with FMVSS No. 214. If the side curtain air bag were deactivated or removed from the vehicle, maintaining compliance with FMVSS No. 226 would not be possible.

That said, we recognize that the requested amendment presents a trade-off of substantial ejection mitigation protection in exchange for continued mobility for people with disabilities. The agency is concerned about the negative effect an exemption may have on the safety benefits afforded to occupants.

In an effort to balance the mobility needs of people who need vehicle modifications to accommodate a disability with the performance requirements of FMVSS No. 226, the exemption we have adopted is limited. Vehicle manufacturing designs generally utilize one ejection mitigation curtain air bag per side to protect the front and the rear rows. If the side curtain air bag must be made inoperative on one side of the vehicle to accommodate a disabled person, we are not convinced that the side curtain air bag on the other side of the vehicle needs to be made inoperative as well.

NHTSA believes it is necessary to maintain as much as possible the integrity of the ejection mitigation safety system for the side of the vehicle that is not altered. From NMEDA's comments, it appears possible to isolate and only deactivate the altered side of the vehicle using a shunt. Several major

[5] 76 FR 37025, June 24, 2011.

[6] NHTSA proposed that the exemption would only be for the side of the vehicle where a seat must be changed to accommodate a person with a disability.

[7] NMEDA is an association representing vehicle repair businesses (modifiers) and vehicle manufacturers that provide mobility to consumers with disabilities.

manufacturers[8] provide, on the internet, information related to modifying vehicles for mobility purposes. We encourage modifiers to contact the respective manufacturer or seek other information to obtain the technical know-how to deactivate one side of the vehicle's curtain air bags without deactivating the other side.

Thus, we amend § 595.7(c) to add § 595.7(c)(17), and only exempt from S4.2 and S5 of 49 CFR 571.226 the side of the vehicle where a seat on that side of the vehicle must be changed to accommodate a person with a disability. A modifier may not knowingly make inoperative the side curtain air bag on the opposite side of the vehicle.

Technical Amendment

On December 4, 2007, the agency published a final rule (72 FR 68234) amending FMVSS No. 108, ''Lamps, reflective devices, and associated equipment'' (49 CFR 571.108), by reorganizing the regulatory text so that the standard provides a more straightforward and logical presentation of the applicable regulatory requirements. The final rule did not impose any new substantive requirements on manufacturers. The effective date of the rule was December 1, 2012.

FMVSS No. 108 includes a requirement that a turn signal operating unit installed on vehicles must be self-canceling by steering wheel rotation and capable of cancellation by a manually operated control. The requirement used to be in S5.1.1.5 of FMVSS No. 108, but after the 2007 final rule it is now in S9.1.1 of the standard.

Following the 2007 final rule, the agency did not revise § 595.7 to reflect the reorganized text of the lighting standard in the make inoperative exemption relating to FMVSS No. 108. Currently, § 595.7(c)(2) references S5.1.1.5 of FMVSS No. 108, when the correct paragraph reference is S9.1.1. Today's final rule corrects § 595.7(c)(2) to reference S9.1.1 of FMVSS No. 108.

Effective Date

As this final rule relieves the regulatory burdens on certain entities and involves FMVSS requirements that have already become effective, the agency believes that a 60-day effective date is appropriate.

[8] *http://www.fordmobilitymotoring.com, http://www.gmmobility.com, http://www.chryslerautomobility.com*, and *http://toyotamobility.com.*

Rulemaking Analyses and Notices

Executive Order (E.O.) 12866 (Regulatory Planning and Review), E.O. 13563, and DOT Regulatory Policies and Procedures

The agency has considered the impact of this rulemaking action under E.O. 12866, E.O. 13563, and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed by the Office of Management and Budget under E.O. 12866, ''Regulatory Planning and Review.'' It is not considered to be significant under E.O. 12866 or the Department's Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). NHTSA has determined that the effects are so minor that a regulatory evaluation is not needed to support the subject rulemaking. This rulemaking imposes no costs on the vehicle modification industry. If anything, there could be a cost savings due to the exemption.

Modifying a vehicle in a way that makes inoperative the performance of ejection mitigation air bags will reduce the protections offered occupants in a rollover. However, the number of vehicles potentially modified is very small. This is essentially the trade-off that NHTSA is faced with when increasing mobility for persons with disabilities: When necessary vehicle modifications are made, some safety may unavoidably be lost to gain personal mobility. The agency has made the exemption adopted today as narrow as reasonably possible, to preserve ejection mitigation protection as much as possible.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 et seq., as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of proposed rulemaking or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). The Small Business Administration's regulations at 13 CFR Part 121 define a small business, in part, as a business entity ''which operates primarily within the United States.'' (13 CFR 121.105(a)). No regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

NHTSA has considered the effects of this final rule under the Regulatory Flexibility Act. Most dealerships and repair businesses are considered small entities, and a substantial number of these businesses modify vehicles to accommodate individuals with disabilities. I certify that this rule will not have a significant economic impact on a substantial number of small entities. While most dealers and repair businesses are considered small entities, the exemption will not impose any new requirements, but will instead provide additional flexibility. Therefore, the impacts on any small businesses affected by this rulemaking will not be substantial.

Executive Order 13132 (Federalism)

NHTSA has examined today's final rule pursuant to Executive Order 13132 (64 FR 43255; Aug. 10, 1999) and concluded that no additional consultation with States, local governments, or their representatives is mandated beyond the rulemaking process. The agency has concluded that the final rule does not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The rule does not have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This rule will not impose any requirements on anyone and instead lessens a requirement for modifiers.

NHTSA rules can have preemptive effect in two ways. First, the National Traffic and Motor Vehicle Safety Act contains an express preemption provision stating that when a motor vehicle safety standard is in effect under 49 U.S.C. chap. 301, a State or a political subdivision of a State may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle or motor vehicle equipment only if the standard is identical to the standard prescribed under Chapter 301. 49 U.S.C. 30103(b)(1). This provision is not relevant to this rulemaking as it does not involve the establishing, amending or revoking of a Federal motor vehicle safety standard.

Second, the Supreme Court has recognized the possibility, in some

instances, of implied preemption of State requirements imposed on motor vehicle manufacturers, including sanctions imposed by State tort law. We are unaware of any State law or action that would prohibit the actions that this final rule permits.

Civil Justice Reform

When promulgating a regulation, agencies are required under Executive Order 12988 to make every reasonable effort to ensure that the regulation, as appropriate: (1) Specifies in clear language the preemptive effect; (2) specifies in clear language the effect on existing Federal law or regulation, including all provisions repealed, circumscribed, displaced, impaired, or modified; (3) provides a clear legal standard for affected conduct rather than a general standard, while promoting simplification and burden reduction; (4) specifies in clear language the retroactive effect; (5) specifies whether administrative proceedings are to be required before parties may file suit in court; (6) explicitly or implicitly defines key terms; and (7) addresses other important issues affecting clarity and general draftsmanship of regulations.

Pursuant to this Order, NHTSA notes as follows. The preemptive effect of this rule is discussed above. NHTSA notes further that there is no requirement that individuals submit a petition for reconsideration or pursue other administrative proceeding before they may file suit in court.

National Technology Transfer and Advancement Act

Under the National Technology Transfer and Advancement Act of 1995 (NTTAA) (Pub. L. 104–113), ''all Federal agencies and departments shall use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments.'' Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the Society of Automotive Engineers (SAE). The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards. No voluntary standards exist regarding this exemption for modification of vehicles to accommodate persons with disabilities.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted for inflation with base year of 1995). This exemption does not result in expenditures by State, local or tribal governments, in the aggregate, or by the private sector in excess of $100 million annually.

National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action will not have any significant impact on the quality of the human environment.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. This final rule does not contain new reporting requirements or requests for information beyond what is already required by 49 CFR Part 595, Subpart C. An entity taking advantage of the exemption will simply list FMVSS No. 226 in the document described in 49 CFR 595.7(b).

Plain Language

Executive Order 12866 requires each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

- Have we organized the material to suit the public's needs?
- Are the requirements in the rule clearly stated?
- Does the rule contain technical language or jargon that isn't clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rule easier to understand?

If you have any responses to these questions, please include them in your comments on this rule.

Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) 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. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

Privacy Act

Anyone is able to search the electronic form of all submissions to any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

List of Subjects in 49 CFR Part 595

Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, NHTSA amends 49 CFR part 595 to read as follows:

PART 595—MAKE INOPERATIVE EXEMPTIONS

■ 1. The authority citation for part 595 is revised to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, 30122 and 30166; delegation of authority at 49 CFR 1.95.

■ 2. Amend § 595.7 by revising paragraph (c)(2) and adding paragraph (c)(17) to read as follows:

§ 595.7 Requirements for vehicle modifications to accommodate people with disabilities.

* * * * *

(c) * * *

(2) S9.1.1 of 49 CFR 571.108, in the case of a motor vehicle that is modified to be driven without a steering wheel or for which it is not feasible to retain the turn signal canceling device installed by the vehicle manufacturer.

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(17) S4.2 and S5 of 49 CFR 571.226, on the side of the vehicle where a seat on that side of the vehicle must be changed to accommodate a person with a disability.

* * * * *

Dated: June 19, 2014.

David J. Friedman,

Acting Administrator.

[FR Doc. 2014–15901 Filed 7–8–14; 8:45 am]

BILLING CODE 4910–59–P

Proposed Rules

Federal Register

Vol. 79, No. 131

Wednesday, July 9, 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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 61

[NRC–2014–0080]

Low-Level Radioactive Waste Regulatory Program

AGENCY: Nuclear Regulatory Commission.

ACTION: Strategic assessment update; extension of comment period.

SUMMARY: On May 15, 2014, the U.S. Nuclear Regulatory Commission (NRC) published a request for public comment on developments concerning the Low Level Radioactive Waste (LLRW) Regulatory Program. These developments over the next several years would affect licensees and States with LLRW disposal sites and actions that the NRC could take to ensure safety, security, and the protection of the environment. The public comment period was originally scheduled to close on July 14, 2014. The NRC has decided to extend the public comment period to allow more time for members of the public to develop and submit their comments.

DATES: The due date for comments requested in the document published on May 15, 2014 (79 FR 27772) is extended. Comments must be filed no later than September 15, 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–2014–0080. 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, Office of Administration, Mail Stop: 3WFN–06–44M, 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: Melanie C. Wong, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2432; email: *Melanie.Wong@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2014–0080 when contacting the NRC about the availability of information regarding this document. You may obtain 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–2014–0080.
- *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.*
- *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–2014–0080 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 that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely 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 that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Further Information

On May 15, 2014 (79 FR 27772), the NRC published a request for public comments on developments to the LLRW Regulatory Program in the next several years that would affect licensees and States where LLRW disposal sites are located and actions that the NRC could take to ensure safety, security, and the protection of the environment. The public comment period was originally scheduled to close on July 14, 2014. The NRC has decided to extend the public comment period to allow more time for stakeholders to develop and submit their comments, and to consider and address the questions posed by the NRC in the document published on May 15, 2014 (79 FR 27772). The deadline for submitting comments is extended to September 15, 2014.

Dated at Rockville, Maryland this 1st day of July, 2014.

For the Nuclear Regulatory Commission.

Gregory Suber,

Acting Deputy Director, Environmental Protection and Performance Assessment Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. 2014–16049 Filed 7–8–14; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0430; Directorate Identifier 2014–NM–083–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all The Boeing Company Model 767 airplanes. This proposed AD was prompted by a report of a rotary actuator for the trailing edge (TE) flap that had slipped relative to its mating reaction ring, which is attached to the flap support rib. This proposed AD would require repetitive inspections for corrosion of the fixed ring gear and reaction ring splines of the rotary actuator assembly for each support position, and related investigative and corrective actions if necessary. We are proposing this AD to detect and correct reaction ring gears and rotary actuator gears from becoming disengaged with flaps extended and causing an uncommanded roll due to flap blowback, overload, or flap departure from the airplane, which could compromise safe flight and landing of the airplane.

DATES: We must receive comments on this proposed AD by August 25, 2014.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

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

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0430; 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 proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Allen Rauschendorfer, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6487; fax: 425–917–6590; email: *Allen.Rauschendorfer@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2014–0430; Directorate Identifier 2014–NM–083–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

We have received a report of a TE flap rotary actuator that had slipped relative to its mating reaction ring, which is attached to the flap support rib. This occurred on a Model 767–300ER airplane that was delivered in June 1997 and had accumulated approximately 79,000 total flight hours and 14,000 total flight cycles in service. Removal of the reaction ring and actuator revealed that the mating splines were severely corroded. The manufacturer determined that, if the corrosion were to affect the mating splines on either surface (actuator or ring) to the point where they could no longer effectively engage, the actuator would be prone to possible slippage. Due to the similarity of the design, the potential condition could develop at multiple flap supports. Should degradation reach the point where both actuators on a single flap were unable to react to the torsion created by air loads, an uncommanded flap retraction, or blowback could occur. The condition of uncommanded roll with flaps extended, due to flap blowback, overload, or flap departure from the airplane, could compromise safe flight and landing of the airplane.

Relevant Service Information

We reviewed Boeing Alert Service Bulletin 767–27A0229, dated March 4, 2014. For information on the procedures and compliance times, see this service information at *http://www.regulations.gov* by searching for Docket No. FAA–2014–0430.

FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would require accomplishing the repetitive inspections for corrosion of the fixed ring gear and reaction ring splines of the rotary actuator assembly for each support position, and related investigative and corrective actions if necessary, specified in the service information described previously.

The phrase ''related investigative actions'' is used in this proposed AD. ''Related investigative actions'' are follow-on actions that (1) are related to the primary actions, and (2) further investigate the nature of any condition found. Related investigative actions in an AD could include, for example, inspections.

The phrase ''corrective actions'' is used in this proposed AD. ''Corrective actions'' are actions that correct or address any condition found. Corrective actions in an AD could include, for example, repairs.

Explanation of ''RC'' Steps in Service Information

The FAA worked in conjunction with industry, under the Airworthiness Directive Implementation Aviation Rulemaking Committee, to enhance the

AD system. One enhancement was a new process for annotating which steps in the service information are required for compliance (RC) with an AD. Differentiating these steps from other tasks in the service information is expected to improve an owner's/operator's understanding of crucial AD requirements and help provide consistent judgment in AD compliance. The actions specified in the service information described previously include steps that are labeled as RC (required for compliance) because these steps have a direct effect on detecting, preventing, resolving, or eliminating an identified unsafe condition.

As noted in the specified service information, steps labeled as RC must be done to comply with the proposed AD. However, steps that are not labeled as RC are recommended. Those steps that are not labeled as RC may be deviated from, done as part of other actions, or done using accepted methods different from those identified in the service information without obtaining approval of an alternative method of compliance (AMOC), provided the steps labeled as RC can be done and the airplane can be put back in a serviceable condition. Any substitutions or changes to steps labeled as RC will require approval of an AMOC.

Costs of Compliance

We estimate that this proposed AD affects 389 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection	60 work-hours × $85 per hour = $5,100 per inspection cycle.	$0	$5,100 per inspection cycle.	$1,983,900 per inspection cycle.

We estimate the following costs to do any necessary repairs that would be required based on the results of the proposed inspection. We have no way of determining the number of aircraft that might need these repairs:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Actuator repair	4 work-hours × $85 per hour = $340 per actuator	$0	$340 per actuator.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2014–0430; Directorate Identifier 2014–NM–083–AD.

(a) Comments Due Date

We must receive comments by August 25, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all The Boeing Company Model 767–200, –300, –300F, and –400ER series airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 57, Wings.

(e) Unsafe Condition

This AD was prompted by a report of a trailing edge (TE) flap rotary actuator that had slipped relative to its mating reaction ring, which is attached to the flap support rib. We are issuing this AD to detect and correct reaction ring gears and rotary actuator gears from becoming disengaged with flaps extended and causing an uncommanded roll due to flap blowback, overload, or flap departure from the airplane, which could compromise safe flight and landing of the airplane.

(f) Compliance

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

(g) Repetitive Inspections, Related Investigative Actions, and Corrective Actions

Except as provided by paragraph (h) of this AD, at the applicable time specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 767–27A0229, dated March 4, 2014: Do a detailed inspection for corrosion of the rotary actuator assembly fixed ring gear and reaction ring splines for each support position; and do all applicable related investigative and corrective actions if necessary; in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 767–27A0229, dated March 4, 2014. Do all applicable related investigative and corrective actions before further flight. Repeat the inspection of the rotary actuator assembly fixed ring gear and reaction ring splines for each support position thereafter at the applicable intervals specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 767–27A0229, dated March 4, 2014.

(h) Exception to the Requirements of Paragraph (g) of This AD

Where paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 767–27A0229, dated March 4, 2014, specifies a compliance time ''after the original issue date of this service bulletin,'' this AD requires compliance within the specified compliance time ''after the effective date of this AD.''

(i) Alternative Methods of Compliance (AMOCs)

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

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

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

(4) If the service information contains steps that are labeled as RC (Required for Compliance), those steps must be done to comply with this AD; any steps that are not labeled as RC are recommended. Those steps that are not labeled as RC may be deviated from, done as part of other actions, or done using accepted methods different from those identified in the specified service information without obtaining approval of an AMOC, provided the steps labeled as RC can be done and the airplane can be put back in a serviceable condition. Any substitutions or changes to steps labeled as RC require approval of an AMOC.

(j) Related Information

(1) For more information about this AD, contact Allen Rauschendorfer, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6487; fax: 425–917–6590; email: *Allen.Rauschendorfer@faa.gov*.

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

Issued in Renton, Washington, on June 26, 2014.

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–16004 Filed 7–8–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0429; Directorate Identifier 2014–NM–039–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain The Boeing Company Model 747–400 and 747–400F series airplanes. This proposed AD was prompted by reports of cracking in the main equipment center (MEC) drip shield and exhaust plenum. This proposed AD would require installing a fiberglass reinforcing overcoat on the MEC drip shield. We are proposing this AD to prevent water penetration into the MEC, which could result in an electrical short and potential loss of several functions essential for safe flight.

DATES: We must receive comments on this proposed AD by August 25, 2014.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

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

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0429; 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 proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Francis Smith, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone: 425–917–6596; fax: 425–917–6590; email: *Francis.Smith@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–

2014–0429; Directorate Identifier 2014–NM–039–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

We have received reports of cracking in the MEC drip shield and exhaust plenum, which have each been identified as part of the leak path into the MEC. Multiple operators have reported a cracked MEC drip shield. These cracks can allow water to penetrate the MEC drip shield and enter the MEC. Water penetration into the MEC, if not detected and corrected, could result in an electrical short and potential loss of several functions essential for safe flight.

Related Rulemaking

We have previously issued AD 2011–16–06, Amendment 39–16764 (76 FR 47427, August 5, 2011), for certain The Boeing Company Model 747–400 and 747–400F series airplanes. AD 2011–16–06 requires inspecting for cracks and holes of the MEC drip shields, repairing cracks, stiffening the drip shield top surface, and installing a fiberglass reinforcing overcoat to the top and sides of the drip shield. We have since received reports of additional cracking of the drip shield that is not mitigated by AD 2011–16–06. The newly reported cracking occurs at the lower radius of the MEC drip shield, adjacent to the floor beams.

Relevant Service Information

We reviewed Boeing Alert Service Bulletin 747–25A3640, dated January 8, 2014. For information on the procedures and compliance times, see this service information at *http://www.regulations.gov* by searching for Docket No. FAA–2014–0429.

FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in the service information described previously.

Explanation of ''RC'' Steps in Service Information

The FAA worked in conjunction with industry, under the Airworthiness Directive Implementation Aviation Rulemaking Committee, to enhance the AD system. One enhancement was a new process for annotating which steps in the service information are required for compliance with an AD. Differentiating these steps from other tasks in the service information is expected to improve an owner's/operator's understanding of crucial AD requirements and help provide consistent judgment in AD compliance. The actions specified in the service information described previously include steps that are labeled as RC (required for compliance) because these steps have a direct effect on detecting, preventing, resolving, or eliminating an identified unsafe condition.

As noted in the specified service information, steps labeled as RC must be done to comply with the proposed AD. However, steps that are not labeled as RC are recommended. Those steps that are not labeled as RC may be deviated from, done as part of other actions, or done using accepted methods different from those identified in the service information without obtaining approval of an alternative method of compliance, provided the steps labeled as RC can be done and the airplane can be put back in a serviceable condition. Any substitutions or changes to steps labeled as RC will require approval of an alternative method of compliance.

Costs of Compliance

We estimate that this proposed AD affects 15 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Installation of a fiberglass reinforcing overcoat on the MEC drip shield.	36 work-hours × $85 per hour = $3,060	$0	$3,060	$45,900

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2014–0429; Directorate Identifier 2014–NM–039–AD.

(a) Comments Due Date

We must receive comments by August 25, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 747–400 and 747–400F airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin 747–25A3640, dated January 8, 2014.

(d) Subject

Air Transport Association (ATA) of America Code 25, Equipment/Furnishings.

(e) Unsafe Condition

This AD was prompted by reports of cracking in the main equipment center (MEC) drip shield and exhaust plenum. We are issuing this AD to prevent water penetration into the MEC, which could result in an electrical short and potential loss of several functions essential for safe flight.

(f) Compliance

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

(g) Installation

Within 24 months after the effective date of this AD, install a fiberglass reinforcing overcoat on the MEC drip shield, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–25A3640, dated January 8, 2014.

(h) Alternative Methods of Compliance (AMOCs)

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

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

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

(4) If the service information contains steps that are labeled as RC (Required for Compliance), those steps must be done to comply with this AD; any steps that are not labeled as RC are recommended. Those steps that are not labeled as RC may be deviated from, done as part of other actions, or done using accepted methods different from those identified in the specified service information without obtaining approval of an AMOC, provided the steps labeled as RC can be done and the airplane can be put back in a serviceable condition. Any substitutions or changes to steps labeled as RC require approval of an AMOC.

(i) Related Information

(1) For more information about this AD, Francis Smith, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone: 425–917–6596; fax: 425–917–6590; email: *Francis.Smith@faa.gov*.

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

Issued in Renton, Washington, on June 26, 2014.

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–16008 Filed 7–8–14; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0431; Directorate Identifier 2013–NM–041–AD]

RIN 2120–AA64

Airworthiness Directives; the Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede Airworthiness Directive (AD) 2005–14–07, which applies to certain The Boeing Company Model 727, 727C, 727–100, 727–100C, 727–200, and 727–200F series airplanes. AD 2005–14–07 currently requires repetitive inspections of the carriage attach fittings on the inboard and outboard foreflaps of each wing for cracking and other discrepancies, and corrective actions if necessary. Since we issued AD 2005–14–07, we received a report of broken inboard and outboard carriage attach fittings of the outboard foreflaps found during an inspection. This proposed AD would reduce certain repetitive inspection intervals for the inboard and outboard carriage attach fittings for the outboard foreflaps, require previously optional terminating actions which install improved outboard foreflap carriage attach fittings, and add new initial and repetitive inspections of those fittings and corrective actions if necessary. We are proposing this AD to detect and correct fatigue cracking of the attach fittings of the foreflap carriage of the wings, which could result in partial or complete loss of the foreflap and consequent loss of controllability of the airplane.

DATES: We must receive comments on this proposed AD by August 25, 2014.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

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

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0431; 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 proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Chandraduth Ramdoss, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5239; fax: 562–627–5210; email *chandraduth.ramdoss@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2014–0431; Directorate Identifier 2013–NM–041–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

On June 29, 2005, we issued AD 2005–14–07, Amendment 39–14184 (70 FR 39647, July 11, 2005), for certain Boeing Model 727, 727C, 727–100, 727–100C, 727–200, and 727–200F series airplanes. AD 2005–14–07 requires repetitive inspections of the carriage attach fittings on the inboard and outboard foreflaps of each wing for cracking and other discrepancies, and corrective actions if necessary. For certain airplanes, AD 2005–14–07 also concurrently requires various other actions related to the subject area. AD 2005–14–07 also provides for an optional terminating action for the repetitive inspection requirements and for an optional replacement that defers the repetitive inspections. AD 2005–14–07 resulted from reports of damaged or failed outboard foreflaps with a cracked or failed carriage attach fitting of the foreflap sequencing carriage. We issued AD 2005–14–07 to detect and correct fatigue cracking of the attach fittings of the foreflap carriage of the wings, which could result in partial or complete loss of the foreflap and consequent loss of controllability of the airplane.

Actions Since AD 2005–14–07, Amendment 39–14184 (70 FR 39647, July 11, 2005) Was Issued

Since we issued AD 2005–14–07, Amendment 39–14184 (70 FR 39647, July 11, 2005), we received a report of broken inboard and outboard carriage attach fittings of the outboard foreflaps found during an inspection required by AD 2005–14–07. The airplane had 47,125 flight cycles. Boeing stated that the metallurgical analysis determined that the cause of the broken fittings is a suspected static overload condition.

Relevant Service Information

We reviewed Boeing Alert Service Bulletin 727–57A0135, Revision 4, dated September 26, 2012. For information on the procedures and compliance times, see this service information at *http://www.regulations.gov* by searching for Docket No. FAA–2014–0431.

FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would retain all requirements of AD 2005–14–07, Amendment 39–14184 (70 FR 39647, July 11, 2005). This proposed AD would reduce certain repetitive inspection intervals for the inboard and outboard carriage attach fittings of the outboard foreflaps, require previously optional terminating actions which install improved outboard foreflap carriage attach fittings, and add new initial and repetitive inspections of those fittings and corrective action if necessary. This proposed AD would also require accomplishing the actions specified in the service information described previously. This proposed AD would also add a reference to Figure 3 of Boeing Alert Service Bulletin 727–57A0135, Revision 3, dated June 27, 2002, in paragraph (i)(2) of this proposed AD that restates the requirements of paragraph (i) of AD 2005–14–07, to provide for further information on corrective actions.

The phrase ''corrective actions'' is used in this proposed AD. ''Corrective actions'' are actions that correct or address any condition found. Corrective actions in an AD could include, for example, repairs.

Change to AD 2005–14–07, Amendment 39–14184 (70 FR 39647, July 11, 2005)

This proposed AD would retain all requirements of AD 2005–14–07, Amendment 39–14184 (70 FR 39647, July 11, 2005). Since AD 2005–14–07 was issued, the AD format has been revised, and certain paragraphs have been rearranged. As a result, the corresponding paragraph identifiers have been redesignated in this proposed AD, as listed in the following table:

REVISED PARAGRAPH DESIGNATIONS

Requirement in AD 2005–14–07, Amendment 39–14184 (70 FR 39647, July 11, 2005)	Corresponding requirement in this proposed AD
paragraph (f)	paragraph (g)
paragraph (g)	paragraph (h)
paragraph (h)	paragraph (i)(1)
paragraph (i)	paragraph (i)(2)
paragraph (j)	paragraph (j)(1)
paragraph (k)	paragraph (j)(2)
paragraph (l)	paragraph (j)(3)
paragraph (m)	paragraph (j)(4)
paragraph (n)	paragraph (k)
paragraph (o)	paragraph (l)
paragraph (p)	paragraph (r)(1)
paragraph (q)	paragraph (r)(2)

Costs of Compliance

We estimate that this proposed AD affects 98 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

RETAINED ESTIMATED COSTS

Retained action	Work hours	Parts cost	Cost	Cost on U.S. operators
Inspections of the carriage attach fittings for all airplanes [retained actions from AD 2005–14–07, Amendment 39–14184 (70 FR 39647, July 11, 2005)].	4	None	$340 per airplane, per inspection cycle.	$33,320, per inspection cycle.
Installation of guide blocks for certain airplanes [retained actions from AD 2005–14–07, Amendment 39–14184 (70 FR 39647, July 11, 2005)].	32	$0	$2,720 per airplane ...	Up to $266,560.
Inspection of foreflap airload roller travel for certain airplanes [retained actions from AD 2005–14–07, Amendment 39–14184 (70 FR 39647, July 11, 2005)].	4	None	$340 per airplane	Up to $33,320.
Modification of the inboard jackscrews on the outboard flap for certain airplanes [retained actions from AD 2005–14–07, Amendment 39–14184 (70 FR 39647, July 11, 2005)].	4	$0	$340 per airplane	Up to $33,320.
Inspection of the entire track and of the track rib faces for certain airplanes [retained actions from AD 2005–14–07, Amendment 39–14184 (70 FR 39647, July 11, 2005)].	12	None	$1,020 per airplane ...	Up to $99,960.

ESTIMATED COSTS FOR NEW PROPOSED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection and functional check of outboard foreflap installation for all airplanes [new proposed action].	3 work-hours × $85 per hour = $255 per inspection cycle.	None	$255, per inspection cycle.	$24,990, per inspection cycle.
Replacement of carriage attach fitting on outboard foreflap for certain airplanes [new proposed action].	2 work-hours × $85 per hour = $170.	$18,000	$18,170 per airplane	Up to $1,780,660.

We estimate the following costs to do any necessary replacements that would be required based on the results of the proposed inspection. We have no way of determining the number of aircraft that might need these replacements:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replacement of sequence carriage slider or sidewall rubstrips.	2 work-hours × $85 per hour = $170	Up to $175	Up to $345.

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 proposed regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

For the reasons discussed above, I certify that the proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2005–14–07, Amendment 39–14184 (70 FR 39647, July 22, 2005), and adding the following new AD:

The Boeing Company: Docket No. FAA–2014–0431; Directorate Identifier 2013–NM–041–AD.

(a) Comments Due Date

The FAA must receive comments on this AD action by August 25, 2014.

(b) Affected ADs

This AD supersedes AD 2005–14–07, Amendment 39–14184 (70 FR 39647, July 11, 2005).

(c) Applicability

This AD applies to Boeing Model 727, 727C, 727–100, 727–100C, 727–200, and 727–200F series airplanes, certificated in any category, as listed in Boeing Alert Service Bulletin 727–57A0135, Revision 3, dated June 27, 2002.

(d) Subject

Air Transport Association (ATA) of America Code 57, Wings.

(e) Unsafe Condition

This AD was prompted by a report of broken carriage attach fittings of the inboard and outboard foreflaps found during an inspection and an additional report of broken inboard and outboard carriage attach fittings of the outboard foreflaps found during an inspection. We are issuing this AD to detect and correct fatigue cracking of the attach fittings of the foreflap carriage of the wings, which could result in partial or complete loss of the foreflap and consequent loss of controllability of the airplane.

(f) Compliance

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

(g) Retained Inspections

This paragraph restates the requirements of paragraph (f) of AD 2005–14–07, Amendment 39–14184 (70 FR 39647, July 11, 2005), with revised service information and new compliance time. Except as provided by paragraph (l) of this AD: Within 1,000 flight cycles after August 15, 2005 (the effective date of AD 2005–14–07) or within 6 months after the effective date of this AD, whichever occurs first, and thereafter at intervals not to exceed 1,000 flight cycles, except as required by paragraph (m) of this AD (for outboard foreflaps), inspect as specified in paragraphs (g)(1) and (g)(2) of this AD in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 727–57A0135, Revision 3, dated June 27, 2002; or Revision 4, dated September 26, 2012. As of the effective date of this AD, use only Boeing Alert Service Bulletin 727–57A0135, Revision 4, dated September 26, 2012. Accomplishing the actions of paragraph (m) or (o) of this AD terminates the inspections required by this paragraph for outboard foreflaps only.

(1) A detailed inspection to detect cracks and surface deviations on all edges, surfaces, and lug attachment fastener holes on the two carriage attach fittings on the inboard and outboard foreflaps of each wing.

(2) A high frequency eddy current (HFEC) inspection to detect cracks at the lug attachment fastener holes on the two carriage attach fittings on the inboard and outboard foreflaps of each wing.

(h) Retained Requirement for Crack or Surface Deviation Findings: Replacement

This paragraph restates the requirements of paragraph (g) of AD 2005–14–07, Amendment 39–14184 (70 FR 39647, July 11, 2005), with revised service information. If any crack is detected or if any surface deviation beyond the limits specified in Boeing Alert Service Bulletin 727–57A0135, Revision 3, dated June 27, 2002; or Revision 4, dated September 26, 2012; is detected during any inspection required by paragraph (g) or (m) of this AD, before further flight, replace the carriage attach fitting with a new, improved fitting or a new fitting having the same part number as the existing fitting, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 727–57A0135, Revision 3, dated June 27, 2002; or Revision 4, dated September 26, 2012. As of the effective date of this AD, use only Boeing Alert Service Bulletin 727–57A0135, Revision 4, dated September 26, 2012.

(i) Retained Measurement and Associated Corrective Action(s)

(1) This paragraph restates the requirements of paragraph (h) of AD 2005–14–07, Amendment 39–14184 (70 FR 39647, July 11, 2005), with revised service information. Within 3,500 flight cycles after August 15, 2005 (the effective date of AD 2005–14–07), inspect for interference between the carriage attach fitting and the carriage lug fitting, and do other related investigative actions by accomplishing all the actions specified in paragraph 3.C. and Figure 2 of the Accomplishment Instructions of Boeing Alert Service Bulletin 727–57A0135, Revision 3, dated June 27, 2002; or paragraph 3.B.3 and Figure 2 of the Accomplishment Instructions of Boeing Alert Service Bulletin 727–57A0135, Revision 4, dated September 26, 2012. Do the actions in accordance with Boeing Alert Service Bulletin 727–57A0135, Revision 3, dated June 27, 2002; or Revision 4, dated September 26, 2012. As of the effective date of this AD, use only Boeing Alert Service Bulletin 727–57A0135, Revision 4, dated September 26, 2012.

(2) Paragraphs (i)(2)(i) and (i)(2)(ii) of this AD restate the requirements of paragraph (i) of AD 2005–14–07, Amendment 39–14184 (70 FR 39647, July 11, 2005), with revised service information.

(i) If any discrepancy is found during any action required by paragraph (i)(1) of this AD, before further flight, accomplish applicable corrective action(s) (e.g., adding a shim or reworking the carriage attachment lug assembly) in accordance with paragraph 3.C. and Figure 2 or 3 of the Accomplishment Instructions of Boeing Alert Service Bulletin 727–57A0135, Revision 3, dated June 27, 2002; or paragraph 3.B.3. and Figure 3 of the Accomplishment Instructions of Boeing Alert Service Bulletin 727–57A0135, Revision 4, dated September 26, 2012; except as required by paragraph (i)(2)(ii) of this AD. As of the effective date of this AD, use only Boeing Alert Service Bulletin 727–57A0135, Revision 4, dated September 26, 2012.

(ii) Where Boeing Alert Service Bulletin 727–57A0135, Revision 3, dated June 27, 2002; or Revision 4, dated September 26, 2012; specify to contact the manufacturer if rework of the improved fitting is required: Before further flight, rework in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), or Los Angeles ACO, FAA, or in accordance with data meeting the type certification basis of the airplane approved by an Authorized Representative (AR) for the Boeing Delegation Option Authorization (DOA) Organization who has been authorized by the FAA to make such findings, or using a method approved in accordance with the procedures specified in paragraph (s) of this AD. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically reference this AD. As of the effective date of this AD, any new repair approval must be done using a method approved in accordance with the procedures specified in paragraph (s) of this AD.

(j) Retained Concurrent Requirements

(1) This paragraph restates the requirements of paragraph (j) of AD 2005–14–07, Amendment 39–14184 (70 FR 39647, July 11, 2005), with new paragraph reference. For Model 727 airplanes listed in Boeing 727 Service Bulletin 57–59, Revision 1, dated September 27, 1965: Before or at the same time with the requirements of paragraph (i) or (o) of this AD, install guide blocks and bushings in the midflap ribs in accordance with the Accomplishment Instructions of Boeing 727 Service Bulletin 57–59, Revision 1, dated September 27, 1965.

(2) This paragraph restates the requirements of paragraph (k) of AD 2005–14–07, Amendment 39–14184 (70 FR 39647, July 11, 2005), with new paragraph reference. For Model 727 airplanes listed in Boeing Service Bulletin 727–27–133, Revision 1, dated May 9, 1972: Before or at the same time with the requirements of paragraph (i) or (o) of this AD, do the actions specified in paragraphs (j)(2)(i) and (j)(2)(ii) of this AD, as applicable.

(i) For Groups I and II airplanes identified in Boeing Service Bulletin 727–27–133, Revision 1, dated May 9, 1972: Do a one-time inspection of the airload support roller for travel on the foreflap track in accordance with Part I of the Accomplishment Instructions of Boeing Service Bulletin 727–27–133, Revision 1, dated May 9, 1972.

(A) If the airload support roller travels within the limits specified in Boeing Service Bulletin 727–27–133, Revision 1, dated May 9, 1972, modify the control drum of the inboard flap and inboard jackscrews of the outboard flap, in accordance with Part II of the Accomplishment Instructions of Boeing Service Bulletin 727–27–133, Revision 1, dated May 9, 1972.

(B) If the airload support roller travels beyond the limits specified in Boeing Service Bulletin 727–27–133, Revision 1, dated May 9, 1972, repair in accordance with a method approved by the Manager, Seattle ACO, or Los Angeles ACO, FAA; or in accordance with data meeting the type certification basis of the airplane approved by an AR for the Boeing DOA Organization who has been authorized by the FAA to make such

findings, or using a method approved in accordance with the procedures specified in paragraph (s) of this AD. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically reference this AD. As of the effective date of this AD, any new repair approval must be done using a method approved in accordance with the procedures specified in paragraph (s) of this AD.

(ii) For Group III airplanes identified in Boeing Service Bulletin 727–27–133, Revision 1, dated May 9, 1972: Modify the inboard jackscrews of the outboard flap (i.e., replacing the down stop at the inboard jackscrews of the outboard flap) in accordance with Part II of the Accomplishment Instructions of Boeing Service Bulletin 727–27–133, Revision 1, dated May 9, 1972.

(3) This paragraph restates the requirements of paragraph (l) of AD 2005–14–07, Amendment 39–14184 (70 FR 39647, July 11, 2005), with new paragraph reference. For Model 727 airplanes listed in Boeing 727 Service Bulletin 57–72, dated September 21, 1966: Before or at the same time with the requirements of paragraph (i) or (o) of this AD, do the actions specified in paragraphs (j)(3)(i) through (j)(3)(iv) of this AD.

(i) Chamfer the upper and lower flanges at the aft end of the foreflap tracks in accordance with the Accomplishment Instructions of Boeing 727 Service Bulletin 57–72, dated September 21, 1966.

(ii) Do a standard magnetic particle inspection of the entire foreflap tracks for cracks in accordance with the Accomplishment Instructions of Boeing 727 Service Bulletin 57–72, dated September 21, 1966. If any crack is detected, before further flight, repair in accordance with a method approved by the Manager, Seattle ACO, or Los Angeles ACO, FAA; or in accordance with data meeting the type certification basis of the airplane approved by an AR for the Boeing DOA Organization who has been authorized by the FAA to make such findings, or using a method approved in accordance with the procedures specified in paragraph (s) of this AD. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically reference this AD. As of the effective date of this AD, any new repair approval must be done using a method approved in accordance with the procedures specified in paragraph (s) of this AD.

(iii) Do a general visual inspection of the track rib faces at the front and rear spars to verify if the opening in the spars is flush with or clear of the plane of the rib faces, in accordance with the Accomplishment Instructions of Boeing 727 Service Bulletin 57–72, dated September 21, 1966. If the opening is not flush or clear with the plane, before further flight, rework the spar opening in accordance with the Accomplishment Instructions of Boeing 727 Service Bulletin 57–72, dated September 21, 1966.

(iv) Do a general visual inspection of the head or shank of bolts by securing the foreflap links to the foreflap tracks to verify if they protrude beyond the edge of the track flange in accordance with the Accomplishment Instructions of Boeing 727 Service Bulletin 57–72, dated September 21, 1966. If the head or shank of the bolts protrude beyond the edge of the track flange, before further flight, rework in accordance with the Accomplishment Instructions of Boeing 727 Service Bulletin 57–72, dated September 21, 1966.

(v) For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

(4) This paragraph restates the requirements of paragraph (m) of AD 2005–14–07, Amendment 39–14184 (70 FR 39647, July 11, 2005), with a new paragraph identifier. For airplanes other than those identified in the service information specified in paragraphs (j)(1) through (j)(3) of this AD: Before or at the same time with the requirements of paragraph (i) or (o) of this AD, do an inspection to verify if any of the parts listed in the ''Spares Affected'' paragraph of each service information referenced in paragraphs (j)(1) through (j)(3) of this AD are installed on the airplane. If any part identified in that paragraph is found installed, before further flight, do the applicable corrective and investigative action(s) specified in paragraphs (j)(1) through (j)(3) of this AD.

(k) Retained Optional Terminating Actions

This paragraph restates the requirements of paragraph (n) of AD 2005–14–07, Amendment 39–14184 (70 FR 39647, July 11, 2005), with no changes. Replacement of the two carriage attach fittings on the inboard and outboard foreflaps of each wing with new, improved fittings, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 727–57A0135, Revision 3, dated June 27, 2002; and accomplishment of the actions specified in paragraphs (j)(1) through (j)(4) of this AD, as applicable, before or concurrently with the replacement; constitutes terminating action for paragraphs (g) through (j) of this AD and paragraph (l) of this AD for those replaced fittings on the outboard and inboard foreflaps.

(l) Retained Optional Deferral of Inspection

This paragraph restates the optional deferral of paragraph (o) of AD 2005–14–07, Amendment 39–14184 (70 FR 39647, July 11, 2005), with no changes. Replacement of the two carriage attach fittings on the inboard and outboard foreflaps of each wing with new fittings having the same part number as the existing fittings, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 727–57A0135, Revision 3, dated June 27, 2002; and accomplishment of the actions specified in paragraphs (j)(1) through (j)(4) of this AD, as applicable, before or concurrently with the replacement; defers the next inspection required by paragraph (g) of this AD for 10,000 flight cycles after the replacement. Thereafter, repeat the inspections required by paragraph (g) of this AD at intervals not to exceed 1,000 flight cycles, except as required by paragraph (m) of this AD.

(m) New Requirement of This AD: Detailed and HFEC Inspections of Outboard Foreflaps, With Reduced Repetitive Intervals

Within 1,000 flight cycles after the most recent accomplishment of the inspections required by paragraph (g) of this AD, do a detailed inspection to detect cracks and surface deviations on all edges, surfaces, and lug attachment fastener holes, and a HFEC inspection to detect cracks at the lug attachment fastener holes, on the two carriage attach fittings on the outboard foreflaps of each wing, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 727–57A0135, Revision 4, dated September 26, 2012, and do all applicable corrective actions required by paragraph (h) of this AD. Repeat the inspections thereafter at intervals not to exceed 200 flight cycles until the requirements of paragraph (o) of this AD is accomplished. Accomplishing the requirements of this paragraph terminates the requirements of paragraph (g) of this AD for the outboard foreflaps only.

(n) New Requirement of This AD: Inspection and Check of Outboard Foreflap Installation and Corrective Action

Within 200 flight cycles or 6 months after the effective date of this AD, whichever occurs first, do a general visual inspection and function check for damage and incorrect operation of the outboard foreflap installations, and all applicable corrective actions, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 727–57A0135, Revision 4, dated September 26, 2012. Do the applicable corrective actions before further flight. Thereafter, repeat the inspection and check at intervals not to exceed 500 flight cycles.

(o) New Requirement of This AD: Replacement of Previously Un-Replaced (or ''Original Configuration'') Carriage Attach Fittings on the Outboard Foreflap

For airplanes on which any production carriage attach fitting is still installed on the outboard foreflap: Within 3,000 flight cycles or 3 years after the effective date of this AD, whichever occurs first, replace all production carriage attach fittings with new, improved carriage attach fittings, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 727–57A0135, Revision 4, dated September 26, 2012, and do all applicable concurrent actions required by paragraph (k) of this AD. Accomplishing the requirements of this paragraph terminates the requirements of paragraphs (g) and (m) of this AD for outboard foreflaps only.

(p) New Requirement of This AD: Inspection, Corrective Action and Replacement of Fittings Replaced in Accordance With Paragraph (l) of This AD

For airplanes on which a new carriage attach fitting with the original part number on the outboard foreflap was installed in accordance with paragraph (l) of this AD: Do the actions specified in paragraphs (p)(1) and (p)(2) of this AD.

(1) Within 1,000 flight cycles after the effective date of this AD, do a detailed inspection for cracks and surface deviation on all edges surfaces, and lug attachment fastener holes, and a HFEC inspection for cracks at the lug attachment fastener holes, on the carriage attach fittings for the outboard foreflaps, and do all applicable corrective actions, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 727–57A0135, Revision 4, dated September 26, 2012. Repeat the inspection at intervals not to exceed 200 flight cycles. Do all applicable corrective actions before further flight.

(2) Within 3,000 flight cycles or 3 years after the effective date of this AD, replace the fitting with a new, improved fitting in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 727–57A0135, Revision 4, dated September 26, 2012. Accomplishing the requirements of this paragraph terminates the requirements of paragraphs (g), (m), and (p)(1) of this AD for that outboard foreflap only.

(q) New Requirement of This AD: Inspection and Corrective Actions on Fittings Replaced According to Paragraph (k), (o), or (p) of This AD on Outboard Foreflaps

For airplanes on which a new, improved carriage attach fitting on the outboard foreflap was replaced in accordance with the requirements of paragraph (k), (o), or (p) of this AD: Within 20,000 flight cycles after installing that fitting, do a detailed inspection for cracks and surface deviation on all edges surfaces, and lug attachment fastener holes, and a HFEC inspection for cracks at the lug attachment fastener holes, on the carriage attach fittings for the outboard foreflaps, and do all applicable corrective actions, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 727–57A0135, Revision 4, dated September 26, 2012. Do all applicable corrective actions before further flight. Repeat the inspection thereafter at intervals not to exceed 1,400 flight cycles. Accomplishing the requirements of this paragraph terminates the requirements of paragraph (g) of this AD for outboard foreflaps only.

(r) Retained Credit for Previously Accomplished Service Bulletins

(1) This paragraph restates the credit provided by paragraph (p) of AD 2005–14–07, Amendment 39–14184 (70 FR 39647, July 11, 2005), with no changes. Installations accomplished before August 15, 2005 (the effective date of AD 2005–14–07), in accordance with Boeing 727 Service Bulletin 57–59, dated September 2, 1965, are acceptable for compliance with the requirements of paragraph (j)(1) of this AD.

(2) This paragraph restates the credit provided by paragraph (q) of AD 2005–14–07, Amendment 39–14184 (70 FR 39647, July 11, 2005), with no changes. Inspections and modifications accomplished before August 15, 2005 (the effective date of AD 2005–14–07), in accordance with Boeing Service Bulletin 727–27–133, dated October 7, 1971, are acceptable for compliance with the requirements of paragraph (j)(2) of this AD.

(s) Alternative Methods of Compliance (AMOCs)

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

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

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

(4) AMOCs approved for AD 2005–14–07, Amendment 39–14184 (70 FR 39647, July 11, 2005), are approved as AMOCs for the corresponding provisions of this AD.

(t) Related Information

(1) For more information about this AD, contact Chandraduth Ramdoss, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5239; fax: 562–627–5210; email *chandraduth.ramdoss@faa.gov.*

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

Issued in Renton, Washington, on June 27, 2014.

John P. Piccola,

Acting Manager, Transport Aircraft Directorate, Aircraft Certification Service.

[FR Doc. 2014–15986 Filed 7–8–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0437; Directorate Identifier: 2012–CE–036–AD]

RIN 2120–AA64

Airworthiness Directives; Piper Aircraft, Inc.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede an existing airworthiness directive (AD) that applies to certain Piper Aircraft, Inc. Models PA–31P airplanes. AD 76–06–09 currently requires repetitive inspection of certain exhaust system parts with replacement of parts mating with the turbocharger, as necessary, and allows installation of a certain tailpipe v-band coupling as terminating action. Since we issued AD 76–06–09, there have been reports of exhaust system failures, the manufacturer issued new service information, and the tailpipe v-band coupling used for terminating action is obsolete. This proposed AD would require the use of the new service information and expand the scope of the inspections of the turbocharger exhaust system. We are proposing this AD to correct the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by August 25, 2014.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

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

For service information identified in this AD, use the following contact information, as applicable, Piper Aircraft, Inc., 2926 Piper Drive, Vero Beach, Florida 32960; telephone: (772) 567–4361; fax: (772) 978–6573; Internet: *www.piper.com/home/pages/Publications.cfm*; or Lycoming Engines, 652 Oliver Street, Williamsport, Pennsylvania 17701; telephone: (570)

323–6181; Internet: *http://www.lycoming.textron.com/support/publications/index.html*. You may review copies of the 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.

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–2014–0437; 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 proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Gary Wechsler, Aerospace Engineer, Atlanta Aircraft Certification Office, FAA, 1701 Columbia Avenue, College Park, Georgia 30337; telephone: (404) 474–5575; fax: (404) 474–5606; email: *gary.wechsler@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2014–0437; Directorate Identifier 2012–CE–036–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

On October 17, 1978, we issued AD 76–06–09, Amendment 39–3325 (43 FR 50417, October 30, 1978), for certain Piper Aircraft, Inc. Model PA–31P airplanes. AD 76–06–09 requires repetitive inspection of certain exhaust system parts with replacement of parts mating with the turbocharger, as necessary, and allows installation of a certain tailpipe v-band coupling as terminating action. AD 76–06–09 resulted from reports of exhaust system failure. We issued AD 76–06–09 to preclude failure of the engine exhaust system.

Actions Since Existing AD Was Issued

Since we issued AD 76–06–09, Amendment 39–3325 (43 FR 50417, October 30, 1978), there have been exhaust system failures, the manufacturer issued new service information, and the tailpipe v-band coupling used for terminating action is obsolete.

Relevant Service Information

We reviewed Textron Lycoming Mandatory Service Bulletin No. 393C, dated November 26, 1976; Piper Aircraft Corporation Service Bulletin No. 462A, dated November 3, 1975; Piper Aircraft, Inc. Service Bulletin No. 492A, dated May 29, 2012; Piper Aircraft, Inc. Service Bulletin No. 644E, dated May 9, 2012; Piper Aircraft Corporation kit part number (P/N) 760 974, dated February 19, 1976; Piper Aircraft Corporation kit P/N 761 045, dated February 19, 1976; and Piper Aircraft Corporation kit P/N 761 047, dated February 19, 1976. The service information describes procedures for inspecting and replacing parts of the turbocharger exhaust v-band couplings, vibration isolators, and support brackets.

FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would retain certain requirements of AD 76–06–09, Amendment 39–3325 (43 FR 50417, October 30, 1978). This proposed AD would require the use of the new service information and expand the scope of the inspections of the turbocharger exhaust system.

Costs of Compliance

We estimate that this proposed AD affects 85 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Visual inspection	3 work-hours × $85 per hour = $255	Not applicable	$255	$21,675
Review of maintenance records	.5 work-hour × $85 per hour = $42.50	Not applicable	42.50	3,612.50

We have no way of determining how much damage may be found on each airplane during the proposed inspection. The scope of damage on the exhaust system could vary from airplane to airplane due to the manner and environments the airplane may operate. We estimate the following costs to do any necessary modification/installation/replacement that would be required based on the results of the proposed inspection. We have no way of determining what damage may be found or the number of airplanes that might need these modification/installation/replacements:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Modification of the exhaust pipe slip joint	5 work-hours × $85 per hour = $425	$2,841	$3,266
Installation of the bracket and clamp assembly	5 work-hours × $85 per hour = $425	5,000	5,425

ON-CONDITION COSTS—Continued

Action	Labor cost	Parts cost	Cost per product
Replacement of v-band coupling	2 work-hours × $85 per hour = $170	780	950

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 proposed regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

For the reasons discussed above, I certify that the proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 76–06–09, Amendment 39–3325 (43 FR 50417, October 30, 1978), and adding the following new AD:

Piper Aircraft, Inc.: Docket No. FAA–2014–0437; Directorate Identifier 2012–CE–036–AD.

(a) Comments Due Date

The FAA must receive comments on this AD action by August 25, 2014.

(b) Affected Ads

This AD supersedes AD 76–06–09, Amendment 39–3325 (43 FR 50417, October 30, 1978).

(c) Applicability

This AD applies to Piper Aircraft, Inc. Models PA–31P airplanes, serial numbers 31P–1 through 31P–80 and 31P–7300110 through 31P–7730012, that are certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC)/ Air Transport Association (ATA) of America Code 78, Engine Exhaust.

(e) Unsafe Condition

This AD was prompted by reports of exhaust system failures, new service information issued by the manufacturer, and the tailpipe v-band coupling used for terminating action is obsolete. We are issuing this AD to prevent the possibility of an in-flight powerplant fire due to an exhaust system failure.

(f) Compliance

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

(g) Inspection of Exhaust System

(1) Within the next 60 hours time-in-service (TIS) after the effective date of this AD or within the next 6 months after the effective date of this AD, whichever occurs first, and repetitively thereafter at intervals not to exceed 60 hours TIS or 6 months, whichever occurs first, inspect the parts as specified in table 1 of paragraph (g)(1) of this AD, if installed.

TABLE 1 OF PARAGRAPH (g)(1) OF THIS AD: INSPECTION FOR PIPER AND LYCOMING EXHAUST SYSTEM PARTS

Product/part nomenclature	Make	Model/part No.	With a light and mirror or other method capable of achieving an equivalent visual resolution, inspect for the following conditions
Airplane	Piper	PA–31P	Bulges, cracks, and exhaust leak stains.
Engine	Lycoming	TIGO–541–E series	Bulges, cracks, and exhaust leak stains.
Pipe, exhaust, right-rear	Lycoming	78012	Bulges, cracks, and exhaust leak stains.
Pipe, exhaust, left-rear	Lycoming	78008	Bulges, cracks, and exhaust leak stains.
Pipe, rear exhaust adapter	Lycoming	LW–13027	Bulges, cracks, and exhaust leak stains.
Tail pipe assembly, upper	Piper	46323–05	Bulges, cracks, and exhaust leak stains.
Tail pipe assembly, lower	Piper	48788–05	Bulges, cracks, and exhaust leak stains.
V-band coupling	Lycoming	LW–12093–5	Cracks and exhaust leak stains.
V-band coupling	Piper	555–366 or 557–369	Cracks and exhaust leak stains.
Isolator (CA–3383–1)	Piper	467–442	Cracks, looseness, and distortion.
Bracket—isolator, upper	Piper	47014–02	Cracks, looseness, and distortion.
Bracket—isolator, lower	Piper	47013–02	Cracks, looseness, and distortion.

(2) If any damage is found in any inspection required in paragraph (g)(1) of this AD, before further fight, do the corrective actions, as applicable, in paragraphs (g)(2)(i) through (g)(2)(iv).

(i) Replace Piper v-band couplings exhibiting cracks and/or exhaust leak stains with airworthy parts following Piper Aircraft, Inc. Mandatory Service Bulletin No. 644E, dated May 9, 2012. Replace Lycoming v-band couplings exhibiting cracks and/or exhaust leak stains with airworthy parts following Lycoming Service Instruction No. 1238B, Revision B, dated January 6, 2010.

Note to paragraphs (g)(2)(i) and (h)(2)(iii): During replacement of v-band couplings, we recommend not opening the v-band coupling more than the MINIMUM diameter necessary to clear coupled flanges. It is recommended to replace any locknuts and/or mating couplings with airworthy parts when locknuts do not exhibit a prevailing torque when installed.

(ii) Replace Lycoming exhaust system parts exhibiting bulges, cracks, and/or exhaust leak stains with airworthy parts following Lycoming Service Instruction No. 1320, dated March 7, 1975; or Lycoming Service Instruction No. 1391, dated October 5, 1979, as applicable.

(iii) Replace Piper tail pipe assembly parts exhibiting bulges, cracks, and/or exhaust leak stains with airworthy parts following Piper Aircraft, Inc. Mandatory Service Bulletin No. 644E, dated May 9, 2012.

(iv) Replace Piper isolators and brackets exhibiting cracks, looseness and/or distortion following Piper Aircraft, Inc. Service Bulletin No. 462A, dated November 3, 1975; and Service Bulletin No. 492A, dated May 29, 2012.

(h) Exhaust System Modifications

(1) Within the next 100 hours TIS after the effective date of this AD or within the next 12 months after the effective date of this AD, whichever occurs first, review the airplane maintenance records to positively identify whether the modifications described in paragraphs (h)(1)(i) through (h)(1)(iii) of this AD have been done.

(i) Exhaust pipe slip joint modification following Piper Aircraft, Inc. Service Bulletin No. 492A, dated May 29, 2012; and Lycoming Service Bulletin No. 393C, dated November 26, 1976.

(ii) Installation of bracket and clamp assembly following Piper Kit No. 760–974 as specified in Piper Aircraft, Inc. Service Bulletin No. 492A, dated May 29, 2012; or Piper Aircraft, Inc. Service Bulletin 462A, dated November 3, 1975.

(iii) Replacement of Piper v-band coupling, part number 556–053, with Piper v-band coupling, part number 557–369, following Piper Aircraft, Inc. Mandatory Service Bulletin No. 644E, dated May 9, 2012.

(2) If you cannot positively identify that the modifications described in paragraphs (h)(1)(i) through (h)(1)(iii) of this AD have been done, before further flight, you must do the modifications described in paragraphs (h)(2)(i) through (h)(2)(ii), as applicable.

(i) Exhaust pipe slip joint modification following Piper Aircraft, Inc. Service Bulletin No. 492A, dated May 29, 2012, and Lycoming Service Bulletin SB 393C, dated November 26, 1976.

(ii) Installation of bracket and clamp assembly following Piper Kit No. 760–974 as specified in Piper Aircraft, Inc. Service Bulletin No. 492A, dated May 29, 2012; or Piper Aircraft, Inc. Service Bulletin 462A, dated November 3, 1975.

(iii) Replacement of Piper v-band coupling, part number 556–053, with Piper v-band coupling, part number 557–369, following Piper Aircraft, Inc. Mandatory Service Bulletin No. 644E, dated May 9, 2012.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Atlanta Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD.

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

(j) Related Information

(1) For more information about this AD, contact Gary Wechsler, Aerospace Engineer, Atlanta ACO, FAA, 1701 Columbia Avenue, College Park, Georgia 30337; telephone: (404) 474–5575; fax: (404) 474–5606; email: *gary.wechsler@faa.gov*.

(2) For service information identified in this AD, contact 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.

Issued in Kansas City, Missouri, on June 24, 2014.

Timothy Smyth,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–16003 Filed 7–8–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–150760–13]

RIN 1545–BM05

Definition of Real Estate Investment True Real Property; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains corrections to a notice of proposed rulemaking and notice of public hearing (REG–150760–13) that was published in the **Federal Register** on Wednesday, May 14, 2014 (79 FR 27508), that clarify the definition of real property for purposes of the real estate investment trust provisions of the Internal Revenue Code.

DATES: Written or electronic comments and request for a public hearing for the notice of proposed rulemaking and notice of public hearing published at 79 FR 27508, May 14, 2014, are still being accepted and must be received by August 12, 2014.

FOR FURTHER INFORMATION CONTACT: Andrea M. Hoffenson, at (202) 317–7053 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking and notice of public hearing that is the subject of this document is under section 856 of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed rulemaking and notice of public hearing (REG–150760–13) contains errors that are misleading and are in need of clarification.

Correction to Publication

Accordingly, notice of proposed rulemaking and notice of public hearing, that is the subject of FR Doc. 2014–11115, is corrected as follows:

1. On page 27508, in the preamble, first column, under the caption **FOR FURTHER INFORMATION CONTACT**, second line, the language ''Andrea Hoffenson, (202) 317–6842, or'' is corrected to read ''Andrea M. Hoffenson, (202) 317–7053, or''.

2. On page 27510, in the preamble, second column, sixteenth line of the second full paragraph, the language ''investment credit contexts, this'' is corrected to read ''investment tax credit contexts, this''.

3. On page 27510, in the preamble, third column, eighth and ninth lines of the first full paragraph, the language ''depreciation, (prior) investment tax credit, and FIRPTA contexts. In drafting'' is corrected to read ''depreciation and (prior) investment tax credit contexts. In drafting''.

§ 1.856–10 [Corrected]

4. On page 27512, second column, fourth line of paragraph (e)(2), the language ''is a distinct asset is based on all of the'' is corrected to read ''is a distinct asset is based on all the''.

5. On page 27512, third column, eighth line of paragraph (g) *Example 1.*

the language ''products of the land and qualify as land'' is corrected to read ''products of the land and are land''.

6. On page 27512, third column, the last line of paragraph (g) *Example 1.* the language ''fruit to qualify as real property.'' is corrected to read ''fruit to be real property.''.

7. On page 27513, first column, paragraph (g) *Example 2.,* the fourth through sixth lines from the top of the column, the language ''that qualify as land within the meaning of paragraph (c) of this section and, therefore, qualify as real property.'' is corrected to read ''that is land within the meaning of paragraph (c) of this section and, therefore, are real property.''.

8. On page 27513, second column, paragraph (g) *Example 6.* (i), the fifth line from the bottom of the column, the language ''telecommunications, and HVAC'' is corrected to read ''telecommunications, and central heating and air-conditioning''.

9. On page 27515, second column, paragraph (g) *Example 10.,* the second paragraph (ii) at line 18 is redesignated as (iii), and existing paragraphs (iii) and (iv) are redesignated as (iv), and (v) respectively.

10. On page 27515, second column, paragraph (g) *Example 10.* newly designated (iv), the second and third line, the language ''(g) *Example 10* (ii)(A) through (ii)(C) and (ii)(E) through (ii)(I) support the conclusion'' is corrected to read ''(g) *Example 10* (iii)(A) through (iii)(C) and (iii)(E) through (iii)(I) support the conclusion''.

11. On page 27515, second column, paragraph (g) *Example 10.* newly designated (iv), the ninth line, the language ''*Example 10* (ii)(D) would support a'' is corrected to read ''*Example 10* (iii)(D) would support a''.

12. On page 27515, second column, paragraph (g) *Example 10.* newly designated (v), the ninth line, the language ''pipeline. The meters and compressors do not'' is corrected to read ''pipeline transmission system. The meters and compressors do not''.

13. On page 27515, third column, paragraph (h), the third line, the language ''quarters beginning on or before the date'' is corrected to read ''quarters beginning after the date''.

Martin V. Franks,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. 2014–15873 Filed 7–8–14; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2014–0310; FRL–9913–29–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Low Emission Vehicle Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Maryland for the purpose of incorporating by reference the most recent amendments to California's Low Emission Vehicle (LEV) program. The Clean Air Act (CAA) contains authority by which other states may adopt new motor vehicle emissions standards that are identical to California's standards. Maryland has adopted by reference California's light and medium-duty vehicle emissions and fuel standards, and consistent with California, submits amendments to these standards as revisions to the State's SIP. In this SIP revision, Maryland is updating its Low Emissions Vehicle Program regulation to adopt by reference California's Advanced Clean Car Program. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal 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 no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by August 8, 2014.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2014–0310 by one of the following methods:

A. *www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *Email: Fernandez.cristina@epa.gov.*

C. *Mail:* EPA–R03–OAR–2014–0310, Cristina Fernandez, Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2014–0310. 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 information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. 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.

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 during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

Copies of the State submittal are available at the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

FOR FURTHER INFORMATION CONTACT: Emlyn Vélez-Rosa, (215) 814–2038, or by email at *velez-rosa.emlyn@epa.gov.*

SUPPLEMENTARY INFORMATION: For further information regarding the amendments to Maryland's Low Emission Vehicle Program, please see the information provided in the direct final rulemaking action, with the same title, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

Dated: June 13, 2014.

W.C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2014–15885 Filed 7–8–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[EPA–HQ–OAR–2013–0748; FRL–9906–56–OAR]

RIN 2060–AS04

Protection of Stratospheric Ozone: Listing of Substitutes for Refrigeration and Air Conditioning and Revision of the Venting Prohibition for Certain Refrigerant Substitutes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: Pursuant to the U.S. Environmental Protection Agency's Significant New Alternatives Policy program, this action proposes to list a number of flammable refrigerants as acceptable substitutes, subject to use conditions, for ozone-depleting substances in several end-uses: Household refrigerators and freezers, stand-alone commercial refrigerators and freezers, very low temperature refrigeration, non-mechanical heat transfer, vending machines, and room air conditioning units. This action also proposes to exempt from Clean Air Act Section 608's prohibition on venting, release, or disposal the hydrocarbon refrigerant substitutes that we are proposing to list in this action as acceptable subject to use conditions in specific end-uses. We are proposing this exemption on the basis of current evidence that their venting, release, or disposal would not pose a threat to the environment.

DATES: Comments must be received on or before September 8, 2014. Any party requesting a public hearing must notify the contact listed below under **FOR FURTHER INFORMATION CONTACT** by 5 p.m. eastern daylight time on July 24, 2014. If a hearing is held, it will take place on or about August 8, 2014 in Washington, DC and further information will be provided on EPA's Stratospheric Ozone Web site at *www.epa.gov/ozone/snap.*

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2013–0748, by one of the following methods:

- *www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Email: A-And-R-Docket@epa.gov.*
- *Mail:* Air and Radiation Docket, Environmental Protection Agency, Mail Code 6102T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–OAR–2013–0748.
- *Hand Delivery:* EPA Docket Center, (EPA/DC) EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC, Attention Docket ID No. EPA–HQ–OAR–2013–0748. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2013–0748. 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 information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. 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 and any form of encryption, and should be free of any defects or viruses. For additional instructions on submitting comments, go to Section I.B. of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the 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 Air and Radiation Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Margaret Sheppard, Stratospheric Protection Division, Office of Atmospheric Programs, Mail Code 6205J, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number (202) 343–9163; fax number (202) 343–2338, email address: *sheppard.margaret@epa.gov.* Notices and rulemakings under EPA's Significant New Alternatives Policy (SNAP) program are available on EPA's Stratospheric Ozone Web site at *www.epa.gov/ozone/snap/regs.*

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I. General Information

A. Background

This rule lists as acceptable subject to use conditions a number of flammable refrigerant substitutes that EPA believes present overall lower risk to human health and the environment compared to other available or potentially available alternatives in the same end-uses. The proposed refrigerants include one hydrofluorocarbon (HFC) refrigerant—HFC–32—and four hydrocarbon refrigerants—ethane, isobutane, propane, and R–441A. This proposed rule, if finalized as proposed, would list one or more of these substitutes as acceptable subject to use conditions in a number of stationary air conditioning (AC) and refrigeration end-uses under the SNAP program, including: household refrigerators and freezers, retail food refrigeration, very low temperature refrigeration, non-mechanical heat transfer, vending machines, and residential and light commercial AC and heat pumps. The use conditions would set requirements to ensure that these substitutes do not present significantly greater risk in the end-use than other substitutes that are currently or potentially available.

All of the end-uses proposed in this rule are for stationary refrigeration or AC; EPA previously addressed flammable refrigerants in motor vehicle air conditioning (MVAC). On June 13, 1995, at 60 FR 31092, the Agency found all flammable substitutes to be unacceptable for use in MVAC unless specifically listed as acceptable subject to use conditions because of flammability risks and the lack of sufficient risk assessment and sufficient information to demonstrate safe use in that end-use at that time. 40 CFR Part 82, Subpart G, Appendix B. Some of these risks are unique to motor vehicles. In recent years, EPA has listed three low global warming potential (GWP) refrigerants as acceptable subject to use conditions for motor vehicles (i.e., R–152a, R–1234yf, and R–744).[1]

This proposed rule responds to a number of SNAP submissions for four hydrocarbon refrigerants and HFC–32 and also lists some of these refrigerants as acceptable subject to use conditions in the same end-uses. Additionally, this action proposes to exempt from Section 608's prohibition on venting, release, or disposal, the four hydrocarbon refrigerant substitutes that we are proposing to list as acceptable subject to use conditions in specific end-uses, on the basis of current evidence that their venting, release, or disposal does not pose a threat to the environment. Note that other environmental regulatory requirements still apply. For example, for those refrigerants that are volatile organic compounds (VOC) as defined in 40 CFR 50.100(s), i.e., isobutane, propane, and R–441A,[2] a State might adopt additional control strategies if necessary for an ozone nonattainment area to attain the National Ambient Air Quality Standard (NAAQS) for ozone.

With the exception of HFC–32, the refrigerants proposed acceptable subject to use conditions in this action are hydrocarbons or blends consisting solely of hydrocarbons. Hydrocarbon refrigerants have been in use for over 15 years in countries such as Germany, the United Kingdom, Australia, and Japan in household and commercial refrigerators and freezers. To a lesser extent, hydrocarbon refrigerants have also been used internationally in small AC units such as mini-splits and portable room air conditioners.

Because hydrocarbon refrigerants have zero ozone depletion potential (ODP) and very low GWPs compared to most other refrigerants, many companies recently have expressed interest in using hydrocarbons in the United States. Also, some companies have reported improved energy efficiency with hydrocarbon refrigerants (A.S. Trust & Holdings, 2012; A/S Vestfrost, 2012; CHEAA, 2013).

In a final rule in the **Federal Register** on December 20, 2011 at 76 FR 78832, EPA's SNAP program listed isobutane and R–441A as acceptable subject to use conditions in household refrigerators, freezers, and combination refrigerators and freezers and found propane acceptable subject to use conditions in retail food refrigerators and freezers (stand-alone units only). In this action, EPA is considering isobutane, propane, and R–441A for different end-uses.

There is interest in use of HFC–32 (difluoromethane, Chemical Abstracts Service Registry Number [CAS Reg. No.] 75–10–5) in residential AC systems and heat pumps because it has a GWP of 675, which is lower than the GWPs of hydrochlorofluorocarbon (HCFC)-22 (1,810) and most other HFC-based refrigerants (approximately 1,500 to 4,000). It also has mild flammability compared to hydrocarbon refrigerants. Mini-split systems using HFC–32 are

[1] Two of these refrigerants are flammable, although less flammable than hydrocarbons. Under 40 CFR part 82, Subpart G, Appendix B, all other flammable substitutes remain unacceptable for use in MVAC because EPA has not taken action to specifically list them as acceptable subject to use conditions.

[2] Both ethane and HFC–32 are not VOC under the definition at 40 CFR 51.100(s).

now being sold in Japan and are being introduced in India and Indonesia.

This action proposes to list one or more of these five lower-GWP refrigerant substitute options as acceptable subject to use conditions in the end-uses identified previously. This is a regular update to EPA's lists of acceptable substitutes through the SNAP program under the authority of Section 612 of the Clean Air Act.

This action also responds to a call in the Climate Action Plan announced June 2013 for EPA to ''use its authority through the Significant New Alternatives Policy Program to encourage private sector investment in low-emissions technology by identifying and approving climate-friendly chemicals'' (Climate Action Plan, 2013). This rule proposes to approve a number of climate-friendly alternatives for various kinds of refrigeration and AC equipment, as discussed below. This is the first listing action EPA has taken since the Climate Action Plan was issued.

This action, if finalized, would expand the menu of available climate-friendly alternatives. Many of these alternatives can substitute both for ozone-depleting substances and for high-GWP HFCs. Using low-GWP alternatives instead of high-GWP HFCs would reduce climate-damaging emissions. Use and emissions of HFCs is rapidly increasing because they are the primary substitutes for ozone-depleting substances in many of the largest end-uses, and because use is growing worldwide, mostly as a result of increased demand for refrigeration and AC, particularly in developing countries. Although they represent a small fraction of current total greenhouse gas (GHG) emissions, their warming impact is hundreds to thousands of times higher than that of CO_2 and other GHGs and their emissions are projected to increase significantly over the next several decades, if left unregulated. In the United States, emissions of HFCs are expected to double from current levels of 1.5 percent of greenhouse gas emissions to 3 percent by 2020 and nearly triple by 2030.[3]

HFCs are rapidly accumulating in the atmosphere. For example, the atmospheric concentration of HFC–134a, the most abundant HFC, has increased by about 10% per year from 2006 to 2012, and concentrations of HFC–143a and HFC–125 have risen over 13% and 16% per year from 2007–2011, respectively (Montzka, 2012; NOAA, 2013).

This action proposes to find acceptable, for specific end-uses and subject to use conditions, several alternatives that have GWPs significantly lower than both the ozone-depleting substances (ODS) and HFC substitute refrigerants currently used in those end-uses. For example, this action, if finalized, would allow the use of isobutane (R–600a) and the hydrocarbon blend R–441A in stand-alone commercial refrigerators. The GWPs[4] of these hydrocarbon refrigerants are less than 10, while HFCs typically used in this end-use—HFC–134a and R–404A (a blend of three HFCs)—have GWPs of 1,430 and approximately 3,920, respectively. In addition, this action proposes to find propane (R–290) acceptable for use in household refrigerator-freezers, subject to use conditions. The GWP of R–290 is 3.3 compared to the GWP of 1430 for HFC–134a, which is typically used in such equipment at present in the U.S. Finally, this action, if finalized, would allow for the use of propane, R–441A, and difluoromethane (HFC–32) in stand-alone room air conditioners. These alternatives have GWPs of 675 or less and could replace the use of R–410A (a blend of two HFCs), which has a GWP of approximately 2,090. ODS replaced in the end-uses in this rule include chlorofluorocarbon (CFC)-12 (ODP[5] of 1 and GWP of 10,900), R–13B1 (also known as bromotrifluoromethane or halon 1301, with ODP of 10 and GWP of 7,140), CFC–113 (ODP of 0.8 and GWP of 6,130), R–502 (a blend of CFC–115 and HCFC–22, with ODP of 0.334 and GWP of 4,660), and HCFC–22 (ODP of 0.055 and GWP of 1,810).

B. Does this action apply to me?

This notice of proposed rulemaking (NPRM) would list the following flammable refrigerants as acceptable subject to use conditions for use in specific end-uses within the refrigeration and AC sector: ethane (R–170), HFC–32 (R–32), isobutane (R–600a), propane (R–290), and the hydrocarbon blend R–441A. Types of residential and light commercial AC equipment addressed in this NPRM include window AC units; packaged terminal AC units and heat pumps; and portable room AC units. Types of refrigeration equipment include stand-alone commercial refrigerators and freezers (retail food refrigeration), very low temperature freezers, thermosiphons (non-mechanical transfer equipment), household refrigerators and freezers, and vending machines.

Table 1 identifies the potential entities that may wish to use ethane, HFC–32, R–441A, isobutane, propane, and other flammable refrigerants in these end-uses.

TABLE 1—POTENTIALLY REGULATED ENTITIES BY NORTH AMERICAN INDUSTRIAL CLASSIFICATION SYSTEM (NAICS) CODE OR SUBSECTOR

Category	NAICS code or subsector	Description of regulated entities
Industry	325412	Pharmaceutical Preparations (e.g., Capsules, Liniments, Ointments, Tablets) Manufacturing.
Industry	333415	Manufacturers of Refrigerators, Freezers, and Other Refrigerating or Freezing Equipment, Electric or Other; Heat Pumps Not Elsewhere Specified or Included (NESOI); and Parts Thereof.
Industry	443111	Appliance Stores: Household-type.
Industry	445120	Convenience Stores.

[3] Climate Change and President Obama's Action Plan. June, 2013. Available online at *www.whitehouse.gov/share/climate-action-plan*

[4] GWPs for HFC–134a, HFC–32, the component HFCs comprising R–404A and R–410A, propane and ethane are listed in IPCC, 2007: *Climate Change 2007: The Physical Science Basis. Contribution of Working Group I to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change* [Solomon, S., D. Qin, M. Manning, Z. Chen, M. Marquis, K.B. Averyt, M. Tignor and H.L. Miller (eds.)]. Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA. This document is accessible at *www.ipcc.ch/publications_and_data/ar4/wg1/en/contents.html.* GWPs for isobutane and R–441A were provided by the submitters to EPA and they are consistent with available information for their components and the range of GWPs found for other hydrocarbons in IPCC, 2007. For refrigerant blends, EPA has taken the 100-year integrated time horizon GWP from IPCC, 2007 for the component compounds and multiplied them by the weight fraction of each component in the blend to obtain an approximate GWP. Unless otherwise stated, GWPs stated in this document are 100-year integrated time horizon values taken from IPCC, 2007.

[5] Unless otherwise stated, the ODP values used in this document are those published in appendices A and B to subpart A of 40 CFR part 82. For refrigerant blends, EPA has taken the ODPs for the component compounds and multiplied them by the weight fraction of each component in the blend to obtain an approximate ODP.

TABLE 1—POTENTIALLY REGULATED ENTITIES BY NORTH AMERICAN INDUSTRIAL CLASSIFICATION SYSTEM (NAICS) CODE OR SUBSECTOR—Continued

Category	NAICS code or subsector	Description of regulated entities
Industry	445110	Supermarkets and Other Grocery (except Convenience) Stores.
Industry	722211	Limited-Service Restaurants.
Industry	238220	Plumbing, Heating, and Air Conditioning Contractors.
Industry	811412	Appliance Repair and Maintenance.
Industry	423620	Household Appliances, Electric Housewares, and Consumer Electronics Merchant Wholesalers.
Industry	423740	Refrigeration Equipment and Supplies Merchant Wholesalers.

This table is not intended to be exhaustive, but rather a guide regarding entities likely to adopt the substitutes whose use would be regulated by this proposed action. If you have any questions about whether this action applies to a particular entity, consult the person listed in the preceding section, **FOR FURTHER INFORMATION CONTACT**.

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

1. Submitting Confidential Business Information (CBI)

Do not submit confidential information to EPA through *www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 Code of Federal Regulations (CFR) Part 2.

2. Tips for Preparing Your Comments

When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date, and page number).
- Follow directions. The agency may ask you to respond to specific questions or organize comments by referencing a CFR part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

D. What acronyms and abbreviations are used in the preamble?

Below is a list of acronyms and abbreviations used in this preamble.

AC—air conditioning
ACGIH—American Conference of Governmental Industrial Hygienists
ACH—air changes per hour
AEGL—acute exposure guideline level
AHRI—Air Conditioning, Heating and Refrigeration Institute
ANSI—American National Standards Institute
ASHRAE—American Society of Heating, Refrigerating and Air-Conditioning Engineers
BTU—British thermal unit
CAA—Clean Air Act
CAS Reg. No.—Chemical Abstracts Service Registry Identification Number
CBI—Confidential Business Information
CFC—chlorofluorocarbon
CFR—Code of Federal Regulations
CMAQ—Community Multiscale Air Quality
DOE—the United States Department of Energy
EO—Executive Order
EPA—the United States Environmental Protection Agency
FR—**Federal Register**
GHG—greenhouse gas
GWP—global warming potential
HCFC—hydrochlorofluorocarbon
HFC—hydrofluorocarbon
ICF—ICF International, Inc.
ICR—Information Collection Request
IEC—International Electrotechnical Commission
IPCC—Intergovernmental Panel on Climate Change
IPR—industrial process refrigeration
kJ—kilojoule
kPa—kilopascal
lb—pound
LFL—lower flammability limit
MSDS—Material Safety Data Sheet
MVAC—motor vehicle air conditioning
NAAQS—National Ambient Air Quality Standard
NAICS—North American Industrial Classification System
NIOSH—the United States National Institute for Occupational Safety and Health
NOAEL—No Observed Adverse Effect Level
NPRM—Notice of Proposed Rulemaking
NTTAA—National Technology Transfer and Advancement Act
OEM—original equipment manufacturer
ODP—ozone depletion potential
ODS—ozone-depleting substance
OHA—Office of Hearing and Appeals
OMB—the United States Office of Management and Budget
OSHA—the United States Occupational Safety and Health Administration
PEL—permissible exposure limit
PFC—perfluorocarbon
PMS—Pantone Matching System
ppb—parts per billion
ppm—parts per million
PRA—Paperwork Reduction Act
PTAC—packaged terminal air conditioner
PTHP—packaged terminal heat pump
REL—recommended exposure limit
RFA—Regulatory Flexibility Act
SBA—the United States Small Business Administration
SNAP—Significant New Alternatives Policy
STEL—short term exposure limit
TLV—threshold limit value
TSCA—Toxic Substances Control Act
TWA—time-weighted average
UL—Underwriters Laboratories Inc.
UMRA—Unfunded Mandates Reform Act
VOC—volatile organic compounds

II. How does the Significant New Alternatives Policy (SNAP) program work?

A. What are the statutory requirements and authority for the SNAP Program?

Section 612 of the Clean Air Act (CAA) requires EPA to develop a program for evaluating alternatives to ODS. EPA refers to this program as the Significant New Alternatives Policy (SNAP) program. The major provisions of section 612 are the following:

1. Rulemaking

Section 612(c) requires EPA to promulgate rules making it unlawful to replace any class I substance (chlorofluorocarbon, halon, carbon tetrachloride, methyl chloroform, and hydrobromofluorocarbon) or class II

substance (hydrochlorofluorocarbon) with any substitute that the Administrator determines may present adverse effects to human health or the environment where the Administrator has identified an alternative that (1) reduces the overall risk to human health and the environment and (2) is currently or potentially available.

2. Listing of Unacceptable/Acceptable Substitutes

Section 612(c) requires EPA to publish a list of the substitutes unacceptable for specific uses and to publish a corresponding list of acceptable alternatives for specific uses. The list of acceptable substitutes may be found at *www.epa.gov/ozone/snap/lists,* and the lists of ''unacceptable,'' ''acceptable subject to use conditions,'' and ''acceptable subject to narrowed use limits'' substitutes are found in the appendices to Subpart G of 40 CFR part 82 as well as at *www.epa.gov/ozone/snap/lists.*

3. Petition Process

Section 612(d) grants the right to any person to petition EPA to add a substance to, or delete a substance from, the lists published in accordance with section 612(c). The Agency has 90 days to grant or deny a petition. Where the Agency grants the petition, EPA must publish the revised lists within an additional six months.

4. 90-Day Notification

Section 612(e) directs EPA to require any person who produces a chemical substitute for a class I substance to notify the Agency not less than 90 days before new or existing chemicals are introduced into interstate commerce for significant new uses as substitutes for a class I substance. The producer must also provide the Agency with the producer's unpublished health and safety studies on such substitutes.

5. Outreach

Section 612(b)(1) states that the Administrator shall seek to maximize the use of federal research facilities and resources to assist users of class I and II substances in identifying and developing alternatives to the use of such substances in key commercial applications.

6. Clearinghouse

Section 612(b)(4) requires the Agency to set up a public clearinghouse of alternative chemicals, product substitutes, and alternative manufacturing processes that are available for products and manufacturing processes which use class I and II substances.

B. What is EPA's regulation implementing section 612?

On March 18, 1994, EPA published the original rulemaking (59 FR 13044) which established the process for administering the SNAP program and issued EPA's first lists identifying acceptable and unacceptable substitutes in the major industrial use sectors (Subpart G of 40 CFR Part 82). These eight sectors—refrigeration and air conditioning; foam blowing; cleaning solvents; fire suppression and explosion protection; sterilants; aerosols; adhesives, coatings and inks; and tobacco expansion—are the principal industrial sectors that historically consumed the largest volumes of ODS.

Section 612 of the CAA instructs EPA to list as acceptable those substitutes that present a lower overall risk to human health and the environment as compared with other substitutes that are currently or potentially available for a specific use.

C. How do the regulations for the SNAP program work?

Under the SNAP regulations, anyone who plans to market or produce a substitute in one of the eight major industrial use sectors where class I or class II substances have been used must provide notice to the Agency, including health and safety information on the substitute, at least 90 days before introducing it into interstate commerce for significant new use as an alternative. 40 CFR 82.176(a). This requirement applies to the persons planning to introduce the substitute into interstate commerce,[6] who typically are chemical manufacturers but may include importers, formulators, equipment manufacturers, and end users when they are responsible for introducing a substitute into commerce.[7] The CAA and the SNAP regulations, 40 CFR 82.174(a), prohibit use of a substitute earlier than 90 days after notice has been provided to the Agency. EPA considers that notice has been received once EPA receives the submission and determines that the submission includes complete and adequate data. 40 CFR 82.180(a). At that point, the SNAP review begins.

The Agency has identified four possible decision categories for substitutes that are submitted for evaluation: acceptable; acceptable subject to use conditions; acceptable subject to narrowed use limits; and unacceptable[8] (40 CFR 82.180(b)). Use conditions and narrowed use limits are both considered ''use restrictions'' and are explained below. Substitutes that are deemed acceptable with no use restrictions (no use conditions or narrowed use limits) can be used for all applications in the relevant end-uses within the sector. Substitutes that are acceptable subject to use restrictions may be used only in accordance with those restrictions.

After reviewing a substitute, the Agency may make a determination that a substitute is acceptable only if certain conditions are met in the way that the substitute is used to minimize risks to human health and the environment. EPA describes such substitutes as ''acceptable subject to use conditions.'' Entities that use these substitutes without meeting the associated use conditions are in violation of section 612 of the CAA and EPA's SNAP regulations. 40 CFR 82.174(c).

For some substitutes, the Agency may permit a narrowed range of use within an end-use or sector. For example, the Agency may limit the use of a substitute to certain end-uses or specific applications within an industry sector. EPA describes these substitutes as ''acceptable subject to narrowed use limits.'' A person using a substitute that is acceptable subject to narrowed use limits in applications and end-uses that are not consistent with the narrowed use limit is using the substitute in an unacceptable manner and is in violation of section 612 of the CAA and EPA's SNAP regulations. 40 CFR 82.174(c).

The Agency publishes its SNAP program decisions in the **Federal Register** (FR). EPA publishes proposed decisions concerning substitutes that are deemed acceptable subject to use restrictions (use conditions and/or narrowed use limits), or substitutes deemed unacceptable, as proposed rulemakings to provide the public providing an opportunity to comment, before publishing final decisions.

[6] As defined at 40 CFR 82.104, ''interstate commerce'' means the distribution or transportation of any product between one state, territory, possession or the District of Columbia, and another state, territory, possession or the District of Columbia, or the sale, use or manufacture of any product in more than one state, territory, possession or District of Columbia. The entry points for which a product is introduced into interstate commerce are the release of a product from the facility in which the product was manufactured, the entry into a warehouse from which the domestic manufacturer releases the product for sale or distribution, and at the site of United States Customs clearance.

[7] As defined at 40 CFR 82.172, ''end-use'' means processes or classes of specific applications within major industrial sectors where a substitute is used to replace an ODS.

[8] The SNAP regulations also include ''pending,'' referring to submissions for which EPA has not reached a determination under this provision.

In contrast, EPA publishes decisions concerning substitutes that are deemed acceptable with no restrictions as ''notices of acceptability'' or ''determinations of acceptability,'' rather than as proposed and final rules. As described in the preamble to the rule initially implementing the SNAP program in the **Federal Register** at 59 FR 13044 on March 18, 1994, EPA does not believe that rulemaking procedures are necessary to list alternatives that are acceptable without restrictions because such listings neither impose any sanction nor prevent anyone from using a substitute.

Many SNAP listings include ''Comments'' or ''Further Information'' to provide additional information on substitutes. Since this additional information is not part of the regulatory decision, these statements are not binding for use of the substitute under the SNAP program. However, regulatory requirements so listed are binding under other regulatory programs (e.g., worker protection regulations promulgated by the Occupational Safety and Health Administration (OSHA)). The ''Further Information'' identified in the listing does not necessarily include all other legal obligations pertaining to the use of the substitute. While the items listed are not legally binding under the SNAP program, EPA encourages users of substitutes to apply all statements in the ''Further Information'' column in their use of these substitutes. In many instances, the information simply refers to sound operating practices that have already been identified in existing industry and/or building codes or standards. Thus many of the statements, if adopted, would not require the affected user to make significant changes in existing operating practices.

D. Where do I find additional information about the SNAP program?

For copies of the comprehensive SNAP lists of substitutes or additional information on SNAP, refer to EPA's Ozone Depletion Web site at: *www.epa.gov/ozone/snap.* For more information on the Agency's process for administering the SNAP program or criteria for evaluation of substitutes, refer to the SNAP final rulemaking in the **Federal Register** at 59 FR 13044 on March 18, 1994, codified at 40 CFR Part 82, Subpart G. A complete chronology of SNAP decisions and the appropriate citations is found at: *www.epa.gov/ozone/snap/chron.html.*

III. What substitutes in what end-uses are considered in this proposed rule?

A. What listing decisions is EPA proposing in this action?

In this action, EPA proposes to list the following refrigerants as acceptable substitutes, subject to use conditions, in the identified end-uses.

1. *Retail food refrigeration.* EPA proposes to list isobutane (also referred to as R–600a) and the hydrocarbon blend R–441A as acceptable subject to use conditions as substitutes in retail food refrigeration (new stand-alone commercial refrigerators and freezers only). EPA proposes the following use conditions:

i. The quantity of the substitute refrigerant (i.e., ''charge size'') must not exceed 150 grams (5.29 ounces);

ii. These refrigerants may be used only in new equipment designed specifically and clearly identified for the refrigerant—i.e., none of these substitutes may be used as a conversion or ''retrofit'' [9] refrigerant for existing equipment;

iii. These refrigerants may be used only in stand-alone commercial refrigerators and freezers that meet all requirements listed in Supplement SB to the 10th edition of Underwriters Laboratories (UL) Standard 471, dated November 24, 2010. In cases where the proposed rule includes requirements more stringent than those of the 10th edition of UL Standard 471, the appliance must meet the requirements of the rule, as finalized;

iv. The refrigerator or freezer must have red Pantone Matching System (PMS) #185 marked pipes, hoses, or other devices through which the refrigerant passes, to indicate the use of a flammable refrigerant. This color must be applied at all service ports and other parts of the system where service puncturing or other actions creating an opening from the refrigerant circuit to the atmosphere might be expected and must extend a minimum of one (1) inch in both directions from such locations;

v. The following markings, or the equivalent, must be provided and must be permanent:

(a) ''DANGER—Risk of Fire or Explosion. Flammable Refrigerant Used. Do Not Use Mechanical Devices To Defrost Refrigerator. Do Not Puncture Refrigerant Tubing.'' This marking must be provided on or near any evaporators that can be contacted by the consumer.

(b) ''DANGER—Risk of Fire or Explosion. Flammable Refrigerant Used. To Be Repaired Only By Trained Service Personnel. Do Not Puncture Refrigerant Tubing.'' This marking must be located near the machine compartment.

(c) ''CAUTION—Risk of Fire or Explosion. Flammable Refrigerant Used. Consult Repair Manual/Owner's Guide Before Attempting To Service This Product. All Safety Precautions Must be Followed.'' This marking must be located near the machine compartment.

(d) ''CAUTION—Risk of Fire or Explosion. Dispose of Properly In Accordance With Federal Or Local Regulations. Flammable Refrigerant Used.'' This marking must be provided on the exterior of the refrigeration equipment.

(e) ''CAUTION—Risk of Fire or Explosion Due To Puncture Of Refrigerant Tubing; Follow Handling Instructions Carefully. Flammable Refrigerant Used.'' This marking must be provided near all exposed refrigerant tubing.

With regard to the proposed use conditions, we note the following. First, regarding the use of red marking for pipes, hoses and other devices in proposed use condition iv., we discuss and solicit comment on direct color application on the applicable parts of the system, such as a red plastic sleeve, in Section V.D, ''Color-coded hoses and piping.'' Discussion of application of red coloring for equipment utilizing a process tube is also provided there. Second, regarding proposed use condition v., the difference between this proposed requirement and clauses SB6.1.2 to SB6.1.5 of UL Standard 471 is that all of these markings must be in letters no less than 6.4 mm (¼ inch) high. In UL 471, the markings are required to be no less than 3.2 mm (⅛ inch) high.

2. *Very low temperature refrigeration and non-mechanical heat transfer.* EPA proposes to list ethane (also referred to as R–170), as acceptable, subject to use conditions, in very low temperature refrigeration equipment and in non-mechanical heat transfer, subject to the same use conditions as described above for isobutane and R–441A in stand-alone commercial refrigerators and freezers.

3. *Household refrigerators and freezers.* EPA proposes to list propane (also referred to as R–290), as acceptable subject to use conditions as a substitute in household refrigerators and freezers and combination refrigerator/freezers subject to the following use conditions.

i. The charge size for any household refrigerator, freezer, or combination refrigerator and freezer for each circuit using R–290 must not exceed 57 grams (2.01 ounces);

[9] Sometimes conversion refrigerant substitutes are inaccurately referred to as ''drop in'' replacements.

ii. This refrigerant may be used only in new equipment specifically designed and clearly identified for the refrigerant—i.e., none of these substitutes may be used as a conversion or ''retrofit'' refrigerant for existing equipment;

iii. This substitute may be used only in equipment that meets all requirements in Supplement SA to the 10th edition of UL Standard 250, dated August 25, 2000. (In cases where the proposed rule includes requirements more stringent than those of the 10th edition of UL Standard 250, the appliance must meet the requirements of the final SNAP listing);

iv. The refrigerator or freezer must have red Pantone Matching System (PMS) #185 marked pipes, hoses, and other devices through which the refrigerant passes to indicate the use of a flammable refrigerant;

v. Permanent markings must be provided on the equipment, as described above for stand-alone commercial refrigerators and freezers. All of these markings must be in letters no less than 6.4 mm (¼ inch) high. (The difference between this requirement and clauses SA6.2.1 to SA6.2.5 of UL Standard 250 is that in UL 250, the markings are required to be no less than 3.2 mm [⅛ inch] high instead of 6.4 mm [¼ inch]).

4. *Vending machines.* EPA proposes to list R–441A, isobutane and propane as acceptable substitutes in vending machines, subject to the same use conditions described above for stand-alone commercial refrigerators and freezers, except that paragraph iii. would read as follows:

Equipment must meet all requirements of Supplement SA to the 7th edition of UL Standard 541, ''Refrigerated Vending Machines,'' dated December 30, 2011 (instead of the 10th edition of UL 471).

Note that in UL 541, the relevant references on equipment markings for flammable refrigerants in Supplement A are sections SA 6.1.2–SA 6.1.5.

5. *Residential and light commercial AC and heat pumps.* EPA proposes to list propane (also known as R–290), difluoromethane (also known as HFC–32 or R–32), and R–441A as acceptable subject to use conditions as substitutes in residential and light commercial AC for self-contained room air conditioners, including packaged terminal air conditioners (PTACs) and packaged terminal heat pumps (PTHPs), window AC units, and portable AC units designed for use in a single room.[10] EPA proposes the following use conditions:

i. These refrigerants may be used only in new equipment designed specifically and clearly identified for the refrigerant—i.e., none of these substitutes may be used as a conversion or ''retrofit'' refrigerant for existing equipment;

ii. These refrigerants may be used only in air conditioners that meet all requirements listed in Supplement SA to the 8th edition, dated August 2, 2012, of Underwriters Laboratories (UL) Standard 484, ''Room Air Conditioners.'' If this rule is finalized as proposed, in cases where the final rule would include requirements more stringent than those of the 8th edition of UL Standard 484, the appliance would need to meet the requirements of the final rule in place of the requirements in the UL Standard;

iii. UL 484 includes charge limits for room air conditioners and adherence to those charge limits would normally be confirmed by the installer. In addition to proposing the charge limits in the UL 484 standard as a requirement, EPA is proposing the following charge size limits adherence to which must be confirmed by the original equipment manufacturer (OEM). In cases where the charge size limit listed is different from those determined by UL 484, the smaller of the two charge sizes would apply. For a review of how these charge size limits were derived, see ''Derivation of Charge Limits for Room Air Conditioners,'' EPA, 2014 in the docket. The charge size limit must be determined based on the type of equipment, the alternative refrigerant used, and the normal rated capacity of the unit. The proposed limits are presented in Tables 3 through 6 below in section V.C, ''Charge size,'' and in Tables A, B, C and D of the regulatory text at the end of this document.

iv. The air conditioner must have red Pantone Matching System (PMS) #185 marked pipes, hoses, or other devices through which the refrigerant passes to indicate the use of a flammable refrigerant. This color must be applied at all service ports and other parts of the system where service puncturing or other actions creating an opening from the refrigerant circuit to the atmosphere might be expected and must extend a minimum of one (1) inch in both directions from such locations;

v. The following markings, or the equivalent, must be provided and must be permanent:

(a) On the outside of the air conditioner: ''DANGER—Risk of Fire or Explosion. Flammable Refrigerant Used. To Be Repaired Only By Trained Service Personnel. Do Not Puncture Refrigerant Tubing.''

(b) On the outside of the air conditioner: ''CAUTION—Risk of Fire or Explosion. Dispose of Properly In Accordance With Federal Or Local Regulations. Flammable Refrigerant Used.''

(c) On the inside of the air conditioner near the compressor: ''CAUTION—Risk of Fire or Explosion. Flammable Refrigerant Used. Consult Repair Manual/Owner's Guide Before Attempting To Service This Product. All Safety Precautions Must be Followed.''

(d) For portable air conditioners, packaged terminal air conditioners and packaged terminal heat pumps, on the outside of the product: ''WARNING: Appliance shall be installed, operated and stored in a room with a floor area larger than ''X'' m^2 (Y ft^2).'' The value ''X'' must be determined using the minimum room size in m^2 calculated using Appendix F of UL 484. The evaporator must remain no higher than 0.6 m above the floor.

(e) For window air conditioners, on the outside of the product: ''WARNING: Appliance shall be installed, operated and stored in a room with a floor area larger than ''X'' m^2 (Y ft^2).'' The value ''X'' must be determined using the minimum room size in m^2 calculated using Appendix F of UL 484. The evaporator must remain no higher than 1.06 m above the floor.

All of these markings must be in letters no less than 6.4 mm (¼ inch) high. (The difference between this requirement and clauses SA6.2.1 to SA6.2.5 of UL Standard 484 is that in UL 484, the markings are required to be no less than 3.2 mm [⅛ inch] high instead of 6.4 mm [¼ inch]).

The regulatory text of our proposed decisions appears in tables at the end of this document. If finalized as proposed, this text would be codified at 40 CFR Part 82 Subpart G. The proposed regulatory text contains listing decisions for the end-uses discussed above. We note that there may be other legal obligations pertaining to the manufacture, use, handling, and disposal of hydrocarbons that are not included in the information listed in the tables (e.g., section 608 prohibition on venting, releasing, or disposing of refrigerant substitutes or Department of Transportation requirements for transport of flammable gases).

[10] Packaged terminal air conditioners are intended for use in a single room and use no ducts to carry cooled air and no external refrigerant lines. Typical applications include motel or dormitory air conditioners.

In summary, EPA is proposing to list ethane, isobutane, propane, HFC–32, and R–441A as acceptable subject to use conditions as substitute refrigerants in certain refrigeration and AC end-uses. If this proposal were to become final, it would be legal to use those refrigerants in the specified types of equipment under the conditions identified above. Use in the specified types of equipment that is not consistent with the use conditions, as finalized, would be a violation of CAA section 612 and EPA's implementing regulations. Both the equipment manufacturers and the end users should be familiar with these proposed use conditions and EPA would expect them to comply with any final use conditions.

B. What are ethane, isobutane, propane, HFC–32, R–441A, and the ASHRAE classifications for refrigerant flammability?

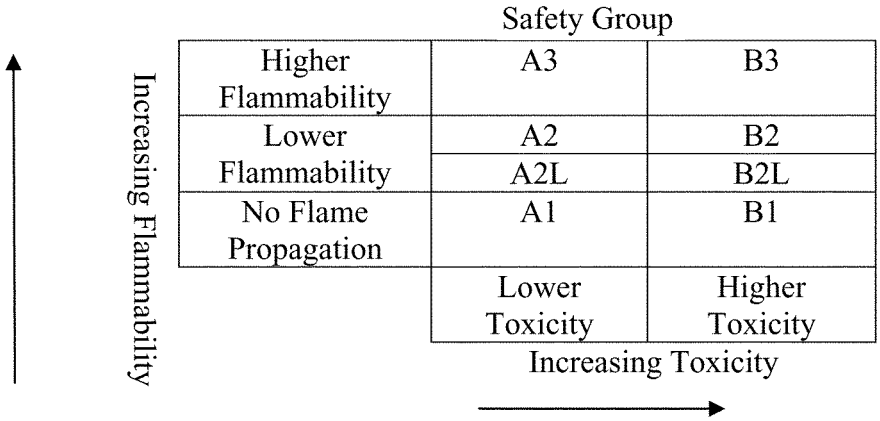
Ethane, isobutane, and propane are hydrocarbons and R–441A is a hydrocarbon blend. Hydrocarbons are highly flammable organic compounds made up of hydrogen and carbon. Ethane has two carbons and a chemical formula of C_2H_6. Propane has three carbons and the formula C_3H_8. Isobutane has four carbons and the formula C_4H_{10}, also written as $CH(CH_3)_2CH_3$ to distinguish it from n-butane. The respective Chemical Abstracts Service Registry Numbers (CAS Reg. Nos.) of ethane, propane, and isobutane are 74–84–0, 74–98–6, and 75–28–5. As refrigerants, ethane, propane, and isobutane can be referred to by the American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE) designations R–170, R–290 and R–600a, respectively.

R–441A, also known by the trade name ''HCR–188C,'' is a highly flammable hydrocarbon blend consisting of 55% propane, 36% n-butane, 6% isobutane, and 3% ethane by weight. HFC–32 is a mildly flammable organic compound made up of hydrogen, carbon, and fluorine with the chemical formula CF_2H_2 (CAS Reg. No. 75–10–5).

The American National Standards Institute (ANSI)/ASHRAE Standard 34–2010 assigns a safety group classification for each refrigerant which consists of two alphanumeric characters (e.g., A2 or B1). The capital letter indicates the toxicity and the numeral denotes the flammability. ASHRAE classifies Class A refrigerants as refrigerants for which toxicity has not been identified at concentrations less than or equal to 400 parts per million (ppm) by volume, based on data used to determine threshold limit value-time-weighted average (TLV–TWA) or consistent indices. Class B signifies refrigerants for which there is evidence of toxicity at concentrations below 400 ppm by volume, based on data used to determine TLV–TWA or consistent indices. The refrigerants are also assigned a flammability classification of 1, 2, or 3. Tests are conducted in accordance with ASTM E681 using a spark ignition source at 60 °C and 101.3 kPa (ASHRAE, 2010). Figure 1 in ANSI/ASHRAE Standard 15–2007 uses the same safety group but limits its concentration to 3400 ppm.

The flammability classification ''1'' is given to refrigerants that, when tested, show no flame propagation. The flammability classification ''2'' is given to refrigerants that, when tested, exhibit flame propagation, have a heat of combustion less than 19,000 kJ/kg (8,174 BTU/lb), and have a lower flammability limit (LFL) greater than 0.10 kg/m^3. Refrigerants within flammability classification 2 may optionally be designated in the lower flammability subclass ''2L'' if they have a maximum burning velocity of 10 cm/s or lower when tested at 23.0 °C and 101.3 kPa. The flammability classification ''3'' is given to refrigerants that, when tested, exhibit flame propagation and that either have a heat of combustion of 19,000 kJ/kg (8,174 BTU/lb) or greater or an LFL of 0.10 kg/m^3 or lower. For both toxicity and flammability classifications, refrigerant blends are designated based on the worst case of fractionation determined for the blend (which may be different when evaluating toxicity than when evaluating flammability).

Figure 1. Refrigerant Safety Group Classification



Using these safety group classifications, ANSI/ASHRAE Standard 34–2010 categorizes ethane, isobutane, propane, and R–441A in the A3 Safety Group and categorizes HFC–32 in the A2L Safety Group.

C. What end-uses are included in EPA's proposed decision?

1. Household Refrigerators, Freezers, and Combination Refrigerator/Freezers

Household refrigerators, freezers, and combination refrigerator/freezers are intended primarily for residential use, although they may be used outside the home. Household freezers only offer storage space at freezing temperatures, unlike household refrigerators. Products with both a refrigerator and freezer in a single unit are most common. Wine coolers used in residential settings are considered part of this end-use. EPA previously found the flammable

hydrocarbon refrigerants isobutane and R–441A acceptable subject to use conditions in this end-use. December 20, 2011, at 76 FR 78832, codified at Appendix R of Subpart G of 40 CFR part 82.

2. Retail Food Refrigeration—Stand-Alone Commercial Refrigerators and Freezers

Retail food refrigeration includes the refrigeration systems, including cold storage cases, designed to chill food or keep it at a cold temperature for commercial sale. In this proposed rule, we are considering the use of hydrocarbons only in stand-alone equipment. A stand-alone appliance is one utilizing a sealed hermetic compressor and for which all refrigerant-containing components, including but not limited to the compressor, condenser, and evaporator, are assembled into a single piece of equipment before delivery to the ultimate consumer or user. Such equipment does not require the addition or removal of refrigerant when placed into initial operation. Stand-alone equipment is used to chill or to store chilled beverages or frozen products (e.g., reach-in beverage coolers, stand-alone ice cream cabinets, and wine coolers in commercial settings). This proposed rule does not apply to large commercial refrigeration systems such as, but not limited to, multiplex direct expansion refrigeration systems typically found in supermarkets. Such equipment typically requires larger charge sizes than those considered in this proposed rule. This proposal also does not apply to walk-in coolers, a type of equipment that typically requires larger charges than those considered in this proposed rule. EPA has already listed propane as acceptable subject to use conditions for use in stand-alone commercial refrigerators and freezers. December 20, 2011, at 76 FR 78832, codified at Appendix R to Subpart G of 40 CFR part 82.

3. Very Low Temperature Refrigeration and 4. Non-Mechanical Heat Transfer Equipment

Very low temperature refrigeration equipment is intended to maintain temperatures considerably lower than for refrigeration of food—for example, −80 °C (−170 °F) or lower. Examples of very low temperature refrigeration equipment include medical freezers and freeze-dryers, which generally require extremely reliable refrigeration cycles to maintain low temperatures and must meet stringent technical standards. In some cases, very low temperature refrigeration equipment may use a refrigeration system with two refrigerant loops or with a direct expansion refrigeration loop coupled with an alternative refrigeration technology (e.g., Stirling cycle). This allows a greater range of temperatures and may reduce the overall refrigerant charge.

There is no U.S. standard that we are aware of that applies specifically to very low temperature refrigeration or non-mechanical heat transfer. The submitter of information for use of ethane in very low temperature refrigeration has indicated that Underwriters Laboratories, Inc. has tested their equipment for compliance with the UL 471 standard for commercial refrigeration equipment, which addresses stand-alone commercial refrigerators and freezers. We are proposing compliance with the UL 471 standard as one of the conditions for use of ethane in very low temperature refrigeration equipment. This submission also addressed the use of ethane in a type of non-mechanical heat transfer equipment called a thermosiphon. Non-mechanical heat transfer involves cooling systems that rely on convection to remove heat from an area, rather than mechanical refrigeration. A thermosiphon is a type of heat transfer system that relies on natural convection currents, as opposed to using a mechanical pump. This proposal would allow use of ethane in non-mechanical heat transfer uses, provided that they meet the use conditions, including the requirements of Supplement B to the UL 471 standard and a charge limit of 150 g.[11]

5. Vending Machines

Vending machines are self-contained units for refrigerating beverages or food which dispense goods that must be kept cold or frozen. This end-use differs from other retail food refrigeration because goods are dispensed, rather than allowing the consumer to reach in to grab a beverage or food product. The design of the refrigeration system of a vending machine is similar to that of a self-contained commercial refrigerator or freezer. Typically the difference lies in how payment for goods is made and in the selection mechanisms found in vending machines but not in self-contained commercial refrigerator-freezers, and possibly the outer casing (e.g., glass doors and open, reach-in designs are generally used in self-contained commercial refrigerator-freezers whereas glass wall and other types of casings are used for vending machines). The standard UL 541 applies to vending machines. It contains a Supplement SA specifically addressing flammable refrigerants that is very similar to the Supplement SB in the UL 471 standard for commercial refrigerators and freezers.

6. Residential and Light Commercial AC and Heat Pumps

This end-use includes equipment for cooling air in individual rooms, in single-family homes, and sometimes in small commercial buildings. This end-use differs from commercial comfort AC, which uses chillers that cool water that is then used to cool air throughout a large commercial building, such as an office building or hotel. Examples of equipment for residential and light commercial AC and heat pumps include:

- Central air conditioners, also called unitary AC or unitary split systems. These systems include an outdoor unit with a condenser and a compressor, refrigerant lines, an indoor unit with an evaporator, and ducts to carry cooled air throughout a building. Central heat pumps are similar but offer the choice to either heat or cool the indoor space. These systems are not addressed in this rule.
- Multi-split air conditioners. These systems include one or more outdoor unit(s) with a condenser and a compressor and multiple indoor units, each of which is connected to the outdoor unit by refrigerant lines. These systems are not addressed in this rule.
- Mini-split air conditioners. These systems include an outdoor unit with a condenser and a compressor and a single indoor unit that is connected to the outdoor unit by refrigerant lines. Cooled air exits directly from the indoor unit rather than being carried through ducts. These systems are not addressed in this rule.
- Window air conditioners. These are self-contained units that fit in a window with the condenser extending outside the window. These types of units would be regulated under this rule if it becomes final.
- Packaged terminal air conditioners and packaged terminal heat pumps. These are self-contained units that consist of a separate, un-encased combination of heating and cooling assemblies mounted through a wall. These types of units would be regulated under this rule if it becomes final.
- Portable room air conditioners. These are self-contained units used inside rooms that are designed to be

[11] EPA expects that equipment designed for cooling the engine compartment of heavy duty vehicles, a potential non-mechanical heat transfer application, does not meet the requirements of UL 471 and thus, would not meet the requirements of this rule. Similar issues may exist for some other non-mechanical heat transfer equipment.

moved easily from room to room, usually having wheels. They may contain an exhaust hose that can be placed through a window or door to eject heat to the outside. These types of units would be regulated under this rule if it becomes final.

Of these types of equipment, window air conditioners, packaged terminal air conditioners, packaged terminal heat pumps, and portable room air conditioners are self-contained equipment with the condenser, compressor, evaporator, and tubing all within casing in a single unit. These units all fall under the scope of the UL 484 standard for Room Air Conditioners. In contrast, unitary split systems, multi-split systems and mini-split systems have an outdoor condenser that is separated from an indoor unit. Compared to split systems, self-contained equipment typically has smaller charge sizes, has fewer locations that are prone to leak, and is less likely to require servicing by a technician, thereby causing refrigerant releases. A lower risk of refrigerant releases and a potential for smaller releases and lower concentration releases would result in lower risk that flammable refrigerant could be ignited. Thus, self-contained air conditioners and heat pumps using a flammable refrigerant have lower risk for fire than split systems using a flammable refrigerant.

IV. What criteria did EPA consider in determining whether to propose to list the substitutes as acceptable and in determining the proposed use conditions and how does EPA consider those criteria?

Section 612(c) of the Clean Air Act directs EPA to publish a list of acceptable replacement substances (''substitutes'') for class I and class II substances for specific uses. EPA compares the risks to human health and the environment of a substitute to the risks associated with other substitutes that are currently or potentially available. EPA also considers whether the substitute for class I and class II ODS ''reduces the overall risk to human health and the environment'' compared to the ODS historically used in the end-use. The criteria we review are listed at 40 CFR 82.180(a)(7). These criteria are: (i) Atmospheric effects and related health and environmental impacts; (ii) general population risks from ambient exposure to compounds with direct toxicity and to increased ground-level ozone; (iii) ecosystem risks; (iv) occupational risks; (v) consumer risks; (vi) flammability; and (vii) cost and availability of the substitute.

EPA evaluated each of the criteria for each substitute in each end-use for which we are proposing action and then for each substitute we considered overall risk to human health and the environment in comparison to other available or potentially available alternatives in the same end-uses. Based on our evaluations, we may reach different conclusions on the same substitute in different end-uses, because of different risk profiles (e.g., different exposure levels and usage patterns) and different sets of available or potentially available substitutes for each end-use.

As noted previously on May 17, 2013, at 78 FR 29035, environmental and human health exposures can vary significantly depending on the particular application of a substitute—and over time, information available regarding a substitute can change. SNAP's comparative risk framework does not imply fundamental tradeoffs with respect to different types of risk, either to the environment or to human health. EPA recognizes that during the nearly two-decade history of the SNAP program, new information about alternatives already found acceptable and new alternatives have emerged. To the extent possible, EPA considers current information that improves our understanding of the risk factors for the environment and human health in the context of the available or potentially available alternatives for a given use.

A. Effects on the Environment

The SNAP program considers a number of environmental criteria when evaluating substitutes: Ozone depletion potential (ODP); climate effects, primarily based on global warming potential (GWP); local air quality impacts, particularly potential impacts on smog formation from emissions of volatile organic compounds (VOC); and ecosystem effects, particularly from negative impacts on aquatic life. These and other environmental and health risks are discussed below.

The ODP is the ratio of the impact on stratospheric ozone of a chemical compared to the impact of an identical mass of CFC–11. Thus, the ODP of CFC–11 is defined to be one (1.0). Other CFCs and HCFCs have ODPs that range from 0.01 to one (1.0).

All refrigerant substitutes in this proposal have an ODP of zero, lower than the ODP of the ozone depleting substances that they replace: CFC–12 (ODP = 1.0); HCFC–22 (ODP = 0.055); R–13B1 (ODP = 10) and R–502 (ODP = 0.334). The most commonly used substitutes in the end-uses addressed in this proposal also have an ODP of zero (e.g., R–404A, R– 134a, R–410A, and R–407C).[12] Some less common alternatives for these end-uses, such as R–401A, R–414A and other blends containing HCFC–22 or HCFC–142b,[13] have ODPs ranging from 0.01 to 0.047. Thus, the refrigerant substitutes in this proposal have ODPs lower than or identical to the ODPs of other available substitutes and of the substances they replace.

The GWP is a means of quantifying the potential integrated climate forcing of various greenhouse gases relative to carbon dioxide. All of the hydrocarbon refrigerants in this proposal have a relatively low 100-year integrated GWP of less than ten. HFC–32 has a GWP of 675. For comparison, some other commonly used, acceptable refrigerants in these end-uses are R–134a, R–404A, R–407C, and R–410A with GWPs of about 1,430, 3,920, 1,770, and 2,090, respectively. In very low temperature refrigeration, a common refrigerant is R–508B, with a GWP of 13,400. The GWPs of the ozone-depleting substances that they replace are: CFC–12 (GWP = 10,900); HCFC–22 (GWP = 1,810); R–13B1/halon 1301 (GWP = 7,140) and R–502 (GWP = 4,660) (IPCC, 2007). The GWPs of the substitutes reviewed in this proposal are significantly lower than those of other refrigerants currently being used in the residential and light commercial AC and heat pump end-use. As stated above, EPA considers overall risk to human health and the environment compared to ODS as well as alternatives that are available and potentially available in a given end-use. Therefore, the GWP of 675 for HFC–32 may not be considered low in other end-uses that have a larger variety of options available with lower GWPs. Among the acceptable substitutes listed in this end-use, only ammonia absorption and the non-vapor compression technologies evaporative cooling and desiccant cooling would have lower GWPs. Given technical limits on the effective use of the non-vapor compression technologies in different climates and the higher toxicity of ammonia than that of the alternatives proposed here, the proposed substitutes still reduce risk overall compared to the available and potentially available substitutes in this end-use.

The GHG impacts of these refrigerants also depend upon the energy use of

[12] We assume that substitutes containing no chlorine, bromine, or iodine have an ODP of zero.

[13] Under EPA's phaseout regulations, virgin HCFC–22, HCFC–142b, and blends containing HCFC–22 or HCFC–142b may only be used to service existing appliances. Consequently, virgin HCFC–22, HCFC–142b and blends containing HCFC–22 or HCFC–142b may not be used to manufacture new pre-charged appliances or appliance components or to charge new appliances assembled onsite.

appliances, since the ''indirect'' GHG emissions associated with electricity consumption typically exceed those from refrigerants over the full lifecycle of refrigerant-containing products. (ORNL, 1997). If appliances using the refrigerants being considered in this proposal are less energy efficient than the appliances they replace, then it is possible that these appliances would result in higher lifecycle GHG emissions than appliances using a higher GWP refrigerant or refrigerant substitute. Conversely, higher energy efficiency of these appliances would lead to even lower lifecycle GHG emissions. While we have not undertaken a comprehensive assessment of all sources of GHG emissions associated with substituting ODS and other commonly used refrigerants with the proposed refrigerants, we note that for most of the types of equipment covered here, energy efficiency standards exist.[14] Thus, total energy use with alternative refrigerants can be expected to be no higher than that required by the standards for those classes of equipment.[15] Further, testing data, peer-reviewed journal articles and other information provided by the submitters for these substitute refrigerants indicated that equipment using these refrigerants is likely to have a higher coefficient of performance and use less energy than equipment currently being manufactured that uses common ODS and HFC refrigerants that are listed as acceptable under SNAP. This implies that equipment that uses the refrigerants proposed to be listed will have the same or lower climate impacts than other available substitutes (Daikin, 2011; A.S. Trust & Holdings, 2012; A/S Vestfrost, 2012; CHEAA, 2013).

In addition to global impacts on the atmosphere, EPA evaluated potential impacts of the proposed substitutes on local air quality. Ethane and HFC–32 are exempt from the definition of VOC under CAA regulations (see 40 CFR 51.100(s)) addressing the development of State Implementation Plans (SIPs) to attain and maintain the national ambient air quality standards. The other proposed refrigerants, isobutane, propane, and components of R–441A, including isobutane, n-butane and propane, are VOC. Potential emissions of VOC from all substitutes for all end-uses in the refrigeration and AC sector are addressed by the venting prohibition under Section 608 of the CAA. Under that prohibition, refrigerant substitutes (and thus the VOC they contain) may only be emitted where EPA issues a final determination exempting a refrigerant substitute from the venting prohibition on the basis that venting, releasing or disposing of such substance does not pose a threat to the environment, as proposed elsewhere in this action (see Section VI, ''How is EPA proposing to address venting, release, or disposal of the refrigerant substitutes proposed to be listed under section 608 of the Clean Air Act?'' below). EPA estimates that potential emissions of hydrocarbons when used as refrigerant substitutes in all end-uses in the refrigeration and AC sector have little impact on local air quality, with the possible exception of unsaturated hydrocarbons such as propylene (ICF, 2014a). However, for those refrigerants that are VOC as defined in 40 CFR 50.100(s), a State could adopt additional control strategies if necessary for an ozone nonattainment area to attain the National Ambient Air Quality Standard (NAAQS) for ozone.

EPA analyzed a number of scenarios to consider the potential impacts on local air quality if hydrocarbon refrigerants were used widely. We used EPA's Vintaging Model to estimate the hydrocarbon emissions from these scenarios and EPA's Community Multiscale Air Quality (CMAQ) model to assess their potential incremental contributions to ground-level ozone concentrations (ICF, 2014a). That analysis assumed that the most reactive hydrocarbon proposed to be acceptable (isobutane) was used in all refrigeration and AC uses, and that all refrigerant used was emitted to the atmosphere even though isobutane is not being proposed as acceptable for use in all refrigeration and AC uses. In that extreme scenario, the model predicted that the maximum increase in the 8-hour average ground-level ozone concentration would be 0.72 ppb in Los Angeles. Further, in the analysis, the additional ground-level ozone did not result in exceeding the NAAQS where an area was in compliance without the additional refrigerant emissions. Given the potential sources of uncertainty in the modeling, the conservativeness of the assumptions, and the finding that the incremental VOC emissions from this refrigerant emissions would not cause any area that otherwise would meet the NAAQS to exceed it, we believe that the use of isobutane consistent with the use conditions will not result in significantly greater risk to the environment than other substitutes that are currently or potentially available. Further, propane, ethane, and n-butane, the remaining component of R–441A, are less reactive than isobutane and we reach a similar conclusion for those refrigerants.

EPA also analyzed the potential impacts of the uses of hydrocarbon refrigerants proposed to be acceptable under this rule. In this less conservative analysis, EPA looked at a set of end-uses that would be more likely to use hydrocarbon refrigerants between now and 2030. The analysis assumed use of hydrocarbon refrigerants in those uses for which UL currently has standards in place, for which the SNAP program has already listed the uses as acceptable subject to use conditions, or for which the SNAP program is reviewing a submission, including those in this rule.[16] In addition, the air quality analysis assumed several different hydrocarbons [17] would be used based upon those under review by the SNAP program in the end-uses for which they were submitted. For example, we assumed use of propane, R–441A, and another hydrocarbon refrigerant under review in room air conditioners and isobutane, propane, and R–441A in vending machines, stand-alone retail food refrigeration equipment, and household refrigerators and freezers, but no use of hydrocarbons in chillers used for AC of large buildings. (For further

[14] For example, Department of Energy (DOE) standards apply to portable air conditioners, room air conditioners, PTACs and PTHPs, household refrigerators and freezers, refrigerated beverage vending machines, and commercial refrigeration equipment. See *https://www1.eere.energy.gov/buildings/appliance_standards/standards_test_procedures.html*.

[15] Refrigeration or air conditioning equipment in the applicable covered equipment class would still be subject to DOE's standards, regardless of the refrigerant that the equipment uses. If a manufacturer believes that its design is subjected to undue hardship by DOE's regulations, the manufacturer may petition DOE's Office of Hearing and Appeals (OHA) for exception relief or exemption from the standard pursuant to OHA's authority under section 504 of the DOE Organization Act (42 U.S.C. 7194), as implemented at subpart B of 10 CFR part 1003. OHA has the authority to grant such relief on a case-by-case basis if it determines that a manufacturer has demonstrated that meeting the standard would cause hardship, inequity, or unfair distribution of burdens.

[16] The analysis included stand-alone commercial refrigerators, freezers, and coolers; vending machines; refrigerated transport; water coolers; commercial ice machines; household refrigerators and freezers; and room air conditioners (window AC, packaged terminal AC and packaged terminal heat pumps). The analysis did not expressly break out very low temperature refrigeration or non-mechanical heat transfer from commercial refrigerators and freezers.

[17] Refrigerants in this scenario included propane, isobutane, and R–441A in the end-uses where they are proposed to be acceptable subject to use conditions, among others. Ethane was not expressly included, since the type of equipment using ethane is not broken out separately in the analysis. However, ethane is less reactive than the other refrigerants included in the analysis, so this omission is expected to result in a slight overestimation of impacts, if any.

information on the specific assumptions, see ICF, 2014a, in the docket for this rulemaking.) Based on this still conservative but more probable assessment of refrigerant use, we found that even if all the refrigerant in appliances in end-uses addressed in this proposed rule were to be emitted, there would be a worst-case impact of 0.15 ppb ozone in the Los Angeles area, which is the area with the highest level of ozone pollution in the United States. In the other cities examined in the analysis, Houston and Atlanta, impacts were smaller (no more than 0.03 and 0.01 ppb, respectively) (ICF, 2014a). These impacts did not cause any areas to exceed the NAAQS that otherwise would have met the NAAQS without the additional refrigerant emissions. Because of the relatively low air quality impacts of these refrigerants if they are released to the atmosphere in limited amounts, EPA believes that these refrigerants do not have a significantly greater impact on human health and the environment based on their effects on local air quality than other refrigerants listed as acceptable in the end-uses proposed in this rule.

The substitutes in this proposal are all highly volatile. They typically evaporate or partition to air, rather than contaminating surface waters. Effects on aquatic life of the substitutes are expected to be small and pose no greater risk of aquatic or ecosystem effects than those of other available substitutes for these uses.

Based on EPA's analysis, the overall environmental risks, including ODP, GWP, local air quality effects and ecosystem impacts are lower than or comparable to those of other acceptable substitutes in the same end-uses.

B. Flammability and Fire Safety

The flammability risks of the proposed substitutes are of potential concern because household and retail food refrigerators and freezers and room AC units have traditionally used refrigerants that are not flammable. Without appropriate use conditions, the flammability risk posed by these refrigerants could be higher than non-flammable refrigerants because individuals may not be aware that their actions could potentially cause a fire, and existing equipment has not been designed specifically to minimize flammable risks. In this section, we discuss the risks posed by the refrigerants considered in this rule and explain the proposed use conditions we believe are necessary to mitigate risks to ensure that the overall risk to human health and the environment posed by these proposed substitutes is not greater than the overall risk posed by other substitutes in the same end-uses. In addition, we discuss why the flammability risks have led us to propose that these substitutes are only acceptable for use in new equipment specifically designed for these flammable refrigerants.

Because of their flammable nature, ethane, isobutane, propane, HFC–32, and R–441A could pose a significant safety concern for workers and consumers in the end-uses addressed in this proposal if they are not handled correctly. In the presence of an ignition source (e.g., static electricity spark resulting from closing a door, using a torch during service, or a short circuit in wiring that controls the motor of a compressor), an explosion or a fire could occur when the concentration of refrigerant exceeds its lower flammability limit (LFL). The LFLs of the proposed substitutes are: ethane—30,000 ppm; HFC–32—139,000 ppm; isobutane—18,000 ppm; propane—21,000 ppm; and R–441A—20,500 ppm. Therefore, to use these substitutes safely, it is important to minimize the presence of potential ignition sources and to reduce the likelihood that the levels of ethane, HFC–32, isobutane, propane, or R–441A will exceed the LFL. Under the proposed listing decision, these substitutes would be acceptable for use only in new equipment (refrigerators, freezers and air conditioners) specifically designed for the refrigerant. We expect that the original equipment manufacturers, who would be storing large quantities of the refrigerant, are familiar with and use proper safety precautions to minimize the risk of explosion, because of the OSHA and building code requirements under which they operate. We are proposing to include in the ''Further Information'' section of the SNAP listings recommendations that these facilities be equipped with proper ventilation systems and be properly designed to reduce possible ignition sources.

To determine whether flammability would be a concern for manufacturing and service personnel or for consumers, EPA analyzed a plausible worst-case scenario to model a catastrophic release of the proposed refrigerants. The worst-case scenario analysis for each refrigerant revealed that even if the unit's full charge is emitted within one minute, none of these refrigerants reached their respective LFLs of 1.8% for isobutane, 2.1% for propane, 2.05% for R–441A, or 3.0% for ethane, provided that the charge sizes were no greater than those specified in the relevant standard from Underwriters Laboratories (ICF, 2014b,c,d,e,f,g,h,i,j,k). Thus, there would not be an excessive risk of fire or explosion, even under those worst-case assumptions, so long as the charge meets the use conditions in this proposed rule. Detailed analysis of the modeling results are discussed below in the next section regarding ''Toxicity.'' EPA also reviewed the submitters' detailed assessments of the probability of events that might create a fire and engineering risk and approaches to avoid sparking from the refrigeration equipment. Further information on these analyses and EPA's risk assessments are available in public docket EPA–HQ–OAR–2013–0748 at *www.regulations.gov*. Although the analysis showed no potential for the released refrigerant from one piece of equipment to reach the LFL, manufacturing and service personnel or consumers may not be familiar with refrigeration or AC equipment containing a flammable refrigerant. Therefore, use conditions are necessary to ensure people handling such equipment are aware that equipment contains a flammable refrigerant and to ensure safe handling. This allows the flammable refrigerants to be used without increasing overall risk to human health and the environment.

C. Toxicity

In evaluating potential toxicity impacts of ethane, HFC–32, isobutane, propane, and R–441A on human health, EPA considered both occupational and consumer risks. EPA investigated the risk of asphyxiation and of exposure to toxic levels of refrigerant for a worst-case scenario and a typical use scenario for each refrigerant. In the worst-case scenario of a catastrophic leak, we modeled release of the unit's full charge within one minute into a confined space to estimate concentrations that might result. We considered a conservatively small space appropriate to each end-use, such as a small convenience store of 244 m^3 for retail food refrigeration, a small galley kitchen of 18 m^3 for a household refrigerator/freezer, or a small bedroom of 41 m^3 for a room air conditioner.

To evaluate toxicity of all five refrigerants, EPA estimated the maximum time-weighted average (TWA) exposure both for a short-term exposure scenario, with a 15-minute and 30-minute TWA exposure, and for an 8-hour time weighted average that would be more typical of occupational exposure for a technician servicing the equipment. We compared these short-term and long-term exposure values to relevant industry and government workplace exposure limits for ethane, HFC–32, isobutane, propane, and

components of R–441A, (including potential impurities in the substitutes). The modeling results indicate that both the short-term (15-minute and 30-minute) and long-term (8-hour) worker exposure concentrations would be below the relevant workplace exposure limits, such as the Occupational Safety and Health Administration (OSHA) permissible exposure limit (PEL), the National Institute for Occupational Safety and Health's (NIOSH) recommended exposure limit (REL), the American Conference of Governmental Industrial Hygienists' (ACGIH) threshold limit value (TLV), or in the case of HFC–32, the manufacturer's recommended workplace exposure limit. In some cases where there was not an established short-term exposure limit (STEL), we considered information on short-term exposure such as the no observed adverse effect level (NOAEL) from available toxicity studies or the National Research Council's Acute Emergency Guideline Limits (AEGL).[18] The respective workplace exposure limits we considered for the various compounds, including components of the refrigerant blend R–441A, are as follows:

- n-Butane, a component in R–441A: 800 ppm REL on 10-hr TWA; 6,900 ppm AEGL–1 over 30 minutes
- Ethane: 1000 ppm TLV on 8-hour TWA
- HFC–32: 1000 ppm manufacturer's exposure guideline on 8-hour TWA; 3000 ppm over 15 minutes
- Isobutane: 800 ppm REL on 10-hr TWA; 18,000 ppm NOAEL over 30 minutes
- Propane: 1000 ppm PEL on 8-hr TWA; 6,900 ppm AEGL–1 over 30 minutes

For equipment with which consumers might come into contact, such as retail food refrigerators and freezers, vending machines, household refrigerators and freezers, and room air conditioners, EPA performed a consumer exposure analysis. In this analysis, we examined potential catastrophic release of the entire charge of the substitute in one minute under a worst-case scenario. We did not examine exposure to consumers in very low temperature refrigeration, as equipment for this end-use would typically be used in the workplace, such as in laboratories, and not in a home or public space. The analysis was undertaken to determine the 15-minute or 30-minute TWA exposure levels for the substitute, which were then compared to the toxicity limits to assess the risk to consumers.

EPA considered toxicity limits for consumer exposure that reflect a short-term exposure such as might occur at home or in a store or other public setting where a member of the general public could be exposed and could then escape. Specific toxicity limits that we used in our analysis of consumer exposure include:

- n-Butane: 6,900 ppm AEGL–1 over 30 minutes
- HFC–32: cardiotoxic NOAEL of 350,000 ppm over 5 minutes
- Isobutane: 18,000 ppm NOAEL over 30 minutes
- Propane: 6,900 ppm AEGL–1 over 30 minutes

The analysis of consumer exposure assumed that 100 percent of the unit's charge would be released over one minute, at which time the concentration of refrigerant would peak in an enclosed space, and then steadily decline. Refrigerant concentrations were modeled under two air change scenarios, believed to represent the baseline of potential flow rates for a home or other public space, assuming flow rates of 2.5 and 4.5 air changes per hour (ACH) (Sheldon, 1989). The highest concentrations of the refrigerant occur in the lower stratum of the room when assuming the lower ventilation level of 2.5 ACH. Calculating the TWA exposure using 2.5 ACH results in a higher concentration than calculating the TWA exposure using 4.5 ACH. Even under the very conservative assumptions used in the consumer exposure modeling, the estimated 15-minute or 30-minute consumer exposures to the proposed refrigerants are much lower than the relevant toxicity limits and thus should not pose a toxicity risk any greater than that of other acceptable refrigerants in the proposed end-uses.

For further information, including EPA's risk screens and risk assessments as well as fault tree analyses from the submitters of the substitutes, see docket number EPA–HQ–OAR–2013–0748 at *www.regulations.gov.*

V. Why is EPA proposing these specific use conditions?

EPA is proposing to list ethane, isobutane, propane, HFC–32, and R–441A as acceptable subject to use conditions in the specified end-uses, as described above in section III.A., ''What listing decisions is EPA proposing in this action?.'' EPA is proposing these uses in new equipment designed and manufactured specifically to use these alternatives. The use conditions include conditions consistent with industry standards, limits on charge size, and requirements for warnings and markings on equipment to inform consumers and technicians of potential flammability hazards. The proposed listings with the specific use conditions are intended to allow for the use of these flammable refrigerants in a manner that will ensure they do not pose a greater risk to human health or the environment than other substitutes that are currently or potentially available. We seek comment on the proposed listing as well as the specific use conditions discussed below.

A. New Equipment Only; Not Intended for Use as a Retrofit Alternative

EPA is proposing that the flammable refrigerants considered in this proposal be limited to use only in new equipment that has been designed and manufactured specifically for use with the listed alternative refrigerant. We are proposing that these substitutes may be used only in new equipment[19] that is designed to address concerns unique to flammable refrigerants. The flammable refrigerants were not submitted under the SNAP program to be used in retrofitted equipment, and no information was provided on how to address hazards of flammable refrigerants when used in equipment that was designed for non-flammable refrigerants. Introduction into interstate commerce of these refrigerants for use in existing equipment without giving timely and adequate notice to EPA would be in violation of section 612(e) of the CAA and the SNAP regulations at 40 CFR Part 82, Subpart G. In addition, if the rule is finalized as proposed, use of these refrigerants in existing equipment would be in violation of

[18] The AEGL limit is an emergency guideline for exposures to the general population (including susceptible populations) and is not time-weighted. It also considers the chemical's flammability in addition to its toxicity. EPA develops a set of AEGL values for a chemical for five exposure periods (10 and 30 minutes, 1 hour, 4 hours and 8 hours). For each exposure period, three different AEGL values are developed to address different levels of toxicological impacts. Of relevance for the modeled scenario is the AEGL–1 (10,000 ppm), which is defined as: ''the airborne concentration, expressed as parts per million or milligrams per cubic meter (ppm or mg/m^3) of a substance above which it is predicted that the general population, including susceptible individuals, could experience notable discomfort, irritation, or certain asymptomatic nonsensory effects. However, the effects are not disabling and are transient and reversible upon cessation of exposure.'' While permanent toxicological effects are not expected up to the AEGL–2 value, this limit is not relevant for this analysis because at that level, flammability would be a greater concern.

[19] This is intended to mean a completely new refrigeration circuit containing a new evaporator, condenser and refrigerant tubing. We are aware that for some types of equipment, e.g., vending machines, it is possible to detach easily and replace the refrigeration circuit from the outer casing of the equipment. In such a situation, replacing the old refrigeration circuit with a new one within the old casing would be considered ''new'' equipment and not a retrofit of the old, existing equipment.

section 612(c) of the CAA and the corresponding SNAP regulations at 40 CFR Part 82, Subpart G.

B. Standards

EPA is proposing that the flammable refrigerants be used only in equipment that meets all requirements in the relevant supplements for flammable refrigerants in certain applicable UL Standards for refrigeration and AC equipment. Specifically, the standards cited include UL 471 10th edition for commercial refrigerators and freezers (including stand-alone freezers for very low temperature refrigeration), UL 250 10th edition (for household refrigerators and freezers), UL 541 7th edition for refrigerated vending machines, and UL 484 8th edition for room air conditioners.

UL has tested equipment for flammability risk in both household and retail food refrigeration. Further, UL has developed acceptable safety standards including requirements for construction, for markings, and for performance tests concerning refrigerant leakage, ignition of switching components, surface temperature of parts, and component strength after being scratched. These standards were developed in an open and consensus-based approach, with the assistance of experts in the AC and refrigeration industry as well as experts involved in assessing the safety of products. While similar standards exist from other bodies such as the International Electrotechnical Commission (IEC), we are proposing to rely on UL standards as those that are most applicable and recognized by the U.S. market. This proposed approach is the same as that in our previous rule on flammable refrigerants (December 20, 2011 at 76 FR 78832).

C. Charge Size

EPA is proposing use conditions that limit the amount of refrigerant allowed in each type of appliance. As before, we believe it is necessary to set limits on charge size in order for these refrigerants not to pose a risk to human health or the environment that is greater than the risk posed by other available substitutes. These limits will reduce the risk to workers and consumers since under worst-case scenario analyses, a leak of the proposed charge sizes did not result in concentrations of the refrigerant that met or exceeded the LFL, as explained above in Section IV.B, ''Flammability and fire safety.''

EPA is proposing limitations on refrigerant charge size for household and stand-alone commercial refrigerators and freezers, vending machines, and room AC units that reflect the UL 250, UL 471, UL 541 and UL 484 standards. As discussed above in paragraph B of this section, we believe UL standards are most applicable to the U.S. market and offer requirements developed by a consensus of experts. EPA is proposing a charge size not to exceed 57 grams (2.01 ounces) for household refrigerators and freezers, not to exceed 150 grams (5.29 ounces) for retail food refrigeration in stand-alone units, and not to exceed 150 grams (5.29 ounces) for vending machines. We are proposing a varying charge size limit for room AC units as discussed below. To place these quantities in a familiar context, EPA estimates the charge size of a disposable lighter is equal to 30 grams (1.06 ounces).

The UL 250 standard for household refrigerators and freezers limits the amount of refrigerant that may leak to 50 grams (1.76 ounces). EPA is proposing a charge size of 57 grams (2.01 ounces) to allow for up to 7 grams (0.25 ounces) of refrigerant that might be solubilized in the oil (and assumed not to leak or immediately vaporize with the refrigerant in the case of a leak). EPA bases this estimate on information received from a manufacturer of hydrocarbon-based refrigerator-freezers (see EPA–HQ–OAR–2009–0286–0033 on *www.regulations.gov*).

UL standards 541 (retail food refrigeration) and 471 (vending machines) limit the amount of refrigerant leaked to 150 grams (5.29 ounces). Furthermore, the charge size limit for A3 refrigerants (for retail food refrigeration) is in line with the IEC 60335–2–89 standard for commercial appliances, which has a charge size limit of 150 grams (5.29 ounces).

As noted above, EPA is proposing a varying charge size for room AC units. We are proposing that the maximum charge must be no greater than the amount calculated for a given sized space according to Appendix F to Supplement SA of UL Standard 484. This section of the UL standard uses a formula for charge of a fixed room air conditioner based upon the size of the space where the refrigerant may escape and the lower flammability limit of the refrigerant. The formula is as follows:

$$m_{max} = 2.5\ (LFL)^{\frac{5}{4}}\ h_o\sqrt{A}$$

Where:

M_{max} is the maximum charge size allowed for the space, in kg,

LFL is the lower flammability limit of the refrigerant in kg/m^3,

h_0 is the installation height of the indoor unit in m (0.6 m for an AC unit on the floor, 1.0 m for an AC unit in a window, 1.8 m for a wall-mounted AC unit, and 2.2 m for a ceiling-mounted AC unit), and

A is the floor area of the room, in m^2.

The equipment manufacturer would then design AC units to be used in rooms with a minimum size and would label the minimum room size on the equipment. Table 2 below gives examples of room sizes and appropriate charge sizes for the three refrigerants proposed to be listed for use in room AC units, assuming a typical height of 1.0 m for a window-mounted unit.

In addition to the formula mentioned above, UL 484 has a requirement that the maximum charge for a room air conditioner may not exceed the amount calculated using the following formula:

$$m_2 = (26\ m^3) \times LFL$$

Where:

m_2 is the maximum charge size allowed, in kg,

26 m^3 is a constant, and

LFL is the lower flammability limit of the refrigerant in kg/m^3.

That formula sets maximum limits on refrigerant in a room air conditioner, as shown in Table 2. With the A3 refrigerants, the maximum value is 1 kg.

TABLE 2—MAXIMUM REFRIGERANT CHARGE SIZES

If you are using this refrigerant	Then its lower flammability limit is . . .		The maximum allowable charge in kg for room air conditioner is . . .	And the maximum charge, in kg, to use in a room of this size[20] is . . .		
	In % by volume	In kg/m^3		1.7 m × 1.7 m × 2.5 m (7.2 m^3) A = 2.89 m^2	6 ft × 8 ft × 8 ft (384 ft^3/10.9 m^3) A = 4.46 m^2	12 ft × 10 ft × 10 ft (1200 ft^3/34.0 m^3) A = 11.15 m^2
HFC–32	14.4	0.306	7.956	0.971	1.192	1.900
Propane (R–290)	2.1	0.038	0.986	0.071	0.087	0.139

TABLE 2—MAXIMUM REFRIGERANT CHARGE SIZES—Continued

If you are using this refrigerant	Then its lower flammability limit is . . .		The maximum allowable charge in kg for room air conditioner is . . .	And the maximum charge, in kg, to use in a room of this size[20] is . . .		
	In % by volume	In kg/m³		1.7 m × 1.7 m × 2.5 m (7.2 m³) A = 2.89 m²	6 ft × 8 ft × 8 ft (384 ft³/10.9 m³) A = 4.46 m²	12 ft × 10 ft × 10 ft (1200 ft³/34.0 m³) A = 11.15 m²
R–441A	2.05	0.041	1.000	0.078	0.095	0.152

Although using a formula to determine the maximum charge size and minimum room size is appropriate from an engineering perspective, it does not ensure that a consumer will select an appropriate AC unit for the size of their room. It is likely that some consumers may be unaware of the exact size of the room to be cooled and thus may select an inappropriately sized AC unit that increases the flammability risk. A consumer may believe that a larger, more powerful AC unit will provide better, faster cooling and therefore may select an inappropriately sized AC unit that increases the flammability risk. To address these concerns, EPA proposes to supplement the charge size guidelines in Appendix F of UL 484 with a use condition that restricts the maximum refrigerant charge of equipment based upon the cooling capacity needed, in British thermal units (BTU) per hour. Equipment manufacturers would be responsible for designing equipment below a maximum charge size consistent with the intended cooling capacity. This would allow the manufacturer, who has greater understanding of the issue than a consumer, to address the issue in a manner under the manufacturer's control. Placing the burden on the manufacturer also provides a better means for EPA to ensure compliance and thus to ensure that the risk to human health will not be greater than that posed by other available substitutes.

We believe that these requirements, in combination with the other use conditions and commonly found informational materials, provide sufficient safeguards against instances of consumers selecting inappropriately-sized equipment. For instance, packaging, technical literature and sales display material will often guide a consumer in choosing the correct capacity for a given room size.

EPA has based its proposed charge limits upon appropriate capacity needs for an area to be cooled and the requirements for refrigerant charge relative to room size in Appendix F of UL 484, discussed above. A document in the docket describes this relationship in tables in a spreadsheet (EPA, 2014). The proposed charge limits for each refrigerant by equipment type and mounting location are as follows:

TABLE 3—MAXIMUM DESIGN CHARGE SIZES FOR WINDOW AC UNITS *

Refrigerant	Maximum design charge size (kg)													
	Associated cooling capacity (BTU/hr)													
	5,000	6,000	7,000	8,000	9,000	10,000	12,000	14,000	18,000	21,000	23,000	24,000	30,000	34,000
R–32	1.73	2.12	2.74	3.00	3.24	3.47	3.68	4.07	4.59	5.48	6.01	6.49	6.72	7.76
R–290	0.13	0.16	0.20	0.22	0.24	0.26	0.27	0.30	0.34	0.40	0.44	0.48	0.50	0.57
R–441A	0.14	0.17	0.22	0.24	0.26	0.28	0.30	0.33	0.37	0.44	0.49	0.53	0.54	0.63

* Assumes the evaporator is at least 1 m, but not more than 1.8 m, above the floor. Cooling capacities between those in the table are to be linearly interpolated between the next smaller and larger capacities listed in the table.

TABLE 4—MAXIMUM DESIGN CHARGE SIZES FOR PACKAGED TERMINAL AC UNITS AND HEAT PUMPS AND PORTABLE AC UNITS *

Refrigerant	Maximum design charge size (kg)													
	Associated cooling capacity (BTU/hr)													
	5,000	6,000	7,000	8,000	9,000	10,000	12,000	14,000	18,000	21,000	23,000	24,000	30,000	34,000
R–32	1.04	1.27	1.65	1.80	1.95	2.08	2.21	2.44	2.75	3.29	3.60	3.89	4.03	4.65
R–290	0.08	0.09	0.12	0.13	0.14	0.15	0.16	0.18	0.20	0.24	0.27	0.29	0.30	0.34
R–441A	0.08	0.10	0.13	0.15	0.16	0.17	0.18	0.20	0.22	0.27	0.29	0.32	0.33	0.38

* Assumes the evaporator is at least 0.6 m, but not more than 1.0 m, above the floor. Cooling capacities between those in the table are to be linearly interpolated between the next smaller and larger capacities listed in the table.

[20] Although the height of the room does not affect the calculation, typical heights are shown here for reference.

TABLE 5—MAXIMUM DESIGN CHARGE SIZES FOR WALL-MOUNTED AC UNITS *

Refrigerant	Maximum design charge size (kg)													
	Associated cooling capacity (BTU/hr)													
	5,000	6,000	7,000	8,000	9,000	10,000	12,000	14,000	18,000	21,000	23,000	24,000	30,000	34,000
R–32	3.12	3.82	4.94	5.41	5.84	6.24	6.62	7.32	7.96	7.96	7.96	7.96	7.96	7.96
R–290	0.23	0.28	0.36	0.40	0.43	0.46	0.49	0.54	0.61	0.73	0.80	0.86	0.89	1.00
R–441A	0.25	0.31	0.40	0.44	0.47	0.51	0.54	0.59	0.67	0.80	0.88	0.95	0.98	1.00

* Assumes the evaporator is at least 1.8 m, but not more than 2.2 m, above the floor. Cooling capacities between those in the table are to be linearly interpolated between the next smaller and larger capacities listed in the table.

TABLE 6—MAXIMUM DESIGN CHARGE SIZES FOR CEILING-MOUNTED AC UNITS *

Refrigerant	Maximum design charge size (kg)													
	Associated cooling capacity (BTU/hr)													
	5,000	6,000	7,000	8,000	9,000	10,000	12,000	14,000	18,000	21,000	23,000	24,000	30,000	34,000
R–32	3.82	4.67	6.03	6.61	7.14	7.63	7.96	7.96	7.96	7.96	7.96	7.96	7.96	7.96
R–290	0.28	0.34	0.44	0.49	0.53	0.56	0.60	0.66	0.74	0.89	0.97	1.00	1.00	1.00
R–441A	0.31	0.38	0.49	0.54	0.58	0.62	0.66	0.73	0.82	0.98	1.00	1.00	1.00	1.00

* Assumes the evaporator is at least 2.2 m above the floor. Cooling capacities between those in the table are to be linearly interpolated between the next smaller and larger capacities listed in the table.

In cases where the rated capacity exceeds the maximum shown on the table, the maximum charge size in the table for that refrigerant applies. In cases where the normal rated capacity lies between two values listed next to each other in the table, the maximum charge size would be determined based on a linear interpolation between the two respective charge sizes. We assume that room air conditioners will be at least 5,000 BTU/hr in capacity; this corresponds to cooling a floor area of roughly 100 square feet or 9.3 m^2 and it is the lowest value observed at a popular retailer's Web site (*www.homedepot.com*). We request comment on whether there should be lower, higher, or additional intermediate capacity values added to these tables.

EPA is requesting comment on the approach of adding a requirement for manufacturers to design with a maximum charge size consistent with the design cooling capacity. We also request comment on other potential methods for supplementing the formulas for calculating charge size in the UL 484 standard in order to reduce potential risks of a consumer using a room air conditioner with an inappropriately high charge that could result in a higher risk of fire.

D. Color-Coded Hoses and Piping

EPA proposes that equipment must have distinguishing color-coded hoses and piping to indicate use of a flammable refrigerant. This will help technicians immediately identify the use of a flammable refrigerant, thereby potentially reducing the risk of using sparking equipment or otherwise having an ignition source nearby. The AC and refrigeration industry currently uses distinguishing colors as means for identifying different refrigerants. Likewise, distinguishing coloring has been used elsewhere to indicate an unusual and potentially dangerous situation, for example in the use of orange-insulated wires in hybrid electric vehicles. Currently, no industry standard exists for color-coded hoses or pipes for ethane, HFC–32, isobutane, propane, or R–441A. EPA is proposing that all such refrigerator tubing be colored red Pantone Matching System (PMS) #185 to match the red band displayed on the container of flammable refrigerants under the Air Conditioning, Heating and Refrigeration Institute (AHRI) Guideline ''N'' 2012, ''2012 Guideline for Assignment of Refrigerant Container Colors.'' This proposal mirrors the existing requirement for the use of hydrocarbons in residential and commercial refrigerator-freezers (December 20, 2011, at 76 FR 78832). EPA wants to ensure that there is adequate notice that a flammable refrigerant is being used within a particular piece of equipment or appliance. One mechanism to distinguish hoses and pipes is to add a colored plastic sleeve or cap to the service tube. The colored plastic sleeve or cap would have to be forcibly removed in order to access the service tube. This would signal to the technician that the refrigeration circuit that she/he was about to access contained a flammable refrigerant, even if all warning labels were somehow removed. This sleeve would be of the same red color (PMS #185) and could also be boldly marked with a graphic to indicate the refrigerant was flammable. This could be a cost-effective alternative to painting or dying the hose or pipe. EPA is taking comment on this mechanism of distinguishing the pipe and hose by adding a colored plastic sleeve or cap to the pipe or hose.

EPA is particularly concerned with ensuring adequate and proper notification for servicing and disposal of appliances containing flammable refrigerants. EPA believes the use of color-coded hoses, as well as the use of warning labels discussed below, would be reasonable and would be consistent with other general industry practices. This proposed approach is the same as that adopted in our previous rule on flammable refrigerants (December 20, 2011, at 76 FR 78832). EPA is interested in receiving information on how this requirement has been implemented for those end-uses that are already subject to the earlier rule, codified in Appendix R to Subpart G of 40 CFR Part 82.

E. Labeling

As a use condition, EPA is proposing to require labeling of household and retail refrigerators and freezers, vending machines, non-mechanical heat transfer equipment, very low temperature refrigeration equipment, and room air conditioners. EPA is proposing the warning labels on the equipment contain letters at least ¼ inch high. The label must be permanently affixed to the equipment. Warning label language requirements are found in Section III.A of this proposal, ''What listings is EPA proposing in this action?'' The warning label language is similar to or exactly the same as that required in UL standards: for household refrigerators

and freezers in UL 250 in section SA6.1, for vending machines in UL 541 in section SA6.1, for commercial refrigerators and freezers in UL 471 in section SB6.1, and for room AC units in UL 484 in section SA6.1.

EPA believes that it would be difficult to see warning labels with the minimum lettering height requirement of ⅛ inch in these UL standards. Therefore, as in the requirements in our previous hydrocarbon refrigerants rule (December 20, 2011, at 76 FR 78832), EPA is proposing the minimum height for lettering must be ¼ inch as opposed to ⅛ inch, which will make it easier for technicians, consumers, retail storeowners, and first responders to view the warning labels. We also understand that UL is considering revising its standards to be consistent with this requirement, which already applies to equipment using propane in commercial stand-alone refrigerators and freezers and equipment using isobutane or R–441A in household refrigerators, freezers, and combination refrigerator/freezers.

F. Other Options Not Included

EPA considered requiring separate servicing fittings for use with flammable refrigerants to avoid mixing flammable and non-flammable refrigerants. We previously considered this option and proposed this as a use condition in a separate rulemaking in the **Federal Register** at 75 FR 25799 on May 10, 2010. In the associated final rule at 76 FR 78848 on December 20, 2011, the Agency did not require separate servicing fittings but did include this option as a recommendation rather than a use condition. The types of equipment addressed in this rule are self-contained pieces of equipment with a hermetically sealed refrigerant circuit that is only rarely serviced. These are the same as or similar to the equipment addressed in the December 20, 2011, rule, and thus with regards to separate servicing fittings we are proposing to again list this as a recommendation rather than as a use condition. We have heard some concern about mixing of refrigerant during servicing of appliances, particularly for AC equipment that is not self-contained. However, this rule is proposing to address only equipment that is self-contained. Moreover, we do not have new information that would lead us to a different decision than in the December 20, 2011, final rule for hydrocarbon refrigerants in household and stand-alone commercial refrigerators and freezers.

We also considered requiring only one use condition for each refrigerant and end-use—to meet the appropriate standard from Underwriters Laboratories. We understand that UL may incorporate certain elements of this proposal, particularly the proposed charge limit and the type font height for labels, into the UL 250 standard for household refrigerators and freezers. If those provisions were the only changes incorporated in a revised version of Supplement A of the UL 250 standard, EPA could remove the use conditions for charge size and for labeling requirements, as they would already be incorporated by reference through the use condition to follow the UL 250 standard. However, at this time, those changes have not been incorporated into UL 250. Therefore, EPA is proposing those use conditions as well as compliance with other aspects of UL 250.

VI. How is EPA proposing to address venting, release, or disposal of the refrigerant substitutes proposed to be listed under section 608 of the Clean Air Act?

A. What are the statutory requirements concerning venting, release, or disposal of refrigerants and refrigerant substitutes under section 608 of the Clean Air Act?

Section 608 of the Act as amended, titled *National Recycling and Emission Reduction Program,* requires EPA to establish regulations governing the use and disposal of ODS used as refrigerants, such as certain CFCs and HCFCs, during the service, repair, or disposal of appliances and industrial process refrigeration (IPR), including AC and refrigeration equipment. EPA's authority to propose the actions in this NPRM is based in part on section 608 of the Clean Air Act. Section 608(c)(1) provides that, effective July 1, 1992, it is:

> unlawful for any person, in the course of maintaining, servicing, repairing, or disposing of an appliance or industrial process refrigeration, to knowingly vent or otherwise knowingly release or dispose of any class I or class II substance used as a refrigerant in such appliance (or industrial process refrigeration) in a manner which permits such substance to enter the environment.

Section 608(c)(1) further exempts from this self-effectuating prohibition ''*[d]e minimis* releases associated with good faith attempts to recapture and recycle or safely dispose'' of such a substance. EPA interprets releases to meet the criteria for exempted *de minimis* releases if they occur when the recycling and recovery requirements of regulations promulgated under sections 608 and 609 are followed. 40 CFR 82.154(a)(2).

Effective November 15, 1995, section 608(c)(2) of the Act extends the prohibition in section 608(c)(1) to knowingly venting or otherwise knowingly releasing or disposing of any refrigerant substitute for class I or class II substances by any person maintaining, servicing, repairing, or disposing of appliances or IPR. This prohibition applies to any substitute unless the Administrator determines that such venting, releasing, or disposing ''does not pose a threat to the environment.'' Thus, section 608(c) provides EPA authority to promulgate regulations to interpret, implement, and enforce this prohibition on venting, releasing, or disposing of class I or class II substances and their refrigerant substitutes, which we refer to as the ''venting prohibition'' in this NPRM.

B. What are EPA's regulations concerning venting, releasing or disposing of refrigerant substitutes?

Regulations promulgated under Section 608 of the Act, published on May 14, 1993 (58 FR 28660), established a recycling program for ozone-depleting refrigerants recovered during the servicing and maintenance of AC and refrigeration appliances. In the same 1993 rule, EPA also promulgated regulations implementing the section 608(c) prohibition on knowingly venting, releasing, or disposing of class I or class II controlled substances. These regulations were designed to substantially reduce the use and emissions of ozone-depleting refrigerants.

EPA issued a final rule on March 12, 2004, at 69 FR 11946 and a second rule on April 13, 2005, at 70 FR 19273 clarifying how the venting prohibition in section 608(c) applies to substitutes for CFC and HCFC refrigerants (e.g., hydrofluorocarbons (HFCs) and perfluorocarbons (PFCs) in part or whole) during the maintenance, service, repair, or disposal of appliances. These regulations are codified at 40 CFR Part 82, Subpart F. The regulation at 40 CFR 82.154(a) now states in part that:

> (1) ''Effective June 13, 2005, no person maintaining, servicing, repairing, or disposing of appliances may knowingly vent or otherwise release into the environment any refrigerant or substitute from such appliances, with the exception of the following substitutes in the following end-uses:
>
> i. Ammonia in commercial refrigeration, or in [IPR] or in absorption units;
>
> ii. Hydrocarbons in [IPR] (processing of hydrocarbons);
>
> iii. Chlorine in [IPR] (processing of chlorine and chlorine compounds);

iv. Carbon dioxide in any application;
v. Nitrogen in any application; or
vi. Water in any application.

(2) The knowing release of a refrigerant or non-exempt substitute subsequent to its recovery from an appliance shall be considered a violation of this prohibition. *De minimis* releases associated with good faith attempts to recycle or recover refrigerants or non-exempt substitutes are not subject to this prohibition. . . .''

As explained in EPA's earlier rulemaking concerning refrigerant substitutes, EPA has not promulgated regulations requiring certification of refrigerant recycling/recovery equipment intended for use with substitutes to date (70 FR 19275; April 13, 2005). However, as EPA noted, the lack of a current regulatory provision should not be considered as an exemption from the venting prohibition for substitutes that are not expressly exempted in Section 82.154(a). EPA has also noted that, in accordance with section 608(c) of the Act, the regulatory prohibition at Section 82.154(a) reflects the statutory references to *de minimis* releases of substitutes as they pertain to good faith attempts to recover and recycle or safely dispose of non-exempted substitutes (70 FR 19275; April 13, 2005).

C. What revision to the venting prohibition has EPA recently issued?

On May 23, 2014 at 79 FR 29682, EPA revised the venting prohibition for refrigerant substitutes.[21] Those changes exempt from that prohibition three hydrocarbon refrigerant substitutes listed as acceptable subject to use conditions in the specified end-uses under the SNAP program: isobutane (R–600a) and R–441A, which were listed as acceptable, subject to use conditions, as refrigerant substitutes in household refrigerators, freezers, and combination refrigerators and freezers, and propane (R–290), which was listed as acceptable, subject to use conditions, as a refrigerant substitute in retail food refrigerators and freezers (stand-alone units only). That final rule does not apply to blends of hydrocarbons with other refrigerants or containing any amount of any CFC, HCFC, HFC, or PFC.

EPA determined that for the purposes of CAA section 608(c)(2), the venting, release or disposal of such hydrocarbon refrigerant substitutes in the specified end-uses does not pose a threat to the environment, considering both the inherent characteristics of these substances and the limited quantities used in the relevant applications. EPA additionally concluded that other authorities, controls and practices that apply to such refrigerants help to mitigate environmental risk from the release of those three hydrocarbon refrigerant substitutes. For example, state and local air quality agencies may include VOC emissions reduction strategies in state implementation plans developed to meet and maintain the NAAQS that would apply to hydrocarbon refrigerants.

D. What is EPA's proposed determination regarding whether venting of hydrocarbons to be listed as acceptable subject to use conditions in the end-uses proposed in this NPRM poses a threat to the environment?

For purposes of section 608(c)(2) of the CAA, EPA considers two factors in determining whether or not venting, release, or disposal of a substitute refrigerant during the maintenance, servicing, repairing, or disposing of appliances poses a threat to the environment. See 69 FR 11948 (March 12, 2004). First, EPA determines whether venting, release, or disposal of the substitute refrigerant poses a threat to the environment because of the inherent characteristics of the refrigerant, such as global warming potential. Second, EPA determines whether and to what extent such venting, release, or disposal actually takes place during the maintenance, servicing, repairing, or disposing of appliances, and to what extent such venting, release, or disposal is controlled by other authorities, regulations, or practices. To the extent that such releases are adequately controlled by other authorities, EPA defers to those authorities.

1. Potential Environmental Impacts

EPA has evaluated the potential environmental impacts of releasing into the environment the hydrocarbon refrigerant substitutes that we are proposing to list under the SNAP program as acceptable subject to use conditions in the end-uses proposed—i.e., ethane in very low temperature refrigeration and non-mechanical heat transfer; isobutane in retail food refrigeration (stand-alone equipment only) and vending machines; propane in household refrigerators and freezers, vending machines and room AC units; and R–441A in retail food refrigeration (stand-alone equipment only), vending machines and room AC units. In particular, we assessed the potential impact of the release of additional hydrocarbons on local air quality and their ability to decompose in the atmosphere, their ODP and their GWPs, as well as potential impacts on ecosystems (see Section IV above, ''What criteria did EPA consider in determining whether to list the substitutes as acceptable and in determining appropriate use conditions and how does EPA consider those factors?''). As explained in that section, the ODP of these hydrocarbons is zero, the GWPs are less than 10, and effects on aquatic life from these hydrocarbons are expected to be small. As to potential effects on local air quality, based on the analysis and modeling results described above, EPA concludes that the four saturated hydrocarbon refrigerant substitutes proposed to be listed as acceptable subject to use conditions in specific end-uses—ethane, isobutane, propane, and R–441A—are expected to have little impact on local air quality. In addition, when examining all hydrocarbon substitute refrigerants in those uses for which UL currently has standards in place, for which the SNAP program has already listed the uses as acceptable subject to use conditions, or for which the SNAP program is reviewing a submission, including those in this rule, we found that even if all the refrigerant in appliances in end-uses addressed in this proposed rule were to be emitted, there would be a worst-case impact of less than 0.2% of the NAAQS for ground-level ozone in the Los Angeles area. In light of its evaluation of potential environmental impacts, EPA concludes that the four hydrocarbon refrigerant substitutes in the end-uses at issue in this proposal are not expected to pose a threat to the environment on the basis of the limited quantities used in the relevant end-uses and applications and on the basis of the inherent characteristics of these substances (ICF, 2014a).

2. Toxicity and Flammability

As discussed above in sections IV.B., ''Flammability and fire safety'' and IV.C., ''Toxicity,'' EPA's SNAP program evaluated the potential for fire risk from flammability and toxicity risks from exposure to the substitute refrigerants in this proposal. EPA is providing some of that information in this section as well.

Hydrocarbons, including ethane, propane, isobutane and the hydrocarbon blend R–441A, are classified as A3 refrigerants by ASHRAE Standard 34–2010, indicating that they have low toxicity and high flammability. Hydrocarbons considered in this proposal have lower flammability limits (LFLs) ranging from 1.8% to 3.0% (18,000 ppm to 30,000 ppm). To address flammability risks, EPA is issuing

[21] EPA is describing that final rule in this NPRM simply for ease of reference and as a reminder of EPA's most recent rule on this subject; EPA is not here changing any aspect of that final rule or reopening the opportunity for comments on that final rule.

recommendations for their safe use (see section VII, ''What recommendations does EPA have for safe use of the proposed flammable substitute refrigerants?'' below) and specified use conditions. The SNAP program's analysis suggests that the use conditions proposed in this rule mitigate flammability risks.

Like most refrigerants, hydrocarbons can displace oxygen at high concentrations and cause asphyxiation. Various industry and regulatory standards exist to address asphyxiation and toxicity risks. The SNAP program's analysis of asphyxiation and toxicity risks suggests that the use conditions proposed in this rule mitigate potential asphyxiation and toxicity risks. Furthermore, the Agency believes that the flammability risks and occupational exposures to hydrocarbons are adequately regulated by OSHA, building, and fire codes at a local and national level.

3. Authorities, Controls, and Practices

EPA believes that existing authorities, controls, and practices would help mitigate environmental risk from the release of these hydrocarbon refrigerants. Analyses performed for both this proposed rule and the SNAP rules issued in 1994 and 2011 (March 17, 1994, at 59 FR 13044 and December 20, 2011, at 76 FR 38832, respectively) indicate that existing regulatory requirements and industry practices designed to limit and control these substances adequately control the emission of the hydrocarbon refrigerants proposed to be listed in this action. As explained below, EPA concludes that the limits and controls under other authorities, regulations or practices adequately control the release of and exposure to the four hydrocarbon substitute refrigerants and mitigate risks from any possible release.

This conclusion is relevant to the second factor mentioned above in the overall determination of whether venting, release, or disposal of a substitute refrigerant poses a threat to the environment—that is, a consideration of the extent that such venting, release, or disposal is adequately controlled by other authorities, regulations, or practices. As such, this conclusion is another part of the determination that the venting, release, or disposal of these four hydrocarbon refrigerants would not pose a threat to the environment.

Industry service practices and OSHA standards and guidelines address hydrocarbon refrigeration equipment, include monitoring efforts, engineering controls, and operating procedures. OSHA requirements that apply during servicing include continuous monitoring of explosive gas concentrations and oxygen levels. In general, hydrocarbon emissions from refrigeration systems are likely to be significantly smaller than those emanating from the industrial process and storage systems, which are controlled for safety reasons. Further, the SNAP rule listing hydrocarbons as acceptable subject to use conditions for use in household and commercial stand-alone refrigerators and freezers (December 20, 2011, at 76 FR 78832), we noted that the amount of refrigerant from a refrigerant loop is limited (57 g for household refrigerators and freezers, and 150 g for commercial stand-alone refrigerators and freezers), indicating that hydrocarbon emissions from such uses are likely to be relatively small. Similar charge limits are proposed to apply to very low temperature refrigeration equipment, non-mechanical heat transfer equipment, and vending machines, with larger but still limited charges for room air conditioners (1000 g for hydrocarbon refrigerants).

Hydrocarbons that are also VOC may be regulated as VOC under sections of the Clean Air Act that address nonattainment, attainment and maintenance of the National Ambient Air Quality Standards for ground level ozone, including those sections addressing development of State Implementation Plans and those addressing permitting of VOC sources.

The release and/or disposal of many refrigerant substitutes, including hydrocarbons, are controlled by other authorities including those established by OSHA and NIOSH guidelines, various standards, and state and local building codes. To the extent that release during maintaining, repairing, servicing or disposing of appliances is controlled by regulations and standards of other authorities, EPA believes these practices and controls for the use of hydrocarbons are sufficiently protective. These practices and controls could help mitigate the risk to the environment that may be posed by the venting, release or disposal of these four hydrocarbon refrigerants during the maintaining, servicing, repairing, or disposing of appliances. This conclusion addresses the second factor in the analysis described above and is thus part of the determination that the venting, release, or disposal of these hydrocarbon refrigerant substitutes does not pose a threat to the environment.

4. Conclusion

EPA has reviewed the potential environmental impacts of four hydrocarbon refrigerant substitutes in the end-uses that we are proposing to list subject to use conditions under SNAP, as well as the authorities, controls and practices in place for those hydrocarbon refrigerant substitutes. Specifically, EPA concludes that these four hydrocarbon refrigerant substitutes in the proposed end-uses and subject to the proposed use conditions are not expected to pose a threat to the environment based on the inherent characteristics of these substances and the limited quantities used in the relevant applications. EPA additionally concludes that existing authorities, controls, and practices help mitigate environmental risk from the release of those four hydrocarbons in the proposed end-uses and subject to the proposed use conditions. In light of these conclusions and those described or identified above in this section, we are proposing to determine, in accordance with 608(c)(2), that based on current evidence and risk analyses, the venting, release or disposal of these four hydrocarbon refrigerant substitutes in the end-uses proposed does not pose a threat to the environment. Furthermore, EPA is proposing to exempt from the venting prohibition at 40 CFR 82.154(a)(1) these additional uses for which hydrocarbons are being proposed to be found acceptable subject to use conditions under the SNAP program.

EPA seeks information or data on whether there currently is an industry standard for recovery units for flammable refrigerants and whether there are commercially available recovery units that are specifically designed to be compatible with ethane, isobutane, propane, and R–441A. At this time, EPA is unaware of any recovery units that are designed specifically for recovering hydrocarbons and which are readily available in the U.S. Further, we are not aware of relevant U.S. standards for such recovery units. However, to the extent that these hydrocarbons are recovered rather than vented as would be allowed in the specified end-uses if this proposal became final, EPA recommends the use of recovery equipment designed for flammable refrigerants, when such equipment and relevant U.S. standards for it become available, in accordance with applicable safe handling practices.

E. What is EPA proposing regarding venting, release, or disposal of refrigerant substitutes, other than hydrocarbons, included in our proposed decision?

Today's proposed rulemaking would regulate the use of HFC–32 in room AC units. All HFCs are currently subject to the venting prohibition. EPA is not proposing to extend the exemption to HFC–32 or any refrigerant blends that contain HFC–32 or any other HFC. Further, the exemption to the venting prohibition proposed in this NPRM does not extend to blends of hydrocarbons and other types of compounds, e.g., blends of HFCs and hydrocarbons. Such refrigerant substitutes would still be subject to the statutory and regulatory venting prohibition.

VII. What recommendations does EPA have for safe use of the proposed flammable substitute refrigerants?

EPA recommends that only technicians specifically trained in handling flammable refrigerant substitutes service or dispose of refrigeration and AC equipment containing these substances. Technicians should know how to minimize the risk of fire and the procedures for using flammable refrigerant substitutes safely. Releases of large quantities of refrigerant substitutes during servicing and manufacturing, especially in enclosed, poorly ventilated spaces or in areas where large amounts of refrigerant are stored, could cause an explosion if an ignition source exists nearby. For these reasons, it is important that only properly trained technicians handle flammable refrigerant substitutes when maintaining, servicing, repairing, or disposing of household and retail food refrigerators and freezers, very low temperature freezers, non-mechanical heat transfer equipment (e.g., thermosiphons), and room air conditioners. In addition, EPA recommends that if hydrocarbon refrigerant substitutes were vented, released, or disposed of (rather than recovered), as would be allowed in the specified end-uses if this proposal became final, the release should be in a well-ventilated area, such as outside of a building.

We are aware that at least one organization, Refrigeration Service Engineers Society (RSES), has developed a technician training program in collaboration with refrigeration equipment manufacturers and users that addresses safe use of flammable refrigerant substitutes. In addition, EPA has reviewed several training programs provided as part of SNAP submissions from persons interested in flammable refrigerant substitutes. EPA intends to update the CAA Section 608 technician certification test bank provided to approved organizations that administer the certification exams in accordance with 40 CFR 82.161 to specifically include questions concerning flammable refrigerant substitutes.

EPA considered proposing a use condition requiring training in handling flammable refrigerant substitutes for technicians who service or dispose of refrigeration and AC equipment containing these substitutes. However, we do not have sufficient information on the core elements that should be part of such a training program to ensure that a training requirement would improve safety. Some examples of potential core elements that EPA might consider include:

- EPA's relevant use conditions for flammable refrigerants;
- relevant OSHA requirements for flammable gases; relevant industry standards (e.g., UL, ASHRAE, NFPA);
- MSDS information, including first aid and physical and chemical characteristics of flammable refrigerants; and
- requirements and procedures for safe storage and handling of flammable refrigerants.

EPA requests comment on whether we should establish a use condition requiring training in handling flammable refrigerant substitutes for technicians servicing or disposing of equipment containing such substitutes, and if so, what should be the mandatory elements of such training.

VIII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

Under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this action is a ''significant regulatory action.'' It raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under EO 12866 and 13563 (76 FR 3821, January 21, 2011) and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. This proposed rule is an Agency determination. It contains no new requirements for reporting or recordkeeping. The Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations in Subpart G of 40 CFR Part 82 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. and has assigned OMB control number 2060–0226. This Information Collection Request (ICR) included five types of respondent reporting and recordkeeping activities pursuant to SNAP regulations: Submission of a SNAP petition, filing a SNAP/TSCA Addendum, notification for test marketing activity, recordkeeping for substitutes acceptable subject to use restrictions, and recordkeeping for small volume uses. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.C.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of this rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the rule on small entities.'' 5 U.S.C. 603 and 604.

Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. The use conditions of this proposed rule, if finalized, would apply to manufacturers of household and commercial refrigerators and freezers, vending machines, non-mechanical heat transfer equipment, very low temperature refrigeration equipment for laboratories and room air conditioners that choose to use these refrigerants. Today's action, if finalized, would allow equipment manufacturers the additional options of using ethane, HFC–32, isobutane, propane, and R–441A in the specified end-uses but does not mandate such use. Because refrigeration and AC equipment for these refrigerants are not manufactured yet in the U.S. for the proposed end-uses (with the exception of limited test-marketing), no change in business practice would be required to meet the use conditions, resulting in no adverse impact compared to the absence of this rule. Proposed provisions that would allow venting of hydrocarbon refrigerants in the uses addressed by this rule would reduce regulatory burden. Thus, the rule would not impose any new costs on small entities if finalized as proposed. EPA continues to be interested in the potential impacts of the proposed rule on small entities and welcomes comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or tribal governments or the private sector. This action imposes no enforceable duty on any State, local, or tribal governments or the private sector. The enforceable requirements of this proposed rule related to integrating risk mitigation devices, markings, and procedures for maintaining safety of refrigeration and AC equipment using flammable refrigerants affect only a small number of manufacturers of refrigeration and AC equipment and their technicians. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA. This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This regulation applies equipment manufacturers and not to governmental entities. Today's action, if finalized, would allow equipment manufacturers the additional options of using ethane, HFC–32, isobutane, propane, and R–441A in the specified end-uses. Because refrigeration and AC equipment for these refrigerants are not manufactured yet in the U.S. for the proposed end-uses, no change in business practice would be required to meet the use conditions. This proposed rule does not mandate a switch to these substitutes; consequently, there is no direct economic impact on entities from this rulemaking.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This regulation applies directly to facilities that use these substances and not to governmental entities. Thus, Executive Order 13132 does not apply to this action. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comments on this proposed action from State and local officials.

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

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. EPA specifically solicits additional comment on this proposed action from tribal officials.

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

This action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in E.O. 12866, and because the Agency does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This proposed rule provides both regulatory restrictions and recommended guidelines based upon risk screens conducted in order to reduce risk of fire and explosion. This proposed rule, if finalized, would provide refrigerant substitutes that have no ODP and lower GWP than other substitutes currently listed as acceptable. The reduction in ODS and GHG emissions would assist in restoring the stratospheric ozone layer and provide climate benefits. The public is invited to submit comments or identify peer-reviewed studies and data that assess effects of early life exposure to the refrigerant substitutes addressed in this action.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not a ''significant energy action'' as defined in Executive Order 13211, (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Preliminary information indicates that these new systems may be more energy efficient than currently available systems in some climates.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This proposed rule involves technical standards. EPA proposes to use current editions of the Underwriters Laboratories (UL) standards 250, 471, 541 and 484, which include requirements for safety and reliability for flammable refrigerants. This proposed rule regulates the safety and deployment of new substitutes for household and commercial refrigerators and freezers, vending machines, non-mechanical heat transfer equipment, very low temperature refrigeration equipment, and room air conditioners.

EPA welcomes comment on this aspect of the proposed rulemaking and, specifically invites the public to identify potentially applicable voluntary consensus standards and to explain why

such standards should be used in this regulation.

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

Executive Order (E.O.) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of human health and environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. This proposed rule, if finalized, would provide refrigerant substitutes that have no ODP and lower GWP than other substitutes currently listed as acceptable. The reduction in ODS and GHG emissions would assist in restoring the stratospheric ozone layer and provide climate benefits.

IX. References

This preamble references the following documents, which are also in the Air Docket at the address listed in Section I.B.1. Unless specified otherwise, all documents are available electronically through the Federal Docket Management System, Docket # EPA–HQ–OAR–2013–0748.

Air-Conditioning, Heating, and Refrigeration Institute (AHRI), 2012. AHRI Guideline N–2012: Assignment of Refrigerant Container Colors. 2012.

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A.S. Trust & Holdings, 2012. Significant New Alternatives Policy Program Submission to the United States Environmental Protection Agency for R–441A in retail food refrigeration.

A/S Vestfrost, 2012. Significant New Alternatives Policy Program Submission to the United States Environmental Protection Agency for isobutane in retail food refrigeration.

Climate Action Plan, 2013. The President's Climate Action Plan. Executive Office of the President. June, 2013. Available online at *www.whitehouse.gov/sites/default/files/image/president27sclimateactionplan.pdf.*

Chinese Household Electrical Appliance Association (CHEAA), 2013. Significant New Alternatives Policy Program Submission to the United States Environmental Protection Agency for Propane (R–290) in residential and light commercial air conditioning and dehumidifiers.

Daikin, 2011. Significant New Alternatives Policy Program Submission to the United States Environmental Protection Agency for HFC–32 in residential and light commercial air conditioning.

EPA, 2014. Derivation of Charge Limits for Room Air Conditioners. Staff memo to Air Docket. 2014.

ICF, 2014a. Assessment of the Potential Impact of Hydrocarbon Refrigerants on Ground-Level Ozone Concentrations.

ICF, 2014b. Risk Screen on Substitutes for CFC–12, HCFC–22 and R–502 in Retail Food Refrigeration; Substitute: Isobutane (R–600a)

ICF, 2014c. Risk Screen on Substitutes for CFC–12, HCFC–22 and R–502 in Retail Food Refrigeration; Substitute: R–441A.

ICF, 2014d. Risk Screen on Substitute for CFC–12, CFC–13, R–13B1, and R–503 in Very Low Temperature Refrigeration and Non-Mechanical Heat Transfer; Substitute: Ethane (R–170).

ICF, 2014e. Risk Screen on Substitutes for CFC–12 and R–502 in Vending Machines; Substitute: R–441A.

ICF, 2014f. Risk Screen on Substitutes for CFC–12 and R–502 in Vending Machines; Substitute: Isobutane (R–600a).

ICF, 2014g. Risk Screen on Substitutes for CFC–12 and R–502 in Vending Machines; Substitute: Propane (R–290).

ICF, 2014h. Risk Screen on Substitutes for CFC–12 and HCFC–22 in Household Refrigerators and Household Freezers.; Substitute: Propane (R–290).

ICF, 2014i. Risk Screen on Substitutes for HCFC–22 in Residential and Light Commercial Air Conditioning and Heat Pumps; Substitute: Propane (R–290).

ICF, 2014j. Risk Screen on Substitutes for HCFC–22 in Residential and Light Commercial Air Conditioning and Heat Pumps; Substitute: HFC–32 (Difluoromethane).

ICF, 2014k. Risk Screen on Substitutes for HCFC–22 in Residential and Light Commercial Air Conditioning and Heat Pumps; Substitute: R–441A.

IPCC, 2007. *Climate Change 2007: The Physical Science Basis. Contribution of Working Group I to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change* [Solomon, S., D. Qin, M. Manning, Z. Chen, M. Marquis, K.B. Averyt, M.Tignor and H.L. Miller (eds.)]. Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA. This document is accessible at *www.ipcc.ch/publications_and_data/ar4/wg1/en/contents.html.*

Montzka, S.A., 2012. HFCs in the Atmosphere: Concentrations, Emissions and Impacts, ASHRAE/NIST Conference 2012.

NOAA, 2013. NOAA emissions data on HFCs. Available online at *ftp://ftp.cmdl.noaa.gov/hats/hfcs/.*

ORNL, 1997. J. Sand, S. Fischer, and V. Baxter, ''Energy and Global Warming Impacts of HFC Refrigerants and Emerging Technologies,'' 1997, Oak Ridge National Lab.

Sheldon, 1989. Sheldon, L.S., et al. 1989. ''An Investigation of Infiltration and Indoor Air Quality.'' New York State Energy Research & Development Authority, Report 90–11. As cited in ICF, 2014h, Risk screen for propane in household refrigerators and freezers.

Underwriters Laboratories (UL) 250. UL 250: Household Refrigerators and Freezers. 10th edition. Supplement SA: Requirements for Refrigerators and Freezers Employing a Flammable Refrigerant in the Refrigerating System. August 2000.

UL 471. Commercial Refrigerators and Freezers. 10th edition. Supplement SB: Requirements for Refrigerators and Freezers Employing a Flammable Refrigerant in the Refrigerating System. November 2010.

UL 484. Room Air Conditioners. 8th edition. Supplement SA: Requirements for Refrigerated Venders Employing a Flammable Refrigerant in the Refrigerating System. August 2012.

UL 541. Refrigerated Vending Machines. 7th edition. Supplement SA: Requirements for Room Air Conditioners Employing a Flammable Refrigerant in the Refrigerating System. December 2011.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Recycling, Reporting and recordkeeping requirements, Stratospheric ozone layer.

Dated: June 26, 2014.

Gina McCarthy,

Administrator.

For the reasons stated in the preamble, 40 CFR part 82 is proposed to be amended as follows:

PART 82—[AMENDED]

■ 1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

■ 2. In § 82.154, add paragraph (a)(1)(iii) to read as follows:

§ 82.154 Prohibitions.

(a) * * *

(1) * * *

(iii) Effective [DATE 60 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], isobutane (R–600a) and R–441A as substitutes in retail food refrigerators and freezers (stand-alone units only); propane (R–290) as a substitute in household refrigerators, freezers, and combination refrigerators and freezers; ethane (R–170) as a substitute in very low temperature refrigeration equipment and equipment for non-mechanical heat transfer; R–441A, propane, and isobutane as substitutes in vending machines; and propane and R–441A in self-contained room air conditioners for residential and light commercial air conditioning and heat pumps.

* * * * *

Appendix R to Subpart G of Part 82—[Amended]

■ 3. Revise Appendix R to subpart G of part 82 to read as follows:

Appendix R to Subpart G of Part 82—Substitutes Subject to Use Restrictions Listed in the December 20, 2011, Final Rule, Effective February 21, 2012, and in the [DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER] Final Rule, Effective [DATE 60 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER]

SUBSTITUTES THAT ARE ACCEPTABLE SUBJECT TO USE CONDITIONS

End-use	Substitute	Decision	Use conditions	Further information
Household refrigerators, freezers, and combination refrigerators and freezers (New equipment only).	Isobutane (R–600a). Propane (R–290) R–441A	Acceptable subject to use conditions.	These refrigerants may be used only in new equipment designed specifically and clearly identified for the refrigerant (i.e., none of these substitutes may be used as a conversion or ''retrofit'' refrigerant for existing equipment designed for a different refrigerant). These refrigerants may be used only in a refrigerator or freezer, or combination refrigerator and freezer, that meets all requirements listed in Supplement SA to the 10th edition of the Underwriters Laboratories (UL) Standard for Household Refrigerators and Freezers, UL 250, dated August 25, 2000. In cases where the final rule includes requirements more stringent than those of the 10th edition of UL 250, the appliance must meet the requirements of the final rule in place of the requirements in the UL Standard. The quantity of the substitute refrigerant (i.e., ''charge size'') must not exceed 57 grams (2.01 ounces) in any refrigerator, freezer, or combination refrigerator and freezer for each circuit.	Applicable OSHA requirements at 29 CFR part 1910 must be followed, including those at 29 CFR 1910.106 (flammable and combustible liquids), 1910.110 (storage and handling of liquefied petroleum gases), 1910.157 (portable fire extinguishers), and 1910.1000 (toxic and hazardous substances). Proper ventilation should be maintained at all times during the manufacture and storage of equipment containing hydrocarbon refrigerants through adherence to good manufacturing practices as per 29 CFR 1910.106. If refrigerant levels in the air surrounding the equipment rise above one-fourth of the lower flammability limit, the space should be evacuated and reentry should occur only after the space has been properly ventilated. Technicians and equipment manufacturers should wear appropriate personal protective equipment, including chemical goggles and protective gloves, when handling these refrigerants. Special care should be taken to avoid contact with the skin since these refrigerants, like many refrigerants, can cause freeze burns on the skin. A class B dry powder type fire extinguisher should be kept nearby. Technicians should only use spark-proof tools when working on refrigerators and freezers with these refrigerants. Any recovery equipment used should be designed for flammable refrigerants. Any refrigerant releases should be in a well-ventilated area, such as outside of a building. Only technicians specifically trained in handling flammable refrigerants should service refrigerators and freezers containing these refrigerants. Technicians should gain an understanding of minimizing the risk of fire and the steps to use flammable refrigerants safely.

SUBSTITUTES THAT ARE ACCEPTABLE SUBJECT TO USE CONDITIONS—Continued

End-use	Substitute	Decision	Use conditions	Further information
Household refrigerators, freezers, and combination refrigerators and freezers (New equipment only).	Isobutane (R–600a). Propane (R–290) R–441A	Acceptable subject to use conditions.	As provided in clauses SA6.1.1 and SA6.1.2 of UL Standard 250, 10th edition, the following markings must be attached at the locations provided and must be permanent: (a) On or near any evaporators that can be contacted by the consumer: "DANGER—Risk of Fire or Explosion. Flammable Refrigerant Used. Do Not Use Mechanical Devices To Defrost Refrigerator. Do Not Puncture Refrigerant Tubing.". (b) Near the machine compartment: "DANGER—Risk of Fire or Explosion. Flammable Refrigerant Used. To Be Repaired Only By Trained Service Personnel. Do Not Puncture Refrigerant Tubing.". (c) Near the machine compartment: "CAUTION—Risk of Fire or Explosion. Flammable Refrigerant Used. Consult Repair Manual/Owner's Guide Before Attempting To Service This Product. All Safety Precautions Must Be Followed.". (d) On the exterior of the refrigerator: "CAUTION—Risk of Fire or Explosion. Dispose of Properly In Accordance With Federal Or Local Regulations. Flammable Refrigerant Used." (e) Near any and all exposed refrigerant tubing: "CAUTION—Risk of Fire or Explosion Due To Puncture Of Refrigerant Tubing; Follow Handling Instructions Carefully. Flammable Refrigerant Used." All of these markings must be in letters no less than 6.4 mm (¼ inch) high. The refrigerator, freezer, or combination refrigerator and freezer must have red, Pantone® Matching System (PMS) #185 marked pipes, hoses, or other devices through which the refrigerant is serviced (typically known as the service port) to indicate the use of a flammable refrigerant. This color must be present at all service ports and where service puncturing or otherwise creating an opening from the refrigerant circuit to the atmosphere might be expected (e.g., process tubes). The color mark must extend at least 2.5 centimeters (1 inch) from the compressor and must be replaced if removed.	Room occupants should evacuate the space immediately following the accidental release of this refrigerant. If a service port is added then household refrigerators, freezers, and combination refrigerator and freezers using these refrigerants should have service aperture fittings that differ from fittings used in equipment or containers using non-flammable refrigerant. "Differ" means that either the diameter differs by at least 1/16 inch or the thread direction is reversed (i.e., right-handed vs. left-handed). These different fittings should be permanently affixed to the unit at the point of service and maintained until the end-of-life of the unit, and should not be accessed with an adaptor.
Retail food refrigerators and freezers (stand-alone units only) (New equipment only).	Isobutane (R–600a). Propane (R–290) R–441A	Acceptable subject to use conditions.	As provided in clauses SB6.1.2 to SB6.1.5 of UL Standard 471, 10th edition, the following markings must be attached at the locations provided and must be permanent: (a) Attach on or near any evaporators that can be contacted by the consumer: "DANGER—Risk of Fire or Explosion. Flammable Refrigerant Used. Do Not Use Mechanical Devices To Defrost Refrigerator. Do Not Puncture Refrigerant Tubing.". (b) Attach near the machine compartment: "DANGER—Risk of Fire or Explosion. Flammable Refrigerant Used. To Be Repaired Only By Trained Service Personnel. Do Not Puncture Refrigerant Tubing.".	Room occupants should evacuate the space immediately following the accidental release of this refrigerant. If a service port is added then retail food refrigerators and freezers using these refrigerants should have service aperture fittings that differ from fittings used in equipment or containers using non-flammable refrigerant. "Differ" means that either the diameter differs by at least 1/16 inch or the thread direction is reversed (i.e., right-handed vs. left-handed). These different fittings should be permanently affixed to the unit at the point of service and maintained until the end-of-life of the unit, and should not be accessed with an adaptor.

SUBSTITUTES THAT ARE ACCEPTABLE SUBJECT TO USE CONDITIONS—Continued

End-use	Substitute	Decision	Use conditions	Further information
			(c) Attach near the machine compartment: ''CAUTION—Risk of Fire or Explosion. Flammable Refrigerant Used. Consult Repair Manual/Owner's Guide Before Attempting To Service This Product. All Safety Precautions Must be Followed.'' (d) Attach on the exterior of the refrigerator: ''CAUTION—Risk of Fire or Explosion. Dispose of Properly In Accordance With Federal Or Local Regulations. Flammable Refrigerant Used.'' (e) Attach near any and all exposed refrigerant tubing: ''CAUTION—Risk of Fire or Explosion Due To Puncture Of Refrigerant Tubing; Follow Handling Instructions Carefully. Flammable Refrigerant Used.'' All of these markings must be in letters no less than 6.4 mm (¼ inch) high. The refrigerator or freezer must have red, Pantone® Matching System (PMS) #185 marked pipes, hoses, and other devices through which the refrigerant is serviced, typically known as the service port, to indicate the use of a flammable refrigerant. This color must be present at all service ports and where service puncturing or otherwise creating an opening from the refrigerant circuit to the atmosphere might be expected (e.g., process tubes). The color mark must extend at least 2.5 centimeters (1 inch) from the compressor and must be replaced if removed.	
Very low temperature refrigeration Non-mechanical heat transfer (New equipment only).	Ethane (R–170).	Acceptable subject to use conditions.	This refrigerant may be used only in new equipment specifically designed and clearly identified for the refrigerant (i.e., the substitute may not be used as a conversion or ''retrofit'' refrigerant for existing equipment designed for other refrigerants). These substitutes may only be used in equipment that meets all requirements in Supplement SB to the 10th edition of the Underwriters Laboratories (UL) Standard for Commercial Refrigerators and Freezers, UL 471, dated November 24, 2010. In cases where the final rule includes requirements more stringent than those of the 10th edition of UL 471, the appliance must meet the requirements of the final rule in place of the requirements in the UL Standard.. The charge size for the retail food refrigerator or freezer must not exceed 150 grams (5.29 ounces) in each circuit.	Applicable OSHA requirements at 29 CFR part 1910 must be followed, including those at 29 CFR 1910.94 (ventilation) and 1910.106 (flammable and combustible liquids), 1910.110 (storage and handling of liquefied petroleum gases), and 1910.1000 (toxic and hazardous substances). Proper ventilation should be maintained at all times during the manufacture and storage of equipment containing hydrocarbon refrigerants through adherence to good manufacturing practices as per 29 CFR 1910.106. If refrigerant levels in the air surrounding the equipment rise above one-fourth of the lower flammability limit, the space should be evacuated and reentry should occur only after the space has been properly ventilated. Technicians and equipment manufacturers should wear appropriate personal protective equipment, including chemical goggles and protective gloves, when handling ethane. Special care should be taken to avoid contact with the skin since ethane, like many refrigerants, can cause freeze burns on the skin. A class B dry powder type fire extinguisher should be kept nearby. Technicians should only use spark-proof tools when working on refrigerators and freezers with flammable refrigerants. Any recovery equipment used should be designed for flammable refrigerants. Any refrigerant releases should be in a well-ventilated area, such as outside of a building.

SUBSTITUTES THAT ARE ACCEPTABLE SUBJECT TO USE CONDITIONS—Continued

End-use	Substitute	Decision	Use conditions	Further information
				Only technicians specifically trained in handling flammable refrigerants should service refrigerators and freezers containing these refrigerants. Technicians should gain an understanding of minimizing the risk of fire and the steps to use flammable refrigerants safely.
Very low temperature refrigeration Non-mechanical heat transfer (New equipment only).	Ethane (R–170).	Acceptable subject to use conditions.	As provided in clauses SB6.1.2 to SB6.1.5 of UL Standard 471, 10th edition, the following markings must be attached at the locations provided and must be permanent: (a) Attach on or near any evaporators that can be contacted by the consumer: ''DANGER—Risk of Fire or Explosion. Flammable Refrigerant Used. Do Not Use Mechanical Devices To Defrost Refrigerator. Do Not Puncture Refrigerant Tubing.''. (b) Attach near the machine compartment: ''DANGER—Risk of Fire or Explosion. Flammable Refrigerant Used. To Be Repaired Only By Trained Service Personnel. Do Not Puncture Refrigerant Tubing.'' (c) Attach near the machine compartment: ''CAUTION—Risk of Fire or Explosion. Flammable Refrigerant Used. Consult Repair Manual/Owner's Guide Before Attempting To Service This Product. All Safety Precautions Must be Followed.'' (d) Attach on the exterior of the refrigerator: ''CAUTION—Risk of Fire or Explosion. Dispose of Properly In Accordance With Federal or Local Regulations. Flammable Refrigerant Used.''. (e) Attach near any and all exposed refrigerant tubing: ''CAUTION—Risk of Fire or Explosion Due To Puncture Of Refrigerant Tubing; Follow Handling Instructions Carefully. Flammable Refrigerant Used.'' All of these markings must be in letters no less than 6.4 mm (¼ inch) high. The refrigeration equipment must have red, Pantone® Matching System (PMS) #185 marked pipes, hoses, and other devices through which the refrigerant is serviced, typically known as the service port, to indicate the use of a flammable refrigerant. This color must be present at all service ports and where service puncturing or otherwise creating an opening from the refrigerant circuit to the atmosphere might be expected (e.g., process tubes). The color mark must extend at least 2.5 centimeters (1 inch) from the compressor and must be replaced if removed.	Room occupants should evacuate the space immediately following the accidental release of this refrigerant. If a service port is added then refrigeration equipment using this refrigerant should have service aperture fittings that differ from fittings used in equipment or containers using non-flammable refrigerant. ''Differ'' means that either the diameter differs by at least 1/16 inch or the thread direction is reversed (i.e., right-handed vs. left-handed). These different fittings should be permanently affixed to the unit at the point of service and maintained until the end-of-life of the unit, and should not be accessed with an adaptor. Example of non-mechanical heat transfer using this refrigerant would be use in a secondary loop of a thermosiphon.
Vending Machines (New equipment only).	Isobutane (R–600a). Propane (R–290) R–441A	Acceptable subject to use conditions.	These refrigerants may be used only in new equipment specifically designed and clearly identified for the refrigerants (i.e., none of these substitutes may be used as a conversion or ''retrofit'' refrigerant for existing equipment designed for other refrigerants).	Applicable OSHA requirements at 29 CFR part 1910 must be followed, including those at 29 CFR 1910.94 (ventilation) and 1910.106 (flammable and combustible liquids), 1910.110 (storage and handling of liquefied petroleum gases), and 1910.1000 (toxic and hazardous substances).

SUBSTITUTES THAT ARE ACCEPTABLE SUBJECT TO USE CONDITIONS—Continued

End-use	Substitute	Decision	Use conditions	Further information
			Where it is possible to easily detach and replace the old refrigeration circuit from the outer casing of the equipment. with a new one containing a new evaporator, condenser and refrigerant tubing within the old casing, this is considered ''new'' equipment and not a retrofit of the old, existing equipment. These substitutes may only be used in equipment that meets all requirements in Supplement SA to the 7th edition of the Underwriters Laboratories (UL) Standard for Refrigerated Vending Machines, UL 541, dated December, 2011. In cases where the final rule includes requirements more stringent than those of the 7th edition of UL 541, the appliance must meet the requirements of the final rule in place of the requirements in the UL Standard. The charge size for the refrigeration equipment must not exceed 150 grams (5.29 ounces) in each circuit. .	Proper ventilation should be maintained at all times during the manufacture and storage of equipment containing hydrocarbon refrigerants through adherence to good manufacturing practices as per 29 CFR 1910.106. If refrigerant levels in the air surrounding the equipment rise above one-fourth of the lower flammability limit, the space should be evacuated and reentry should occur only after the space has been properly ventilated. Technicians and equipment manufacturers should wear appropriate personal protective equipment, including chemical goggles and protective gloves, when handling propane. Special care should be taken to avoid contact with the skin since ethane, like many refrigerants, can cause freeze burns on the skin. Technicians should only use spark-proof tools when working on refrigeration equipment with flammable refrigerants. Any recovery equipment used should be designed for flammable refrigerants. Any refrigerant releases should be in a well-ventilated area, such as outside of a building. Only technicians specifically trained in handling flammable refrigerants should service refrigeration equipment containing this refrigerant. Technicians should gain an understanding of minimizing the risk of fire and the steps to use flammable refrigerants safely.
Vending Machines (New equipment only).	Isobutane (R–600a). Propane (R–290) R–441A	Acceptable subject to use conditions.	As provided in clauses SA6.1.2 to SA6.1.5 of UL Standard 541, 7th edition, the following markings must be attached at the locations provided and must be permanent: (a) Attach on or near any evaporators that can be contacted by the consumer: ''DANGER—Risk of Fire or Explosion. Flammable Refrigerant Used. Do Not Use Mechanical Devices To Defrost Refrigerator. Do Not Puncture Refrigerant Tubing.''. (b) Attach near the machine compartment: ''DANGER—Risk of Fire or Explosion. Flammable Refrigerant Used. To Be Repaired Only By Trained Service Personnel. Do Not Puncture Refrigerant Tubing.''. (c) Attach near the machine compartment: ''CAUTION—Risk of Fire or Explosion. Flammable Refrigerant Used. Consult Repair Manual/Owner's Guide Before Attempting To Service This Product. All Safety Precautions Must be Followed.''.	Room occupants should evacuate the space immediately following the accidental release of this refrigerant. If a service port is added then refrigeration equipment using this refrigerant should have service aperture fittings that differ from fittings used in equipment or containers using non-flammable refrigerant. ''Differ'' means that either the diameter differs by at least 1/16 inch or the thread direction is reversed (i.e., right-handed vs. left-handed). These different fittings should be permanently affixed to the unit at the point of service and maintained until the end-of-life of the unit, and should not be accessed with an adaptor.

SUBSTITUTES THAT ARE ACCEPTABLE SUBJECT TO USE CONDITIONS—Continued

End-use	Substitute	Decision	Use conditions	Further information
			(d) Attach on the exterior of the refrigerator: "CAUTION—Risk of Fire or Explosion. Dispose of Properly In Accordance With Federal or Local Regulations. Flammable Refrigerant Used." (e) Attach near any and all exposed refrigerant tubing: "CAUTION—Risk of Fire or Explosion Due To Puncture Of Refrigerant Tubing; Follow Handling Instructions Carefully. Flammable Refrigerant Used." All of these markings must be in letters no less than 6.4 mm (¼ inch) high. The refrigeration equipment must have red, Pantone® Matching System (PMS) #185 marked pipes, hoses, and other devices through which the refrigerant is serviced, typically known as the service port, to indicate the use of a flammable refrigerant. This color must be present at all service ports and where service puncturing or otherwise creating an opening from the refrigerant circuit to the atmosphere might be expected (e.g., process tubes). The color mark must extend at least 2.5 centimeters (1 inch) from the compressor and must be replaced if removed.	
Residential and light-commercial air conditioning and heat pumps—self-contained room air conditioners only (New equipment only).	HFC–32 ..... Propane (R–290) R–441A	Acceptable subject to use conditions.	These refrigerants may be used only in new equipment specifically designed and clearly identified for the refrigerants (i.e., none of these substitutes may be used as a conversion or "retrofit" refrigerant for existing equipment designed for other refrigerants). These substitutes may only be used in equipment that meets all requirements in Supplement SA and Appendixes B through F of the 8th edition of the Underwriters Laboratories (UL) Standard for Room Air Conditioners, UL 484, dated August 3, 2012. In cases where the final rule includes requirements more stringent than those of the 8th edition of UL 484, the appliance must meet the requirements of the final rule in place of the requirements in the UL Standard. The charge size for the entire air conditioner must not exceed the maximum refrigerant mass determined according to Appendix F of UL 484, 8th edition for the room size where the air conditioner is used. The charge size for these three refrigerants must in no case exceed 7960 g (280.8 oz or 17.55 lb) of HFC–32; 1000 g (35.3 oz or 2.21 lbs) of propane; or 1000 g (35.3 oz or 2.21 lb) of R–441A. The manufacturer must design a charge size for the entire air conditioner that does not exceed the amount specified for the unit's cooling capacity, as specified in Table A, B, C, or D of this appendix.	Applicable OSHA requirements at 29 CFR part 1910 must be followed, including those at 29 CFR 1910.94 (ventilation) and 1910.106 (flammable and combustible liquids), 1910.110 (storage and handling of liquefied petroleum gases), and 1910.1000 (toxic and hazardous substances). Proper ventilation should be maintained at all times during the manufacture and storage of equipment containing hydrocarbon refrigerants through adherence to good manufacturing practices as per 29 CFR 1910.106. If refrigerant levels in the air surrounding the equipment rise above one-fourth of the lower flammability limit, the space should be evacuated and reentry should occur only after the space has been properly ventilated. Technicians and equipment manufacturers should wear appropriate personal protective equipment, including chemical goggles and protective gloves, when handling propane. Special care should be taken to avoid contact with the skin since propane, like many refrigerants, can cause freeze burns on the skin. A class B dry powder type fire extinguisher should be kept nearby. Technicians should only use spark-proof tools when working on air conditioning equipment with flammable refrigerants. Any recovery equipment used should be designed for flammable refrigerants. Any refrigerant releases should be in a well-ventilated area, such as outside of a building. Only technicians specifically trained in handling flammable refrigerants should service refrigeration equipment containing this refrigerant. Technicians should gain an understanding of minimizing the risk of fire and the steps to use flammable refrigerants safely.

SUBSTITUTES THAT ARE ACCEPTABLE SUBJECT TO USE CONDITIONS—Continued

End-use	Substitute	Decision	Use conditions	Further information
Residential and light-commercial air conditioning and heat pumps—self-contained room air conditioners only (New equipment only).	HFC–32 ..... Propane (R–290) R–441A	Acceptable subject to use conditions.	As provided in clauses SA6.1.2 to SA6.1.5 of UL 484, 8th edition, the following markings must be attached at the locations provided and must be permanent: (a) On the outside of the air conditioner: "DANGER—Risk of Fire or Explosion. Flammable Refrigerant Used. To Be Repaired Only By Trained Service Personnel. Do Not Puncture Refrigerant Tubing." (b) On the outside of the air conditioner: "CAUTION—Risk of Fire or Explosion. Dispose of Properly In Accordance With Federal Or Local Regulations. Flammable Refrigerant Used." (c) On the inside of the air conditioner near the compressor: "CAUTION—Risk of Fire or Explosion. Flammable Refrigerant Used. Consult Repair Manual/Owner's Guide Before Attempting To Service This Product. All Safety Precautions Must be Followed." (d) On the outside of each portable air conditioner: "WARNING: Appliance shall be installed, operated and stored in a room with a floor area larger the "X" m^2 (Y ft^2)." The value "X" on the label must be determined using the minimum room size in m^2 calculated using Appendix F of UL 484, 8th edition. For R–441A, use a lower flammability limit of 0.041 kg/m^3 in calculations in Appendix F of UL 484, 8th edition. (e) All of these markings must be in letters no less than 6.4 mm (¼ inch) high. The air conditioning equipment must have red, Pantone® Matching System (PMS) #185 marked pipes, hoses, and other devices through which the refrigerant is serviced, typically known as the service port, to indicate the use of a flammable refrigerant. This color must be present at all service ports and where service puncturing or otherwise creating an opening from the refrigerant circuit to the atmosphere might be expected (e.g., process tubes). The color mark must extend at least 2.5 centimeters (1 inch) from the compressor and must be replaced if removed.	Room occupants should evacuate the space immediately following the accidental release of this refrigerant. If a service port is added then air conditioning equipment using this refrigerant should have service aperture fittings that differ from fittings used in equipment or containers using non-flammable refrigerant. "Differ" means that either the diameter differs by at least 1/16 inch or the thread direction is reversed (i.e., right-handed vs. left-handed). These different fittings should be permanently affixed to the unit at the point of service and maintained until the end-of-life of the unit, and should not be accessed with an adaptor. Air conditioning equipment in this category includes: Window air conditioning units. Portable room air conditioners. Packaged terminal air conditioners and heat pumps.

Note: The use conditions in this appendix contain references to certain standards from Underwriters Laboratories Inc. (UL). The standards are incorporated by reference, and the referenced sections are made part of the regulations in part 82:

1. UL 250: Household Refrigerators and Freezers. 10th edition. Supplement SA: Requirements for Refrigerators and Freezers Employing a Flammable Refrigerant in the Refrigerating System. Underwriters Laboratories, Inc. August 25, 2000.

2. UL 471. Commercial Refrigerators and Freezers. 10th edition. Supplement SB: Requirements for Refrigerators and Freezers Employing a Flammable Refrigerant in the Refrigerating System. Underwriters Laboratories, Inc. November 24, 2010.

3. UL 541. Refrigerated Vending Machines. 7th edition. Supplement SA: Requirements for Room Air Conditioners Employing a Flammable Refrigerant in the Refrigerating System. December 30, 2011

4. UL 484. Room Air Conditioners. 8th edition. Supplement SA: Requirements for Refrigerated Venders Employing a Flammable Refrigerant in the Refrigerating System and Appendixes B through F. August 3, 2012.

The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of UL Standards 250, 471, 484 and 541 may be purchased by mail at: COMM 2000; 151 Eastern Avenue; Bensenville, IL 60106; Email: *orders@comm-2000.com;* Telephone: 1–888–853–3503 in the U.S. or Canada (other countries dial +1–415–352–2168); Internet address: *http://ulstandardsinfonet.ul.com/* or *www.comm-2000.com.*

You may inspect a copy at U.S. EPA's Air and Radiation Docket; EPA West Building, Room 3334, 1301 Constitution Ave. NW., Washington, DC or at the National Archives and Records Administration (NARA). For questions regarding access to these standards, the telephone number of EPA's Air and Radiation Docket is 202–566–1742. For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

TABLE A—MAXIMUM DESIGN CHARGE SIZES FOR WINDOW AIR CONDITIONERS

Refrigerant	Maximum design charge size (kg)										
	Associated cooling capacity (BTU/hr)										
	5,000	6,000	7,000	8,000	9,000	10,000	12,000	14,000	18,000	21,000	23,000
R–32	1.73	2.12	2.74	3.00	3.24	3.47	3.68	4.07	4.59	5.48	6.01
R–290	0.13	0.16	0.20	0.22	0.24	0.26	0.27	0.30	0.34	0.40	0.44
R–441A	0.14	0.17	0.22	0.24	0.26	0.28	0.30	0.33	0.37	0.44	0.49

Note: For use with self-contained air conditioning units or heat pumps with an evaporator at least 0.6 and no more than 1.0 m above the floor. Cooling capacities between those in the table are to be linearly interpolated between the next smaller and larger capacities listed in the table.

TABLE B—MAXIMUM DESIGN CHARGE SIZES FOR PACKAGED TERMINAL AIR CONDITIONERS, PACKAGED TERMINAL HEAT PUMPS, AND PORTABLE AIR CONDITIONING UNITS

Refrigerant	Maximum design charge size (kg)										
	Associated cooling capacity (BTU/hr)										
	5,000	6,000	7,000	8,000	9,000	10,000	12,000	14,000	18,000	21,000	23,000
R–32	1.04	1.27	1.65	1.80	1.95	2.08	2.21	2.44	2.75	3.29	3.60
R–290	0.08	0.09	0.12	0.13	0.14	0.15	0.16	0.18	0.20	0.24	0.27
R–441A	0.08	0.10	0.13	0.15	0.16	0.17	0.18	0.20	0.22	0.27	0.29

Note: For use with self-contained air conditioning units or heat pumps with an evaporator no more than 0.6 m above the floor. Cooling capacities between those in the table are to be linearly interpolated between the next smaller and larger capacities listed in the table.

TABLE C—MAXIMUM DESIGN CHARGE SIZES FOR WALL-MOUNTED AC UNITS

Refrigerant	Maximum design charge size (kg)										
	Associated cooling capacity (BTU/hr)										
	5,000	6,000	7,000	8,000	9,000	10,000	12,000	14,000	18,000	21,000	23,000
R–32	3.12	3.82	4.94	5.41	5.84	6.24	6.62	7.32	7.96	7.96	7.96
R–290	0.23	0.28	0.36	0.40	0.43	0.46	0.49	0.54	0.61	0.73	0.80
R–441A	0.25	0.31	0.40	0.44	0.47	0.51	0.54	0.59	0.67	0.80	0.88

Note: For use with self-contained air conditioners or heat pumps with an evaporator at least 1.0 and no more than 1.8 m above the floor. Cooling capacities between those in the table are to be linearly interpolated between the next smaller and larger capacities listed in the table.

TABLE D—MAXIMUM DESIGN CHARGE SIZES FOR CEILING-MOUNTED AC UNITS

Refrigerant	Maximum design charge size (kg)										
	Associated cooling capacity (BTU/hr)										
	5,000	6,000	7,000	8,000	9,000	10,000	12,000	14,000	18,000	21,000	23,000
R–32	3.82	4.67	6.03	6.61	7.14	7.63	7.96	7.96	7.96	7.96	7.96
R–290	0.28	0.34	0.44	0.49	0.53	0.56	0.60	0.66	0.74	0.89	0.97
R–441A	0.31	0.38	0.49	0.54	0.58	0.62	0.66	0.73	0.82	0.98	1.00

Note: For use with self-contained air conditioners or heat pumps with an evaporator more than 1.8 m above the floor. Cooling capacities between those in the table are to be linearly interpolated between the next smaller and larger capacities listed in the table.

[FR Doc. 2014–15889 Filed 7–8–14; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 140, 141, 142, 143, 144, 145, 146, and 147

46 CFR Parts 10, 11, 12, 13, 14, and 15

[Docket No. USCG–2013–0175]

RIN 1625–AC10

Training of Personnel and Manning on Mobile Offshore Units and Offshore Supply Vessels Engaged in U.S. Outer Continental Shelf Activities

AGENCY: Coast Guard, DHS.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Coast Guard is extending the comment period on the advance notice of proposed rulemaking titled, ''Training of Personnel and Manning on Mobile Offshore Units and Offshore Supply Vessels Engaged in U.S. Outer Continental Shelf Activities,'' published on April 14, 2014. We are extending the comment period at the request of industry to ensure stakeholders have adequate time to submit complete responses.

DATES: The comment period for the proposed rule published April 14, 2014 (79 FR 20844) is extended. Comments and related material must either be submitted to our online docket via *http://www.regulations.gov* on or before September 8, 2014, or reach the Docket Management Facility by that date.

ADDRESSES: You may submit comments identified by docket number USCG–2013–0175 using any one of the following methods:

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

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

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

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email Mr. Gerald Miante, Maritime Personnel Qualifications Division (CG–OES–1), U.S. Coast Guard, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593; telephone 202–372–1407, or email *Gerald.P.Miante@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Ms. Cheryl Collins, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

We encourage you to submit comments and related materials on the advance notice of proposed rulemaking (ANPRM). With the exception of confidential and sensitive comments, all comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided.

A. Submitting Comments

If you submit a comment, please include the docket number for this notice (USCG–2013–0175) and provide a reason for each suggestion or recommendation. You may submit your comments and material online, or by fax, mail or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov*, click on the ''submit a comment'' box, which will then become highlighted in blue. In the ''Document Type'' drop down menu select ''Proposed Rule'' and insert ''USCG–2013–0175'' in the ''Keyword'' box. Click ''Search'' then click on the balloon shape in the ''Actions'' column. If you submit your comments 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. If you submit your comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change this proposed rule based on your comments.

If you submit comments, do not send materials that include trade secrets, confidential, commercial, or financial information; or Sensitive Security Information to the public regulatory docket. Please submit such comments separately from other comments on the rulemaking. Comments containing this type of information should be appropriately marked as containing such information and submitted by mail to the Coast Guard point of contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

Upon receipt of such comments, the Coast Guard will not place the comments in the public docket and will handle them in accordance with applicable safeguards and restrictions on access. The Coast Guard will hold them in a separate file to which the public does not have access, and place a note in the public docket that the Coast Guard has received such materials from the commenter. If the Coast Guard receives a request to examine or copy this information, we will treat it as any other request under the Freedom of Information Act (5 U.S.C. 552).

B. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box insert ''USCG–2013–0175'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation, West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

C. Privacy Act

Anyone can search the electronic form of 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 a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

II. Regulatory History and Information

On April 14, 2014, the Coast Guard published an ANPRM, ''Training of Personnel and Manning on Mobile

Offshore Units and Offshore Supply Vessels Engaged in U.S. Outer Continental Shelf Activities'' (79 FR 20844). In the ANPRM, the Coast Guard announced that it is considering expanding current maritime safety training requirements to cover all persons other than crew working on offshore supply vessels (OSVs) and mobile offshore units (MOUs) that are involved in activities on the U.S. Outer Continental Shelf (OCS), regardless of flag. The rationale for expanding this safety training is to ensure that more effective responses and protocols are in place to address emergencies and other incidents both, onboard OSVs and MOUs that are engaged in activities on the OCS, and to thwart or mitigate potential damage to the surrounding environment where these vessels operate. Examples of safety concerns include fire, personal injuries, and abandon ship situations. Some urgent response scenarios take place in hazardous environments and under extreme weather conditions. Recent incidents involving human casualties and environmental damage underscore the need to expand training requirements to apply to persons other than crew since current safety training regulations only apply to maritime crew.

III. Reason for the Extension

On May 29, 2014, the International Association of Drilling Contractors requested that the Coast Guard extend the comment period by an additional 60 days to allow their organization, and others in the industry, more time to respond to the ANPRM and to gather the ''organizational and economic data'' that the Coast Guard requested in the ANPRM. The Coast Guard is extending the public comment period, as requested, to ensure that all stakeholders (industry, State and Federal Government agencies, and other individuals who would be impacted by this rulemaking) have adequate time to review and fully respond to the questions posed in the ANPRM and to any other material included in the ANPRM.

We encourage all members of the public to send comments explaining what, if any, impact this ANPRM could have on them or their organizations. Also, we ask that commenters be specific and detailed in their submissions to aid us in effectively responding to the comments, and so that we may craft regulations that will enhance existing maritime safety training.

This notice of extension is issued under the authority of 5 U.S.C. 552(a).

Dated: July 3, 2014.

J.G. Lantz,

Director of Commercial Regulations and Standards, U.S. Coast Guard.

[FR Doc. 2014–16074 Filed 7–8–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 535

[Docket No. NHTSA–2014–0074]

Notice of Intent To Prepare an Environmental Impact Statement for New Medium- and Heavy-Duty Vehicle Fuel Efficiency Improvement Program Standards

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of intent; request for scoping comments.

SUMMARY: NHTSA plans to prepare an Environmental Impact Statement (EIS) to analyze the potential environmental impacts of new fuel efficiency standards for commercial medium- and heavy-duty on-highway vehicles and work trucks (potentially covering engines, chassis, vehicles, and/or trailers manufactured after model year 2018) that will be proposed by the agency pursuant to the Energy Independence and Security Act of 2007. This document initiates the scoping process for determining the scope of issues to be addressed in the EIS and for identifying the significant environmental issues related to the proposed action. Further, it discusses cooperating agencies, the environmental review process, and the agency's tentative planning and decision-making schedule. NHTSA invites the participation of Federal, State, and local agencies, Indian tribes, stakeholders, and the public in this process to help identify the significant issues and reasonable alternatives to be examined in the EIS, and to eliminate from detailed study the issues that are not significant.

DATES: The scoping process will culminate in the preparation and issuance of a Draft EIS (DEIS), which will be made available for public comment. To ensure that NHTSA has an opportunity to fully consider scoping comments and to facilitate NHTSA's prompt preparation of the DEIS, scoping comments should be received on or before August 8, 2014. NHTSA will try to consider comments received after that date to the extent the rulemaking schedule allows.

ADDRESSES: You may submit comments to the docket number identified in the heading of this document by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, M–30, U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery or Courier:* U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m. Eastern time, Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

Regardless of how you submit your comments, please mention the docket number identified in the heading of this notice. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that your comments were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received, including any personal information provided, will be posted without change to *http://www.regulations.gov.* Please see the Privacy Act heading below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

How to Read Comments submitted to the Docket: You may read the comments received by Docket Management at the address and times given above. You may also view the documents from the Internet at *http://www.regulations.gov.* Follow the online instructions for accessing the dockets. The docket ID number and title of this notice are shown at the heading of this notice. Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically search the Docket for new material.

FOR FURTHER INFORMATION CONTACT: For technical issues, contact James

MacIsaac, Fuel Economy Division, Office of International Policy, Fuel Economy and Consumer Standards, telephone: 202–366–9108; for legal issues, contact Russell Krupen, Legislation & General Law Division, Office of the Chief Counsel, telephone: 202–366–1834, at the National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: In a forthcoming notice of proposed rulemaking (NPRM), NHTSA intends to propose fuel efficiency standards for commercial medium- and heavy-duty on-highway vehicles and work trucks (collectively, ''HD vehicles'' or ''heavy-duty vehicles'') manufactured after model year (MY) 2018 pursuant to the Energy Independence and Security Act of 2007 (EISA).[1] In particular, NHTSA will propose Phase 2 of the Fuel Efficiency Improvement Program (potentially covering engines, chassis, vehicles, and/or trailers manufactured after MY 2018) as part of a joint rulemaking with the Environmental Protection Agency (which will propose new greenhouse gas [GHG] regulations for heavy-duty vehicles). In connection with this action, NHTSA will prepare an Environmental Impact Statement (EIS) to analyze the potential environmental impacts of the proposed HD vehicle fuel efficiency standards and reasonable alternative standards pursuant to the National Environmental Policy Act (NEPA) and implementing regulations issued by the Council on Environmental Quality (CEQ) and NHTSA.[2] NEPA instructs Federal agencies to consider the potential environmental impacts of their proposed actions and possible alternatives. To inform decision-makers and the public, the EIS will compare the potential environmental impacts of the agency's Preferred Alternative and a spectrum of reasonable alternatives, including a ''no action'' alternative. As required by NEPA, the EIS will consider direct, indirect, and cumulative impacts of the proposed action and alternatives and will discuss impacts in proportion to their significance.

Background: The Energy Policy and Conservation Act of 1975 (EPCA)[3] mandated that NHTSA establish and implement a regulatory program for motor vehicle fuel economy as part of a comprehensive approach to federal energy policy. As codified in Chapter 329 of Title 49 of the U.S. Code, and as amended by EISA, EPCA set forth extensive requirements concerning the establishment of fuel economy standards for passenger cars and light trucks. Pursuant to this statutory authority, NHTSA sets Corporate Average Fuel Economy (CAFE) standards for those vehicles.[4]

In December 2007, EISA provided DOT (and by delegation, NHTSA[5]) new authority to implement, through rulemaking and regulations, ''a commercial medium- and heavy-duty on-highway vehicle[6] and work truck[7] fuel efficiency improvement program designed to achieve the maximum feasible improvement[.]''[8] This provision also directs NHTSA to ''adopt and implement appropriate test methods, measurement metrics, fuel economy standards, and compliance and enforcement protocols that are appropriate, cost-effective, and technologically feasible for commercial medium- and heavy-duty on-highway vehicles and work trucks.''[9] NHTSA may set ''separate standards for different classes of vehicles.''[10]

EISA also provides requirements for lead time and regulatory stability. New fuel efficiency improvement program standards that NHTSA adopts pursuant to EISA must provide not less than 4 full model years of regulatory lead-time and 3 full model years of regulatory stability.[11] Finally, EISA directs that NHTSA's HD rulemaking must be conducted in consultation with the Environmental Protection Agency (EPA) and the Department of Energy.[12]

On May 21, 2010, the President issued a memorandum to the Secretary of Transportation, the Secretary of Energy, the Administrator of EPA, and the Administrator of NHTSA that called for coordinated regulation of the heavy-duty vehicle market segment under EISA and under the Clean Air Act.[13] NHTSA and EPA met that directive in August 2011 by finalizing first-of-a-kind standards for new HD engines and vehicles in MYs 2014 through 2018 (''Phase 1'').[14] The performance-based standards created a national program requiring manufacturers to meet targets for fuel efficiency and greenhouse gas emissions. The Phase 1 standards are expected to save vehicle owners and operators an estimated $50 billion in fuel costs over the lifetime of those vehicles while also reducing oil consumption by a projected 530 billion barrels and greenhouse gas pollution by approximately 270 million metric tons.[15]

[1] Public Law 110–140, 121 Stat. 1492 (Dec. 19, 2007) (codified at 49 U.S.C. 32901 *et seq.*).

[2] NEPA is codified at 42 U.S.C. 4321–4347. CEQ's NEPA implementing regulations are codified at 40 CFR parts 1500–1508, and NHTSA's NEPA implementing regulations are codified at 49 CFR part 520.

[3] Public Law 94–163, 89 Stat. 871 (Dec. 22, 1975).

[4] *See Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards, Final Rule,* 75 FR 25324 (May 7, 2010); *2017 and Later Model Year Light-Duty Vehicle Greenhouse Gas Emissions and Corporate Average Fuel Economy Standards,* 77 FR 62624 (October 15, 2012).

[5] The Secretary has delegated responsibility for implementing fuel economy and fuel efficiency requirements under EPCA and EISA to NHTSA. 49 U.S.C. 322(b); 49 CFR 1.95, 501.2.

[6] EISA added the following definition to the automobile fuel economy chapter of the United States Code: '' 'commercial medium- and heavy-duty on-highway vehicle' means an on-highway vehicle with a gross vehicle weight rating of 10,000 pounds or more.'' 49 U.S.C. 32901(a)(7).

[7] EISA added the following definition to the automobile fuel economy chapter of the United States Code: '' 'work truck' means a vehicle that—(A) is rated at between 8,500 and 10,000 pounds gross vehicle weight; and (B) is not a medium-duty passenger vehicle (as defined in section 86.1803–01 of title 40, Code of Federal Regulations, as in effect on the date of the enactment of [EISA]).'' 49 U.S.C. 32901(a)(19).

[8] 49 U.S.C. 32902(k)(2).

[9] *Id.*

[10] *Id.* For background on the HD vehicle segment, issues related to regulating this segment, and fuel efficiency improvement technologies available for these vehicles, see the reports recently issued by the National Academy of Sciences. National Research Council, *Technologies and Approaches to Reducing the Fuel Consumption of Medium- and Heavy-Duty Vehicles,* Washington, DC (The National Academies Press, 2010), *available at http://www.nap.edu/catalog.php?record_id=12845* (last accessed April 25, 2014); National Research Council, *Reducing the Fuel Consumption and Greenhouse Gas Emissions of Medium- and Heavy-Duty Vehicles, Phase Two: First Report,* Washington, DC (The National Academies Press, 2014), *available at http://www.nap.edu/catalog.php?record_id=18736* (last accessed April 25, 2015).

[11] 49 U.S.C. 32902(k)(3).

[12] 49 U.S.C. 32902(k)(2). As discussed later in this document, both agencies have been invited to serve as cooperating agencies on this EIS.

[13] *See* The White House, Office of the Press Secretary, *Presidential Memorandum Regarding Fuel Efficiency Standards* (May 21, 2010), *available at http://www.whitehouse.gov/the-press-office/presidential-memorandum-regarding-fuel-efficiency-standards* (last accessed April 25, 2014); *see also* The White House, Office of the Press Secretary, *President Obama Directs Administration to Create First-Ever National Efficiency and Emissions Standards for Medium- and Heavy-Duty Trucks* (May 21, 2010), *available at http://www.whitehouse.gov/the-press-office/president-obama-directs-administration-create-first-ever-national-efficiency-and-em* (last accessed April 25, 2014).

[14] *See Greenhouse Gas Emissions Standards and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles,* 76 FR 57106 (September 15, 2011).

[15] *See White House Announces First Ever Oil Savings Standards for Heavy Duty Trucks, Buses* (August 9, 2011), *available at http://www.nhtsa.gov/About+NHTSA/Press+Releases/2011/White+House+Announces+First+Ever+Oil+Savings+Standards+for+Heavy+Duty+Trucks,+Buses* (last accessed April 28, 2014). For more information on the rulemaking, *see also* EPA Regulatory Announcement, *EPA and NHTSA Adopt First-Ever Program to Reduce Greenhouse Gas Emissions and Improve Fuel Efficiency of Medium- and Heavy-Duty Vehicles* (August 2011), *available at http://*

Continued

Continued improvement in the efficiency of HD vehicles is a key component of the President's 2013 Climate Action Plan to reduce carbon emissions.[16] Building on the success of Phase 1 of the program, in a February 18, 2014 Presidential Announcement, the President directed NHTSA and EPA to finalize the next phase of HD vehicle fuel efficiency and greenhouse gas standards by March 31, 2016.[17] Under this timeline, the agencies expect to issue a Notice of Proposed Rulemaking by March 2015.

In developing Phase 2 standards, the agencies are instructed to partner with industry leaders and other key stakeholders, including manufacturers, labor, States, and non-governmental organizations. To this end, EPA and NHTSA will consult with the California Air Resources Board (CARB) with the goal of ensuring that the next phase of standards allows manufacturers to continue to build a single national fleet.[18] The Phase 2 standards are expected to spur manufacturing innovation and lead to the adoption of new fuel-efficient technologies on trucks and semi-trailers. EPA and NHTSA will assess advanced technologies that may not currently be in production, and will consider, for example: Engine and powertrain efficiency improvements, aerodynamics, weight reduction, improved tire rolling resistance, hybridization, natural gas engines and converters, automatic engine shutdown, and/or accessory improvements (e.g., water pumps, fans, auxiliary power units, and air conditioning).[19] For more information and further updates on the program, please see the agencies' Web sites.[20]

NHTSA will prepare an EIS to analyze the potential environmental impacts of its proposed HD vehicle fuel efficiency standards and reasonable alternative standards. This Notice of Intent initiates the scoping process for the EIS under NEPA, 42 U.S.C. 4321–4347, and implementing regulations issued by CEQ, 40 CFR parts 1500–1508, and NHTSA, 49 CFR part 520.[21] Specifically, this Notice of Intent requests public input on the scope of NHTSA's NEPA analysis and the significant environmental issues relating to more stringent fuel efficiency standards for HD vehicles.

The Alternatives: NHTSA's upcoming NPRM will propose standards for HD vehicles manufactured after MY 2018. The HD sector is extremely diverse in several respects, including types of manufacturing companies involved, the range of sizes of trucks and engines they produce, the types of work the trucks are designed to perform, and the regulatory history of different subcategories of vehicles and engines. The current HD fleet encompasses vehicles from the ''18-wheeler'' combination tractors one sees on the highway to school and transit buses, to vocational vehicles such as utility service trucks, as well as the largest pickup trucks and vans. Compared to the light-duty sector, there is a much larger number of heavy-duty truck manufacturers, which vary in size and level of build process integration. For example, some trucks are assembled by a body builder using components from an engine manufacturer, a powertrain manufacturer, component suppliers, and a chassis builder. Each of these separate stakeholders has an impact on the fuel efficiency of the truck. NHTSA is therefore developing Phase 2 in recognition of the complex industry structure and providing for increasing coverage of the opportunities for fuel efficiency improvement.

Under NEPA, the purpose of and need for an agency's action inform the range of reasonable alternatives to be considered in its NEPA analysis.[22] In developing alternatives for analysis in the EIS, NHTSA must consider EISA's requirements for the HD fuel efficiency program noted above. 49 U.S.C. 32902(k)(2) and (3) contain the following three requirements specific to the HD vehicle fuel efficiency improvement program: (1) The program must be ''designed to achieve the maximum feasible improvement''; (2) the various required aspects of the program must be appropriate, cost-effective, and technologically feasible for HD vehicles; and (3) the standards adopted under the program must provide not less than four model years of lead time and three model years of regulatory stability. In considering these various requirements, NHTSA will also account for relevant environmental and safety considerations.

Due to the diversity of the HD industry, the Phase 1 rule divided HD vehicles into three regulatory categories: Heavy-duty pick-up trucks and vans (Class 2b and Class 3), vocational vehicle chassis (Class 2b–Class 8), and combination tractors (Class 7 and 8). Phase 1 established separate standards for each of these categories, as well as standards for the engines powering vocational vehicles and combination tractors. Phase 2 may include post-MY 2018 engine and vehicle fuel efficiency standards that are more stringent than those for MYs 2016–2018, as well as regulatory standards and certification requirements for previously unregulated new trailers pulled by semi-tractors. The following discusses each of these regulatory categories in turn.

- *Class 2b and 3 Heavy-Duty Pick-Up Trucks and Vans:* Heavy-duty pickup trucks and vans are used chiefly as work trucks and vans, as shuttle vans, and for personal transportation, with an average annual mileage in the range of 13,000–14,000 miles. Class 2b and 3 pick-up trucks and vans have up to 14,000 lbs. gross vehicle weight rating, with about 90 percent of them being ¾-ton and 1-ton pickup trucks, 12- and 15-passenger vans, and large work vans that are sold by vehicle manufacturers as complete vehicles, with no secondary manufacturer making substantial modifications prior to registration and use. These vehicle manufacturers are companies with major light-duty markets in the United States. Furthermore, the technologies available to reduce fuel consumption and GHG emissions from this segment are similar to the technologies used on light-duty pickup trucks, including both engine efficiency improvements (for gasoline and diesel engines) and vehicle efficiency improvements.
- *Class 2b–8 Vocational Vehicle Chassis:* Vocational vehicles, which may span Classes 2b through 8, vary widely in size and use, including smaller and larger van trucks; delivery, utility, tank, flat-bed, and refuse trucks; transit, shuttle, and school buses; fire trucks and other emergency vehicles; motor homes; and tow trucks, among others. The annual mileage of these trucks is as varied as their uses, but for the most part tends to fall in between heavy-duty pickups/vans and the large

www.epa.gov/otaq/climate/documents/420f11031.pdf (last accessed April 28, 2014).

[16] Executive Office of the President, *The President's Climate Action Plan* (June 2013), *available at http://www.whitehouse.gov/sites/default/files/image/president27sclimateactionplan.pdf* (last accessed April 28, 2014).

[17] *See FACT SHEET—Opportunity For All: Improving the Fuel Efficiency of American Trucks—Bolstering Energy Security, Cutting Carbon Pollution, Saving Money and Supporting Manufacturing Innovation* (February 18, 2014), *available at http://www.whitehouse.gov/the-press-office/2014/02/18/fact-sheet-opportunity-all-improving-fuel-efficiency-american-trucks-bol* (last accessed April 28, 2014); *Improving the Fuel Efficiency of American Trucks—Bolstering Energy Security, Cutting Carbon Pollution, Saving Money and Supporting Manufacturing Innovation* (February 2014), *available at http://www.whitehouse.gov/sites/default/files/docs/finaltrucksreport.pdf* (last accessed April 28, 2014).

[18] *Id.*

[19] *Id.*

[20] For NHTSA, *see http://www.nhtsa.gov/fuel-economy* (last accessed April 28, 2014); for EPA, *see http://www.epa.gov/otaq/climate/regs-heavy-duty.htm* (last accessed April 28, 2014).

[21] *See* 40 CFR 1501.7, 1508.22; 49 CFR 520.21(g).

[22] 40 CFR 1502.13.

combination tractors, although some travel more and some less. Vocational vehicles frequently begin as incomplete chassis that can be used for a number of vocational applications. The chassis manufacturers install engines and transmissions from other manufacturers and then sell the chassis to body manufacturers who add appropriate features for the vehicles' final end-use (e.g., dump bed, delivery box, or utility bucket). Phase 1 created a new vehicle certification and compliance program for vocational chassis manufacturers, which relies on a computer simulation of vehicle CO_2 emissions and fuel consumption rather than on emissions testing. Vocational body manufacturers were not regulated in Phase 1.

• *Class 7 and 8 Combination Tractors:* Class 7 and 8 combination tractor-trailers [23]—some equipped with sleeper cabs and some not—are used for freight transportation. Tractors sometimes run without a trailer in between loads, but most of the time they run with one or more trailers that can carry up to 50,000 pounds or more of payload, consuming significant quantities of fuel and producing significant amounts of GHG emissions. Class 7 and 8 combination tractors and their engines contribute approximately 65 percent of the total GHG emissions and fuel consumption of the heavy-duty sector due to their large payloads, their high annual miles traveled (sometimes more than 150,000 miles per year), and their major role in national freight transport. In general, reducing GHG emissions and fuel consumption from these vehicles may involve improvements in aerodynamics, tires, and engine-based efficiency, reduction in idle operation, and improvements in or installation of other technologies. Fleet owners and truck owner/operators were not regulated in Phase 1.

• *Engines:* Phase 1 required that engines used in heavy-duty vehicles be separately certified by their manufacturer to meet GHG emissions and fuel efficiency standards using the same test procedures used to certify engines for criteria pollutants, unless the vehicle is allowed to be chassis-certified (typically, Class 2b and 3 heavy-duty pick-up trucks and vans) whereby the separate engine certification is not required. Phase 1 engine standards vary depending on engine size linked to intended vehicle service class and use. In particular, the agencies created separate standards for spark-ignition (traditionally gasoline-fueled) and compression-ignition (traditionally diesel-fueled) engines. In addition, in Phase 1, standards for natural gas engines were identical to those for either the diesel- or gasoline-fueled engines, depending on the natural gas engine architecture.

• *Semi-trailers:* Semi-trailers pulled by Class 7 and 8 tractors were considered but ultimately excluded from the Phase 1 final regulations. Since 2011, EPA and NHTSA have initiated several test programs to evaluate fuel efficient and GHG-reducing trailer technologies such as low-rolling resistance tires, aerodynamic technologies, and weight reduction. Phase 2 is expected to consider again the regulation of trailers, such as dry van trailers, refrigerated (reefer) trailers, container chassis, and other trailer types.

NHTSA (in consultation with EPA) is still evaluating the costs and effectiveness of the various technologies available, the potential structure of the program, the stringencies of potential alternatives covering each regulatory category of the HD sector (Class 2b and 3 heavy-duty pick-up trucks and vans, Class 2b through 8 vocational vehicles, Class 7 and 8 combination tractors, trailers, and/or engines), and the range of reasonable alternatives for consideration in this rulemaking and EIS.[24] NHTSA will evaluate several factors in developing alternatives for consideration and analysis, including costs for technology development and manufacture, costs that will be paid by heavy-duty vehicle owners and operators, fuel efficiency (and corresponding GHG reduction) benefits, industry structure, and more.

NEPA requires agencies to consider a ''no action'' alternative in their NEPA analyses and to compare the effects of not taking action with the effects of the reasonable action alternatives in order to demonstrate the different environmental effects of the action alternatives.[25] In its EIS, NHTSA will consider a ''no action'' alternative, which assumes, for purposes of NEPA analysis, that NHTSA would not issue a rule regarding HD fuel efficiency standards. Under these circumstances, the existing fuel efficiency standards established for the end of Phase 1 would persist until NHTSA takes additional action.[26] NHTSA will refer to this as the ''No Action Alternative'' or as the ''baseline.''

Similar to the approach NHTSA used in its EIS for the MY 2017–2025 light-duty CAFE standards, the EIS will also analyze action alternatives calculated at the lower point and at the upper point of the range the agency believes encompasses reasonable alternatives meeting the purpose and need of the proposed action (i.e., increasing fuel efficiency of HD vehicles in conformity with the requirements of EISA). These lower and upper ''bounds'' or ''brackets'' will account for various potential structures for the Phase 2 fuel efficiency improvement program and various levels of stringency for the regulatory categories identified above. These alternatives would bracket the range of actions the agency may select. If additional granularity is necessary, the agency may analyze additional action alternatives within the range.

In the draft EIS (DEIS), NHTSA intends to identify a Preferred Alternative, which may be one of the above-identified alternatives or a level of stringency that falls between those extremes. The Preferred Alternative would reflect what the agency believes is the ''maximum feasible improvement'' required under EISA, and may require fuel efficiency improvement that is constant throughout the regulatory period or varies from year to year (and from segment to segment) in accordance with predetermined stringency increases that would be established by this rule. However, the overall stringency and impacts will fall at or between the lower and upper brackets discussed above. NHTSA has not yet identified its Preferred Alternative.

The lower and upper bounds of the range of reasonable alternatives would

[23] These vehicles consist of a cab and engine (tractor or combination tractor) and a detachable trailer. In general, the heavy-duty combination tractor industry consists of tractor manufacturers (which manufacture the tractor chassis and bodies and either install their own engines or purchase and install engines from separate engine manufacturers) and trailer manufacturers. These manufacturers are not the same entity. For this and other reasons, Phase 1 treated these as separate regulatory categories.

[24] Amongst other research and reports, NHTSA will consider the findings contained in the recent National Academies report regarding Phase 2 regulations. *See* National Research Council. *Reducing the Fuel Consumption and Greenhouse Gas Emissions of Medium- and Heavy-Duty Vehicles, Phase Two: First Report.* Washington, DC: The National Academies Press, 2014.

[25] *See* 40 CFR 1502.2(e), 1502.14(d). CEQ has explained that ''[T]he regulations require the analysis of the no action alternative *even if the agency is under a court order or legislative command to act.* This analysis provides a benchmark, enabling decision makers to compare the magnitude of environmental effects of the action alternatives. . . . Inclusion of such an analysis in the EIS is necessary to inform Congress, the public, and the President as intended by NEPA. [*See* 40 CFR 1500.1(a).]'' *Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations,* 46 FR 18026 (1981) (emphasis added).

[26] The ''no action'' alternative will also assume that EPA would not issue a rule regarding HD GHG emissions standards. The existing GHG standards established for the end of Phase 1 would also persist indefinitely.

reflect different ways NHTSA could weigh the considerations before the agency in the rulemaking. The lower bound, representing the least stringent fuel efficiency improvement, would reflect more pessimistic assumptions of the appropriateness, feasibility, and cost-effectiveness of various technologies designed to achieve the maximum feasible improvement in fuel efficiency. This alternative might assume, for example, that fuel efficiency improvement technologies are at the upper end of their ranges of potential cost, that technologies are not effectively deployable until later in time, that the benefits are at the lower end of their potential range, or that heavy-duty vehicle owners and operators demand more immediate benefits. On the other hand, the upper bound, representing the most stringent fuel efficiency improvement, would reflect more optimistic assumptions of the appropriateness, feasibility, and cost-effectiveness of those technologies. This alternative might assume, for example, that fuel efficiency improvement technologies are at the lower end of their ranges of potential cost, that technologies will be deployed earlier in time, that the benefits are at the higher end of their potential range, or that heavy-duty vehicle owners and operators will accept benefits over the long-term despite higher initial costs.

The range covered will reflect differences in the degree of technology adoption across the fleet, in costs to manufacturers and heavy-duty vehicle owners and operators, and in conservation of fuel and related reductions in GHGs. For example, the most stringent alternative NHTSA will evaluate would likely require, on balance, greater adoption of technology across the fleet than the least stringent alternative NHTSA will evaluate. As a result, the most stringent alternative would impose greater costs and achieve greater energy conservation and related reductions in GHGs.

This range of stringencies, along with the analysis for the Preferred Alternative, would provide a broad range of information for NHTSA to use in evaluating and weighing the statutory factors in EISA. It would also assist the decision-maker in considering the differences and uncertainties in the way in which key economic inputs (e.g., the price of fuel and the social cost of carbon) and technological inputs are estimated or valued.

NHTSA invites comments to ensure that the agency considers a full range of reasonable alternatives in setting new HD vehicle fuel efficiency improvement standards and that the agency identifies the environmental impacts and focuses its analyses on all the potentially significant impacts related to each alternative. Comments may go beyond the approaches and information that NHTSA described above for developing the alternatives and in identifying the potentially significant environmental effects. The agency may modify the proposed alternatives and environmental effects that will be analyzed in depth based upon the comments received during the scoping process and upon further agency analysis.

Planned Analysis: The scoping process initiated by this notice seeks to determine ''the range of actions, alternatives, and impacts to be considered'' in the EIS and to identify the most important issues for analysis involving the potential environmental impacts of NHTSA's HD vehicle fuel efficiency improvement program.[27] NHTSA's NEPA analysis will consider the direct, indirect and cumulative environmental impacts of the proposed post-2018 standards and those of reasonable alternatives.

While the main focus of NHTSA's prior EISs (*i.e.,* the CAFE EISs for MYs 2017–2025,[28] 2012–2016,[29] and 2011–2015,[30] and the HD Phase 1 EIS [31]) was the quantitative analysis of impacts to energy, air quality, and climate, as well as qualitative analysis of cumulative impacts resulting from climate change, those prior EISs also addressed other potentially affected resources. For example, NHTSA conducted a qualitative review of impacts of the alternatives on water resources, biological resources, land use, hazardous materials, safety, noise, historic and cultural resources, and environmental justice. In the last CAFE EIS, NHTSA also presented a literature synthesis of life-cycle environmental impacts of certain vehicle materials and technologies.[32]

Similar to past EIS practice, NHTSA plans to analyze environmental impacts related to fuel and energy use, air pollutant emissions including GHGs and their effects on temperature and climate change, air quality, natural resources, and the human environment. NHTSA will consider the direct and indirect impacts of the proposed HD standards, as well as the cumulative impacts [33] of the proposed standards together with any past, present, and reasonably foreseeable future actions. NHTSA also intends to present a literature synthesis of life-cycle and upstream environmental impacts of vehicle materials and technologies relevant to the improvement of fuel efficiency in HD vehicles. Overall, NHTSA plans to analyze impacts in much the same manner as it did in its prior EISs, particularly the CAFE MY 2017–2025 Final EIS (FEIS), while incorporating by reference any of the relevant discussions from those documents.

Because of the models NHTSA will use for this rulemaking and EIS, the agency anticipates analyzing impacts on fuel/energy use and pollutant emissions through 2050 and impacts on GHG emissions, global temperature, and climate change through 2100. In the CAFE MY 2017–2025 FEIS, NHTSA analyzed impacts on fuel/energy use and pollutant emissions through 2060. However, because HD vehicles generally accumulate the vast majority of their VMT in early years, and because more distant projections contain far more uncertainty, NHTSA believes the analysis year of 2050 for fuel/energy use and air quality will provide sufficient information for the decision-maker to assess the totality of the impacts related to the regulated vehicles. Because climate impacts are more long-term, NHTSA anticipates that the EIS will assess these impacts to 2100.

NHTSA specifically requests comment on its proposed analysis as laid out in the previous paragraphs. For example, do the resources and impacts described represent the significant issues to be analyzed in depth in the EIS? [34] How should the agency assess cumulative impacts, including those from various emissions source categories and across a range of geographic locations? How should the agency distinguish the direct/indirect

[27] *See* 40 CFR 1500.5(d), 1501.7, 1508.25.

[28] *Final Environmental Impact Statement, Corporate Average Fuel Economy Standards, Passenger Cars and Light Trucks, Model Years 2017–2025,* Docket No. NHTSA–2011–0056–2089 (July 2012).

[29] *Final Environmental Impact Statement, Corporate Average Fuel Economy Standards, Passenger Cars and Light Trucks, Model Years 2012–2016,* Docket No. NHTSA–2009–0059–0140 (February 2010).

[30] *Final Environmental Impact Statement, Corporate Average Fuel Economy Standards, Passenger Cars and Light Trucks, Model Years 2011–2015,* Docket No. NHTSA–2008–0060–0605 (October 2008).

[31] *Final Environmental Impact Statement, Medium- and Heavy-Duty Fuel Efficiency Improvement Program, Model Years 2014–2018,* Docket No. NHTSA–2010–0079–0151 (June 2011).

[32] *See* Chapter 6 of the CAFE MY 2017–2025 Final EIS.

[33] In accordance with CEQ regulations, cumulative impacts are ''the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-federal) or person undertakes such action.'' 40 CFR 1508.7.

[34] *See* 40 CFR 1501.7(a)(2).

impacts of its action from the cumulative impacts of its action? Finally, should the cumulative impacts analysis consider emissions and impacts related to only HD vehicles, all on-road motor vehicles, the entirety of the transportation sector, or all sources of such emissions?

The agency anticipates uncertainty in estimating the potential environmental impacts of the alternatives it proposes, particularly with regard to climate change. For instance, NHTSA expects that there will be uncertainty associated with its estimates of the range of potential global mean temperature changes that may result from changes in fuel and energy consumption and GHG emissions due to a range of new HD vehicle fuel efficiency standards. Further, it is difficult to predict and compare the ways in which potential temperature changes attributable to new HD vehicle fuel efficiency standards may, in turn, affect many aspects of the environment. NHTSA will endeavor to gather the key relevant and credible information. Where information is incomplete or unavailable, the agency will acknowledge the uncertainties in its NEPA analysis, and will apply the provisions in the CEQ regulations addressing ''[i]ncomplete or unavailable information.'' [35]

NHTSA intends to rely primarily upon the Intergovernmental Panel on Climate Change (IPCC) Fourth and Fifth Assessment Reports and reports of the U.S. Climate Change Science Program (CCSP) and the U.S. Global Change Research Program (USGCRP), including the USGCRP Third National Climate Assessment (NCA) Report, as sources for recent ''summar[ies] of existing credible scientific evidence which is relevant to evaluating the reasonably foreseeable significant adverse impacts on the human environment.'' [36] NHTSA will also rely on National Academies and National Research Council assessments of climate impacts and the EPA Endangerment and Cause or Contribute Findings for Greenhouse Gases under Section 202(a) of the Clean Air Act and the accompanying Technical Support Document (referred to collectively hereinafter as the EPA Endangerment Finding). NHTSA believes that the IPCC Fourth and Fifth Assessment Reports, the USGCRP NCA, National Academies and National Research Council assessments, and the EPA Endangerment Finding are the most recent, most comprehensive summaries available, but recognizes that subsequent peer-reviewed research and other federal agency reports may provide additional relevant and credible evidence not accounted for in these Reports. NHTSA expects to consider such subsequent information as well, to the extent that it provides relevant and credible evidence.

NHTSA expects to rely on its previously published EISs, incorporating material by reference ''when the effect will be to cut down on bulk without impeding agency and public review of the action.'' [37] Therefore, the NHTSA NEPA analysis and documentation will incorporate by reference relevant materials, including portions of the agency's prior NEPA documents, where appropriate.

NHTSA has invited EPA, the Federal Motor Carrier Safety Administration (FMCSA), and the Department of Energy (DOE) to serve as cooperating agencies on this EIS.[38] If they accept, these agencies' role in the development of the EIS could include the following as they relate to their area of expertise:

- Identifying the significant issues to be analyzed in the EIS from a fuel use, climate change, and air quality perspective for heavy-duty vehicles;
- Participating in the scoping process as appropriate and, in particular, assisting NHTSA to ''identify and eliminate from detailed study the issues which are not significant or which have been covered by prior environmental review (§ 1506.3), narrowing the discussion of these issues in the statement to a brief presentation of why they will not have a significant effect on the human environment or providing a reference to their coverage elsewhere;'' [39]
- Providing information and expertise on manufacture, sale, operation, and maintenance, of heavy-duty vehicles;
- Providing information and expertise related to technologies for improving the fuel efficiency of heavy-duty vehicles;
- Providing technical assistance, information, and expertise for modeling environmental impacts related to manufacture and use of heavy-duty vehicles;
- Participating in coordination meetings, as appropriate; and
- Reviewing and commenting on the DEIS and FEIS prior to publication.

As part of the scoping process, NHTSA will work with cooperating agencies to refine their role, though NHTSA will retain responsibility for the EIS.[40]

Scoping and Public Participation: NHTSA's NEPA analysis for new HD fuel efficiency improvement program standards will consider the direct, indirect, and cumulative environmental impacts of proposed standards and those of reasonable alternatives. The scoping process initiated by this notice seeks public comment on the range of alternatives under consideration, and on the most important issues for in-depth analysis in the EIS.[41]

NHTSA invites all Federal agencies, Indian Tribes, State and local agencies, stakeholders, and the public to participate in the scoping process.[42] Please submit written comments concerning the appropriate scope of the NEPA analysis for proposed HD vehicle fuel efficiency standards to the docket number identified in the heading of this notice, using any of the methods described in the **ADDRESSES** section of this notice. NHTSA does not plan to hold a public scoping meeting, because past experience indicates that written comments will be effective in identifying and narrowing the issues for analysis.

All comments relevant to the scoping process are welcome. Specifically, NHTSA requests:

- Peer-reviewed scientific studies that have been issued since the EPA Endangerment Finding and that address or may inform: (a) The impacts on CO_2 and other GHG emissions that may be associated with any of the alternatives under consideration; (b) the impacts from climate change that may be associated with these emission changes; or (c) the time periods over which such

[35] *See* 40 CFR 1502.22.

[36] 40 CFR 1502.22(b)(3); *see* 40 CFR 1502.21. The IPCC reports are available at *http://www.ipcc.ch/* (last visited April 29, 2014). Information on CCSP and USGCRP can be found at *http://www.globalchange.gov/* (last visited May 19, 2014). Information on EPA's Endangerment and Cause or Contribute Findings is available at *http://www.epa.gov/climatechange/endangerment/* (last visited April 29, 2014).

[37] 40 CFR 1502.21.

[38] Under the CEQ implementing regulations, a cooperating agency is ''any Federal agency[, State or local agency, or Indian tribe] other than a lead agency which has jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal (or a reasonable alternative) for . . . [a] major Federal action significantly affecting the quality of the human environment.'' 40 CFR 1508.5. *See also* 40 CFR 1501.6.

[39] 40 CFR 1501.7(a)(3).

[40] *See* 40 CFR 1501.7(a)(4).

[41] *See* 40 CFR 1500.5(d), 1501.7, 1508.25.

[42] Consistent with NEPA and implementing regulations, NHTSA is sending this notice directly to: (1) Federal agencies having jurisdiction by law or special expertise with respect to the environmental impacts involved or authorized to develop and enforce environmental standards; (2) the Governors of every State, to share with the appropriate agencies and offices within their administrations and with the local jurisdictions within their States; (3) organizations representing state and local governments and Indian tribes; and (4) other stakeholders that NHTSA reasonably expects to be interested in the NEPA analysis for the HD vehicle fuel efficiency standards. *See* 42 U.S.C. 4332(2)(C); 49 CFR 520.21(g); 40 CFR 1501.7, 1506.6.

impacts may occur. NHTSA is particularly interested in peer-reviewed studies analyzing the potential impacts of climate change within the United States or in particular geographic areas of the United States.

- Comments on how NHTSA should estimate the potential changes in temperature that may result from the changes in CO_2 emissions projected from setting new HD fuel efficiency standards, and comments on how NHTSA should estimate the potential impacts of temperature changes on the environment.
- Comments on how NHTSA should discuss or estimate any localized or regional impacts of decreased fuel use, including potential upstream impacts (e.g., changes in fuel use and emissions levels resulting from the extraction, production, storage, and distribution of fuel; changes in materials or other technologies), and comments on how NHTSA should estimate the potential impacts of these localized or regional changes on the environment.
- Comments on what time frame NHTSA should use to evaluate the environmental impacts that may result from setting HD vehicle fuel efficiency standards.
- Comments on emerging environmental issues that should be considered when setting standards.

NHTSA understands that there are a variety of potential alternatives that could be considered that fit within the purpose and need for the proposed rulemaking, as set forth in EISA. NHTSA is therefore interested in comments on how best to structure or describe proposed alternatives for purposes of evaluation under NEPA. Subject to the statutory restraints under EISA, a variety of potential alternatives could be considered within the purpose and need for the proposed rulemaking, each falling along a theoretically infinite continuum of potential standards. As described above, NHTSA plans to address this issue by identifying alternatives at the upper and lower bounds of a range within which we believe the statutory requirement for ''maximum feasible improvement'' [43] would be satisfied, as well as identifying and analyzing the impacts of a preferred alternative. In this way, NHTSA expects to bracket the potential environmental impacts of the standards it may select.[44]

NHTSA seeks comments on what criteria should be used to choose the Preferred Alternative, given the agency's statutory requirement of developing a ''program designed to achieve the maximum feasible improvement.'' [45] When suggesting an approach, please explain how it would satisfy the EISA requirements (in particular, how and why it would be ''appropriate, cost-effective, and technologically feasible'') and give effect to NEPA's policies.[46]

In addition, as noted above, NHTSA requests comments on how the agency should assess cumulative impacts, including those from various emissions source categories and from a range of geographic locations. Also in regard to cumulative impacts, the agency requests comments on how to consider the incremental impacts from foreseeable future actions of other agencies or persons, and how they might interact with the HD vehicle fuel efficiency improvement program's incremental impacts.

Two important purposes of scoping are identifying the significant issues that merit in-depth analysis in the EIS and identifying and eliminating from detailed analysis the issues that are not significant and therefore require only a brief discussion in the EIS.[47] The more specific your comments are, and the more support you can provide by directing the agency to peer-reviewed scientific studies and reports as requested above, the more useful your comments will be to the agency. For example, if you identify an additional area of impact or environmental concern you believe NHTSA should analyze, or an analytical tool or model that you believe NHTSA should use to evaluate these environmental impacts, you should clearly describe it and support your comments with a reference to a specific peer-reviewed scientific study, report, tool or model. Specific, well-supported comments will help the agency prepare an EIS that is focused and relevant, and will serve NEPA's overarching aims of making high quality information available to decision-makers and the public by ''concentrat[ing] on the issues that are truly significant to the action in question, rather than amassing needless detail.'' [48] By contrast, mere assertions that the agency should evaluate broad lists or categories of concerns, without support, will likely not assist the scoping process for the proposed standards.

Written comments should include an Internet citation (with a date last visited) to each peer-reviewed study or report you cite in your comments if one is available. If a document you cite is not available to the public online, you should attach a copy to your comments [49] or describe the study with sufficient detail to allow the agency to determine whether its contents warrant further analysis and potential inclusion in the EIS. Your comments should indicate how each document you cite, attach, or describe is relevant to the rulemaking or NEPA analysis, and indicate the specific pages and passages in the attachment that are most informative.

In the past, some commenters have incorporated by reference comments they or others have previously submitted with regard to other EISs prepared by NHTSA. To the degree those previously submitted comments do not relate to the current EIS, have already been responded to by the agency in a prior EIS, or have been addressed by changes in the prior or current EISs, NHTSA will not provide a direct response in the current DEIS or FEIS. If a commenter does not believe the issues raised in those previously submitted comments have been fully addressed by the agency, the commenter may choose to raise the issue again, but should provide sufficient explanation and supporting material in comments submitted to the agency with regard to the current EIS (including comments submitted during scoping).

Please be sure to reference the docket number identified in the heading of this document in your comments. NHTSA may communicate with interested parties by email. Thus, please also provide an email address (or a mailing address if you decline email communications).[50] These steps will help NHTSA manage a large volume of material during the NEPA process. All comments and materials received, including the names and addresses of the commenters who submit them, will

[43] *See* 49 U.S.C. 32902(k)(2).

[44] Should NHTSA ultimately choose to set standards at levels other than the Preferred Alternative, we believe that this bracketing will properly inform the decision-maker, so long as the standards are set within its bounds. This methodology permits the analysis of a range of reasonable alternatives the agency may pick, while providing the agency flexibility to select the alternative based on the most up-to-date information and analyses available at that time.

[45] 49 U.S.C. 32902(k)(2).

[46] *See* 49 U.S.C. 32902(k)(2); 40 CFR 1502.14, *Alternatives Including the Proposed Action* (explaining what agencies should include in the alternatives section of an EIS).

[47] 40 CFR 1500.4(g), 1501.7(a).

[48] 40 CFR 1500.1(b).

[49] Many studies or reports are subject to distribution limitations under U.S. copyright law. Please do not attach the document to your written comments if it would violate U.S. copyright law to make that document available to the public in the agency's docket.

[50] If you prefer to receive NHTSA's NEPA correspondence by U.S. mail, NHTSA intends to provide its NEPA publications via a CD readable on a personal computer.

become part of the administrative record and will be posted on the web at *http://www.regulations.gov.*

NHTSA expects to prepare an NPRM and DEIS for public comment by March 2015, and an FEIS and final rule by March 2016. NHTSA will make its DEIS and FEIS available on the agency's Web site (*http://www.nhtsa.dot.gov/fuel-economy*) [51] and in the docket identified at the beginning of the notice. NHTSA will mail notices of the availability of environmental documents to Federal agencies with jurisdiction by law or special expertise (including cooperating agencies), States, Indian tribes, commenters, stakeholders (e.g., vehicle, trailer, or engine manufacturers, trade organizations, and environmental organizations the agency has identified), and national organizations that have requested that notice regularly be provided.[52] EPA will then announce the availability of NHTSA's DEIS and FEIS in **Federal Register** notices. To reduce its impact on the environment, NHTSA's default method of distribution will be through the Internet by the agency's Web site and online docket (*http://www.regulations.gov*). However, NHTSA will create limited quantities of the EIS on CD–ROMs and in hard-copy printed books for those who require and specifically request to receive it in those formats.[53]

David M. Hines,

Acting Associate Administrator for Rulemaking.

[FR Doc. 2014–16005 Filed 7–8–14; 8:45 am]

BILLING CODE 4910–59–P

[51] NHTSA will also post information about the NEPA process and the HD vehicle fuel efficiency improvement program rulemaking on this Web site.

[52] Members of the public, including national organizations, may request that notice of the availability of environmental documents be provided directly to them. To be included on this transmittal list, please provide your email address or mailing address to NHTSA by email (*NHTSA.NEPA_Mailing@dot.gov*) or regular mail (James MacIsaac, 1200 New Jersey Ave. SE., W43–444, Washington, DC 20590).

[53] Such requests may be made by email or regular mail at the addresses indicated in the previous footnote. Please be advised that requests received after January 1, 2015 may result in delayed receipt of a CD–ROM or hard copy.

Notices

Federal Register

Vol. 79, No. 131

Wednesday, July 9, 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

Submission for OMB Review; Comment Request

July 2, 2014.

The Department of Agriculture has submitted the following information collection requirement(s) to Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 725 17th Street NW., Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Rural Utilities Service

Title: RUS Form 87, Request for Mail List Data.

OMB Control Number: 0572–0051.

Summary of Collection: The Rural Utilities Service (RUS) is a credit agency of the U.S. Department of Agriculture. The agency makes loans (direct and guaranteed) to finance electric and telecommunications facilities in rural areas in accordance with the Rural Electrification Act of 1936, 7 U.S.C. 901 as amended, (ReAct). RUS Electric Program provides support to the vast rural American electric infrastructure. RUS' Telecommunications Program makes loans to furnish and improve telephone services and other telecommunications purposes in rural areas.

Need and Use of the Information: RUS will collect information using RUS Form 87, Request for Mail List Data. The information is used for the RUS Electric and Telephone programs to obtain the name and addresses of the borrowers' officers/board of directors and corporate officials, who are authorized to sign official documents and/or to make official representations concerning borrower operations and management. RUS uses the information to assure that (1) accurate, current, and verifiable information is available; (2) correspondence with borrowers is properly directed; and (3) the appropriate officials have signed the official documents submitted. Failure to collect information from borrowers could result in failure to protect the government's security interest when determining eligibility and administering loan programs.

Description of Respondents: Not-for-profit institutions; Business or other for-profit.

Number of Respondents: 1,125.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 281.

Charlene Parker,

Departmental Information Collection Clearance Office.

[FR Doc. 2014–16053 Filed 7–8–14; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Office of the Chief Information Officer; Notice of Request for a Revision to and Extension of an Information Collection; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: Office of the Chief Information Officer.

ACTION: Notice and request for comments.

SUMMARY: The Office of the Chief Information Officer, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public to comment on the ''Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery'' for approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 et. seq.). This collection was developed as part of a Federal Government-wide effort to streamline the process for seeking feedback from the public on service delivery. This notice announces our intent to submit this collection to Office of Management and Budget (OMB) for approval and solicit comments on specific aspects for the proposed information collection.

DATES: Consideration will be given to all comments received by September 8, 2014.

ADDRESSES: Submit comments by one of the following methods:

- *Web site: www.Regulations.gov.*
- *Email: Ruth.Brown@ocio.usda.gov* and *Charlene.Parker@ocio.usda.gov.*
- *Fax:* 202–690–0068.

Comments submitted in response to this notice may be made available to the public. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. If you send an email comment, 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. Please note that responses

to this public comment request containing any routine notice about the confidentiality of the communication will be treated as public comments that may be made available to the public notwithstanding the inclusion of the routine notice.

FOR FURTHER INFORMATION CONTACT: Ruth Brown, 202–720–8958 or Charlene Parker, 202–720–8681.

SUPPLEMENTARY INFORMATION:

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

Abstract: The proposed information collection activity provides a means to 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. This feedback will, (1) provide insights into customer or stakeholder perceptions, experiences and expectations, (2) provide an early warning of issues with service and, (3) focus attention on areas where communication, training or changes in operations might improve delivery of products or services. This collection will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

The solicitation of feedback will target areas such as: Timeliness, appropriateness, accuracy of information, courtesy, efficiency of service delivery, and resolution of issues with service delivery. Responses will be assessed to plan and inform efforts to improve or maintain the quality of service offered to the public. If this information is not collected, vital feedback from customers and stakeholders on the Agency's services will be unavailable.

The Agency will only submit a collection for approval under this generic clearance if it meets the following conditions:

- The collections are voluntary;
- The collections are low-burden for respondents (based on considerations of total burden hours, total number of respondents, or burden-hours per respondent) and are low-cost for both the respondents and the Federal Government;
- The collections are non-controversial and do not raise issues of concern to other Federal agencies;
- Any collection is targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program in the near future;
- Personally identifiable information (PII) is collected only to the extent necessary and is not retained;
- Information gathered will be used only internally for general service improvement and program management purposes and is not intended for release outside of the agency;
- Information gathered will not be used for the purpose of substantially informing influential policy decisions; and
- Information gathered will yield qualitative information; the collections will not be designed or expected to yield statistically reliable results or used as though the results are generalizable to the population of study.

Feedback collected under this generic clearance provides useful information, but it does 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 usage require more rigorous designs that address: The target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential non-response bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior to fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

As a general matter, information collections will not result in any new system of records containing privacy information and will not ask questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

Current Actions: Extension of approval for a collection of information.

Type of Review: Extension.

Affected Public: Individuals and households, businesses and organizations, State, Local or Tribal Government.

Estimated Number of Respondents: 20,000.

Below we provide projected average estimates for the next 3-years:

Average Expected Annual Number of Activities: 20.

Average number of Respondents per Activity: 1.

Annual responses: 20,000.

Frequency of Response: Once per request.

Average minutes per response: 30.

Burden hours: 10,000.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions to; (1) Develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; (2) train personnel and to be able to respond to a collection of information, to search data sources, (3) complete and review the collection of information; and to transmit or otherwise disclose the information.

All written comments will be available for public inspection at *Regulations.gov.*

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid

Office of Management and Budget control number.

Cheryl L. Cook,

Chief Information Officer.

[FR Doc. 2014–16044 Filed 7–8–14; 8:45 am]

BILLING CODE 3410–KR–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

July 2, 2014.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food and Nutrition Service

Title: School Nutrition and Meal Cost Study.

OMB Control Number: 0584—NEW.

Summary Of Collection: The school meal programs administered by the Food and Nutrition Service (FNS) of the U.S. Department of Agriculture are a cornerstone of the nation's nutrition safety net for low-income children. FNS has long been committed to ensuring that the meals provided in schools are healthful and contribute to children's dietary requirements. The School Nutrition and Meal Cost Study (SNMCS) will continue the long-standing commitment of FNS to periodically assess the school meal programs. The SNMCS comes at a time of unprecedented change for the National School Lunch Program (NSLP) and School Breakfast Program (SBP). In the 2012–2013 school year, the school meal programs began to undergo far-reaching changes, mainly stemming from the Healthy, Hunger Free Kids Act (HHFKA, Public Law 111–296). Key reforms stemming from this legislation include new, more stringent meal pattern and nutrient requirements for school meals, new offer-versus-serve rules, gradually increased price for paid meals, and the introduction of nutrition standards for competitive foods. With the implementation of the new meal patters, nutrition requirements, and other changes, FNS has to determine the success of school meals in meeting the program goals set by the new standards, the cost of serving healthful meals that are acceptable to children, and the relationship of the school meals and competitive foods to children's participation in the programs and dietary quality.

Need and Use of the Information: The SNMCS will collect a broad range of data from nationally representative samples of public school food authorities, school, students, and parents during SY 2014–2015. These data will provide needed information about how federally sponsored school meal programs are operating after implementation of the new nutrition standards and other changes in regulations. Without this information FNS will not be able to assess progress toward key strategic goals for the NSLP and SBP or identify related training and technical assistance needs of SFAs and schools.

Description of Respondents: Individual or households; Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 40,509.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 52,594.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2014–16050 Filed 7–8–14; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Revision of the Land Management Plan for the Chugach National Forest

AGENCY: Forest Service, USDA.

ACTION: Notice of initiating the development of a land management plan revision for the Chugach National Forest.

SUMMARY: The Chugach National Forest, located in Southcentral Alaska, is initiating the development of a land management plan revision (forest plan). An Assessment will be posted to our Web site around September 1, 2014. We are inviting the public to help us further develop the ''need for change'' and a proposed action for the land management plan revision.

DATES: The Assessment report for the revision of the Chugach NF's land management plan will be posted on the following Web site at *www.fs.usda.gov/chugach* around September 1, 2014.

Public meetings associated with the continued development of the ''need for change'' and a proposed action will be announced on the Web site cited above.

It is anticipated that the Notice of Intent to prepare an environmental impact statement (which will accompany the land management plan revision for the Chugach NF), will be published in the **Federal Register** around March 1, 2015.

ADDRESSES: Written comments or questions concerning this notice should be addressed to U.S. Forest Service, Chugach National Forest, 161 East 1st Avenue, Door 8, Anchorage, Alaska, 99501. Comments or questions may also be sent via email to *FS-comments-alaska-chugach@fs.fed.us.* All correspondence, including names and addresses when provided, are placed in the record and are available for public inspection and copying.

FOR FURTHER INFORMATION CONTACT: Steve Kessler, Acting Forest Plan Revision Team Leader, at 907–743–9461 or, after September 1, 2014, Mary C. Rasmussen, Forest Plan Revision Team Leader at 907–743–9500. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–

800–877–8339 between 8:00 a.m. and 8:00 p.m. (Eastern time), Monday through Friday.

More information on the planning process can also be found on the Chugach National Forest Planning Web site at *www.fs.usda.gov/main/chugach/landmanagement/planning.*

SUPPLEMENTARY INFORMATION: Pursuant to the 2012 Forest Planning Rule (36 CFR Part 219), the planning process encompasses three-stages: assessment, plan revision, and monitoring. The first stage of the planning process involves assessing social, economic, and ecological conditions of the planning area, which is documented in an assessment report. The assessment report for the Chugach NF is being completed and will be available around September 1, 2014 on the Forest Web site at *www.fs.usda.gov/main/chugach/landmanagement/planning.*

This notice announces the start of the second stage of the planning process, which is the development of the land management plan revision. The first task of plan revision is to develop a preliminary ''need for change,'' which identifies the need to change management direction in the current plan due to information already received about the planning area from the public or employees, changing conditions or monitoring information. The next task is to develop a proposed action, which considers which items identified in the need for change will be addressed in the revision. We are inviting the public to further help us develop our preliminary ''need for change'' which will inform the proposed action.

A proposed action will initiate our compliance with the National Environmental Policy Act. A Notice of Intent to prepare an environmental impact statement for the land management plan revision, which will include a description of the preliminary need for change and a description of the proposed action, is anticipated to be published around March 1, 2015 in the **Federal Register**.

Forest plans developed under the National Forest Management Act (NFMA) of 1976 describe the strategic direction for management of forest resources for ten to fifteen years, and are adaptive and amendable as conditions change over time. The Forest Plan for the Chugach NF was approved in 2002 and has been amended five times. On January 31, 2013 and February 7, 2013, public announcements were made that the Chugach NF was beginning to work on the Assessment for revising their Forest Plan. This notice announces the start of the second stage of the planning process, the development of the land management plan revision. Once the plan revision is completed, it will be subject to the objection procedures of 36 CFR Part 219, Subpart B, before it can be approved. The third stage of the planning process is the monitoring and evaluation of the revised plan, which is ongoing over the life of the revised plan.

As public meetings, other opportunities for public engagement, and public review and comment opportunities are identified to assist with the development of the forest plan revision, public announcements will be made, notifications will be posted on the Forest's Web site at *www.fs.usda.gov/chugach* and information will be sent out to the Forest's mailing list. If anyone is interested in being on the Forest's mailing list to receive these notifications, please contact Karl Vester, Documents Coordinator, at the address identified above, or by sending an email to *FS-comments-alaska-chugach@fs.fed.us.*

Responsible Official

The responsible official for the revision of the land management plan for the Chugach National Forest is Terri Marceron, Forest Supervisor, Chugach National Forest, 161 East 1st Avenue, Door 8, Anchorage, AK 99501.

Dated: June 23, 2014.

Terri Marceron,

Forest Supervisor.

[FR Doc. 2014–15768 Filed 7–8–14; 8:45 am]

BILLING CODE 3410–11–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Rhode Island Advisory Committee

DATES: Dates and Times: Monday, July 21, 2014, at 12:00 p.m. [ET].

Place: Via Teleconference. Public Dial-in: 1–877–446–3914; Listen Line Code: 6509423.

TDD: Dial Federal Relay Service 1–800–977–8339 give operator the following number: 202–376–7533—or by email at *ero@usccr.gov.*

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 of the Rhode Island Advisory Committee to the Commission will convene via conference call on Friday, July 25, 2014. The purpose of the planning meeting is for the Advisory Committee to discuss the project proposal on human trafficking and to plan a future briefing meeting.

The meeting will be conducted via conference call. In order to reserve a sufficient number of lines, members of the public, including persons with hearing impairments, who wish to listen to the conference call, are asked to either call (202–376–7533) or email the Eastern Regional Office (ERO), (*ero@usccr.gov*) ten days in advance of the scheduled meeting. Persons with hearing impairments must first dial the Federal Relay Service TDD: 1–800–977–8339 and give the operator the Eastern Regional Office number (202–376–7533).

Members of the public who call-in can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number.

Members of the public are entitled to submit written comments. The comments must be received in the ERO by August 25, 2014. Comments may be mailed to the Eastern Regional Office, U.S. Commission on Civil Rights, 1331 Pennsylvania Avenue, Suite 1150, Washington, DC 20425, faxed to (202) 376–7548, or emailed to Paul Eliasson at *ero@usccr.gov.* Persons who desire additional information may contact the Eastern Regional Office at 202–376–7533.

Records generated from these meetings may be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after each 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 Eastern Regional Office at the above phone number, e-mail or street address.

The meetings will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Dated: July 3, 2014.

David Mussatt,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. 2014–16041 Filed 7–8–14; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No. PTO–P–2014–0025]

Request for Comments on Optimum First Action and Total Patent Pendency

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Request for comments.

SUMMARY: The United States Patent and Trademark Office (USPTO) is seeking public input on optimal patent first action and total pendency target levels. The current targets of ten month average first action pendency and twenty month average total pendency were established with stakeholder input in the previous USPTO 2010–2015 Strategic Plan. In the USPTO 2014–2018 Strategic Plan, the USPTO included an initiative to ''work with stakeholders to refine long-term pendency goals, while considering requirements of the IP community''. The USPTO recognizes the importance of continually refining and defining optimal pendency to take into consideration the external environment affecting workload inputs, the commitments made to the fee paying public, and the need to ensure a balance between workload, production capacity, and requirements of the Intellectual Property (IP) community. As a first step in beginning that initiative, the USPTO is seeking public input about IP community's suggestions for optimal patent first action and total pendency target levels.

DATES: *Comment Deadline Date:* Written comments must be received on or before September 8, 2014.

ADDRESSES: Comments must be sent by electronic mail message over the Internet addressed to: *patent_pendency2014@uspto.gov.*

FOR FURTHER INFORMATION CONTACT: Gregory L. Mills, Office of the Commissioner for Patents, at 571–272–1439.

SUPPLEMENTARY INFORMATION: As noted in the new 2014–2018 USPTO Strategic Plan, the USPTO is committed to working with stakeholders to refine long-term patent pendency goals, while considering the need for quality examination and other requirements of the IP community. *See http://www.uspto.gov/about/stratplan/index.jsp.* The purpose of this Request for Comments is to gather stakeholder input on optimal patent pendency levels. This information will be used to help the USPTO plan for patent pendency targets that are optimal for the Office, stakeholders, and the public at large. Reaffirming or refining the optimal pendency levels also will provide the USPTO with targets to use in planning for patent examination staffing levels and other agency resource requirements. In turn, these resource requirements will inform patent fee levels and revenue estimates during the biennial patent fee review.

The current targets are ten month average first action pendency and twenty month average total pendency which are measures of the timeliness of the examination process. More specifically, average first action pendency, or average first office action pendency, is the average number of months from the patent application filing date until the date a first office action is mailed by the USPTO. This time includes not only the time an application is awaiting a decision by the USPTO, but also any time awaiting a reply from an applicant, for example, their time to submit all parts of their patent application. Average first action pendency is an average for all applications that have a first office action mailed over a three-month period of time.

Average total pendency is the average number of months from the patent application filing date until the date the application either issues as a patent or goes abandoned. This time includes not only the time an application is awaiting action by the USPTO, but also includes any time awaiting a reply from an applicant, for example, including any extensions of time. Average total pendency is an average for all applications that either issue as a patent or go abandoned over a three month period of time. It does not include applications in which a Request for Continued Examination (RCE) has been filed.

The current targets of ten month average first action pendency and twenty month average total pendency were established about five years ago in the USPTO's 2010–2015 Strategic Plan. These targets have guided the USPTO in making significant reductions to pendency over the past four years, specifically: (1) A thirty percent reduction in average first action pendency, from an average first action pendency of 25.7 months in fiscal year (FY) 2010 to the current average first action pendency of 18.1 months; and (2) a twenty percent reduction in average total pendency, from an average total pendency of 35.3 months in FY 2010 to the current average total pendency of 28.1 months.

The USPTO worked closely with stakeholders and responded to their concerns in establishing the targets of ten month first action pendency and twenty month total pendency in the previous 2010–2015 Strategic Plan. These pendency targets were supported by stakeholders when they were announced in 2009 (e.g., the Patent Public Advisory Committee (PPAC) gave its support to these pendency timeframes in their 2009 Annual Report).

In the January 2013 final rule to set and adjust patent fees under the authority provided in section 10 of the Leahy-Smith America Invents Act (AIA) (Pub. L. 112–29, 125 Stat. 284, 316–17 (2011)), the PPAC commented in the Patent Public Advisory Committee Fee Setting Report of September 24, 2012 that it ''supports reducing pendency and while the proposed levels are laudable, there is nothing magical about the proposed pendency times,'' specifically ten month first action pendency and twenty month total pendency. *See Setting and Adjusting Patent Fees,* 78 FR 4211, 4244 (January 13, 2013). The PPAC advised that for future years it will be important to reach a properly balanced inventory level of patent applications pending at the USPTO that is appropriate for the workforce level. *See id.* Further, the PPAC stated that inventory should be low enough to achieve desired decreased pendency and high enough to accommodate potential fluctuations in application filings, retention of examiners, and changes in RCE filings stemming from the programs being instituted by the USPTO. *See id.*

The USPTO also currently has available a number of alternative prosecution options designed to reduce pendency including:

- Prioritized Examination (Track One) which allows users to receive a final disposition within an average of 12 months.
- Patent Prosecution Highway, which provides that when claims are determined to be allowable in the Office of First Filing, a corresponding application filed in the Office of Second Filing may be advanced out of turn.
- First Action Interview (FAI) Pilot program, in which an applicant is entitled to a first action interview, upon request, prior to the first Office action on the merits.
- After Final Consideration pilot (AFCP), which authorizes additional time for examiners to search and/or consider responses after final rejection.
- Quick-Path IDS (QPIDs) which eliminates the requirement for processing of a request for continued examination (RCE) with an information disclosure statement (IDS) filed after

payment of the issue fee in order for the IDS to be considered by the examiner.

Further details about these programs can be found at the USPTO Patent Application Initiatives Timeline Internet Web site (*http://www.uspto.gov/patents/init_events/patapp-initiatives-timeline.jsp*). Additionally, the USPTO has a number of different patent pendency measures displayed on the Data Visualization Dashboard of the USPTO's Internet Web site (*http://www.uspto.gov/dashboards/patents/main.dashxml*).

The public is invited to submit comments on issues related to patent application pendency that they deem relevant. Comment regarding the issues below would be particularly helpful to the USPTO:

1. Are the current targets of ten month average first action patent pendency and twenty month average total patent pendency the right agency strategic targets for the USPTO, stakeholders, and the public at large? If not, what are the appropriate average first action patent pendency and average total patent pendency targets, and what is the supporting rationale for different targets?

2. Average first action pendency and average total pendency have been the historical measures for many years. Using average pendency as the historical measure allows for a range of pendency across all applications in all technology areas. Should the USPTO have first action pendency and total pendency targets be met by nearly all applications (e.g., 90 or 95 percent of applications meeting the pendency target) rather than an average first action pendency and total pendency targets? If so, what should the percentage be and why?

3. Using average pendency as the historical measure also allows for a range of pendency across different examining units. Should the USPTO consider more technology level patent pendency targets, for example, at the Technology Center level? If so, should all the Technology Centers have the same target? If not, please explain why Technology Centers should have different pendency target levels and how they should be determined?

4. The American Inventors Protection Act (AIPA) provides for patent term adjustment for certain examination delays. *See* Public Law 106–113, 113 Stat. 1501, 1501A–557 through 1501A–560 (1999). The patent term adjustment (PTA) provisions set out examination timeframes, which may result in patent term adjustment if not met. *See* 35 U.S.C. 154(b)(1)(A) and (b)(1)(B). These examination timeframes are referred to within the USPTO as ''14–4–4–4–36'' timeframes. The ''14'' refers to fourteen months to first action. *See* 35 U.S.C. 154(b)(1)(A)(i). The first ''4'' refers to four months to respond to an amendment or RCE. *See* 35 U.S.C. 154(b)(1)(A)(ii). The second ''4'' refers to four months to act on an application after a Patent Trial and Appeal Board (PTAB) or court decision when allowable claims remain in the application. *See* 35 U.S.C. 154(b)(1)(A)(iii). The third ''4'' refers to four months to issue an application after payment of the issue fee. *See* 35 U.S.C. 154(b)(1)(A)(iv). Finally, the ''36'' refers to thirty-six-month (or three-year) total pendency. *See* 35 U.S.C. 154(b)(1)(B). If the USPTO considered using targets tied to these PTA provisions, the measure could differ from the current average pendency target measures in a few notable ways.

First, a target tied to PTA provisions could be based on the percent of applications that were completed within a certain number of months, rather than the average of all applications completed. Should the USPTO consider using a first action pendency target tied to minimizing the number of applications in which a first action is not mailed within fourteen months?

Second, the PTA provisions include more specific actions by the USPTO in specific timeframes. Should the USPTO also consider using some of the other PTA specific timeframes for their optimal pendency targets?

5. The PPAC has previously suggested the USPTO's goal to reduce first action pendency to ten months may have the unintended consequences of increasing the uncertainty of the patenting process and potentially reducing the quality of patents due to the possibility of ''hidden'' prior art since patent applications are not published until eighteen months after their filing date. *See Setting and Adjusting Patent Fees,* 78 FR at 4244–45. This potential of ''hidden'' prior art mentioned by the PPAC could be exacerbated by changes in the AIA regarding prior art submissions by third parties. *See* 35 U.S.C. 122(e). In other words, a USPTO policy to encourage completing first office actions too soon after the filing date of an application does not allow for the publication of all pertinent patent prior art and for the appropriate window for third party prior art submissions. Would the benefits of a prompt first Office action outweigh potential concerns of the Office action being issued too quickly?

6. There have been suggestions that many changes are occurring in the IP system, and the USPTO should be cautious at this point in time to avoid going too low in first action pendency. For example:

a. Some potentially significant case law decisions are pending which may impact large categories of inventions and possibly lead to reduced patent filings.

b. It has been just over one year since patent fees were adjusted. *See Setting and Adjusting Patent Fees,* 78 FR 4211 (January 13, 2013). User practices and business decisions based on the adjusted fee levels may not have stabilized yet.

c. There is a lot of activity in the global IP arena which may impact patent filing activity and IP practices in the United States.

The USPTO welcomes comments on these potential concerns.

7. In addition to seeking public input on optimal patent first action and total pendency levels, the USPTO also is interested in knowing if there are other activities where pendency or timeliness should be measured and reported. While the USPTO reports on a number of different patent pendency measures displayed on the Data Visualization Dashboard of the USPTO's Internet Web site (*www.uspto.gov*):

a. What other metrics should the USPTO consider utilizing to measure pendency or timeliness throughout the examination process?

b. Specifically regarding RCEs, what other metrics should the USPTO consider utilizing to measure the pendency or timeliness regarding RCEs? Should these metrics also be considered for other continuing-type applications (*i.e.,* continuation, continuation-in-part, and divisional applications)?

Dated: July 2, 2014.

Michelle K. Lee,

Deputy Under Secretary of Commerce for Intellectual Property and Deputy Director of the United States Patent and Trademark Office.

[FR Doc. 2014–16031 Filed 7–8–14; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Renewal of Department of Defense Federal Advisory Committees

AGENCY: DoD.

ACTION: Renewal of Federal Advisory Committee.

SUMMARY: The Department of Defense is publishing this notice to announce that it is renewing the charter for the

Advisory Council on Dependents' Education (''the Council'').

FOR FURTHER INFORMATION CONTACT: Jim Freeman, Advisory Committee Management Officer for the Department of Defense, 703–692–5952.

SUPPLEMENTARY INFORMATION: This committee's charter is being renewed pursuant to 20 U.S.C. 929 and in accordance with the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended) and 41 CFR 102–3.50(a).

The Council is a statutory Federal advisory committee that shall provide independent advice and recommendations to the Director, Department of Defense Education Activity (''the Director'') and the Secretary of Defense, as appropriate, on the following:

a. Recommend to the Director general policies for operation of the defense dependents' education system with respect to curriculum selection, administration, and operation of the system;

b. provide information to the Director from other Federal agencies concerned with primary and secondary education with respect to education programs and practices which such agencies have found to be effective and which should be considered for inclusion in the defense dependents' education system;

c. advise the Director on the design of the study and the selection of the contractor referred to in 20 U.S.C. 930(a)(2); and

d. perform such other tasks as may be required by the Secretary of Defense.

The Council reports to the Director for all matters listed in a through c above, and any other matters involving the DoD dependents' education system that are within the Director's purview. All matters outside the Director's purview shall be reported to the Secretary of Defense, through the Under Secretary of Defense for Personnel and Readiness (USD(P&R)).

The USD(P&R) or the Director, as appropriate, may act upon the Council's advice and recommendations.

The Council, pursuant to 20 U.S.C. 929(a), shall be comprised of the following 16 members:

a. The Secretary of Defense and the Secretary of Education, or their respective designees;

b. Twelve individuals appointed jointly by the Secretary of Defense and the Secretary of Education who shall be individuals who have demonstrated an interest in the field of primary or secondary education and who shall include representatives of professional employee organizations, school administrators, and parents of students enrolled in the defense dependents' education system, and one student enrolled in such system; and

c. A representative of the Secretary of Defense and of the Secretary of Education.

Members appointed to the Council from professional employee organizations, pursuant to 20 U.S.C. 929(a)(2), shall be individuals designated by those organizations and shall serve three-year terms of service, not to exceed two full terms.

The Secretary of Defense and Secretary of Education may approve the appointment of individuals appointed pursuant to 20 U.S.C. 929(a)(1)(B) for one-to-four year term of service; however, no member appointed pursuant to 20 U.S.C. 929(a)(1)(B), unless authorized by the Secretary of Defense and the Secretary of Education, may serve more than two consecutive terms of service, unless authorized by the Secretary of Defense and the Secretary of Education. Any member appointed to fill a vacancy occurring before the expiration of the term of service for which his or her predecessor was appointed shall be appointed for the remainder of such term. Individuals who are not full-time or permanent part-time Federal employees shall be appointed as experts or consultants pursuant to 5 U.S.C. 3109 to serve as special government employee (SGE) members. Individuals who are full-time or permanent part-time Federal employees shall be appointed pursuant to 41 CFR 102–3.130(a) to serve as regular government employee (RGE) members. All members shall have their appointment renewed on an annual basis.

Pursuant to 20 U.S.C. 929(d), members of the Council who are not full-time or permanent part-time employees of the Federal government shall, while attending meetings or conferences of the Council or otherwise engaged in the business of the Council, be entitled to compensation at the daily equivalent of the rate specified at the time of such service for level IV of the Executive Schedule under 5 U.S.C. 5315. All Council members, while on official travel, shall be entitled to compensation for travel and per diem.

Pursuant to 20 U.S.C. 929(a)(3), the Secretary of Defense and the Secretary of Education, or their designated representatives, shall serve as the Council's co-chairs.

Pursuant to 20 U.S.C. 929(a)(4), the Director, Department of Defense Education Activity, shall be the Executive Secretary of the Council, but shall not vote on matters before the Council.

All members of the Council are appointed to provide advice on the basis of their best judgment without representing any particular point of view and in a manner that is free from conflict of interest.

DoD, when necessary and consistent with the Council's mission and DoD policies and procedures, may establish subcommittees, task forces, or working groups to support the Council. Establishment of subcommittees will be based upon a written determination, to include terms of reference, by the Secretary of Defense, the Deputy Secretary of Defense, or USD (P&R), as the Council's sponsor.

Such subcommittees shall not work independently of the Council and shall report all of their recommendations and advice solely to the Council for full and open deliberation, discussion, and voting. Subcommittees, task forces, or working groups have no authority to make decisions and recommendations, verbally or in writing, on behalf of the Council. No subcommittee or any of its members can update or report, verbally or in writing, on behalf of the Council, directly to the DoD or any Federal officer or employee.

The Secretary of Defense or the Deputy Secretary of Defense will appoint subcommittee members to a term of service of one-to-four years, with annual renewals, even if the member in question is already a member of the Council. Subcommittee members shall not serve more than two consecutive terms of service unless authorized by the Secretary of Defense or the Deputy Secretary of Defense.

Subcommittee members, if not full-time or permanent part-time Federal employees, will be appointed as experts or consultants pursuant to 5 U.S.C. 3109 to serve as SGE members. Subcommittee members, who are full-time or permanent part-time Federal employees, shall be appointed pursuant to 41 CFR 102–3.130(a) to serve as RGE members. With the exception of reimbursement of official travel and per diem related to the Council or its subcommittees, subcommittee members shall serve without compensation.

All subcommittees operate under the provisions of FACA, the Sunshine Act, governing Federal statutes and regulations, and established DoD policies and procedures.

The Council's Designated Federal Officer (DFO) shall be a full-time or permanent part-time DoD employee and shall be appointed in accordance with established DoD policies and procedures.

The Council's DFO is required to be in attendance at all meetings of the Council and any subcommittees for the entire duration of each and every meeting. However, in the absence of the Council's DFO, a properly approved Alternate DFO, duly appointed to the Council according to established DoD policies and procedures, shall attend the entire duration of all meetings of the Council and its subcommittees.

The DFO, or the Alternate DFO, shall call all meetings of the Council and its subcommittees; prepare and approve all meeting agendas; and adjourn any meeting when the DFO, or the Alternate DFO, determines adjournment to be in the public interest or required by governing regulations or DoD policies and procedures.

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to Advisory Council on Dependents' Education membership about the Council's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of the Advisory Council on Dependents' Education.

All written statements shall be submitted to the DFO for the Advisory Council on Dependents' Education, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Advisory Council on Dependents' Education DFO can be obtained from the GSA's FACA Database—*http://www.facadatabase.gov/.*

The DFO, pursuant to 41 CFR 102–3.150, will announce planned meetings of the Advisory Council on Dependents' Education. The DFO, at that time, may provide additional guidance on the submission of written statements that are in response to the stated agenda for the planned meeting in question.

Dated: July 3, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2014–15998 Filed 7–8–14; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Record of Decision for the Final Supplemental Environmental Impact Statement F–35 Beddown at Eglin Air Force Base, Florida

ACTION: Notice of Availability (NOA) of a Record of Decision (ROD).

SUMMARY: On June 26, 2014, the United States Air Force signed the ROD for the Final F–35 Beddown Supplemental Environmental Impact Statement (SEIS). Among other issues, the ROD states the Air Force decision to implement the No Action Alternative, the decision to beddown fifty-nine (59) F–35 aircraft, associated cantonment construction, and recommendations from the Air Force's Gulf Range Airspace Initiative.

The SEIS was made available to the public on February 28, 2014 through a NOA in the **Federal Register** (Volume 79, Number 40, Page 11428) with a wait period that ended on March 31, 2014.

Authority: This NOA is published pursuant to the relevant subsection of the regulations (40 CFR part 1506.6(b)(2)) implementing the provisions of the NEPA of 1969 (42 USC 4321, et seq.) and the relevant subsections of the Air Force's Environmental Impact Analysis Process (EIAP) (32 CFR Parts 989.21(b) and 989.24(b)(7)).

FOR FURTHER INFORMATION CONTACT: Mr. Mike Spaits, 850–882–2836.

Henry Williams,

Acting Air Force Federal Register Liaison Officer.

[FR Doc. 2014–15910 Filed 7–8–14; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Global Positioning System Directorate (GPSD)

AGENCY: Department of the Air Force, DoD.

ACTION: Notice of Meeting—2014 Open Forum for the NAVSTAR GPS Public Documents.

SUMMARY: This notice informs the public that the Global Positioning Systems (GPS) Directorate will host the 2014 Public Open Forum on 22 August 2014 for the following NAVSTAR GPS public documents: IS–GPS–200 (Navigation User Interfaces), IS–GPS–705 (User Segment L5 Interfaces), IS–GPS–800 (User Segment L1C Interface), and ICD–GPS–870 (Navstar Next Generation GPS Operational Control Segment [OCX] to User Support Community Interfaces). Additional logistical details can be found below.

The purpose of this forum is to collect issues/comments for analysis and possible integration into the next GPS public document revisions. The GPS Directorate has determined that for the public documents noted above, there will be no technical baseline changes processed this fiscal year. All outstanding comments on the GPS public documents will be considered along with the comments received at this year's open forum in the next revision cycle. The 2014 Open Forum is open to the general public. For those who would like to attend and participate in this forum, we request that you register no later than August 1, 2014. Please send the registration information to *timothy.johnson.91.ctr@us.af.mil* or *SMCGPER@us.af.mil,* providing your name, organization, telephone number, mailing and email addresses, and country of citizenship.

Comments will be collected, catalogued, and discussed as potential inclusions to the version following the current release. If accepted, these changes will be processed through the formal Directorate change process for IS–GPS–200, IS–GPS–705, IS–GPS–800, and ICD–GPS–870. All comments must be submitted in a Comments Resolution Matrix (CRM). These forms along with current versions of the documents and the official meeting notice are posted at: *http://www.gps.gov/technical/icwg/.* Please submit comments to the SMC/GPS Requirements (SMC/GPER) mailbox at *SMCGPER@us.af.mil* or to Timothy Johnson at *timothy.johnson.91.ctr@us.af.mil* by August 1, 2014. Special topics may also be considered for the Public Open Forum. If you wish to present a special topic, please coordinate with SMC/GPER or Timothy Johnson no later than August 1, 2014. For more information, please contact Timothy Johnson at 310–416–8476 or Capt. Frank Clark at 310–653–2041.

DATES: *Date/Time:* 22 Aug 2014, 0800–1700 (Pacific Standard Time P.S.T.).

ADDRESSES:

Leidos Facility,*
300 N. Sepulveda Blvd.,
3rd Floor, CR–3020ABC,
El Segundo, CA 90245.
Dial-In Information and Location:
Phone Number: 1–855–462–5367,
Code: 8311939,
*Identification will be required at the entrance of the Leidos facility (Passport, state ID or Federal ID).

Leidos facility phone number: 1–310–416–8300

FOR FURTHER INFORMATION CONTACT: Timothy Johnson, *timothy.johnson.91.ctr@us.af.mil,* (310) 416–8476

Or

Captain Frank Clark, *SMCGPER@us.af.mil,* (310) 653–2041.

Henry Williams,

Acting Air Force Federal Liaison Officer.

[FR Doc. 2014–15911 Filed 7–8–14; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2014–ICCD–0103]

Agency Information Collection Activities; Comment Request; Early Childhood Longitudinal Study Kindergarten Class of 2010–11 (ECLS–K:2011) Spring 4th Grade Data Collection & Recruitment for 5th Grade

AGENCY: Institute of Education Sciences (IES)/National Center for Education Statistics (NCES), 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 [insert one of the following: A revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before September 8, 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–0103 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 Kasha Kubdzela, 202–502–7411.

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: Early Childhood Longitudinal Study Kindergarten Class of 2010–11 (ECLS–K:2011) Spring 4th Grade Data Collection & Recruitment for 5th Grade.

OMB Control Number: 1850–0750.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: State or Local governments.

Total Estimated Number of Annual Responses: 140,208.

Total Estimated Number of Annual Burden Hours: 49,507.

Abstract: The Early Childhood Longitudinal Study, Kindergarten Class of 2010–11 (ECLS–K:2011), sponsored by the National Center for Education Statistics (NCES) within the Institute of Education Sciences (IES) of the U.S. Department of Education (ED), is a survey that focuses on children's early school experiences beginning with kindergarten and continuing through the fifth grade. It includes the collection of data from parents, teachers, school administrators, and nonparental care providers, as well as direct child assessments. Like its sister study, the Early Childhood Longitudinal Study, Kindergarten Class of 1998–99 (ECLS–K), the ECLS–K:2011 is exceptionally broad in its scope and coverage of child development, early learning, and school progress, drawing together information from multiple sources to provide rich data about the population of children who were kindergartners in the 2010–11 school year. This submission requests OMBs clearance for (1) a spring 2015 fourth-grade national data collection and (2) recruitment for the spring 2016 fifth-grade data collection.

Dated: July 2, 2014.

Stephanie Valentine,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2014–15945 Filed 7–8–14; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2014–ICCD–0071]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and approval; Comment Request; 2015 National Household Education Survey (NHES 2015) Full Scale Data Collection

AGENCY: Institute of Education Sciences/National Center for Education Statistics (NCES), 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 8, 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–0071 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 Kashka Kubdzela, 202–502–7411.

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: 2015 National Household Education Survey (NHES 2015) Full Scale Data Collection.

OMB Control Number: 1850–0768.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: Individuals or households.

Total Estimated Number of Annual Responses: 198,736.

Total Estimated Number of Annual Burden Hours: 32,240.

Abstract: The National Household Education Surveys Program (NHES) is conducted by the National Center for Education Statistics (NCES). NHES is NCESs principal mechanism for addressing education topics appropriate for households rather than establishments. Such topics cover a wide range of issues, including early childhood care and education, children's readiness for school, parent perceptions of school safety and discipline, before- and after-school activities of school-age children, participation in adult education and training, parent involvement in education, school choice, homeschooling, and civic involvement. The NHES consists of a series of rotating surveys using a two-stage design in which a household screener collects household membership and key characteristics for sampling and then appropriate topical survey(s) are mailed to sample members. Data from the NHES are used to provide national cross-sectional estimates on populations of special interest to education researchers and policymakers. For surveys about children, the population of interest is defined by age or grade in school, or both, depending on the particular survey topic and research questions. For surveys of adults, the population of interest is those aged 16 to 65 who are not enrolled in grade 12 or below, excluding those on active duty military service and those who are institutionalized. The NHES targets these populations using specific screening and sampling procedures. The NHES design also yields estimates for subgroups of interest for each child and adult survey. In addition to providing cross-sectional estimates, the NHES is designed to produce estimates from repeated cross sections to measure changes in key statistics. NHES surveys were conducted approximately every other year from 1991 through 2007 using random digit dial (RDD) methodology; beginning in 2012 NHES began collecting data by mail to improve response rates. This submission seeks clearance to repeat the child topical surveys conducted in 2012, Parent and Family Involvement in Education (PFI) and Early Childhood Program Participation (ECPP), to begin to measure changes over time with the new methodology. It also seeks clearance to conduct the first adult topical survey in NHES since 2005, the Credentials for Work Survey (CWS), and to pilot an adult topical survey for NHES:2017, the Training for Work Survey (TWS). The adult surveys were developed in conjunction with the Interagency Working Group on Expanded Measures of Enrollment and Attainment (GEMEnA) and the CWS was pilot tested in the 2014 NHES Feasibility Study. Data collection approaches that were most successful at balancing the need to limit overall bias, respondent burden, and cost in the Feasibility Study will be used for the 2015 data collection.

Dated: July 2, 2014.

Stephanie Valentine,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2014–15935 Filed 7–8–14; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; National Institute on Disability and Rehabilitation Research—Rehabilitation Engineering Research 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 Engineering Research Centers (RERCs)—Improving the Accessibility, Usability, and Performance of Technology for Individuals who are Deaf or Hard of Hearing Notice inviting applications for new awards for fiscal year (FY) 2014.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.133E–4.

DATES:

Applications Available: July 9, 2014.

Deadline for Letter of Intent to Apply: August 13, 2014.

Date of Pre-Application Meeting: July 30, 2014.

Deadline for Transmittal of Applications: September 8, 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. The program is also intended to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended (Rehabilitation Act).

Rehabilitation Engineering Research Centers

The purpose of NIDRR's RERCs program, which is funded through the Disability and Rehabilitation Research Projects and Centers Program, is to improve the effectiveness of services authorized under the Rehabilitation Act. It does so by conducting advanced engineering research, developing and evaluating innovative technologies, facilitating service delivery system changes, stimulating the production and distribution of new technologies and equipment in the private sector, and providing training opportunities. RERCs seek to solve rehabilitation problems and remove environmental barriers to improvements in employment, community living and participation, and health and function outcomes of individuals with disabilities.

The general requirements for RERCs are set out in subpart D of 34 CFR part 350 (What Rehabilitation Engineering Research Centers Does the Secretary Assist?).

Priority: This priority is from the notice of final priority for this program, published elsewhere in this issue of the **Federal Register**.

Absolute Priority: For FY 2014 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

Improving the Accessibility, Usability, and Performance of Technology for Individuals who are Deaf or Hard of Hearing.

Note: The full text of this priority is included in the notice of final priority for this program 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)(3).

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 debarment and suspension regulations in 2 CFR part 3485. (c) The regulations for this program in 34 CFR part 350. (d) The notice of final priority 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: $950,000.

Maximum Award: $950,000.

We will reject any application that proposes a budget exceeding $950,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 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 package from ED Pubs, be sure to identify this program as follows: CFDA number 84.133E–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 this competition.

Notice of Intent to Apply: Due to the broad nature of the priority in this competition, and to assist with the selection of reviewers for this competition, 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 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.

Applicants should submit the optional LOI by mail (either through the U.S. Postal Service or a commercial carrier) or by email to: Patricia Barrett, U.S. Department of Education, 400 Maryland Avenue, Room 5142, Potomac Center Plaza (PCP), Washington, DC 20202, email: *patricia.barrett@ed.gov.* The optional LOI should be submitted no later than August 13, 2014.

For further information regarding the LOI submission process, contact Patricia Barrett at (202) 245–6211, or email: *patricia.barrett@ed.gov.*

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. You are not required to double space titles, headings, footnotes, references, captions, or 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 1: 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.

Note 2: 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: July 9, 2014.

Deadline for Letter of Intent to Apply: August 13, 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 30, 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 Transmittal of Applications: September 8, 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 the RERC competition, CFDA Number 84.133E–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 RERC 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 84.133E).

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. Grants.gov will also notify you automatically by email if your application met all the Grants.gov validation requirements or if there were any errors. You will be given an opportunity to correct any errors and resubmit your application, but you must still meet the deadline for submission of applications.

Once your application is successfully validated by Grants.gov, the Department will retrieve your application from Grants.gov and send you an email with a unique PR/Award number for your application. 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).

These emails do not mean that your application is free of any disqualifying errors. It is your responsibility to ensure that your submitted application has met all of the Department's requirements, including submitting all attachments to your application as files in a PDF (Portable Document) read-only, non-modifiable format, as described in this notice and in the application instructions.

• 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 the 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 84.133E–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 84.133E–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 competition 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.

5. *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 5037, 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: July 3, 2014.

Michael K. Yudin,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2014–16088 Filed 7–8–14; 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—Family Support Notice inviting applications for new awards for fiscal year (FY) 2014.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.133B–8.

DATES:

Applications Available: July 9, 2014.

Date of Pre-Application Meeting: July 30, 2014.

Deadline for Notice of Intent to Apply: August 13, 2014.

Deadline for Transmittal of Applications: September 8, 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. 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#types.*

Priorities: NIDRR has established two absolute 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 Family Support 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—Family Support.

Note: The full text of the Family Support 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 debarment and suspension 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 this 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.

We will reject any application that proposes a budget exceeding $875,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

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 package from ED Pubs, be sure to identify this program as follows: CFDA number 84.133B–8.

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 priority in the competition, and to assist with the selection of reviewers for the competition, 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 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 August 13, 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. You are not required to double space titles, headings, footnotes, references, captions, or 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 1: 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.

Note 2: 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: July 9, 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 30, 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: August 13, 2014.

Deadline for Transmittal of Applications: September 8, 2014.

Applications for grants under the competition announced in this notice 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 the competition announced in this notice 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 the RRTC competition (CFDA Number 84.133B–8) 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 the RRTC competition (CFDA Number 84.133B–8) 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 the 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 the 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–8),
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–8),
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.

5. *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 5037, 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: July 3, 2014.

Michael K. Yudin,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2014–16086 Filed 7–8–14; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[OE Docket No. PP–400]

Application for Presidential Permit; New England Clean Power Link Project

AGENCY: Office of Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of Application.

SUMMARY: Champlain VT, LLC, doing business as TDI-New England (TDI-NE), has applied for a Presidential permit to construct, operate, maintain, and connect an electric transmission line across the United States border with Canada.

DATES: Comments or motions to intervene must be submitted on or before August 8, 2014.

ADDRESSES: Comments or motions to intervene should be addressed as follows: Office of Electricity Delivery and Energy Reliability (OE–20), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Christopher Lawrence (Program Office) at 202–586–5260 or via electronic mail at *Christopher.Lawrence@hq.doe.gov,* Katherine Konieczny (Program Attorney) at 202–586–0503.

SUPPLEMENTARY INFORMATION: The construction, operation, maintenance, and connection of facilities at the international border of the United States for the transmission of electric energy between the United States and a foreign country is prohibited in the absence of a Presidential permit issued pursuant to Executive Order (EO) 10485, as amended by EO 12038.

On May 20, 2014, TDI-NE., an entity principally based in Albany, New York, filed an application with the Office of Electricity Delivery and Energy Reliability of the Department of Energy (DOE) for a Presidential permit for the New England Clean Power Link Project. On June 23, 2014, TDI-NE filed supplemental information concerning its application. TDI-New England would own and operate the transmission facilities with functional control being turned over to the Independent System Operator of New England once the project is in service.

TDI-NE proposes to construct, operate and maintain the New England Clean Power Link Project (NECPL), a high voltage direct current (HVDC) electric transmission line with an operating voltage of +/− 300 to 320 kilovolts (kV). The project would be constructed in both aquatic (underwater) and terrestrial (underground) environments.

As proposed, NECPL is a high voltage direct current (HVDC) electric transmission line with an expected power transfer rating of 1000 megawatts (MW). The proposed project would originate in the Canadian province of Quebec and terminate in Ludlow, Vermont. From the Canadian border, the line would be located underground in Alburgh, Vermont for approximately 0.5 miles and would enter Lake Champlain via a horizontal directional drill. The cables would then be installed in Lake Champlain, within the jurisdictional waters of Vermont for 97.6 miles. The cables would emerge from Lake Champlain in the town of Benson, Vermont and would be buried along town roads and state highway rights-of-way for approximately 55.7 miles until terminating at a proposed converter station in Ludlow, Vermont. The total direct current portion of the project is approximately 153.8 miles. The project would also involve the construction of a single circuit 345 kilovolt (kV) underground high voltage alternating current (AC) transmission system which would run approximately 0.3 miles from the converter station in Ludlow to the Coolidge Substation located in the towns of Ludlow and Cavendish, Vermont. The total length of the proposed project from the U.S. border crossing in Alburgh to the Coolidge substation is approximately 154.1 miles.

Since the restructuring of the electric industry began, resulting in the introduction of different types of competitive entities into the marketplace, DOE has consistently expressed its policy that cross-border trade in electric energy should be subject to the same principles of comparable open access and non-discrimination that apply to transmission in interstate commerce. DOE has stated that policy in export authorizations granted to entities requesting authority to export over international transmission facilities. Specifically, DOE expects transmitting utilities owning border facilities to provide access across the border in accordance with the principles of comparable open access and non-discrimination contained in the Federal Power Act and articulated in Federal Energy Regulatory Commission (FERC) Order No. 888 (Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; FERC Stats. & Regs. ¶31,036 (1996)), as amended. In furtherance of this policy, DOE invites comments on whether it would be appropriate to condition any Presidential permit issued in this proceeding on compliance with these open access principles.

Procedural Matters: Any person may comment on this application by filing such comment at the address provided above. Any person seeking to become a party to this proceeding must file a motion to intervene at the address provided above in accordance with Rule 214 of FERC's Rules of Practice and Procedure (18 CFR 385.214). Two copies of each comment or motion to intervene should be filed with DOE on or before the date listed above.

Additional copies of such motions to intervene also should be filed directly with: Mr. Donald Jessome, General Manager, TDI-New England, P.O. Box 155, Charlotte, VT 05445, *Donald.Jessome@chvtllc.com.*

Before a Presidential permit may be issued or amended, DOE must determine that the proposed action is in the public interest. In making that determination, DOE considers the environmental impacts of the proposed project pursuant to the National Environmental Policy Act of 1969, determines the project's impact on electric reliability by ascertaining whether the proposed project would adversely affect the operation of the U.S. electric power supply system under normal and contingency conditions, and any other factors that DOE may also consider relevant to the public interest. Also, DOE must obtain the concurrences of the Secretary of State and the Secretary of Defense before taking final action on a Presidential permit application.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above, by accessing the program Web site at *http://energy.gov/oe/services/electricity-policy-coordination-and-implementation/international-electricity-regulatio-2.*

Issued in Washington, DC, on July 2, 2014.

Christopher A. Lawrence,

Electricity Policy Analyst, National Electricity Delivery Division, Office of Electricity Delivery and Energy Reliability.

[FR Doc. 2014–16106 Filed 7–8–14; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC14–9–000]

Commission Information Collection Activities (FERC–520, FERC–561, and FERC–566); Comment Request

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Comment request.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(a)(1)(D), the Federal Energy Regulatory Commission (Commission or FERC) is submitting its information collections FERC–520 (Application for Authority to Hold Interlocking Directorate Positions), FERC–561 (Annual Report of Interlocking Positions), and FERC–566 (Annual Report of a Utility's 20 Largest Purchasers) to the Office of Management and Budget (OMB) for review of the information collection requirements. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission previously issued a Notice in the **Federal Register** (79 FR 12191, 3/4/2014) requesting public comments. The Commission received four comments on the FERC–520, FERC–561, and FERC–566 information collections. The Commission addresses these comments in this notice and in its submittal to OMB.

DATES: Comments on the collection of information are due August 8, 2014.

ADDRESSES: Comments filed with OMB, identified by the OMB Control Nos. 1902–0083, 1902–0099, and 1902–0114, should be sent via email to the Office of Information and Regulatory Affairs: *oira_submission@omb.gov,* Attention: Federal Energy Regulatory Commission Desk Officer. The Desk Officer may also be reached via telephone at 202–395–4718.

A copy of the comments should also be sent to the Commission, in Docket No. IC14–9–000, by either of the following methods:

- eFiling at Commission's Web site: *http://www.ferc.gov/docs-filing/efiling.asp.*
- Mail/Hand Delivery/Courier: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* For user assistance contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* by telephone at (202) 502–8663, and by fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION:

Title: FERC–520 (Application for Authority to Hold Interlocking Directorate Positions), FERC Form 561 (Annual Report of Interlocking Positions), and FERC–566 (Annual Report of a Utility's 20 Largest Purchasers).

OMB Control No.: FERC–521 (1902–0083), FERC–561 (1902–0099), and FERC–566 (1902–0114).

Type of Request: Three-year extension of the FERC–521, FERC Form 561, and FERC–566 information collection requirements with no changes to the reporting requirements.

Abstract: The Federal Power Act (FPA), as amended by the Public Utility Regulatory Policies Act of 1978 (PURPA), mandates federal oversight and approval of certain electric corporate activities to ensure that neither public nor private interests are adversely affected. Accordingly, the FPA proscribes related information filing requirements to achieve this goal. Such filing requirements are found in the Code of Federal Regulations (CFR), specifically in 18 CFR Parts 45, 46, and Section 131.31 and serve as the basis for FERC–520, Form 561, and FERC–566.

Overview of the Three Data Collections. FERC–520, Form 561 and FERC–566 provide information related to complex electric corporate activities and serve to safeguard public and private interests, as the FPA requires. The Commission can use its enforcement authority when violations and omissions of FPA requirements occur.

FERC–520: FERC–520 is divided into two types of applications: Full and informational. The full application, as specified in 18 CFR Section 45.8, implements the FPA requirement under Section 305(b) that it is unlawful for any person to concurrently hold the positions of officer or director of more than one public utility; or a public utility and a financial institution that is authorized to underwrite or participate in the marketing of public utility securities; or a public utility and an electrical equipment supplier to that public utility, unless authorized by order of the Commission. In order to obtain authorization, an applicant must demonstrate that neither public nor private interests will be adversely affected by the holding of the position. The full application provides the Commission with information about any interlocking position for which the applicant seeks authorization including, but not limited to, a description of duties and the estimated time devoted to the position.

An informational application, specified in 18 CFR Section 45.9, allows an applicant to receive automatic authorization for an interlocked position upon receipt of the filing by the Commission. The informational application applies only to those individuals who seek authorization as: (1) an officer or director of two or more public utilities where the same holding company owns, directly or indirectly, that percentage of each utility's stock (of whatever class or classes) which is required by each utility's by-laws to elect directors; (2) an officer or director of two public utilities, if one utility is owned, wholly or in part, by the other and, as its primary business, owns or operates transmission or generation facilities to provide transmission service or electric power for sale to its owners; or (3) an officer or director of more than one public utility, if such person is already authorized under Part 45 to hold different positions as officer or director of those utilities where the interlock involves affiliated public utilities.

Pursuant to 18 CFR 45.5, in the event that an applicant resigns or withdraws from Commission-authorized interlocked positions or is not re-elected or re-appointed to such interlocked positions, the Commission requires that the applicant submit a notice of change

within 30 days from the date of the change.

FERC Form 561: The Commission uses FERC Form 561 to implement the FPA requirement that those who are authorized to hold certain interlocked positions annually disclose the interlocked positions they held the prior year. The positions that must be disclosed in the Form 561 include those which public utility officers and directors hold with other public utilities, with financial institutions, insurance companies, electrical equipment and fuel providers, and with any of the public utility's 20 largest purchasers of electric energy. The FPA specifically defines most of the information elements in the Form 561, including the information that must be filed, the required filers, the directive to make the information available to the public, and the filing deadline.

FERC–566: FERC–566 implements FPA requirements that each public utility annually publish a list of the 20 purchasers which purchased the largest annual amounts of electric energy sold by such public utility during any of the three previous calendar years. The public disclosure of this information provides the information necessary to determine whether an interlocked position is with any of the 20 largest purchasers of electric energy. Similar to the Form 561, the FPA identifies who must file the FERC–566 report and sets the filing deadline.

Type of Respondents: Individuals who plan to concurrently become or concurrently are officers or directors of public utilities and of certain other entities must request authorization to hold such interlocking positions by submitting a FERC–520. Those who are authorized to hold interlocked positions must annually disclose interlocked positions that they held in the prior calendar year by submitting a Form 561. Lastly, each public utility must annually publish the FERC–566 to list the purchasers of the 20 largest annual amounts of electric energy sold by such public utility during any of the last three calendar years.

Estimates of Annual Burden: [1] The Commission estimates the annual public reporting burdens for the information collections as:

FERC–520

[Application for Authority to Hold Interlocking Directorate Positions]

	Number of respondents (1)	Annual number of responses per respondent (2)	Total number of responses (1)*(2)=(3)	Average burden/cost per response [2] (4)	Total annual burden hours (total annual cost) [3] (3)*(4)=(5)	Cost per respondent ($) (5)÷(1)
Full	10	1	10	51.8	518	3,652
				$3,651.9	$36,519	
Informational	454	1	454	16	7,264	1,128
				$1,128	$512,112	
Notice of Change	254	1	254	0.25	63.5	17.63
				$17.63	$4,477	
Total			718		7,845.5	$4,797.63
					$553,108	

FERC FORM 561

[Annual Report of Interlocking Positions]

	Number of respondents (1)	Annual number of responses per respondent (2)	Total number of responses (1)*(2)=(3)	Average burden/cost per response [2] (4)	Total annual burden hours (total annual cost) [3] (3)*(4)=(5)	Cost per respondent ($) (5)÷(1)
FERC Form 561	2,675	1	2,675	0.25	668.75	17.63
				$17.63	$47,147	

FERC–566

[Annual Report of a Utility's 20 Largest Purchasers]

	Number of respondents (1)	Annual number of responses per respondent (2)	Total number of responses (1)*(2)=(3)	Average burden/cost per response [2] (4)	Total annual burden hours (total annual cost) [3] (3)*(4)=(5)	Cost per respondent ($) (5)÷(1)
FERC–566	1,082	1	1,082	6	6,492	423
				$423	$457,686	

[1] The Commission defines burden as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, reference 5 Code of Federal Regulations 1320.3.

[2] The estimates for cost per response are derived using the following formula: Total Annual Cost (Column 5) ÷ Total Number of Responses (Column 3) = Average Cost per Response.

[3] Total Annual Burden Hours * $70.50.

Public Comments and FERC Responses: A summary of the comments filed by the public in response to the 30-day notice for the FERC–520, FERC–561, and FERC–566 information collections and FERC's responses are provided below.

Public Comments: A number of commenters request changes to Form 561. For example, the Electric Power Supply Association (EPSA) argues that the Commission should modify Form 561 to allow individuals holding interlocking positions pursuant to automatic authorization to check a box indicating that they hold interlocking positions solely with affiliated entities. Similarly, NRG Energy (NRG) argues that, instead of requiring the Form 561, the Commission should consider an annual report where those holding covered positions are permitted to check a box indicating that they are the officer or director of affiliated entities, whether the entities are public utilities, electrical equipment suppliers, fuel suppliers or none of the categories. White & Case LLP (White & Case) submits that the Commission should only require the re-filing of an updated Form 561 after a year in which the individual changed reportable positions from those previously reported in a prior Form 561.

Commenters also request certain exemptions from the FERC–520 and FERC–566 reporting requirements. White & Case suggests that the Commission should not require an informational report under Part 45 for automatic authorization to hold officer/director positions with more than one public utility in a corporate family when the corporate family does not include any franchised public utility with captive customers. White & Case also recommends that the Commission eliminate the requirement to file notices of change under section 45.5 of the Commission's regulations and the requirement to file FERC–566 for public utilities that do not make any reportable sales. NYISO argues that it should be exempted from the requirement to submit FERC–566. EPSA and NRG suggest that the Commission should exempt electric wholesale generators (EWG) from the FERC–566 filing requirement.

FERC's Response: The Commission shares commenters' interest in identifying and implementing burden reductions to the benefit of filers as well as the Commission. Nevertheless, commenters' suggestions raise issues that require additional study. Moreover, should the Commission determine after further study to pursue changes to these information collections, those changes would be more appropriately addressed in a forum and through a process that is better suited to full public identification of and deliberation on possible proposed changes. Any changes to the Commission's regulations would need to be made through the Commission's formal rulemaking process. Given competing demands on the resources of both the Commission and industry, we estimate that it would take more than two years to complete the rulemaking process for the three information collections. That period includes the development, preparation and issuance of a Notice of Proposed Rulemaking, review of the submitted comments, the preparation and promulgation of a Final Rule and the development and implementation of any necessary software changes. As a result, the Commission is requesting that OMB extend the three collections for three years and thus provide the Commission with the necessary time to consider the issues and, if it decides that changes may be warranted, to promulgate any necessary rulemakings.

Additional Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: July 1, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–15993 Filed 7–8–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP10–837–000.
Applicants: Dominion Transmission, Inc.
Description: DTI—Operational Gas Sales Report—2014.
Filed Date: 6/30/14.
Accession Number: 20140630–5231.
Comments Due: 5 p.m. ET 7/14/14.

Docket Numbers: RP10–900–000.
Applicants: Dominion Transmission, Inc.
Description: DTI—Informational Fuel Report—2014.
Filed Date: 6/30/14.
Accession Number: 20140630–5232.
Comments Due: 5 p.m. ET 7/14/14.

Docket Numbers: RP14–1064–000.
Applicants: Gulf South Pipeline Company, LP.
Description: Cap Rel Neg Rate Agmts (QEP 36601, 37657 to 42637,42644,42645,42648) to be effective 7/1/2014.
Filed Date: 6/30/14.
Accession Number: 20140630–5042.
Comments Due: 5 p.m. ET 7/14/14.

Docket Numbers: RP14–1065–000.
Applicants: Gulf South Pipeline Company, LP.
Description: Cap Rel Neg Rate Agmt (Petrohawk 41455 to BP 42647) to be effective 7/1/2014.
Filed Date: 6/30/14.
Accession Number: 20140630–5043.
Comments Due: 5 p.m. ET 7/14/14.

Docket Numbers: RP14–1066–000.
Applicants: Gulf South Pipeline Company, LP.
Description: Cap Rel Neg Rate Agmt (JW Operating 34690 to QWest 42657) to be effective 7/1/2014.
Filed Date: 6/30/14.
Accession Number: 20140630–5044.
Comments Due: 5 p.m. ET 7/14/14.

Docket Numbers: RP14–1067–000.
Applicants: Dominion Transmission, Inc.
Description: DTI—June 30, 2014 Negotiated Rate Agreement to be effective 7/1/2014.
Filed Date: 6/30/14.
Accession Number: 20140630–5065.
Comments Due: 5 p.m. ET 7/14/14.

Docket Numbers: RP14–1068–000.
Applicants: Northern Natural Gas Company.
Description: 20140630 ILD Compliance Filing to be effective 9/30/2014.
Filed Date: 6/30/14.
Accession Number: 20140630–5077.
Comments Due: 5 p.m. ET 7/14/14.

Docket Numbers: RP14–1069–000.
Applicants: Texas Eastern Transmission, LP.
Description: EPC AUG 2014 FILING to be effective 8/1/2014.
Filed Date: 6/30/14.
Accession Number: 20140630–5122.
Comments Due: 5 p.m. ET 7/14/14.

Docket Numbers: RP14–1070–000.
Applicants: Big Sandy Pipeline, LLC.
Description: Big Sandy EPC 2014 to be effective 8/1/2014.

Filed Date: 6/30/14.
Accession Number: 20140630–5124.
Comments Due: 5 p.m. ET 7/14/14.

Docket Numbers: RP14–1071–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: BP Energy Company (RTS)—1410–15 & 18 to be effective 7/1/2014.
Filed Date: 6/30/14.
Accession Number: 20140630–5136.
Comments Due: 5 p.m. ET 7/14/14.

Docket Numbers: RP14–1072–000.
Applicants: Horizon Pipeline Company, L.L.C.
Description: Negotiated Rate Filing—Nicor Gas to be effective 7/1/2014.
Filed Date: 6/30/14.
Accession Number: 20140630–5168.
Comments Due: 5 p.m. ET 7/14/14.

Docket Numbers: RP14–1073–000.
Applicants: East Tennessee Natural Gas, LLC.
Description: EQT permanent release to Range to be effective 7/1/2014.
Filed Date: 6/30/14.
Accession Number: 20140630–5173.
Comments Due: 5 p.m. ET 7/14/14.

Docket Numbers: RP14–1074–000.
Applicants: Millennium Pipeline Company, LLC.
Description: Negotiated Rate Service Agreement—MMGS to be effective 8/1/2014.
Filed Date: 6/30/14.
Accession Number: 20140630–5209.
Comments Due: 5 p.m. ET 7/14/14.

Docket Numbers: RP14–1075–000.
Applicants: Northern Natural Gas Company.
Description: 20140630 Negotiated Rate to be effective 7/1/2014.
Filed Date: 6/30/14.
Accession Number: 20140630–5229.
Comments Due: 5 p.m. ET 7/14/14.

Docket Numbers: RP14–1076–000.
Applicants: Chandeleur Pipe Line, LLC.
Description: Chandeleur Name Change Refile to be effective 1/24/2014.
Filed Date: 6/30/14.
Accession Number: 20140630–5253.
Comments Due: 5 p.m. ET 7/14/14.

Docket Numbers: RP14–1077–000.
Applicants: Chandeleur Pipe Line, LLC.
Description: Chandeleur Show Cause Section 8.7.7 Refile to be effective 6/19/2014.
Filed Date: 6/30/14.
Accession Number: 20140630–5255.
Comments Due: 5 p.m. ET 7/14/14.

Docket Numbers: RP14–1078–000.
Applicants: Transcontinental Gas Pipe Line Company.
Description: Negotiated Rates—Cherokee AGL—Replacement Shippers—Jul 2014 to be effective 7/1/2014.
Filed Date: 6/30/14.
Accession Number: 20140630–5296.
Comments Due: 5 p.m. ET 7/14/14.

Docket Numbers: RP14–1080–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: Measurement Variance/Fuel Use Factors of Iroquois Gas Transmission System, L.P.
Filed Date: 6/30/14.
Accession Number: 20140630–5328.
Comments Due: 5 p.m. ET 7/14/14.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP13–1031–007.
Applicants: Trailblazer Pipeline Company LLC.
Description: Rate Case—Final Settlement to be effective 7/1/2014.
Filed Date: 6/30/14.
Accession Number: 20140630–5212.
Comments Due: 5 p.m. ET 7/14/14

Docket Numbers: RP14–628–001.
Applicants: Chandeleur Pipe Line, LLC.
Description: Chandeleur Imbalances Section 8.8.4 Refile to be effective 4/19/2014.
Filed Date: 6/30/14.
Accession Number: 20140630–5254.
Comments Due: 5 p.m. ET 7/14/14.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated July 1, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–16000 Filed 7–8–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2480–003.
Applicants: Berkshire Power Company, LLC.
Description: Order No. 697 Triennial Compliance Filing of Berkshire Power Company, LLC.
Filed Date: 6/30/14.
Accession Number: 20140630–5322.
Comments Due: 5 p.m. ET 8/29/14.

Docket Numbers: ER10–2603–006.
Applicants: Rumford Paper Company.
Description: Rumford Paper Company Market-Based Rate Tariff to be effective 7/1/201.
Filed Date: 6/30/14.
Accession Number: 20140630–5142.
Comments Due: 5 p.m. ET 7/21/14.

Docket Numbers: ER10–2924–004.
Applicants: Kleen Energy Systems, LLC.
Description: Order No. 697 Triennial Compliance Filing of Kleen Energy Systems, LLC.
Filed Date: 6/30/14.
Accession Number: 20140630–5316.
Comments Due: 5 p.m. ET 8/29/14.

Docket Numbers: ER10–2959–005; ER10–2934–004.
Applicants: Chambers Cogeneration Limited Partnership, Logan Generating Company, LP.
Description: Order No. 697 Triennial Compliance Filing of Chambers Cogeneration, Limited Partnership, et al. et al.
Filed Date: 6/30/14.
Accession Number: 20140630–5325.
Comments Due: 5 p.m. ET 8/29/14.

Docket Numbers: ER10–2961–004; ER10–2950–004.
Applicants: Edgecombe Genco, LLC, Spruance Genco, LLC.
Description: Order No. 697 Triennial Compliance Filing of Edgecombe Genco, LLC, et al.
Filed Date: 6/30/14.
Accession Number: 20140630–5324.
Comments Due: 5 p.m. ET 8/29/14.

Docket Numbers: ER10–2964–005; ER11–2041–005; ER11–2042–005; ER10–3193–004.
Applicants: Innovative Energy Systems, Seneca Energy II, LLC, Selkirk Cogen Partners, L.P., Brooklyn Navy Yard Cogeneration Partners.
Description: Order No. 697 Triennial Compliance Filing of Selkirk Cogen Partners, L.P., et al.

Filed Date: 6/30/14.
Accession Number: 20140630–5323.
Comments Due: 5 p.m. ET 8/29/14.

Docket Numbers: ER10–3069–005; ER10–3070–005.
Applicants: Alcoa Power Generating Inc., Alcoa Power Marketing LLC.
Description: Southeast Triennial Update of the Alcoa Companies.
Filed Date: 6/30/14.
Accession Number: 20140630–5326.
Comments Due: 5 p.m. ET 8/29/14.

Docket Numbers: ER13–343–002; ER13–342–004.
Applicants: CPV Shore, LLC, CPV Maryland, LLC.
Description: Order No. 697 Triennial Compliance Filing and Limited Request for Privileged Treatment of CPV Maryland, LLC, et al.
Filed Date: 6/30/14.
Accession Number: 20140630–5321.
Comments Due: 5 p.m. ET 8/29/14.

Docket Numbers: ER14–2087–003.
Applicants: Appalachian Power Company.
Description: OATT—Revise Attachments K & L, TCC Rate Cleanup to be effective 12/31/9998.
Filed Date: 6/30/14.
Accession Number: 20140630–5283.
Comments Due: 5 p.m. ET 7/21/14.

Docket Numbers: ER14–2090–001.
Applicants: Florida Power & Light Company.
Description: Errata to FPL and Seminole Rate Schedule No. 327 to be effective 5/31/2014.
Filed Date: 6/30/14.
Accession Number: 20140630–5297.
Comments Due: 5 p.m. ET 7/21/14.

Docket Numbers: ER14–2318–000.
Applicants: Portland General Electric Company.
Description: Att A1–B Sec 4–23 Sched 4 Filing to be effective 7/1/2014.
Filed Date: 6/30/14.
Accession Number: 20140630–5234.
Comments Due: 5 p.m. ET 7/21/14.

Docket Numbers: ER14–2319–000.
Applicants: Duke Energy Florida, Inc.
Description: Southeast Triennial Filing 2014 to be effective 3/1/2014.
Filed Date: 6/30/14.
Accession Number: 20140630–5235.
Comments Due: 5 p.m. ET 8/29/14.

Docket Numbers: ER14–2320–000.
Applicants: Portland General Electric Company.
Description: Att M and M1 Compliance Filing to be effective 9/1/2014.
Filed Date: 6/30/14.
Accession Number: 20140630–5237.
Comments Due: 5 p.m. ET 7/21/14.

Docket Numbers: ER14–2321–000.
Applicants: Duke Energy Progress, Inc.
Description: Southeast Triennial Filing 2014 to be effective 3/1/2014.
Filed Date: 6/30/14.
Accession Number: 20140630–5238.
Comments Due: 5 p.m. ET 8/29/14.

Docket Numbers: ER14–2322–000.
Applicants: Chestnut Flats Lessee, LLC.
Description: Triennial Market Power Update for the Northeast Region for Chestnut Flats Lessee to be effective 7/1/2014.
Filed Date: 6/30/14.
Accession Number: 20140630–5244.
Comments Due: 5 p.m. ET 8/29/14.

Docket Numbers: ER14–2323–000.
Applicants: Duke Energy Carolinas, LLC.
Description: Southeast Triennial Filing 2014 to be effective 3/1/2014.
Filed Date: 6/30/14.
Accession Number: 20140630–5256.
Comments Due: 5 p.m. ET 8/29/14.

Docket Numbers: ER14–2324–000.
Applicants: Wisconsin Electric Power Company.
Description: Wisconsin Electric FERC Electric Tariff Volume No. 9 2014 update to be effective 8/29/2014.
Filed Date: 6/30/14.
Accession Number: 20140630–5260.
Comments Due: 5 p.m. ET 7/21/14.

Docket Numbers: ER14–2325–000.
Applicants: Mosic Fertilizer, LLC.
Description: FERC ELECTRIC TARIFF, VOLUME NO. 1 to be effective 6/30/2014.
Filed Date: 6/30/14.
Accession Number: 20140630–5261.
Comments Due: 5 p.m. ET 7/21/14.

Docket Numbers: ER14–2326–000.
Applicants: Entergy Nuclear FitzPatrick, LLC
Description: Entergy Nuclear Fitzpatrick, LLC, Market Power Update and Tariff Revisions to be effective 8/29/2014.
Filed Date: 6/30/14.
Accession Number: 20140630–5263.
Comments Due: 5 p.m. ET 8/29/14.

Docket Numbers: ER14–2327–000.
Applicants: Entergy Nuclear Generation Company.
Description: Entergy Nuclear Generating Company Market Power Update and Tariff Revisions to be effective 8/29/2014.
Filed Date: 6/30/14.
Accession Number: 20140630–5265.
Comments Due: 5 p.m. ET 8/29/14.

Docket Numbers: ER14–2328–000.
Applicants: Entergy Nuclear Indian Point 2, LLC.
Description: Entergy Nuclear Indian Point 2, LLC, Market Power Update and Tariff Revisions to be effective 8/29/2014.
Filed Date: 6/30/14.
Accession Number: 20140630–5266.
Comments Due: 5 p.m. ET 8/29/14.

Docket Numbers: ER14–2329–000.
Applicants: Entergy Nuclear Indian Point 3, LLC.
Description: Entergy Nuclear Indian Point 3, LLC, Market Power Update and Tariff Revisions to be effective 8/29/2014.
Filed Date: 6/30/14.
Accession Number: 20140630–5267.
Comments Due: 5 p.m. ET 8/29/14.

Docket Numbers: ER14–2330–000.
Applicants: Entergy Nuclear Power Marketing, LLC.
Description: Entergy Nuclear Power Marketing, LLC, Market Power Update and Tariff Revisions to be effective 8/29/2014.
Filed Date: 6/30/14.
Accession Number: 20140630–5272.
Comments Due: 5 p.m. ET 8/29/14.

Docket Numbers: ER14–2331–000.
Applicants: Entergy Nuclear Vermont Yankee, LLC.
Description: Entergy Nuclear Vermont Yankee, LLC, Market Power Update and Tariff Revisions to be effective 8/29/2014.
Filed Date: 6/30/14.
Accession Number: 20140630–5273.
Comments Due: 5 p.m. ET 8/29/14.

Docket Numbers: ER14–2332–000.
Applicants: Entergy Rhode Island State Energy, L.P.
Description: Entergy Rhode Island State Energy, LP., Market Power Update and Tariff Revisions to be effective 8/29/2014.
Filed Date: 6/30/14.
Accession Number: 20140630–5277.
Comments Due: 5 p.m. ET 8/29/14.

Docket Numbers: ER14–2333–000.
Applicants: Rushmore Energy, LLC.
Description: Rushmore Energy Market Based Rate Tariff to be effective 7/9/2014.
Filed Date: 6/30/14.
Accession Number: 20140630–5281.
Comments Due: 5 p.m. ET 7/21/14.

Docket Numbers: ER14–2335–000.
Applicants: Appalachian Power Company.
Description: OATT—Revise Attachments K & L, TCC Rate Update R2 to be effective 12/31/9998.
Filed Date: 6/30/14.
Accession Number: 20140630–5290.
Comments Due: 5 p.m. ET 7/21/14.

Docket Numbers: ER14–2336–000.
Applicants: Appalachian Power Company.
Description: OATT—Revise Attachment K, TNC Rate Update to be effective 12/31/9998.
Filed Date: 6/30/14.

Accession Number: 20140630–5294.
Comments Due: 5 p.m. ET 7/21/14.

Docket Numbers: ER14–2337–000.
Applicants: El Paso Electric Company.
Description: Operating Procedure 10 with PNM to be effective 6/1/2014.
Filed Date: 6/30/14.
Accession Number: 20140630–5300.
Comments Due: 5 p.m. ET 7/21/14.

Docket Numbers: ER14–2338–000.
Applicants: Wisconsin Electric Power Company.
Description: Wisconsin Electric and WPPI Rate Schedule FERC No. 90 2014 revisions to be effective 8/29/2014.
Filed Date: 6/30/14.
Accession Number: 20140630–5307.
Comments Due: 5 p.m. ET 7/21/14.

Docket Numbers: ER14–2339–000.
Applicants: Baltimore Gas and Electric Company, PJM Interconnection, L.L.C.
Description: BGE submits revisions to the PJM OATT adding a Attachment M–2 for BGE to be effective 9/1/2014.
Filed Date: 6/30/14.
Accession Number: 20140630–5308.
Comments Due: 5 p.m. ET 7/21/14.

Docket Numbers: ER14–2340–000.
Applicants: PECO Energy Company, PJM Interconnection, L.L.C.
Description: PECO submits revisions to the PJM OATT adding Attachment M–2 for PECO to be effective 9/1/2014.
Filed Date: 6/30/14.
Accession Number: 20140630–5309.
Comments Due: 5 p.m. ET 7/21/14.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 1, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–16025 Filed 7–8–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP14–1079–000.
Applicants: TC Offshore LLC.
Description: Fieldwood Energy Neg Rate to be effective 7/1/2014.
Filed Date: 7/1/14.
Accession Number: 20140701–5023.
Comments Due: 5 p.m. ET 7/14/14.

Docket Numbers: RP14–1081–000.
Applicants: Gulf South Pipeline Company, LP.
Description: Amendment to Neg Rate Agmt (QEP 37657–77) to be effective 7/1/2014.
Filed Date: 7/1/14.
Accession Number: 20140701–5040.
Comments Due: 5 p.m. ET 7/14/14.

Docket Numbers: RP14–1082–000.
Applicants: Dominion Transmission, Inc.
Description: DTI—2014 Overrun and Penalty Revenue Distribution.
Filed Date: 7/1/14.
Accession Number: 20140701–5041.
Comments Due: 5 p.m. ET 7/14/14.

Docket Numbers: RP14–1083–000.
Applicants: Texas Gas Transmission, LLC.
Description: Receipt Point Capacity Update to be effective 8/1/2014.
Filed Date: 7/1/14.
Accession Number: 20140701–5076.
Comments Due: 5 p.m. ET 7/14/14.

Docket Numbers: RP14–1084–000.
Applicants: Rockies Express Pipeline LLC.
Description: Neg Rate 2014–06–30 Encana to be effective 7/1/2014.
Filed Date: 7/1/14.
Accession Number: 20140701–5097.
Comments Due: 5 p.m. ET 7/14/14.

Docket Numbers: RP14–1085–000.
Applicants: Stingray Pipeline Company, L.L.C.
Description: Stingray Filing to Update Contact Information to be effective 8/1/2014.
Filed Date: 7/1/14.
Accession Number: 20140701–5099.
Comments Due: 5 p.m. ET 7/14/14.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP14–218–001.
Applicants: High Island Offshore System, L.L.C.
Description: HIOS Settlement Rate Motion to be effective 6/1/2014.
Filed Date: 7/1/14.
Accession Number: 20140701–5186.
Comments Due: 5 p.m. ET 7/14/14.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 2, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–16001 Filed 7–8–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2331–026; ER14–630–003; ER10–2326–025; ER10–2343–023; ER14–1468–003; ER10–2330–025.
Applicants: J.P. Morgan Ventures Energy Corporation, AlphaGen Power LLC, Cedar Brakes I, L.L.C., J.P. Morgan Commodities Canada Corporation, KMC Thermo, LLC, Utility Contract Funding, L.L.C.
Description: Updated Market Power Analysis and Order 697 Compliance Filing of the J.P. Morgan Sellers.
Filed Date: 6/30/14.
Accession Number: 20140630–5179.
Comments Due: 5 p.m. ET 8/29/14.

Docket Numbers: ER10–2398–003; ER10–2399–003; ER10–2406–004; ER10–2408–003; ER10–2409–003; ER10–2410–003; ER10–2411–004;

ER10–2412–004; ER11–2935–004; ER13–1816–001.

Applicants: Blackstone Wind Farm, LLC, Blackstone Wind Farm II LLC, High Trail Wind Farm, LLC, Meadow Lake Wind Farm LLC, Meadow Lake Wind Farm II LLC, Meadow Lake Wind Farm III LLC, Meadow Lake Wind Farm IV LLC, Paulding Wind Farm II LLC, Sustaining Power Solutions LLC, Marble River, LLC.

Description: Updated Market Power Analysis for the Northeast Region of Blackstone Wind Farm, LLC, et. al.

Filed Date: 6/27/14.

Accession Number: 20140627–5239.

Comments Due: 5 p.m. ET 8/26/14.

Docket Numbers: ER10–2414–004.

Applicants: Old Trail Wind Farm, LLC.

Description: Updated Market Power Analysis for the Northeast Region of Old Trail Wind Farm, LLC.

Filed Date: 6/27/14.

Accession Number: 20140627–5237.

Comments Due: 5 p.m. ET 8/26/14.

Docket Numbers: ER10–2604–006.

Applicants: Luke Paper Company.

Description: Luke Paper Company Market-Based Rate Tariff to be effective 7/1/2014.

Filed Date: 6/30/14.

Accession Number: 20140630–5144.

Comments Due: 5 p.m. ET 7/21/14.

Docket Numbers: ER10–2606–008.

Applicants: Consolidated Water Power Company.

Description: Consolidated Water Power Company Market-Based Rate Tariff to be effective 7/1/2014.

Filed Date: 6/30/14.

Accession Number: 20140630–5147.

Comments Due: 5 p.m. ET 7/21/14.

Docket Numbers: ER10–2609–008.

Applicants: Escanaba Paper Company.

Description: Escanaba Paper Company Market-Based Rate Tariff to be effective 7/1/2014.

Filed Date: 6/30/14.

Accession Number: 20140630–5145.

Comments Due: 5 p.m. ET 7/21/14.

Docket Numbers: ER10–2984–018.

Applicants: Merrill Lynch Commodities, Inc.

Description: Updated Market Power Analysis for the Northeast Region of Merrill Lynch Commodities, Inc.

Filed Date: 6/27/14.

Accession Number: 20140627–5235.

Comments Due: 5 p.m. ET 8/26/14.

Docket Numbers: ER12–2513–003; ER12–2510–003; ER12–2511–003; ER12–2512–003; ER13–2308–001; ER10–2432–006; ER10–2435–006; ER10–2440–006; ER10–2442–006; ER10–2444–006; ER10–2446–006; ER10–2449–006; ER14–1439–001.

Applicants: Raven Power Marketing LLC, Brandon Shores LLC, C.P. Crane LLC, H.A. Wagner LLC, Sapphire Power Marketing LLC, Bayonne Plant Holding, L.L.C., Camden Plant Holding, L.L.C., Dartmouth Power Associates Limited Partn, Elmwood Park Power, LLC, Newark Bay Cogeneration Partnership, L.P, Pedricktown Cogeneration Company LP, York Generation Company LLC, TrailStone Power, LLC.

Description: Updated Market Power Analysis in the Northeast Region of Raven Power Marketing LLC.

Filed Date: 6/27/14.

Accession Number: 20140627–5238.

Comments Due: 5 p.m. ET 8/26/14.

Docket Numbers: ER13–2233–002.

Applicants: Midcontinent Independent System Operator, Inc.

Description: 2014–06–30 Order 764 Compliance Filing to be effective 6/30/2015.

Filed Date: 6/30/14.

Accession Number: 20140630–5163.

Comments Due: 5 p.m. ET 7/21/14.

Docket Numbers: ER14–2306–000.

Applicants: CalEnergy, LLC.

Description: CalEnergy Change in Status Filing to be effective 7/1/2014.

Filed Date: 6/30/14.

Accession Number: 20140630–5143.

Comments Due: 5 p.m. ET 7/21/14.

Docket Numbers: ER14–2307–000.

Applicants: New York State Electric & Gas Corporation.

Description: NYSEG–NYPA Attachment C—O&M Annual Update to be effective 9/1/2014.

Filed Date: 6/30/14.

Accession Number: 20140630–5146.

Comments Due: 5 p.m. ET 7/21/14.

Docket Numbers: ER14–2308–000.

Applicants: Waterside Power, LLC.

Description: Triennial Update Market Power Analysis Filing for NE Region & Tariff Amendments to be effective 7/1/2014.

Filed Date: 6/30/14.

Accession Number: 20140630–5151.

Comments Due: 5 p.m. ET 8/29/14.

Docket Numbers: ER14–2309–000.

Applicants: Lea Power Partners, LLC.

Description: Triennial Update Market Power Analysis Filing for NE Region & Tariff Amendment to be effective 7/1/2014.

Filed Date: 6/30/14.

Accession Number: 20140630–5154.

Comments Due: 5 p.m. ET 8/29/14.

Docket Numbers: ER14–2310–000.

Applicants: Consolidated Edison Company of New York,

Description: PASNY Tariff 18-a Surcharge to be effective 7/1/2014.

Filed Date: 6/30/14.

Accession Number: 20140630–5162.

Comments Due: 5 p.m. ET 7/21/14.

Docket Numbers: ER14–2311–000.

Applicants: New England Power Pool Participants Committee.

Description: July 2014 Membership Filing to be effective 7/1/2014.

Filed Date: 6/30/14.

Accession Number: 20140630–5169.

Comments Due: 5 p.m. ET 7/21/14.

Docket Numbers: ER14–2312–000.

Applicants: Lyonsdale Biomass, LLC.

Description: Lyonsdale Biomass Order 784 Compliance Tariff Filing to be effective 7/1/2014.

Filed Date: 6/30/14.

Accession Number: 20140630–5178.

Comments Due: 5 p.m. ET 7/21/14.

Docket Numbers: ER14–2313–000.

Applicants: ReEnergy Livermore Falls LLC.

Description: ReEnergy Livermore Falls Order 784 Compliance Tariff Filing to be effective 7/1/2014.

Filed Date: 6/30/14.

Accession Number: 20140630–5181.

Comments Due: 5 p.m. ET 7/21/14.

Docket Numbers: ER14–2314–000.

Applicants: ReEnergy Sterling CT Limited Partnership.

Description: ReEnergy Sterling CT Limited Partnership Order 784 Compliance Tariff Filing to be effective 7/1/2014.

Filed Date: 6/30/14.

Accession Number: 20140630–5206.

Comments Due: 5 p.m. ET 7/21/14.

Docket Numbers: ER14–2315–000.

Applicants: ReEnergy Stratton LLC.

Description: ReEnergy Stratton Order 784 Compliance Tariff Filing to be effective 7/1/2014.

Filed Date: 6/30/14.

Accession Number: 20140630–5213.

Comments Due: 5 p.m. ET 7/21/14.

Docket Numbers: ER14–2316–000.

Applicants: ReEnergy Ashland LLC.

Description: ReEnergy Ashland Compliance Tariff Filing to be effective 7/1/2014.

Filed Date: 6/30/14.

Accession Number: 20140630–5218.

Comments Due: 5 p.m. ET 7/21/14.

Docket Numbers: ER14–2317–000.

Applicants: ReEnergy Fort Fairfield LLC.

Description: ReEnergy Fort Fairfield Order 784 Compliance Tariff Filing to be effective 7/1/2014.

Filed Date: 6/30/14.

Accession Number: 20140630–5222.

Comments Due: 5 p.m. ET 7/21/14.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings

must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: June 30, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–15981 Filed 7–8–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC14–108–000.
Applicants: Elizabethtown Energy, LLC, Lumberton Energy, LLC.
Description: Application Under Section 203 For Authorization Of Disposition Of Jurisdictional Facilities, And Request For Waivers, Expedited Consideration, And Confidential Treatment of Elizabethtown Energy, LLC, and Lumberton Energy, LLC.
Filed Date: 6/30/14.
Accession Number: 20140630–5356.
Comments Due: 5 p.m. ET 7/21/14.

Docket Numbers: EC14–109–000.
Applicants: Arlington Valley, LLC, Griffith Energy LLC, GWF Energy LLC, Cogen Technologies Linden Venture, L.P., East Coast Power Linden Holding, L.L.C., Oaktree Capital Group, LLC.
Description: Application of for Authorization for Disposition of Jurisdictional Facilities, et al. of Arlington Valley, et. under EC14–109.
Filed Date: 7/1/14.
Accession Number: 20140701–5132.
Comments Due: 5 p.m. ET 7/22/14.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1437–002.
Applicants: Tampa Electric Company.
Description: Triennial Market Power Update of Tampa Electric Company.
Filed Date: 6/30/14.
Accession Number: 20140630–5353.
Comments Due: 5 p.m. ET 8/29/14.

Docket Numbers: ER10–1585–006; ER10–2960–004; ER10–1586–004; ER10–1586–004; ER10–1594–006; ER10–1595–004; ER10–1598–004; ER10–1617–006; ER10–1618–004; ER12–60–008; ER10–1632–008; ER10–1626–005; ER10–1628–006; ER10–1630–004.
Applicants: Astoria Generating Company, L.P., Big Sandy Peaker Plant, LLC, California Electric Marketing, LLC, Crete Energy Venture, LLC, Lincoln Generating Facility, LLC, New Mexico Electric Marketing, LLC, Rolling Hills Generating, L.L.C., Tenaska Power Management, LLC, Tenaska Power Services Co., Tenaska Virginia Partners, L.P., Texas Electric Marketing, LLC, Wolf Hills Energy, LLC, Alabama Electric Marketing, LLC.
Description: Updated Market Power Analysis in Northeast Region of the Tenaska MBR Sellers.
Filed Date: 6/30/14.
Accession Number: 20140630–5331.
Comments Due: 5 p.m. ET 8/29/14.

Docket Numbers: ER10–2131–008.
Applicants: Grand Ridge Energy LLC.
Description: Triennial Report of Grand Ridge Energy LLC.
Filed Date: 6/30/14.
Accession Number: 20140630–5332.
Comments Due: 5 p.m. ET 8/29/14.

Docket Numbers: ER10–2133–008.
Applicants: Sheldon Energy LLC.
Description: Triennial Report of Sheldon Energy LLC.
Filed Date: 6/30/14.
Accession Number: 20140630–5337.
Comments Due: 5 p.m. ET 8/29/14.

Docket Numbers: ER10–2137–008.
Applicants: Beech Ridge Energy LLC.
Description: Triennial Report of Beech Ridge Energy LLC.
Filed Date: 6/30/14.
Accession Number: 20140630–5330.
Comments Due: 5 p.m. ET 8/29/14.

Docket Numbers: ER10–2138–008; ER10–2139–008.
Applicants: Grand Ridge Energy III LLC, Grand Ridge Energy II LLC.
Description: Triennial Report of Grand Ridge Energy II LLC, et al.
Filed Date: 6/30/14.
Accession Number: 20140630–5335.
Comments Due: 5 p.m. ET 8/29/14.

Docket Numbers: ER10–2140–008.
Applicants: Grand Ridge Energy IV LLC.
Description: Triennial Report of Grand Ridge Energy IV LLC.
Filed Date: 6/30/14.
Accession Number: 20140630–5334.
Comments Due: 5 p.m. ET 8/29/14.

Docket Numbers: ER10–2141–008.
Applicants: Grand Ridge Energy V LLC.
Description: Triennial Report of Grand Ridge Energy V LLC.
Filed Date: 6/30/14.
Accession Number: 20140630–5338.
Comments Due: 5 p.m. ET 8/29/14.

Docket Numbers: ER10–2253–011; ER10–3319–014.
Applicants: Astoria Energy LLC, Astoria Energy II LLC.
Description: Order No. 697 Triennial Compliance Filing of Astoria Energy LLC and Astoria Energy II, LLC.
Filed Date: 6/30/14.
Accession Number: 20140630–5358.
Comments Due: 5 p.m. ET 8/29/14.

Docket Numbers: ER10–2543–002; ER14–1153–001; ER12–1571–003; ER14–1154–001; ER11–2159–003.
Applicants: Verso Androscoggin LLC, Verso Androscoggin Power LLC, Verso Bucksport LLC, Verso Maine Energy LLC, Verso Bucksport Power LLC.
Description: Triennial Market Power Report for the Northeast Region of the Verso MBR Entities.
Filed Date: 6/30/14.
Accession Number: 20140630–5349.
Comments Due: 5 p.m. ET 8/29/14.

Docket Numbers: ER10–2604–007; ER10–2603–007; ER10–2602–010; ER10–2609–009; ER10–2606–009.
Applicants: Luke Paper Company, Escanaba Paper Company, Consolidated Water Power Company, NewPage Energy Services, LLC, Rumford Paper Company.
Description: Updated Northeast Region Market Analysis of the NewPage MBR Companies.
Filed Date: 6/30/14.
Accession Number: 20140630–5354.
Comments Due: 5 p.m. ET 8/29/14.

Docket Numbers: ER10–2651–003.
Applicants: Lockhart Power Company.
Description: Southeast Triennial Update of Lockhart Power Company.
Filed Date: 6/30/14.
Accession Number: 20140630–5333.
Comments Due: 5 p.m. ET 8/29/14.

Docket Numbers: ER10–2881–014; ER10–2882–014; ER10–2883–014; ER10–2884–014; ER10–2885–014; ER10–2641–014; ER10–2663–014; ER10–2886–014; ER13–1101–009; ER13–1541–008; ER14–787–002.
Applicants: Alabama Power Company, Southern Power Company, Mississippi Power Company, Georgia Power Company, Gulf Power Company, Oleander Power Project, Limited Partnership, Southern Company-Florida LLC, Southern Turner Cimarron I, LLC, Spectrum Nevada Solar, LLC, Spectrum Nevada Solar, LLC, Campo Verde Solar, LLC, Macho Springs Solar, LLC.
Description: Updated Market Power Analysis of Alabama Power Company, et al.

Filed Date: 6/30/14.
Accession Number: 20140630–5346.
Comments Due: 5 p.m. ET 8/29/14.

Docket Numbers: ER11–3872–009.
Applicants: Stony Creek Energy LLC.
Description: Triennial Report of Stony Creek Energy LLC.
Filed Date: 6/30/14.
Accession Number: 20140630–5336.
Comments Due: 5 p.m. ET 8/29/14.

Docket Numbers: ER12–161–007.
Applicants: Bishop Hill Energy LLC.
Description: Triennial Report of Bishop Hill Energy LLC.
Filed Date: 6/30/14.
Accession Number: 20140630–5329.
Comments Due: 5 p.m. ET 8/29/14.

Docket Numbers: ER12–162–007; ER13–1266–004; ER13–1267–003; ER11–3876–009; ER13–1268–003; ER13–1269–003; ER13–1270–003; ER11–2044–010; ER10–2475–009; ER10–3246–004; ER13–520–003; ER13–521–003; ER10–2601–002; ER13–1271–003; ER13–1272–003; ER10–2474–009; ER13–1441–003; ER13–1442–003; ER10–2611–007; ER12–1626–004; ER13–1273–003; ER10–2605–007.
Applicants: Bishop Hill Energy II LLC, CalEnergy, LLC,CE Leathers Company, Cordova Energy Company LLC, Del Ranch Company, Elmore Company, Fish Lake Power LLC, MidAmerican Energy Company, Nevada Power Company, PacifiCorp, Pinyon Pines Wind I, LLC, Pinyon Pines Wind II, LLC, Power Resources, Ltd., Salton Sea Power Generation Company, Salton Sea Power L.L.C., Solar Star California XX, LLC, Solar Star California XIX, LLC,SARANAC POWER PARTNERS LP, Topaz Solar Farms LLC, Vulcan/BN Geothermal Power Company, Yuma Cogeneration Associates.
Description: Notification of Change in Status of the BHE MBR Sellers.
Filed Date: 6/30/14.
Accession Number: 20140630–5351.
Comments Due: 5 p.m. ET 7/21/14.

Docket Numbers: ER12–281–006.
Applicants: Northampton Generating Company, L.P.
Description: Updated Market Power Analysis for the Northeast Region of Northampton Generating Company, L.P.
Filed Date: 6/30/14.
Accession Number: 20140630–5342.
Comments Due: 5 p.m. ET 8/29/14.
Docket Numbers: ER12–1195–002; ER10–2310–003; ER10–2314–003; ER10–2311–003; ER14–221–001; ER10–2312–003; ER10–2313–003; ER10–2315–003; ER10–2316–003; ER10–2318–003; ER10–2321–003.
Applicants: Camden County Energy Recovery Associates, Covanta Energy Marketing LLC, Covanta Delaware Valley, L.P., Covanta Essex Company, Covanta Haverhill Associates, LP, Covanta Hempstead Company, Covanta Maine, LLC, Covanta Niagara, L.P., Covanta Plymouth Renewable Energy Limited, Covanta Power, LLC, Covanta Union, Inc.
Description: Northeast Triennial Update of the Covanta MBR Entities.
Filed Date: 6/30/14.
Accession Number: 20140630–5340.
Comments Due: 5 p.m. ET 8/29/14.

Docket Numbers: ER12–1934–005.
Applicants: Wisconsin Power and Light Company.
Description: Notice of Non-Material Change in Status of Wisconsin Power and Light Company.
Filed Date: 6/30/14.
Accession Number: 20140630–5355.
Comments Due: 5 p.m. ET 7/21/14.

Docket Numbers: ER13–618–004; ER12–2570–005.
Applicants: Westwood Generation, LLC, Panther Creek Power Operating, LLC.
Description: Triennial Report of Westwood Generation, LLC and Panther Creek Power Operating, LLC.
Filed Date: 6/30/14.
Accession Number: 20140630–5352.
Comments Due: 5 p.m. ET 8/29/14.

Docket Numbers: ER13–821–006.
Applicants: Scrubgrass Generating Company, L.P.
Description: Updated Market Power Analysis for the Northeast Region of Scrubgrass Generating Company, L.P.
Filed Date: 6/30/14.
Accession Number: 20140630–5343.
Comments Due: 5 p.m. ET 8/29/14.

Docket Numbers: ER14–2136–001.
Applicants: Southwestern Electric Power Company.
Description: Revised and Restated Prescott PSA to be effective 7/1/2014.
Filed Date: 7/1/14.
Accession Number: 20140701–5100.
Comments Due: 5 p.m. ET 7/22/14.

Docket Numbers: ER14–2341–000.
Applicants: Ameren Illinois Company.
Description: Sectionalizing Switch Replacement Letter Agreement with EIEC and PPI to be effective 6/9/2014.
Filed Date: 7/1/14.
Accession Number: 20140701–5066.
Comments Due: 5 p.m. ET 7/22/14.

Docket Numbers: ER14–2342–000.
Applicants: Southern California Edison Company.
Description: GIA and Distrib Serv Agmt with LACSD for Spadra Gas-to-Energy Project to be effective 8/31/2014.
Filed Date: 7/1/14.
Accession Number: 20140701–5108.
Comments Due: 5 p.m. ET 7/22/14.

Docket Numbers: ER14–2343–000.
Applicants: Florida Power & Light Company.
Description: FPL and Seminole Electric Cooperative, Inc. Revisions to TSA No. 162 to be effective 7/2/2014.
Filed Date: 7/1/14.
Accession Number: 20140701–5110.
Comments Due: 5 p.m. ET 7/22/14.

Docket Numbers: ER14–2344–000.
Applicants: Vermont Transco, LLC.
Description: Vermont Transco LLC Updated Exhibit A for the 1991 Transmission Agreement to be effective 7/1/2014.
Filed Date: 7/1/14.
Accession Number: 20140701–5111.
Comments Due: 5 p.m. ET 7/22/14.

Docket Numbers: ER14–2345–000.
Applicants: El Paso Electric Company.
Description: Housekeeping Updates—OATT to be effective 9/1/2014.
Filed Date: 7/1/14.
Accession Number: 20140701–5112.
Comments Due: 5 p.m. ET 7/22/14.

Take notice that the Commission received the following qualifying facility filings:

Docket Numbers: QF12–135–000.
Applicants: Iowa Hydro, LLC.
Description: Supplemental Refund Report of Iowa Hydro, LLC.
Filed Date: 6/30/14.
Accession Number: 20140630–5339.
Comments Due: 5 p.m. ET 7/21/14.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

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Dated: July 1, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–16026 Filed 7–8–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1437–001.
Applicants: Tampa Electric Company.
Description: Tampa Electric's Order 784 Compliance Filing to be effective 7/1/2014.
Filed Date: 6/30/14.
Accession Number: 20140630–5092.
Comments Due: 5 p.m. ET 7/21/14.

Docket Numbers: ER10–2331–025; ER14–630–002; ER10–2319–019; ER10–2317–019; ER10–2324–019; ER10–2326–024; ER10–2343–022; ER14–1468–002; ER11–4609–018; ER10–2330–024.
Applicants: J.P. Morgan Ventures Energy Corporation, AlphaGen Power LLC, BE Alabama LLC, BE CA LLC, BE KJ LLC, Cedar Brakes I, L.L.C., J.P. Morgan Commodities Canada Corporation, KMC Thermo, LLC, Triton Power Michigan LLC, Utility Contract Funding, L.L.C.
Description: Non-Material Change in Status of the J.P. Morgan Sellers.
Filed Date: 6/27/14.
Accession Number: 20140627–5224.
Comments Due: 5 p.m. ET 7/18/14.

Docket Numbers: ER10–2602–009.
Applicants: NewPage Energy Services, LLC.
Description: NewPage Energy Services, LLC Market-Based Rate Tariff to be effective 7/1/2014.
Filed Date: 6/30/14.
Accession Number: 20140630–5140.
Comments Due: 5 p.m. ET 7/21/14.

Docket Numbers: ER10–2603–006.
Applicants: Rumford Paper Company.
Description: Rumford Paper Company Market-Based Rate Tariff to be effective 7/1/2014.
Filed Date: 6/30/14.
Accession Number: 20140630–5142.
Comments Due: 5 p.m. ET 7/21/14.

Docket Numbers: ER10–2670–008; ER10–2669–008; ER14–1219–001; ER10–2253–010; ER10–3319–013; ER10–2674–008; ER10–2627–009; ER10–2629–010; ER10–1546–010; ER10–1547–008; ER14–1699–001; ER10–2636–009; ER10–1974–014; ER10–1550–009; ER10–1975–014; ER11–2424–012; ER10–2677–008; ER10–2678–007.
Applicants: ANP Blackstone Energy Company, LLC, ANP Bellingham Energy Company, LLC, Armstrong Power, LLC, Astoria Energy LLC, Astoria Energy II LLC, Calumet Energy Team, LLC, FirstLight Hydro Generating Company, FirstLight Power Resources Management, LLC, GDF SUEZ Energy Marketing NA, Inc., Hopewell Cogeneration Limited Partnership, Milford Power, LLC, Mt. Tom Generating Company, LLC, Northeast Energy Associates, A Limited Partnership, Northeastern Power Company, North Jersey Energy Associates, A Limited Partnership, Pinetree Power-Tamworth, Inc., Pleasants Energy, LLC, Troy Energy, LLC.
Description: Triennial Filing for the GDF SUEZ Northeast MBR Sellers.
Filed Date: 6/27/14.
Accession Number: 20140627–5232.
Comments Due: 5 p.m. ET 8/26/14.

Docket Numbers: ER10–2870–004; ER10–2868–003; ER10–2853–003; ER10–2856–003; ER10–2872–003; ER10–2860–004.
Applicants: TransCanada Power Marketing Ltd, TransCanada Hydro Northeast Inc., TransCanada Maine Wind Development Inc., Ocean State Power, Ocean State Power II,TC Ravenswood, LLC.
Description: Updated Market Power Analysis for the Northeast Region of TransCanada Entities.
Filed Date: 6/27/14.
Accession Number: 20140627–5231.
Comments Due: 5 p.m. ET 7/18/14.

Docket Numbers: ER10–2906–007; ER10–2908–007; ER10–2911–007; ER10–2909–007; ER10–2910–007; ER10–2899–007; ER10–2900–008; ER10–2898–012; ER11–4393–005.
Applicants: Morgan Stanley Capital Group Inc.
Description: Updated Market Power Analysis of the Morgan Stanley Utilities.
Filed Date: 6/27/14.
Accession Number: 20140627–5225.
Comments Due: 5 p.m. ET 7/18/14.

Docket Numbers: ER10–3097–003.
Applicants: Bruce Power Inc.
Description: Updated Market Power Analysis for the Northeast Region of Bruce Power Inc.
Filed Date: 6/27/14.
Accession Number: 20140627–5233.
Comments Due: 5 p.m. ET 7/18/14.

Docket Numbers: ER13–2318–002; ER10–1854–004; ER13–2317–002; ER10–2755–004; ER10–2739–007; ER11–3320–004; ER13–2319–002; ER10–2744–005; ER10–2740–005; ER13–2316–002; ER10–1631–004; ER11–3321–004; ER14–19–002.
Applicants: All Dams Generation, LLC, Doswell Limited Partnership, Lake Lynn Generation, LLC, Las Vegas Power Company, LLC, LS Power Marketing, LLC, LSP University Park, LLC, PE Hydro Generation, LLC, Riverside Generating Company, L.L.C., Rocky Road Power, LLC, Seneca Generation, LLC, University Park Energy, LLC, Wallingford Energy LLC, West Deptford Energy, LLC.
Description: Updated Market Power Analysis of the LS Northeast MBR Sellers.
Filed Date: 6/27/14.
Accession Number: 20140627–5222.
Comments Due: 5 p.m. ET 7/18/14.

Docket Numbers: ER14–1704–001.
Applicants: Trans Bay Cable LLC.
Description: Compliance Filing to Adjust TO Tariff TRBAA to be effective 4/23/2014.
Filed Date: 6/27/14.
Accession Number: 20140627–5201.
Comments Due: 5 p.m. ET 7/18/14.

Docket Numbers: ER14–1708–001.
Applicants: Commonwealth Edison Company, PJM Interconnection, L.L.C.
Description: ComEd submits compliance filing per 5/28/2014 Order to be effective 5/21/2014.
Filed Date: 6/27/14.
Accession Number: 20140627–5113.
Comments Due: 5 p.m. ET 7/18/14.

Docket Numbers: ER14–1956–001.
Applicants: Panther Creek Power Operating, LLC.
Description: Compliance Filing to be effective 6/1/2014.
Filed Date: 6/30/14.
Accession Number: 20140630–5056.
Comments Due: 5 p.m. ET 7/21/14.

Docket Numbers: ER14–1956–002.
Applicants: Panther Creek Power Operating, LLC.
Description: Amendment to Compliance Filing to be effective 6/1/2014.
Filed Date: 6/30/14.
Accession Number: 20140630–5071.
Comments Due: 5 p.m. ET 7/21/14.

Docket Numbers: ER14–2292–000.
Applicants: Tampa Electric Company.
Description: Cancellation of Market Based Sales Tariff to be effective 6/30/2014.
Filed Date: 6/27/14.
Accession Number: 20140627–5154.
Comments Due: 5 p.m. ET 7/18/14.

Docket Numbers: ER14–2293–000.
Applicants: DTE Electric Company.
Description: Revision of PLD Wholesale Distribution Agreement to be effective 5/16/2014.
Filed Date: 6/27/14.
Accession Number: 20140627–5155.
Comments Due: 5 p.m. ET 7/18/14.

Docket Numbers: ER14–2294–000.
Applicants: Indianapolis Power & Light Company.
Description: IPL Market Based Rate Tariff to be effective 6/27/2014.
Filed Date: 6/27/14.

Accession Number: 20140627–5189.
Comments Due: 5 p.m. ET 7/18/14.

Docket Numbers: ER14–2295–000.
Applicants: Waterbury Generation, LLC.
Description: Triennial Review to be effective 8/28/2014.
Filed Date: 6/27/14.
Accession Number: 20140627–5197.
Comments Due: 5 p.m. ET 8/26/14.

Docket Numbers: ER14–2296–000.
Applicants: K Road Modesto Solar LLC.
Description: RET Modesto Notice of Succession to be effective 5/14/2014.
Filed Date: 6/30/14.
Accession Number: 20140630–5000.
Comments Due: 5 p.m. ET 7/21/14.

Docket Numbers: ER14–2297–000.
Applicants: MidAmerican Energy Company.
Description: Market-Based Rate Tariff—4th Rev—MBR Triennial Filing to be effective 3/1/2014.
Filed Date: 6/30/14.
Accession Number: 20140630–5048.
Comments Due: 5 p.m. ET 7/21/14.

Docket Numbers: ER14–2298–000.
Applicants: AEP Texas Central Company.
Description: TCC-Los Vientos Windpower V Preliminary Development Agr. to be effective 6/9/2014.
Filed Date: 6/30/14.
Accession Number: 20140630–5059.
Comments Due: 5 p.m. ET 7/21/14.

Docket Numbers: ER14–2299–000.
Applicants: AEP Texas North Company.
Description: TNC–RE Roserock Preliminary Development Agr. to be effective 6/9/2014.
Filed Date: 6/30/14.
Accession Number: 20140630–5061.
Comments Due: 5 p.m. ET 7/21/14.

Docket Numbers: ER14–2300–000.
Applicants: Public Service Company of New Mexico.
Description: Modifications to Attachments L and N of PNM's Open Access Transmission Tariff to be effective 8/29/2014.
Filed Date: 6/30/14.
Accession Number: 20140630–5064.
Comments Due: 5 p.m. ET 7/21/14.

Docket Numbers: ER14–2301–000.
Applicants: PJM Interconnection, L.L.C.
Description: No Queue; Service Agreement No. 3858 to be effective 5/29/2014.
Filed Date: 6/30/14.
Accession Number: 20140630–5081.
Comments Due: 5 p.m. ET 7/21/14.

Docket Numbers: ER14–2302–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc. submits tariff filing per 35.13(a)(2)(iii): 2568 Abengoa Bioenergy Biomass of Kansas ASFCA Cancellation to be effective 5/23/2014.
Filed Date: 6/30/14.
Accession Number: 20140630–5098.
Comments Due: 5 p.m. ET 7/21/14.

Docket Numbers: ER14–2303–000.
Applicants: The Connecticut Light and Power Company.
Description: Covanta Bristol, Inc. Interconnection Agreement Rate Schedule No. IA–NU–20 to be effective 7/1/2014.
Filed Date: 6/30/14.
Accession Number: 20140630–5099.
Comments Due: 5 p.m. ET 7/21/14.

Docket Numbers: ER14–2304–000.
Applicants: ReEnergy Black River LLC.
Description: ReEnergy Black River Order 784 Compliance Tariff Filing to be effective 7/1/2014.
Filed Date: 6/30/14.
Accession Number: 20140630–5137.
Comments Due: 5 p.m. ET 7/21/14.

Docket Numbers: ER14–2305–000.
Applicants: PJM Interconnection, L.L.C.
Description: Service Agreement No. 3318; Queue No. X3–075 to be effective 6/4/2013.
Filed Date: 6/30/14.
Accession Number: 20140630–5139.
Comments Due: 5 p.m. ET 7/21/14.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: June 30, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–15980 Filed 7–8–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #3

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER12–952–002; ER13–1141–001; ER13–1142–001; ER13–1143–002; ER13–1144–002; ER10–2196–001.
Applicants: Essential Power, LLC, Essential Power Massachusetts, LLC, Essential Power Newington, LLC, Essential Power OPP, LLC, Essential Power Rock Springs, LLC, Lakewood Cogeneration, LP.
Description: Updated Appendix B to December 20, 2013 Triennial Market-Based Rate Update Filing for the Northeast Region of the EP Entities.
Filed Date: 6/30/14.
Accession Number: 20140630–5367.
Comments Due: 5 p.m. ET 8/29/14.

Docket Numbers: ER14–2346–000.
Applicants: Southwest Power Pool, Inc.
Description: 1876R3 KEPCO NITSA NOA to be effective 6/1/2014.
Filed Date: 7/1/14.
Accession Number: 20140701–5168.
Comments Due: 5 p.m. ET 7/22/14.

Docket Numbers: ER14–2347–000.
Applicants: California Independent System Operator Corporation.
Description: 2014–07–01_GatesGregg_APSA to be effective 8/31/2014.
Filed Date: 7/1/14.
Accession Number: 20140701–5176.
Comments Due: 5 p.m. ET 7/22/14.

Docket Numbers: ER14–2348–000.
Applicants: Southwest Power Pool, Inc.
Description: 2900 Kansas Municipal Energy Agency NITSA NOA to be effective 5/1/2014.
Filed Date: 7/1/14.
Accession Number: 20140701–5175.
Comments Due: 5 p.m. ET 7/22/14.

Docket Numbers: ER14–2349–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc. submits tariff filing per 35.13(a)(2)(iii) 1313R8 Oklahoma Gas and Electric Company NITSA and NOA to be effective 5/1/2014.
Filed Date: 7/1/14.
Accession Number: 20140701–5181.
Comments Due: 5 p.m. ET 7/22/14.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 1, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–16027 Filed 7–8–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR14–35–000]

HollyFrontier Refining & Marketing LLC, Southwest Airlines Co., Tesoro Refining and Marketing Company, US Airways, Inc., Valero Marketing and Supply Company, Western Refining Company, L.P. v. SFPP, L.P.; Notice of Complaint

Take notice that on June 27, 2014, pursuant to Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206, Section 343.2 of the Procedural Rules Applicable to Oil Pipeline Proceedings, 18 CFR 343.2, and Sections 1(5), 8, 9, 13, 15, and 16 of the Interstate Commerce Act (ICA), 49 U.S.C. App. 1(5), 8, 9, 13, 15, and 16 (1994), HollyFrontier Refining & Marketing LLC, Southwest Airlines Co., Tesoro Refining and Marketing Company, US Airways Inc., Valero Marketing and Supply Company, and Western Refining Company, L.P. (together, Indicated Complainants) submitted a complaint challenging the justness and reasonableness of SFPP, L.P.'s (Respondent) West Line (Tariff Nos. 196.9.0 and 198.9.0) and East Line (Tariff No. 197.4.0) index rate increases taken in 2012 and Respondent's West Line (Tariff No. 198.10.0), East Line (Tariff No. 197.6.0), Oregon Line (Tariff No. 200.4.0), North Line (Tariff No. 199.4.0), and Sepulveda Line (Tariff No. 195.4.0) index increases taken in 2013. Indicated Complainants allege that Respondent's rates for this transportation are unjust and unreasonable and request that the Commission investigate Respondent's rates, set the proceedings for an evidentiary hearing to determine the just and reasonable rates for Respondent's index rate increases, require Respondent to pay reparations starting two years before the date of the Complaint for all rates, and award such other relief as is necessary and appropriate under the ICA.

Indicated Complainants state that copies of the Complaint were served on Respondent.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on July 28, 2014.

Dated: June 30, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–15994 Filed 7–8–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR14 -36–000]

Chevron Products Company v. SFPP, L.P.; Notice of Complaint

Take notice that on June 30, 2014, pursuant to Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206, Section 343.2 of the Procedural Rules Applicable to Oil Pipeline Proceedings, 18 CFR 343.2, and Sections 1(5), 8, 9, 13, 15, and 16 of the Interstate Commerce Act (ICA), 49 U.S.C. App. 1(5), 8, 9, 13, 15, and 16 (1994), Chevron Products Company (Complainant) submitted a complaint challenging the justness and reasonableness of SFPP's (Respondent) West Line (Tariff Nos. 196.9.0 and 198.9.0) and East Line (Tariff No. 197.4.0) index rate increases taken in 2012 and Respondent's West Line (Tariff No. 198.10.0), East Line (Tariff No. 197.6.0), Oregon Line (Tariff No. 200.4.0), North Line (Tariff No. 199.4.0), and Sepulveda Line (Tariff No. 195.4.0) index increases taken in 2013. Complainant alleges that Respondent's rates for this transportation are unjust and unreasonable and request that the Commission investigate Respondent's rates, set the proceedings for an evidentiary hearing to determine the just and reasonable rates for Respondent's index rate increases, require Respondent to pay reparations starting two years before the date of the Complaint for all rates, and award such other relief as is necessary and appropriate under the ICA.

Complainant states that copies of the Complaint were served on Respondent.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.*

Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on July 30, 2014.

Dated: June 30, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–16020 Filed 7–8–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR14–34–000]

Enbridge Energy, Limited Partnership; Notice of Petition for Declaratory Order

Take notice that on June 26, 2014, pursuant to Rule 207(a)(2) of the Commission's Rules of Practices and Procedure, 18 CFR 385.207(a)(2)(2014), Enbridge Energy, Limited Partnership (Enbridge Energy) filed a petition for a declaratory order confirming that Enbridge Energy may establish a new receipt point on the Lakehead System at Flanagan, Illinois, which will be available for shipper nominations only in months when the Lakehead System is in apportionment upstream of Flanagan such that not all of the volumes to or through Flanagan can be accepted, as more fully explained in the petition.

Any person desiring to intervene or to protest in this proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioner.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern time on July 28, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–15996 Filed 7–8–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL14–58–000]

Midwest Independent Transmission System Operator, Inc.; Notice of Institution of Section 206 Proceeding and Refund Effective Date

On June 30, 2014, the Commission issued an order in Docket No. EL14–58–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e (2012), instituting an investigation into the justness and reasonableness of Midwest Independent Transmission System Operator, Inc.'s (MISO) allocation of voltage or local reliability-related revenue sufficiency guarantee costs to pseudo-tied load. *Midwest Indep. Transmission Sys. Operator, Inc.,* 147 FERC ¶ 61, 262 (2014).

The refund effective date in Docket No. EL14–58–000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Dated: June 30, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–16019 Filed 7–8–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP14–503–000]

Enable Gas Transmission, LLC; Notice of Request Under Blanket Authorization

Take notice that on June 20, 2014, Enable Gas Transmission, LLC (EGT) filed in Docket No. CP14–503–000 a Prior Notice request pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (NGA), and EGT's blanket certificate issued in Docket Nos. CP82–384–000 and CP82–384–001. EGT seeks authorization to install a new pipeline lateral, located in Grady and McClain Counties in the State of Oklahoma, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, EGT proposes to install about 16.2 miles of 24-inch diameter pipeline to be known as Line AD–607 and necessary appurtenant facilities in Grady and McClain Counties, Oklahoma. EGT states that Line AD–607 will connect EGT's Line AD-East with a natural gas processing plant currently being constructed, known as the Bradley Processing Plant.

Any questions regarding this application should be directed to Michelle Willis, Manager Regulatory & Compliance, Enable Gas Transmission, LLC, P. O. Box 21743, Shreveport, Louisiana 71151, by telephone at (318) 429–3708, by FAX at (318) 429–3133 or by email at *michelle.willis@enablemidstream.com.*

Any person or the Commission's Staff may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and, pursuant to section 157.205 of the Commission's Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If

a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding, or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such motions or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission encourages electronic submission of comments, protests, and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: June 30, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–15995 Filed 7–8–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13884–001]

Pennamaquan Tidal Power LLC; Notice of Initial Study Plan Meetings and Revised Process Plan

On June 5, 2014, Commission staff issued a letter to Pennamaquan Tidal Power LLC (Pennamaquan Tidal) stating that Pennamaquan Tidal's proposed study plan for the Pennamaquan Tidal Power Plant Project (P–13884) filed on December 12, 2013, meets the requirements of section 5.11 of the Commission's regulations and that the Integrated Licensing Process (ILP) can resume. According to section 5.11(e) of the Commission's regulations, the next step in the ILP is the initial study plan meeting. In its June 5, 2014, letter, Commission staff indicated that the initial study plan meeting must be held within 75 days of, but no sooner than 60 days from, June 5, 2014. Accordingly, Pennamaquan Tidal has scheduled the meetings listed below:

Meetings in Bangor, ME

Dates and Times: August 6 and 7, 2014. 8:00 a.m. to 5:00 p.m.

Location: Maine Department of Environmental Protection, Eastern Maine Regional Office, 106 Hogan Road, Bangor, Maine 04401.

Contact: Ramez Attiya, Pennamaquan Tidal, (281) 467–0846.

Meeting in Pembroke, ME

Date and Time: August 8, 2014. 12:00 p.m. to 2:00 p.m.

Location: Pembroke Town Office, 48 Old County Road, Pembroke, ME 04666.

Contact: Ramez Attiya, Pennamaquan Tidal, (281) 467–0846.

A revised process plan that includes new dates for completing the ILP is provided below:

Responsible party	Pre-filing milestone	Date [1]	FERC regulation
Pennamaquan	Issue Public Notice for NOI/PAD	7/19/12	5.3(d)(2)
Pennamaquan	File NOI/PAD with FERC	7/19/12	5.5, 5.6
FERC	Initiate Tribal Consultation	8/18/12	5.7
FERC	Issue Notice of Commencement of Proceeding; Scoping Document 1 (SD1).	9/14/12	5.8
FERC	Project Environmental Site Review and Scoping Meetings.	10/25/12 10/26/12	5.8(b)(viii)
All stakeholders	PAD/SD1 Comments and Study Requests Due	12/4/12	5.9
FERC	Issue Scoping Document 2 (if needed)	1/18/13	5.1
Pennamaquan	File Proposed Study Plan (PSP)	12/12/13	5.11(a)
All stakeholders	Proposed Study Plan Meeting (scheduled for 8/6/14 to 8/8/14).	Between 8/4/14 and 8/19/14 [2]	5.11(e)
All stakeholders	Proposed Study Plan Comments Due	10/18/14	5.12
Pennamaquan	File Revised Study Plan	11/17/14	5.13(a)
All stakeholders	Revised Study Plan Comments Due	12/2/14	5.13(b)

Responsible party	Pre-filing milestone	Date [1]	FERC regulation
FERC	Director's Study Plan Determination	12/17/14	5.13(c)
Mandatory Conditioning Agencies.	Any Study Disputes Due	1/6/15	5.14(a)
Dispute Panel	Third Dispute Panel Member Selected	1/21/15	5.14(d)(3)
Dispute Panel	Dispute Resolution Panel Convenes	1/26/15	5.14(d)
Pennamaquan	Applicant Comments on Study Disputes Due	1/31/15	5.14(j)
Dispute Panel	Dispute Resolution Panel Technical Conference	2/5/15	5.14(j)
Dispute Panel	Dispute Resolution Panel Findings Issued	2/25/15	5.14(k)
FERC	Director's Study Dispute Determination	3/17/15	5.14(l)
Pennamaquan	First Study Season	Spring/Summer 2015	5.15(a)
Pennamaquan	Initial Study Report	12/17/15	5.15(c)(1)
All stakeholders	Initial Study Report Meeting	1/1/16	5.15(c)(2)
Pennamaquan	Initial Study Report Meeting Summary	1/16/16	5.15(c)(3)
All stakeholders	Any Disputes/Requests to Amend Study Plan Due.	2/15/16	5.15(c)(4)
All stakeholders	Responses to Disputes/Amendment Requests Due.	3/16/16	5.15(c)(5)
FERC	Director's Determination on Disputes/Amendments.	4/15/16	5.15(c)(6)
Second study season if necessary. Schedule would be adjusted accordingly.			
Pennamaquan	File Preliminary Licensing Proposal (PLP)	12/14/16 [3]	5.16(a)
All stakeholders	PLP Comments Due	3/14/17	5.16(e)

[1] If a due date falls on a weekend or holiday, the due date is the following business day. Dates prior to August 2014 are the dates when the events occurred, rather than due dates.
[2] Commission staff issued a letter on June 5, 2014, requiring the proposed study plan meeting to be held between August 4, 2014, and August 19, 2014. Subsequent deadlines in the process plan were calculated from the deadline of August 19, 2014.
[3] The date for filing of the PLP is a staff estimate.

Dated: July 1, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–15997 Filed 7–8–14; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2014–0379; FRL–9912–90]

Pesticide Experimental Use Permit; Receipt of Application; Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's receipt of an application, 67760–EUP–R, from Cheminova, Inc., 160 Wilson Blvd., Suite 700, Arlington, VA 22209, requesting an experimental use permit (EUP) for the chemical Flutriafol. The Agency has determined that the permit may be of regional and national significance. Therefore, because of the potential significance, EPA is seeking comments on this application.

DATES: Comments must be received on or before August 8, 2014.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2014–0379, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Lois Rossi, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. Although this action may be of particular interest to those persons who conduct or sponsor research on pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action.

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

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a

Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticide discussed in this document, compared to the general population.

II. What action is the Agency taking?

Under section 5 of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. 136c, EPA can allow manufacturers to field test pesticides under development. Manufacturers are required to obtain an EUP before testing new pesticides or new uses of pesticides if they conduct experimental field tests on 10 acres or more of land or one acre or more of water.

Pursuant to 40 CFR 172.11(a), the Agency has determined that the following EUP application may be of regional and national significance, and therefore is seeking public comment on the EUP application:

Submitter: Cheminova, Inc. (66760–EUP–R).

Pesticide Chemical: Flutriafol.

Summary of Request: For use on sweet corn in five states (Minnesota, Florida, New York, Washington, and Wisconsin) each including up to 20 plots of up to 20 acres. Foliar applications will be made at a maximum single application rate of 0.114 lb a.i. per acre. A maximum of two applications may be made (up to 0.22 lb a.i. per acre per season) at a 7-day interval. The proposed length of treatment will be one year.

Following the review of the application and any comments and data received in response to this solicitation, EPA will decide whether to issue or deny the EUP request, and if issued, the conditions under which it is to be conducted. Any issuance of an EUP will be announced in the **Federal Register**.

List of Subjects

Environmental protection, Experimental use permits.

Dated: July 1, 2014.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2014–16036 Filed 7–8–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2014–0410; FRL–9913–49–OAR]

Greenhouse Gas Reporting Program: Publication of Aggregated Greenhouse Gas Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; Extension of public comment period.

SUMMARY: The EPA is announcing an extension of the public comment period for the notice titled ''Greenhouse Gas Reporting Program: Publication of Aggregated Greenhouse Gas Data.''

DATES: The public comment period started on June 9, 2014 (79 FR 32948). This notice announces the extension of the deadline for public comment from July 9, 2014 to July 23, 2014. Comments must be received on or before July 23, 2014.

ADDRESSES: You may submit your comments, identified by Docket ID No. EPA–HQ–OAR–2014–0410 by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the online instructions for submitting comments.
- *Email: A-and-R-Docket@epa.gov*. Include Docket ID No. EPA–HQ–OAR–2014–0410 in the subject line of the message.
- *Fax:* (202) 566–9744.
- *Mail:* Environmental Protection Agency, EPA Docket Center (EPA/DC), Mailcode 28221T, Attention Docket ID No. EPA–HQ–OAR–2014–0410, 1200 Pennsylvania Avenue NW., Washington, DC 20460.
- *Hand Delivery:* EPA Docket Center, Room 3334, EPA WJC West Building, 1301 Constitution Avenue NW., Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2014–0410. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be confidential business information (CBI) or other information whose disclosure is restricted by statute.

Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email. Send or deliver information identified as CBI to only the mail or hand/courier delivery address listed above, attention: Docket ID No. EPA–HQ–OAR–2014–0410. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means the 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 the EPA without going through *http://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, the 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 the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Docket, EPA/DC, Room 3334, EPA WJC West Building, 1301

Constitution Ave. NW., Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Carole Cook, Climate Change Division, Office of Atmospheric Programs (MC–6207J), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 343–9263; fax number: (202) 343–2342; email address: *GHGreporting@epa.gov*. For technical information, please go to the Greenhouse Gas Reporting Rule Program Web site *http://www.epa.gov/climatechange/emissions/ghgrulemaking.html*. To submit a question, select Rule Help Center, followed by ''Contact Us.''

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of today's notice will also be available through the WWW. Following the Director's signature, a copy of this action will be posted on EPA's greenhouse gas reporting rule Web site at *http://www.epa.gov/climatechange/emissions/ghgrulemaking.html*.

SUPPLEMENTARY INFORMATION:

Background on Today's Action. In this action, the EPA is providing notice that it is extending the comment period on the notice titled ''Greenhouse Gas Reporting Program: Publication of Aggregated Greenhouse Gas Data,'' which was published on June 9, 2014. The original deadline for submitting public comments on that notice was July 9, 2014. The EPA is extending that deadline to July 23, 2014. This extension will provide the public additional time to participate and comment.

Dated: July 1, 2014.

Sarah Dunham,

Director, Office of Atmospheric Programs.

[FR Doc. 2014–16090 Filed 7–8–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL 9913–52–OECA]

National Environmental Justice Advisory Council; Notification of Public Teleconference Meeting and Public Comment

AGENCY: Environmental Protection Agency.

ACTION: Notification of Public Teleconference Meeting and Public Comment.

SUMMARY: Pursuant to the Federal Advisory Committee Act (FACA), Public Law 92–463, the U.S. Environmental Protection Agency (EPA) hereby provides notice that the National Environmental Justice Advisory Council (NEJAC) will host a public teleconference meeting on Thursday, July 17, 2014, from 2:00 p.m. to 4:00 p.m. Eastern Time. The primary topics of discussion will be (1) recommendations for EPA's environmental justice policy on Tribes and Indigenous peoples, (2) a follow-up discussion about additional recommendations about ensuring environmental justice in goods movement, and (3) updates from NEJAC workgroups.

There will be a public comment period from 3:30 p.m. to 4:00 p.m. Eastern Time. Members of the public are encouraged to provide comments relevant to the topics of the meeting.

For additional information about registering to attend the meeting or to provide public comment, please see the ''Registration'' and **SUPPLEMENTARY INFORMATION** sections below. Due to a limited number of telephone lines, attendance will be on a first-come, first served basis. Pre-registration is required. Registration for the teleconference meeting closes at Noon Eastern Time on Monday, July 14, 2014. The deadline to sign up to speak during the public comment period, or to submit written public comments, is also Noon, Monday, July 14, 2014.

DATES: The NEJAC teleconference meeting on Thursday, July 17, 2014, will begin promptly at 2:00 p.m. Eastern Time.

Registration: Registrations will be processed at <*http://nejac-july2014.eventbrite.com.*> When registering, please provide your name, organization, city and state, email address, and telephone number for follow up. Please also state whether you would like to be put on the list to provide public comment, and whether you are submitting written comments before the Monday, July 14, 2014, noon deadline. Non-English speaking attendees wishing to arrange for a foreign language interpreter may also make appropriate arrangements using the email address or telephone/fax number.

FOR FURTHER INFORMATION CONTACT: Questions or correspondence concerning the teleconference meeting should be directed to Jasmin Muriel, U.S. Environmental Protection Agency, by mail at 1200 Pennsylvania Avenue NW. (MC2201A), Washington, DC 20460; by telephone at 202–564–4287; via email at *Muriel.Jasmin@epa.gov;* or by fax at 202–564–1624. Additional information about the NEJAC is available at: *www.epa.gov/environmentaljustice/nejac.*

SUPPLEMENTARY INFORMATION: The Charter of the NEJAC states that the advisory committee shall provide independent advice to the Administrator on areas that may include, among other things, ''advice about broad, cross-cutting issues related to environmental justice, including environment-related strategic, scientific, technological, regulatory, and economic issues related to environmental justice.''

A. Public Comment: Members of the public who wish to provide public comment during the Thursday, July 17, 2014, public teleconference meeting must pre-register by Noon Eastern Time on Friday July 11, 2014. Individuals or groups making remarks during the public comment period will be limited to seven (7) minutes. To accommodate the number of people who want to address the NEJAC, only one representative of a particular community, organization, or group will be allowed to speak. Written comments can also be submitted for the record. The suggested format for individuals providing public comments is as follows: name of speaker; name of organization/community; city and state; and email address; brief description of the concern, and what you want the NEJAC to advise EPA to do. Written comments received by Noon Eastern Time on Monday, July 14, 2014, will be included in the materials distributed to the NEJAC prior to the teleconference. Written comments received after that time will be provided to the NEJAC as time allows. All written comments should be sent to Jasmin Muriel, EPA, via email at *Muriel.jasmin@epa.gov.*

B. Information about Services for Individuals with Disabilities: For information about access or services for individuals with disabilities, please contact Jasmin Muriel, at (202) 564–4287 or via email at *Muriel.Jasmin@EPA.gov.* To request special accommodations for a disability, please contact Ms. Muriel at least four working days prior to the meeting, to give EPA sufficient time to process your request. All requests should be sent to the address, email, or phone/fax number listed in the **FOR FURTHER INFORMATION CONTACT** section above.

Dated: June 30, 2014.

Jasmin Muriel,

Designated Federal Officer, Office of Environmental Justice, U.S. EPA.

[FR Doc. 2014–16110 Filed 7–8–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9913–55–OAR]

Protection of Stratospheric Ozone: Request for Methyl Bromide Critical Use Exemption Applications for 2017

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency is providing notice of the process for submitting applications for critical use exemptions for 2017. Critical use exemptions are exceptions to the phaseout of production and import of methyl bromide, a controlled class I ozone-depleting substance. Critical use exemptions must be authorized by the Parties to *the Montreal Protocol on Substances that Deplete the Ozone Layer* and must be in accordance with the Clean Air Act. Applications received in accordance with this notice will be considered as the basis for submitting potential nominations for critical use exemptions to future Meetings of the Parties to the Montreal Protocol. Critical use exemptions allow production and import only in the year for which the Parties authorize them. All entities interested in obtaining a critical use exemption must provide EPA with technical and economic information to support a ''critical use'' claim by the deadline specified in this notice even if they have applied for an exemption in previous years.

DATES: Applications for critical use exemptions must be submitted to EPA no later than September 30, 2014.

ADDRESSES: Applications for the methyl bromide critical use exemption can also be submitted by U.S. mail to: U.S. Environmental Protection Agency, Office of Air and Radiation, Stratospheric Protection Division, Attention Methyl Bromide Team, Mail Code 6205M, 1200 Pennsylvania Ave. NW., Washington, DC 20460.

Confidentiality: Application materials that are confidential should be submitted under separate cover and be clearly identified as ''confidential business information.'' Information covered by a claim of business confidentiality will be treated in accordance with the procedures for handling information claimed as confidential under 40 CFR part 2, subpart B, and will be disclosed only to the extent and by means of the procedures set forth in that subpart. If no claim of confidentiality accompanies the information when it is received by EPA, the information may be made available to the public by EPA without further notice to the company (40 CFR 2.203). EPA may place a copy of Worksheet 6 in the public domain. Any information on Worksheet 6 shall not be considered confidential and will not be treated as such by the Agency.

FOR FURTHER INFORMATION CONTACT:

General Information: U.S. EPA Stratospheric Ozone Information Hotline, 1–800–296–1996; also *www.epa.gov/ozone/mbr*.

Technical Information: Bill Chism, U.S. Environmental Protection Agency, Office of Pesticide Programs (7503P), 1200 Pennsylvania Ave. NW., Washington, DC 20460, 703–308–8136. Email: *chism.bill@epa.gov*.

Regulatory Information: Jeremy Arling, U.S. Environmental Protection Agency, Stratospheric Protection Division (6205M), 1200 Pennsylvania Ave. NW., Washington, DC 20460, 202–343–9055. EPA encourages users to submit their applications electronically to *arling.jeremy@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background on the Critical Use Exemption

The *Montreal Protocol on Substances that Deplete the Ozone Layer* is the international agreement aimed at reducing and eliminating the production and consumption of stratospheric ozone-depleting substances. Methyl bromide was added to the Protocol as an ozone-depleting substance in 1992 through the Copenhagen Amendment.

The Protocol provides that the Parties may exempt ''the level of production or consumption that is necessary to satisfy uses agreed by them to be critical uses'' (Art. 2H para 5). The Parties to the Protocol included this language in the treaty's methyl bromide phaseout provisions in recognition that alternatives might not be available by 2005 for certain uses of methyl bromide agreed by the Parties to be ''critical uses.''

In their Ninth Meeting (1997), the Parties agreed to Decision IX/6, setting forth the following criteria for a ''critical use'' determination and an exemption from the production and consumption phaseout:

(a) That a use of methyl bromide should qualify as ''critical'' only if the nominating Party determines that:

(i) The specific use is critical because the lack of availability of methyl bromide for that use would result in a significant market disruption; and

(ii) There are no technically and economically feasible alternatives or substitutes available to the user that are acceptable from the standpoint of environment and health and are suitable to the crops and circumstances of the nomination.

(b) That production and consumption, if any, of methyl bromide for a critical use should be permitted only if:

(i) All technically and economically feasible steps have been taken to minimize the critical use and any associated emission of methyl bromide;

(ii) Methyl bromide is not available in sufficient quantity and quality from existing stocks of banked or recycled methyl bromide, also bearing in mind the developing countries' need for methyl bromide;

(iii) It is demonstrated that an appropriate effort is being made to evaluate, commercialize and secure national regulatory approval of alternatives and substitutes, taking into consideration the circumstances of the particular nomination. . . . Non-Article 5 Parties [which includes the U.S.] must demonstrate that research programs are in place to develop and deploy alternatives and substitutes. . . .

In 1998, Congress amended the Clean Air Act to require EPA to conform the U.S. phaseout schedule for methyl bromide to the provisions of the Protocol and to allow EPA to provide a critical use exemption. These amendments were codified in Section 604 of the Clean Air Act, 42 U.S.C. 7671c. Under EPA implementing regulations, the production and consumption of methyl bromide was phased out as of January 1, 2005. Section 604(d)(6), as added in 1998, allows EPA to exempt the production and import of methyl bromide from the phaseout for critical uses, to the extent consistent with the Montreal Protocol. EPA has defined ''critical use'' at 40 CFR 82.3 based on the criteria in Decision IX/6.

EPA regulations at 40 CFR 82.4 prohibit the production and import of methyl bromide in excess of the amount of unexpended critical use allowances held by the producer or importer, unless authorized under a separate exemption. Methyl bromide produced or imported by expending critical use allowances may be used only for the appropriate category of approved critical uses as listed in Appendix L to the regulations (40 CFR 82.4(p)(2)). The use of methyl bromide that was produced or imported through the expenditure of production

or consumption allowances prior to 2005, while not confined to critical uses under EPA's phaseout regulations, is subject to the labeling restrictions under FIFRA as specified in the product labeling.

II. Critical Use Nomination Process

Entities requesting critical use exemptions should send a completed application to EPA on the candidate use by September 30, 2014. Critical use exemptions are valid for only one year and do not automatically renew. All users desiring to obtain an exemption must apply to EPA annually even if they have applied for critical uses in prior years. Because of the potential for changes to registration status, costs, and economic aspects of producing critical use crops and commodities, applicants must fill out the application form completely.

Upon receipt of applications, EPA will review the information and work with other interested Federal agencies as required in section 604 of the Clean Air Act to determine whether the candidate use satisfies Clean Air Act requirements, and whether it meets the critical use criteria adopted by the Parties to the Montreal Protocol and warrants nomination by the United States for an exemption.

All Parties, including the United States, must transmit nominations to the UNEP Ozone Secretariat by January 24, 2015, to be considered by the Parties at their annual meeting at the end of 2015. The UNEP Ozone Secretariat forwards nominations to the Montreal Protocol's Technical and Economic Assessment Panel (TEAP) and the Methyl Bromide Technical Options Committee (MBTOC). The MBTOC and the TEAP review the nominations to determine whether they meet the criteria for a critical use established by Decision IX/6, and to make recommendations to the Parties for critical use exemptions. The Parties then consider those recommendations at their annual meeting before making a final decision. If the Parties determine that a specified use of methyl bromide is critical and authorize an exemption from the Protocol's production and consumption phaseout for 2017, EPA may then take domestic action to allow the production and consumption to the extent consistent with the Clean Air Act.

III. Information Required for Critical Use Application

Entities interested in obtaining a critical use exemption must complete the application form available at *www.epa.gov/ozone/mbr/cueinfo.html*. Applications requesting critical use allowances should include information that U.S. Government agencies and the Parties to the Protocol can use to evaluate the candidate use according to the criteria in Decision IX/6 described above. Applications that fail to include sufficient information may not be nominated.

Specifically, applications should include the information requested in the current version of the TEAP Handbook on Critical Use Nominations. The handbook is available electronically at *http://ozone.unep.org/Assessment_Panels/TEAP/Reports/MBTOC/Handbook%20CUN-version5-27Nov06.pdf*. EPA requests that applications contain the following information, as described in the handbook, in order for the U.S. to provide sufficient information to the Montreal Protocol's technical review bodies within the nomination:

- A clear statement on the specific circumstances of the nomination which describe the critical need for methyl bromide and quantity of methyl bromide requested;
- Data on the availability and technical and economic feasibility of alternatives to the proposed methyl bromide use;
- A review of the comparative performance of methyl bromide and alternatives including control of target pests in research and commercial scale up studies; [1]
- A description of all technically and economically feasible steps taken by the applicant to minimize methyl bromide use and emissions;
- Data on the use and availability of stockpiled methyl bromide;
- A description of efforts made to test, register, and commercially adopt alternatives;
- Plans for phase-out of critical uses of methyl bromide;
- The methodology used to provide economic comparisons.

EPA's Web site (*www.epa.gov/ozone/mbr/alts.html*) contains a list of available and potential alternatives. To support the assertion that a specific use of methyl bromide meets the requirements of the critical use exemption, applicants must demonstrate that none of the listed alternatives are technically and economically feasible for that use. In addition, applicants must describe research plans which includes the pest(s), chemical(s), or management practice(s) they will be testing to support their transition from methyl bromide.

Since there is no formal end date for the CUE program, anyone interested in obtaining a critical use exemption may apply. However, the language and spirit of controls on ozone depleting substances under the Montreal Protocol envisions a phaseout and for the critical use exemption to be a ''temporary derogation'' from that phaseout. Over the last decade, the research, registration, and adoption of alternatives has led many sectors to transition from methyl bromide. The number of sectors nominated has declined from seventeen for 2006 to two for 2016. Below is information on how the agency evaluated specific uses in considering nominations for critical uses for 2016, as well as specific information needed for the U.S. to successfully defend future nominations for critical uses.

Commodities Such as Dried Fruit and Nuts

Data reviewed by EPA as part of the 2016 nomination process for commodities such as dried fruit and nuts indicate that sulfuryl fluoride is effective against key pests. The industry has mostly converted to sulfuryl fluoride and no market disruption has occurred. Rapid fumigation is not a critical condition for this sector and therefore products can be treated with sulfuryl fluoride or phosphine and be held for relatively long periods of time without a significant economic impact.

To support a nomination, applicants must address potential economic losses due to pest pressures, changes in quality, changes in timing, and any other economic implications for producers when converting to alternatives. Alternatives for which such information is needed are: Sulfuryl fluoride, propylene oxide (PPO), phosphine, and controlled atmosphere/temperature treatment system. Applicants should include the costs to retrofit equipment or design and construct new fumigation chambers for these alternatives. For the economic assessment applicants must provide: The amount of fumigant gas used (for both methyl bromide and alternatives, which may include heat), price per pound of the fumigant gas from the most recent use season, application rates, differences in time required for fumigation, differences in labor inputs (i.e., hours and wages) associated with alternatives, the amount of commodity treated with each fumigant/treatment and the value of the commodity being treated/produced. Applicants should also provide information on changes in costs for any other practices or

[1] Where an alternative is not registered for use in a particular jurisdiction, growers in that jurisdiction need not address the performance of that particular alternative.

equipment used (e.g., sanitation and IPM) that are not needed when methyl bromide is used for fumigation, including information on the size of fumigation chambers where methyl bromide is used, the percent of commodity fumigated under tarps, the length of the harvest season, peak of the harvest season and duration, and volume of commodity treated daily at the harvest peak.

Where applicable, also provide examples of specific customer requests regarding pest infestation and examples of any phytosanitary requirements of foreign markets (e.g., import requirements of other countries) that may necessitate use of methyl bromide accompanied by explanation of why the methyl bromide quarantine and preshipment (QPS) exemption is not applicable for this purpose. Also include information on what pest control practices organic producers are using for their commodity.

Dried Cured Pork

Applicants must list how many facilities have been fumigated with methyl bromide over the last three years; the rate, volume, and target concentration over time [CT] of methyl bromide at each location; volume of each facility; number of fumigations per year; and the materials from which the facility was constructed. It is important for this sector to specify research plans into alternatives and alternative practices that support the transition from methyl bromide, as well as information on the technical and economic feasibility of using recapture technologies. Given the low volume of usage requested by the sector compared to the amount of remaining pre-phaseout inventory, it will also be important for applicants to indicate efforts to secure and use stockpiled methyl bromide.

Cucurbits, Eggplant, Pepper, and Tomato

In reviewing data for the 2016 CUE nomination, EPA found that although no single alternative is effective for all pest problems, a review of multiple year data indicates that the alternatives in various combinations provide control equal or superior to methyl bromide plus chloropicrin. Several research studies show that the three way mixture of 1,3-dichloropene plus chloropicrin plus metam sodium can effectively suppress pathogens (*P. capsici, F. oxysporum*) and nematodes.

To support a nomination, applicants must address potential changes to yield, quality, and timing when converting to alternatives, including: The mixture of 1,3-dichloropropene plus chloropicrin, the University of Georgia three way mixture of 1,3-dichloropropene plus chloropicrin plus metam (sodium or potassium) or allyl isothiocyanate (Dominus™) used in place of metam, dimethyl disulfide (DMDS), and any fumigationless system (if data are available). Applications must address regulatory and economic implications for growers and your region's production of these crops using these alternatives, including the costs to retrofit equipment and the differential impact of buffers for methyl bromide plus chloropicrin compared to the alternatives. For the economic assessment applicants must provide the following: Price per pound of fumigant gas used (both methyl bromide and alternatives) from the most recent use season; application rates; value of the crop being produced; differences in labor inputs (i.e., hours and wages); and any differences in equipment costs or time needed to operate equipment associated with alternatives.

Strawberry Fruit

Based on EPA's review of information as part of the 2016 nomination process, EPA believes alternatives are available as advances have been made: (1) In safely applying 100% chloropicrin, (2) in strategies to improve efficacy in applying 1,3-dichloropropene, and (3) in transitioning from experimental to commercial use of non-chemical tools, such as steam, anaerobic soil disinfestations, and substrate production.

To support a nomination, applicants must address potential changes to yield, quality, and timing when converting to alternatives, including: The mixture of 1,3-dichloropropene plus chloropicrin, the University of Georgia three way mixture of 1,3-dichloropropene plus chloropicrin plus metam (sodium or potassium) or allyl isothiocyanate (Dominus™) used in place of metam in states other than California, or dimethyl disulfide (DMDS), and any fumigationless system (if data are available). Applications must address regulatory and economic implications for growers and your region's production of these crops using these alternatives, including the costs to retrofit equipment and the differential impact of buffers for methyl bromide plus chloropicrin compared to the alternatives. For the economic assessment applicants must provide the following: Price per pound of fumigant gas used (both methyl bromide and alternatives) from the most recent use season; application rates; value of the crop being produced; differences in labor inputs (i.e., hours and wages); and any differences in equipment costs or time needed to operate equipment associated with alternatives.

Orchard Replant

EPA's review of data in the 2016 nomination process indicated that while no single alternative is effective for all pest problems, numerous field trials indicate alternatives to methyl bromide are effective. Therefore, EPA concluded that transitioning to the alternatives was feasible without substantial losses. Registered alternatives are available for individual-hole treatments and soil preparation procedures are available to enable effective treatment with alternatives even in soils with high moisture content.

To support a nomination, applicants must address potential changes to yield, quality, and timing when converting to alternatives, including: The mixture of 1,3-dichloropropene plus chloropicrin, the University of Georgia three way mixture of 1,3-dichloropropene plus chloropicrin plus metam (sodium or potassium), dimethyl disulfide (DMDS), and steam. Applications must address regulatory and economic implications for growers and your region's production of these crops using these alternatives, including the costs to retrofit equipment and the differential impact of buffers for methyl bromide plus chloropicrin compared to the alternatives. For the economic assessment applicants must provide the following: Price per pound of fumigant gas used (for both methyl bromide and alternatives) from the most recent use season; application rates; value of the crop being produced; differences in labor inputs (i.e., hours and wages); and any differences in equipment costs or time needed to operate equipment associated with alternatives.

Ornamentals

In considering nominations for 2016, EPA found that while no single alternative is effective for all pest problems, a review of multiple year data indicates that the alternatives in various combinations provide control equal or superior to methyl bromide plus chloropicrin. Research demonstrates that 1,3-dichloropene plus chloropicrin, the three way mixture of 1,3-dichloropene plus chloropicrin plus metam sodium, and dimethyl disulfide plus chloropicrin all show excellent results. To support a nomination, applicants must address potential changes to yield, quality, and timing when converting to alternatives, including: The mixture of 1,3-dichloropropene plus chloropicrin, the

University of Georgia three way mixture of 1,3-dichloropropene plus chloropicrin plus metam (sodium or potassium) or allyl isothiocyanate (Dominus™) used in place of metam, dimethyl disulfide (DMDS), and steam. Applications must address regulatory and economic implications for growers and your region's production of these crops using these alternatives, including the costs to retrofit equipment and the differential impact of buffers for methyl bromide plus chloropicrin compared to the alternatives. For the economic assessment applicants must provide the following: Price per pound of fumigant gas used (both methyl bromide and alternatives) from the most recent use season; application rates; value of the crop being produced; differences in labor inputs (i.e., hours and wages); and any differences in equipment costs or time needed to operate equipment associated with alternatives.

Nurseries

In considering this sector in the 2016 nomination process, EPA noted that a Special Local Need label allows Telone II to be used in accordance with certification standards for propagative material.[2] To support a nomination, applicants must address potential changes to yield, quality, and timing when converting to alternatives, including: The mixture of 1,3-dichloropropene plus chloropicrin, the University of Georgia three way mixture of 1,3-dichloropropene plus chloropicrin plus metam (sodium or potassium) or allyl isothiocyanate (Dominus™) used in place of metam in states other than California, dimethyl disulfide (DMDS), and steam. Applications must address regulatory and economic implications for growers and your region's production of these crops using these alternatives, including the costs to retrofit equipment and the differential impact of buffers for methyl bromide plus chloropicrin compared to the alternatives. For the economic assessment applicants must provide the following: Price per pound of fumigant gas used (for both methyl bromide and alternatives) from the most recent use season; application rates; value of the crop being produced; differences in labor inputs (i.e., hours and wages); and any differences in equipment costs or time needed to operate equipment associated with alternatives.

[2] EPA also noted that growers can use a combination of methyl bromide for quarantine situations and 1,3-D plus chloropicrin for non-quarantine situations to meet certification requirements.

Golf Courses

EPA has not found that a significant market disruption would occur in the golf industry in the absence of methyl bromide. To support a nomination, applicants must address potential changes to quality when converting to alternatives, including: Basamid, chloropicrin, 1,3-dichloropene, 1,3-dichloropene plus chloropicrin, metam sodium, or allyl isothiocyanate (Dominus™), and steam. Non-fumigant alternatives currently in use (e.g., additional pesticides, fertilizers, different cultural practices, and increased management) should also be described. Applications must address regulatory and economic implications for growers using these alternatives, including the costs to retrofit equipment and the differential impact of buffers for methyl bromide compared to the alternatives. For the economic assessment, applicants must provide the following: Price per pound of fumigant gas used (both methyl bromide and alternatives) from the most recent use season; application rates; economic impact for the golf course from a transition to alternatives (e.g., downtime when resurfacing, years between fumigations); differences in labor inputs (i.e., hours and wages); and any differences in equipment costs or time needed to operate equipment associated with alternatives. Supporting evidence could be included that would demonstrate that alternatives lead to more frequent resurfacing and therefore, greater adverse economic impacts. Applicants should also address their efforts to secure and use stockpiled methyl bromide.

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this notice under the provisions of the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0482.

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

Dated: July 1, 2014.

Sarah Dunham,

Director, Office of Atmospheric Programs.

[FR Doc. 2014–16064 Filed 7–8–14; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within twelve days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (www.fmc.gov) or by contacting the Office of Agreements at (202)–523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 011463–008.

Title: East Coast of North America to West Coast of South America and Caribbean Cooperative Working Agreement.

Parties: Compania Sud Americana de Vapores S.A.; Norasia Container Lines Limited; Hamburg-Sud; and Compania Chilena de Navagacion Interoceania, S.A.

Filing Party: Walter H. Lion, Esq.; McLaughlin & Stern, LLP; 260 Madison Avenue; New York, NY 10018.

Synopsis: The amendment modifies the Agreement to reflect CSAV's transfer of its container shipping business to its wholly-owned subsidiary, Norasia, modifying agreement provisions accordingly.

Agreement No.: 011795–004.

Title: Puerto Rican Cross Space Charter and Sailing Agreement.

Parties: Compania Sud Americana de Vapores S.A.; Norasia Container Lines Limited; and Compania Chilena de Navegacion Interoceanica S.A.

Filing Party: Walter H. Lion, Esq.; McLaughlin & Stern, LLP; 260 Madison Avenue; New York, NY 10016.

Synopsis: The amendment modifies the Agreement to reflect CSAV's transfer of its container shipping business to its wholly-owned subsidiary, Norasia, modifying agreement provisions accordingly.

Agreement No.: 012100–003.

Title: CMA CGM/Norasia Gulf Bridge Express Vessel Sharing Agreement.

Parties: CMA CGM, S.A; Compania Sud Americana de Vapores S.A.; and Norasia Container Lines Limited.

Filing Party: Walter H. Lion, Esq.; McLaughlin & Stern, LLP; 260 Madison Avenue; New York, NY 10016.

Synopsis: The amendment modifies the Agreement to reflect CSAV's transfer of its container shipping business to its wholly-owned subsidiary, Norasia, modifying agreement provisions accordingly.

Agreement No.: 012103–004.

Title: CMA CGM/Norasia Victory Bridge Vessel Sharing Agreement.

Parties: CMA CGM, S.A.; Compania Sud American de Vapores S.A.; and Norasia Container Lines Limited.

Filing Party: Walter H. Lion, Esq.; McLaughlin & Stern, LLP; 260 Madison Avenue; New York, NY 10016.

Synopsis: The amendment modifies the Agreement to reflect CSAV's transfer of its container shipping business to its wholly-owned subsidiary, Norasia, modifying agreement provisions accordingly.

Agreement No.: 012138–001.

Title: NORASIA/CCNI Venezuela Space Charter Agreement.

Parties: Compana Sud Americana de Vapores S.A.; Norasia Lines Limited; and Compania Chilena de Navegacion Interoceanica S.A..

Filing Party: Walter H. Lion, Esq.; McLaughlin & Stern, LLP; 260 Madison Avenue; New York, NY 10016.

Synopsis: The amendment modifies the Agreement to reflect CSAV's transfer of its container shipping business to its wholly-owned subsidiary, Norasia, modifying agreement provisions accordingly.

Agreement No.: 012286.

Title: CSAV/NCLL/CMA CGM Space Charter Agreement.

Parties: CMA CGM, S.A; Compania Sud Americana de Vapores S.A.; and Norasia Container Lines Limited.

Filing Party: Draughn B. Arbona, Esq.; CMA CGM (America) LLC; 5701 Lake Wright Drive; Norfolk, VA 23502.

Synopsis: The agreement authorizes CSAV/Norasia to charter space to CMA CGM for the carriage of empty containers between the U.S. East Coast and China.

By Order of the Federal Maritime Commission.

Dated: July 3, 2014.

Rachel E. Dickon,

Secretary.

[FR Doc. 2014–16052 Filed 7–8–14; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 23, 2014.

A. Federal Reserve Bank of Atlanta (Chapelle Davis, Assistant Vice President) 1000 Peachtree Street, NE., Atlanta, Georgia 30309:

1. *The Stock Holdings of Delaware, LLC, and Karnise Diann Schweizer, as the sole member,* both of Fort Walton Beach, Florida; to acquire voting shares of Beach Community Bancshares, Inc., and thereby indirectly acquire voting shares of Beach Community Bank, both in Fort Walton Beach, Florida.

B. Federal Reserve Bank of Minneapolis (Jacquelyn K. Brunmeier, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *The Thomas H. Healey Family Trust dated June 27, 2013, Edina, Minnesota; John Healey, Edina, Minnesota, individually and as trustee for the Healey Trust; Ann Allen, Chanhassen, Minnesota, individually and as trustee committee member; and Peter Ramme,* Edina, Minnesota, as trustee committee member; all to retain voting shares of Crown Bankshares, Inc., (also known as Crown BHC), and thereby indirectly retain voting shares of Crown Bank, both in Edina, Minnesota.

In connection with this application, *Peter Dahl and Lisa Dahl, both of Edina, Minnesota; Thomas Healey, Jr., Burnsville, Minnesota; and Rachel Anderson,* Bloomington, Minnesota, as part of the Healey family group acting in concert, will retain voting shares of Crown BHC, and thereby indirectly retain voting shares of Crown Bank, both in Edina, Minnesota.

2. *Lois A. Bednar,* Fargo, North Dakota, as trustee, to join a group acting in concert with Thomas Watson, as Trustee, of the Bank Forward Employee Stock Ownership Plan, Hannaford, North Dakota; to retain and acquire additional voting shares of Security State Bank Holding Company, Fargo, North Dakota, and thereby indirectly retain and acquire additional voting shares of Bank Forward, Hannaford, North Dakota.

Board of Governors of the Federal Reserve System, July 3, 2014.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2014–16006 Filed 7–8–14; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

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

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 1, 2014.

A. Federal Reserve Bank of Richmond (Adam M. Drimer, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. *Eagle Bancorp, Inc.,* Bethesda, Maryland; to acquire 100 percent of the voting shares of Virginia Heritage Bank, Vienna, Virginia.

2. *HomeTrust Bancshares, Inc.,* Asheville, North Carolina; to become a bank holding company upon the conversion of HomeTrust Bank, Asheville, North Carolina, to a national bank.

In connection with this application, Applicant has also applied to engage in extending credit and servicing loans and acquiring debt in default, pursuant to sections 225.28(b)(1) and (b)(2)(vii), respectively.

B. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *First National Bancshares of Weatherford, Inc. Employee Stock Ownership Plan,* Weatherford,

Oklahoma; to become a bank holding company by acquiring at least 26 percent of the voting shares of First National Bancshares of Weatherford, Inc., and First National Bank and Trust Company of Weatherford, Inc., both in Weatherford, Oklahoma.

Board of Governors of the Federal Reserve System, July 3, 2014.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2014–16007 Filed 7–8–14; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0153; Docket 2014–0055; Sequence 11]

Federal Acquisition Regulation; Information Collection; OMB Circular A–119

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), the Regulatory Secretariat Division (MVCB) will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning OMB Circular A–119.

DATES: Submit comments on or before September 8, 2014.

ADDRESSES: Submit comments identified by Information Collection 9000–0153, OMB Circular A–119, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.*

Submit comments via the Federal eRulemaking portal by searching the OMB control number 9000–0153. Select the link ''Comment Now'' that corresponds with ''Information Collection 9000–0153, OMB Circular A–119''. Follow the instructions provided on the screen. Please include your name, company name (if any), and ''Information Collection 9000–0153, OMB Circular A–119'' on your attached document.

- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405. ATTN: Ms. Hada Flowers/IC 9000–0153, OMB Circular A–119.

Instructions: Please submit comments only and cite Information Collection 9000–0153, OMB Circular A–119, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Michael O. Jackson, Procurement Analyst, Acquisition Policy Division, GSA 202–208–4949 or email *michaelo.jackson@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

On February 19, 1998, a revised OMB Circular A–119, ''Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities,'' was published in the **Federal Register** at 63 FR 8545, February 19, 1998. FAR Subparts 11.1 and 11.2 were revised and a solicitation provision was added at 52.211–7, Alternatives to Government-Unique Standards, to implement the requirements of the revised OMB circular. If an alternative standard is proposed, the offeror must furnish data and/or information regarding the alternative in sufficient detail for the Government to determine if it meets the Government's requirements. We believe the burden for FAR 52.211–7 to be negative, as it is purely a permissive means for offerors to propose reducing regulatory burden on a given solicitation. There are other places A–119 has an effect, though we believe these to be positive. One is by enabling the single process initiative. Another is the general replacement of Mil standards with commercial standards, e.g., ISO 9000. Also, A–119 is the basis for the language in FAR 53.105, which reduces the chaos in data standards development. The whole purpose of A–119 was to reduce regulatory burden by promoting the use of industry standards in lieu of federal ones.

To the extent that data on the annual frequency of the use of voluntary consensus standards under FAR 52.211–7 is not available, we believe 100 is reasonable. As an aside, FAR part 45 recognizes the use of voluntary consensus standards in the management of Government property. However, in these cases there is no Government standard per se, with the voluntary consensus standard serving as the Government standard. Consequently, when under part 45 voluntary consensus standards are used, they are not an alternative to a Government standard under FAR 52.211–7.

B. Annual Reporting Burden

Respondents: 100.
Responses per Respondent: 1.
Total Responses: 100.
Hours per Response: 1.
Total Burden Hours: 100.

C. Public Comments

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it 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.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405, telephone 202–501–4755. Please cite OMB Control No. 9000–0153, OMB Circular A–119, in all correspondence.

Dated: July 2, 2014.

Karlos Morgan,

Acting Director, Federal Acquisition Policy Division, Office of Government-Wide Acquisition Policy, Office of Acquisition Policy, Office of Government-Wide Policy.

[FR Doc. 2014–16078 Filed 7–8–14; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0185; Docket No. 2014–0055; Sequence 24]

Submission for OMB Review; Commercial and Government Entity Code

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for a new OMB clearance.

SUMMARY: The Paperwork Reduction Act (44 U.S.C. chapter 35) applies. The proposed rule contains information collection requirements. Accordingly, the Regulatory Secretariat Division (MVCB) has submitted a request for approval of a new information collection requirement concerning Commercial and Government Entity Code (FAR Case 2012–024) to the Office of Management and Budget. A request for comments was published in the **Federal Register** at 75 FR 23194, on April 18, 2013. One comment was received.

DATES: Submit comments on or before August 8, 2014.

ADDRESSES: Submit comments identified by Information Collection 9000–0185, Commercial and Government Entity Code by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching the OMB control number 9000–0185. Select the link ''Comment Now'' that corresponds with ''Information Collection 9000–0185, Commercial and Government Entity Code''. Follow the instructions provided on the screen. Please include your name, company name (if any), and ''Information Collection 9000–0185, Commercial and Government Entity Code'' on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405. ATTN: Ms. Flowers/IC 9000–0185, Commercial and Government Entity Code.
- *Instructions:* Please submit comments only and cite Information Collection 9000–0185, Commercial and Government Entity Code, in all correspondence related to this collection. 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, Office of Government-wide Acquisition Policy, at telephone 202–501–0650 or via email to *Edward.loeb@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

DoD, GSA, and NASA published a proposed rule at 78 FR 23194 on April 18, 2013, soliciting public comments on the proposed rule and received one response.

DoD, GSA, and NASA are revising the FAR to require that offerors provide their Commercial and Government Entity (CAGE) codes to contracting officers and that, if owned by another entity, offerors will provide, in a new provision with their representations and certifications, the CAGE codes and names of such entity or entities. For those offerors located in the United States or its outlying areas that register in the System for Award Management (SAM), a CAGE code is assigned as part of the registration process. If SAM registration is not required, the offeror must request and obtain a CAGE code from the Defense Logistics Agency (DLA) Contractor and Government Entity Branch. A CAGE code is not required when a condition described at FAR 4.605(c)(2) applies and the acquisition is funded by an agency other than DoD or NASA. Offerors located outside the United States will obtain an NCAGE from their NATO Codification Bureau or, if not a NATO member or sponsored nation, from the NATO Support Agency (NSPA).

The Federal procurement community strives toward greater measures of transparency and reliability of data, to facilitate achievement of rigorous accountability of procurement dollars, processes, and compliance with regulatory and statutory acquisition requirements, e.g., the Federal Funding and Accountability and Transparency Act of 2006 (Pub. L. 109–282, 31 U.S.C. 6101 note). Increased transparency and accuracy of procurement data broaden the Government's ability to implement fraud detection technologies restricting opportunities for mitigating occurrences of fraud, waste, and abuse of taxpayer dollars.

To further the desired increases in traceability and transparency, this rule uses the unique identification that a CAGE code provides, coupled with vendor representation of ownership and owner CAGE code. The CAGE code is a five-character alpha-numeric identifier used extensively within the Federal Government and will provide for standardization across the Federal Government. This rule will support successful implementation of business tools that provide insight into:

—Federal spending patterns across corporations;
—Traceability in tracking performance issues across corporations;
—Contractor personnel outside the United States; and
—Supply chain traceability and integrity efforts.

B. Analysis of Public Comments

Comment: In response to the notice of proposed rulemaking and the request for comment on the burden estimates, one respondent did question the burden estimates. The respondent indicated that the rule adds additional costs to the process not recognized in the rule. This relates to usability issues with SAM. The respondent indicated that, as a pilot, industry conducted hierarchy assessment and this took well over an hour without the additional revalidations required by SAM. The respondent requested that the FAR Council republish the rule for public comment after clarifying the issues raised.

Response: The FAR Council determined that a revision to the Paperwork Burden is not warranted. Obtaining a CAGE code is already a requirement for an active registration in SAM and for its predecessors the Online Representations and Certifications (ORCA) and the Central Contractor Registration (CCR) database. This final rule applies no new burden in that regard. Burden for registration in SAM was re-assessed as part of the rulemaking in the FAR case (FAR Case 2011–021) that established that requirement. Additionally, this final rule does not require the use of SAM to obtain the CAGE code(s) for the immediate owner or highest-level owner; although registration in SAM could be accomplished to do so for U.S. registrants (as U.S. registrants are assigned a CAGE code upon registration). It is true that it may take some time in larger organizations to update all of the contractor's SAM registrations to include the immediate and highest-level owner CAGE information (if the contractor has hundreds of SAM records and it is updating them centrally and at the same time). However, including the data on an individual registration or renewal basis should not result in any significant additional time.

Annual Reporting Burden

The annual reporting burden to obtain CAGE codes is estimated as follows:

Respondents required to obtain a CAGE code	1,134.
Number of responses per respondent	1.
Total annual responses	1,134.
Preparation hours per response	.25
Subtotal response hours	284
Respondents required to obtain an NCAGE code	1,020.
Number of responses per respondent	1.
Total annual responses	1,020.

Preparation hours per response	.5
Subtotal response hours	510.
Total CAGE response burden hours	794

The annual reporting burden is estimated as follows to respond to ownership provision 52.204–YY requirements:

Respondents	413,808
Average responses per respondent	1
Total annual responses	413,808
Preparation hours per response	.5
Total response burden hours	206,904

The combined total of the CAGE hours and the ownership provision hours are 207,698 response burden hours.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405, telephone 202–501–4755. Please cite OMB Control No. 9000–0185, Commercial and Government Entity Code in all correspondence.

Dated: July 2, 2014.

Karlos Morgan,

Acting Director, Federal Acquisition Policy Division, Office of Government-Wide Acquisition Policy, Office of Acquisition Policy, Office of Government-Wide Policy.

[FR Doc. 2014–16084 Filed 7–8–14; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0155; Docket 2014–0055; Sequence 12]

Information Collection; Prohibition on Acquisition of Products Produced by Forced or Indentured Child Labor

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), the Regulatory Secretariat Division (MVCB) will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement regarding prohibition on acquisition of products produced by forced or indentured child labor.

DATES: *Submit comments on or before:* September 8, 2014.

ADDRESSES: Submit comments identified by Information Collection 9000–0155, Prohibition on Acquisition of Products Produced by Forced or Indentured Child Labor, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching the OMB control number 9000–0155. Select the link ''Comment Now'' that corresponds with ''Information Collection 9000–0155, Prohibition on Acquisition of Products Produced by Forced or Indentured Child Labor''. Follow the instructions provided on the screen. Please include your name, company name (if any), and ''Information Collection 9000–0155, Prohibition on Acquisition of Products Produced by Forced or Indentured Child Labor'' on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405. ATTN: Ms. Hada Flowers/IC 9000–0155, Prohibition on Acquisition of Products Produced by Forced or Indentured Child Labor.

Instructions: Please submit comments only and cite Information Collection 9000–0155, Prohibition on Acquisition of Products Produced by Forced or Indentured Child Labor, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Michael O. Jackson, Procurement Analyst, Acquisition Policy Division, GSA 202–208–4949 or email *michaelo.jackson@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

This information collection complies with Executive Order 13126, Prohibition on Acquisition of Products Produced by Forced or Indentured Child Labor. Executive Order 13126 requires that this prohibition be enforced within the federal acquisition system by means of: (1) A provision that requires the contractor to certify to the contracting officer that the contractor or, in the case of an incorporated contractor, a responsible official of the contractor has made a good faith effort to determine whether forced or indentured child labor was used to mine, produce, or manufacture any product furnished under the contract and that, on the basis of those efforts, the contractor is unaware of any such use of child labor; and (2) A provision that obligates the contractor to cooperate fully in providing reasonable access to the contractor's records, documents, persons, or premises if reasonably requested by authorized officials of the contracting agency, the Department of the Treasury, or the Department of Justice, for the purpose of determining whether forced or indentured child labor was used to mine, produce, or manufacture any product furnished under the contract.

The information collection requirements of the Executive Order are evidenced via the certification requirements delineated at FAR 22.1505, 52.212–3, 52.222–18, and 52.222–19.

To eliminate some of the administrative burden on offerors who must submit the same information to various contracting offices, the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) decided to amend the Federal Acquisition Regulation (FAR) to require offerors to submit representations and certifications electronically via the Business Partner Network (BPN), unless certain exceptions apply. Online Representations and Certifications Application (ORCA) was the specific application on the BPN to replace the paper based Representations and Certifications process. The change to the FAR was accomplished by FAR Case 2002–024. The BPN and ORCA systems have now been incorporated into the System for Award Management, also known as SAM.

B. Annual Reporting Burden

To date, there are 355,531 active registrants in SAM. Those registrants are required to complete the Representations and Certifications section of SAM. Of the 355,531 active registrants in SAM, 949 registrants identified their business concern as one that may supply an end product that is on the list of products requiring contractor certification as to Forced or Indentured Child Labor, identified by their country of origin. The 949 registrants will be used as the basis for the number of respondents. This number represents an increase from what was published in the **Federal Register** at 76 FR 42709 on July 19,

2011. No public comments were received in prior years that have challenged the validity of the Government's estimate.

Respondents: 949.

Responses per Respondent: 1.

Hours per Response: 0.325.

Total Burden Hours: 308.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405, telephone 202–501–4755.

Please cite OMB Control No. 9000–0155, Prohibition on Acquisition of Products Produced by Forced or Indentured Child Labor, in all correspondence.

Dated: July 2, 2014.

Karlos Morgan,

Acting Director, Federal Acquisition Policy Division, Office of Government-Wide Acquisition Policy, Office of Acquisition Policy, Office of Government-Wide Policy.

[FR Doc. 2014–16081 Filed 7–8–14; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency Information Collection Activities: Proposed Collection; 30-Day Public Comment Request; Communications Testing for Comprehensive Communication Campaign for HITECH ACT

AGENCY: Office of the National Coordinator for Health Information Technology, Department of Health and Human Services.

ACTION: 30-Day notice of submission of information collection approval from the Office of Management and Budget and request for comments.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the National Coordinator for Health Information Technology (ONC), Department of Health and Human Services, announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). The ICR is for extending the use of the approved information collection assigned OMB control number 0955–0005, which expires on July 31, 2014. Prior to submitting that ICR to OMB, ONC seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments must be submitted by August 8, 2014.

ADDRESSES: Written comments may be submitted to *Information.CollectionClearance@hhs.gov* or by calling (202) 690–6162.

FOR FURTHER INFORMATION CONTACT: To request additional information, please contact Penelope Hughes at *Penelope.Hughes@hhs.gov* or (202) 205.8658.

SUPPLEMENTARY INFORMATION:

Title: ''Communications Testing for Comprehensive Communication Campaign for HITECH ACT.''

Abstract: The Office of the National Coordinator for Health Information Technology (ONC) serves as the Health and Human Services (HHS) Secretary's principal advisor on the development, application, and use of health information technology (health IT). ONC is requesting an approval by OMB on an extension, to a previously approved generic clearance titled Communications Testing for Comprehensive Communication Campaign for HITECH ACT, 0955–0005, for collecting information through a variety of research methods for the purpose of developing and testing communications involving health information technology and health information privacy. ONC responsibilities include promoting the development of a nationwide health IT infrastructure that allows for electronic use and exchange of information and fostering the public understanding of health information technology, including educating the public about health information privacy. In order to fulfill these responsibilities, information from the public at large is necessary to determine what education is needed and what types of communication techniques will be most effective. Due to the rapidly evolving nature of health information technology, an extension of the original generic data collection is being requested to ensure that these education and communication efforts keep pace with technological advancements and the changing health information technology ecosystem. This information will be used to assess the need for communications on specific topics and to assist in the development and modification of communication messages. The data will help in tailoring print, broadcast, and electronic media communications and other materials for them to have powerful and desired impacts on target audiences. The data will not be used for the purposes of making policy or regulatory decisions.

The agency received no comments in response to the 60-day notice for the extension request published in the **Federal Register** of April 3, 2014 (79 FR 18690).

Below we provide the Office of the National Coordinator for Health Information Technology's projected average estimates for the next three years: [1]

Current Actions: New collection of information.

Type of Review: Extension.

Affected Public: Likely respondents include consumers as well as physicians, nurses and other health care providers.

Average Expected Annual Number of Activities: 6.

Respondents: 1,900.

Annual Responses: 11,400.

Frequency of Response: Once per request.

Average Minutes per Response: 15.

Burden Hours: 2850.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget control number.

Darius Taylor,

Information Collections Clearance Officer.

[FR Doc. 2014–16022 Filed 7–8–14; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology; Announcement of Requirements and Registration for ''EHR Innovations for Improving Hypertension Challenge''

AGENCY: Office of the National Coordinator for Health Information Technology, HHS.

Award Approving Official: Karen DeSalvo, National Coordinator for Health Information Technology.

ACTION: Notice.

SUMMARY: The goal of the EHR Innovations for Improving Hypertension Challenge is to seek practices that have used clinical decision support (CDS) to implement the most clinically successful examples of an evidence-based blood pressure treatment protocol, gather details about these tools

[1] The 60-day notice included the following estimate of the aggregate burden hours for this generic clearance federal-wide:

Average Expected Annual Number of activities: 6.

Average Number of Respondents per Activity: 1,900.

Annual Responses: 11,400.

Frequency of Response: Once per request.

Average Minutes per Response: 12.

Burden Hours: 2,300.

and their implementation, and then drive widespread implementation of those tools by other providers. In Phase 1 (three months), practices will document the CDS tools they used to implement an evidence-based BP control protocol, as well as describe the details and results of the implementation. Practices must demonstrate high BP control levels and/or improvement to ensure that tools and strategies merit replication across practice settings. In Phase 2 (nine months), practices and their partners will conduct, evaluate and document dissemination strategies for tools identified in Phase 1, emphasizing widespread, effective use of these tools by other practices. Submitters must demonstrate successful use of these tools in at least 2 additional practices.

The statutory authority for this challenge competition is Section 105 of the America COMPETES Reauthorization Act of 2010 (Public L. No 111–358).

DATES:

- Phase I submission period: July 7–October 6, 2014.
- Phase I winners announcement, tools posted: October 27, 2014.
- Phase II submission period: October 28, 2014–July 31, 2015.
- Phase II winners announcement: August/September, 2015.

FOR FURTHER INFORMATION CONTACT: Adam Wong, *adam.wong@hhs.gov* (preferred), 202–720–2866.

SUPPLEMENTARY INFORMATION:

Subject of Challenge Competition

Phase 1 Details

1. Purpose: Identify CDS tools and approaches effectively used by individual practices to improve blood pressure so they can be spread to other practices.

2. Participants: A practice implementing the protocol must lead the submission. Practices are encouraged to form teams supporting their entry that include organizations such as a Regional Extension Center (REC), EHR developer, quality organization and/or professional society.

3. Duration: 3 months.

4. Required to submit:

a. Provide data on BP control rate and/or improvement, as well as data on hypertension prevalence in the practice (prevalence data is collected to better understand the organization's hypertension screening results, but is not used for review)

- Submission requires more than 70% BP control (<140/90) in hypertension patients; specifications used to determine this rate must be the same as that used for PQRS #236/NQF #0018 and/or
- Significant improvement over time in BP control: Provide the percent of the patient population whose BP rate was improved over a specified period. Each submission will be evaluated based on the percent improvement and time period but no specific threshold for these must be met as a part of submission requirements.
- Information about the patients affected by the CDS interventions to help describe the Challenge's reach and effects, including: Size of the practice's patient population and hypertension prevalence; Aggregate demographic information on the patient population (e.g., disparities); and Specialty and demographic information about the practice (e.g., number/type of providers, setting [rural vs. urban], type [academic vs. community]).

b. Describe Protocol elements addressed (use structured narrative; we encourage but do not require that submitters address all five elements):

- BP measurement/recording (e.g., use of documentation templates, highlighting abnormal BPs in EHR).
- BP follow-up and patient recall (e.g., use of registry reports).
- Medication selection and titration (e.g., use of order sets).
- Patient engagement (e.g., use of patient education and goal setting tools, templates for documenting and responding to home BP readings, patient reminders for medications/appointments).
- Workup/referral for poor control (e.g., reference information, hypertension-specific consult order forms).

c. Describe EHR/health IT tools used to implement protocol (generic description; screenshots optional) and details about deployment so that others can replicate it.

- Order sets, registry reports, documentation templates/tools, medication protocols, patient engagement/education tools, referral templates, reminders, etc.
- Tool descriptions can include generic version of intervention (e.g., contents of order set, documentation template, rule), screenshots, and/or implementable artifacts. We encourage, but do not require, use of the format described in the HL7 CDS Knowledge sharing implementation guide (also called the 'Health eDecisions' format).

d. Describe how the tools are deployed in workflow.

- Use CDS/Quality Improvement worksheets for standard presentation/replication (e.g., similar to QI case example within the CDS/QI resources recently provided by ONC [1]).

Phase 2 Details

1. Purpose:

- The ultimate goal is that many organizations (e.g., professional societies, developers, quality organizations, RECs) spread use of the effective tools and related workflows from Phase 1 to many additional practice settings.
- Phase 2 submitters will develop and implement strategies for disseminating the CDS interventions recognized from Phase 1 as having the greatest value for BP control.
- Organizations with the greatest spread results and further spread potential will be selected for recognition, including a single winner, from the Phase 2 Challenge component.

2. Participants: Phase 2 Challenge applicants can include any organization or collaboration that is able to widely spread successful use of EHR/CDS-enabled BP treatment protocols using tools recognized during Phase 1. Phase 2 submitters need not have participated in Phase 1.[2]

3. Duration: 9 months.

4. Required to submit:

a. Evidence that the tools and artifacts were implemented, or implementation is underway, in at least 2 other practices or provider groups.

- As part of describing the spread strategy, submitters must describe the CDS tools that were used to implement the hypertension control protocol; the format for this is based on that from Phase 1, and also includes any modification made to the tools so they could spread. We encourage, but do not require, use of the format described in the HL7 CDS Knowledge Sharing Implementation Guide (i.e., the 'Health eDecisions' format).

b. Results from spreading CDS tools to other practices: Ideally blood pressure control/improvements similar to that achieved from the tools in Phase 1, but, at a minimum, compelling evidence of significant value from tool implementation.

c. Evidence of *intent* from other practices (i.e., *in addition* to those practices covered in 4.a above) to replicate the BP protocol approach using the CDS tools.

[1] These resources are available at: *bit.ly/CDS4MU*; see specifically II.A: CHC Inc. and Ellsworth QI Case Studies.

[2] Phase 2 success will likely require partnership with organizations that have significant size and reach—such as specialty societies, quality organizations, RECs, health IT products or services vendors—to support tool dissemination goals.

d. Information about the patients affected by the CDS interventions, including:

- Size of practice's patient population and hypertension prevalence;
- Aggregate demographic information on the patient population (i.e., disparities); and
- Specialty and demographic information about the practice (e.g., number of providers, setting [rural vs. urban], type [academic vs. community]).

This information will help define the Challenge's reach and effects; the Challenge is intended to affect many different practices sizes and types.

e. Practice deployment strategy summary and critical success factors for spreading CDS tool implementation to enhance BP control.

Eligibility Rules for Participating in the Competition

To be eligible to win a prize under this challenge, an individual or entity—

(1) Shall have registered to participate in the competition under the rules promulgated by the Office of the National Coordinator for Health Information Technology.

(2) Shall have complied with all the requirements under this section.

(3) In the case of a private entity, shall be incorporated in and maintain a primary place of business in the United States, and in the case of an individual, whether participating singly or in a group, shall be a citizen or permanent resident of the United States.

(4) May not be a Federal entity or Federal employee acting within the scope of their employment.

(5) Shall not be an HHS employee working on their applications or submissions during assigned duty hours.

(6) Shall not be an employee of Office of the National Coordinator for Health IT.

(7) Federal grantees may not use Federal funds to develop COMPETES Act challenge applications unless consistent with the purpose of their grant award.

(8) Federal contractors may not use Federal funds from a contract to develop COMPETES Act challenge applications or to fund efforts in support of a COMPETES Act challenge submission.

An individual or entity shall not be deemed ineligible because the individual or entity used Federal facilities or consulted with Federal employees during a competition if the facilities and employees are made available to all individuals and entities participating in the competition on an equitable basis.

Entrants must agree to assume any and all risks and waive claims against the Federal Government and its related entities, except in the case of willful misconduct, for any injury, death, damage, or loss of property, revenue, or profits, whether direct, indirect, or consequential, arising from my participation in this prize contest, whether the injury, death, damage, or loss arises through negligence or otherwise.

Entrants must also agree to indemnify the Federal Government against third party claims for damages arising from or related to competition activities.

Registration Process for Participants

To register for this Challenge, participants can access *http://www.challenge.gov* and search for ''EHR Innovations for Improving Hypertension Challenge.''

Prize

Phase 1 will have up to 4 winners, each of whom will receive a $5,000 prize. Other Phase 1 submitters who provide CDS tools that reviewers select for spread during Phase 2 dissemination efforts will receive non-monetary recognition (e.g., Honorable Mention).

Phase 2 will have a single winner of a $30,000 cash prize. Other Phase 2 submitters, whose CDS tool dissemination and implementation strategies the reviewers deem commendable, will receive non-monetary recognition (e.g., Honorable Mention).

Payment of the Prize

Prize will be paid by contractor.

Basis Upon Which Winner Will Be Selected

The review panel will make selections based upon the following criteria:

Phase 1

- BP Control (<140/90) among hypertension patients.
  - BP control *rate:* Specifications used to determine this rate must be the same as that used for PQRS #236/NQF #0018) and/or
  - BP control rate *improvement:* Percentage point increase in BP control rate over a specified time. Submissions will be evaluated based on the percent improvement, if this is provided by submitters, but no specific threshold must be demonstrated as a part of submission requirements.
- Comprehensiveness and innovation in addressing the protocol elements using EHR or other health IT.
- CDS tool implementation description detailed enough so that others could replicate it.
- Ease with which others could implement the same approach (e.g., if the strategy required a high degree of custom development that cannot easily be shared, then it would be harder for others to replicate).

Phase 2

- Number of practices in which the CDS interventions were implemented, or implementation is underway.
- Number of practices expressing interest in replicating the CDS-enabled protocol implementation approach in addition to those that actually implemented it during Phase 2.
- CDS tool implementation spread efforts resulting in demonstrated BP control improvements. Absent actual BP control improvements, demonstration of compelling evidence that CDS tool implementation has made a positive impact on BP care processes and/or that BP control improvements are likely.
- Comprehensiveness and innovation in supporting BP protocol elements with CDS tools.
- Likelihood that the submitter's approach to spreading the CDS tool-enabled BP protocol implementation can be further replicated beyond Phase 2.

In order for an entry to be eligible to win this Challenge, it must not use HHS' or ONC's logos or official seals in the Submission, and must not claim endorsement.

Additional Information

General Conditions: ONC reserves the right to cancel, suspend, and/or modify the Contest, or any part of it, for any reason, at ONC's sole discretion.

Intellectual Property:

- Each entrant retains title and full ownership in and to their submission. Entrants expressly reserve all intellectual property rights not expressly granted under the challenge agreement.
- By participating in the challenge, each entrant hereby irrevocably grants to Sponsor and Administrator a limited, non-exclusive, royalty-free, worldwide license and right to reproduce, publically perform, publically display, and use the Submission to the extent necessary to administer the challenge, and to publically perform and publically display the Submission, including, without limitation, for advertising and promotional purposes relating to the challenge.

Authority: 15 U.S.C. 3719.

Dated: June 26, 2014.

Karen DeSalvo,

National Coordinator for Health Information Technology.

[FR Doc. 2014–16016 Filed 7–7–14; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Decision To Evaluate a Petition To Designate a Class of Employees From the General Atomics Facility in La Jolla, California, To Be Included in the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: NIOSH gives notice as required by 42 CFR 83.12(e) of a decision to evaluate a petition to designate a class of employees from the General Atomics facility in La Jolla, California, to be included in the Special Exposure Cohort under the Energy Employees Occupational Illness Compensation Program Act of 2000. The initial proposed definition for the class being evaluated, subject to revision as warranted by the evaluation, is as follows:

Facility: General Atomics.

Location: La Jolla, California.

Job Titles and/or Job Duties: All Atomic Weapons Employees who worked for General Atomics at its facility in La Jolla, California, during the period from January 1, 1960 through December 31, 1969, for a number of work days aggregating at least 250 work days, occurring either solely under this employment or in combination with work days within the parameters established for one or more other classes of employees included in the Special Exposure Cohort.

Period of Employment: January 1, 1960 through December 31, 1969.

FOR FURTHER INFORMATION CONTACT: Stuart L. Hinnefeld, Director, Division of Compensation Analysis and Support, National Institute for Occupational Safety and Health, 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 877–222–7570. Information requests can also be submitted by email to *DCAS@CDC.GOV.*

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 2014–15988 Filed 7–8–14; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: ''Improving Hospital Informed Consent With an Informed Consent Toolkit.'' In accordance with the Paperwork Reduction Act, AHRQ invites the public to comment on this proposed information collection.

DATES: Comments on this notice must be received by September 8, 2014.

ADDRESSES: Written comments should be submitted to: Doris Lefkowitz, Reports Clearance Officer, AHRQ, by email at *doris.lefkowitz@AHRQ.hhs.gov.*

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by email at *doris.lefkowitz@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Project

Improving Hospital Informed Consent With an Informed Consent Toolkit

The ultimate aim of this project is to pilot test a toolkit to improve the informed consent process in U.S. hospitals. Clinical informed consent is the process by which a patient is told about the risks and benefits of proposed treatments or procedures, as well as alternatives, and makes a decision based on that information. Informed consent may be jeopardized by incorrect clinician assumptions about patient comprehension, the manner in which consent is sought, and poor readability of consent forms (Paasche-Orlow et al., 2013). All too frequently, patients do not understand the risks, benefits, and alternatives of their treatments even after signing a consent form (Braddock et al., 1999; Sudore et al., 2006). De-identified accreditation data analyzed as part of AHRQ's preliminary research for this data collection effort suggest that some hospitals are not following the basic ethical principles underlying informed consent. These data, as well as the guidance from the study's Expert and Stakeholder Panel, indicate that hospital administrators and clinicians could benefit from training on evidence-based practices to improve the informed consent process. These include improving communication, using interpreters to meet the communication needs of patients with limited English proficiency, using high-quality decision aids to support the informed consent discussion, and using teach-back to verify patient understanding (Temple University Health System, 2009). Hospital system changes that can facilitate these practices include improving hospitals' informed consent policies and enhancing the infrastructure that supports the informed consent process (e.g., interpreter services, high-quality decision aids, easy-to-understand forms).

Building upon a previously published guide, a review of the literature, and the aforementioned analysis of de-identified accreditation data, AHRQ has developed a new Informed Consent Toolkit. Toolkit content will be delivered via two training modules of approximately one hour each (one for hospital leaders, the other for frontline clinical staff), to be offered through a Learning Management System. Clinical staff taking the training will be eligible for continuing education (CE) credit.

AHRQ will pilot test the toolkit to assess:

- Facilitators of and barriers to implementing the toolkit
- Effectiveness of the toolkit in improving informed consent processes and relevant outputs and outcomes

Pilot test results will be used to improve the toolkit and provide information to hospitals considering using it to improve their informed consent processes. The pilot test will take place in four hospitals. Each participating hospital will be asked to:

- Train the leaders of their choosing using the training module Champion improvements in their informed consent policies and processes based on the information and tools in the leader training.
- Train frontline staff members in four units, including at least one surgical unit. Using the frontline training module.
- Implement improvement initiatives over a period of two to six months in participating units based on materials presented in the frontline training.
  - In at least one unit implementation will last at least three months and use

at least one of the techniques presented in the training (e.g., use teach-back to confirm patient understanding, use high quality decision aids, overcome communication barriers)

• Conduct and cooperate with assessment activities:

○ In at least one unit, use the Rapid Feedback Patient Survey.

○ In at least one surgical unit, collect surgical cancellation and delay rates.

○ Collect other metrics to assess the effectiveness of the informed consent toolkit.

○ Cooperate with project team in the data collection efforts described below.

This study is being conducted by AHRQ through its contractor, Abt Associates Inc., pursuant to AHRQ's statutory authority to conduct and support research on health care and on systems for the delivery of such care, including activities with respect to the quality, effectiveness, efficiency, appropriateness and value of health care services and with respect to quality measurement and improvement. 42 U.S.C. 299a(a)(1) and (2).

Method of Collection

The following data collections efforts will be pursued in participating hospitals to achieve project goals:

1. The Hospital Informed Consent Baseline and Final Assessment will be completed by the four hospitals participating in the pilot testing at baseline and upon completion of the implementation period. The assessment, completed by the hospital's designated liaison to the project and the leaders of the participating units (unit leaders), will describe each hospital's informed consent policies and processes (e.g., procedures that require signed informed consent forms, clinical staff roles and responsibilities in informed consent, when interpreter services should be used), and document any changes that occurred as a result of toolkit implementation. Questions will include both open-ended questions (e.g., descriptions of process) and Likert scale questions (1 to 5) regarding the extent to which essential components are covered in informed consent discussions (e.g., benefits and risks of alternatives) and evidence-based practices to improve the informed consent process are used.

2. Pre-/Post-Training Quiz. A quiz is given both before and after the training to measure whether knowledge (related to the content in the Toolkit) increases after completing the training module(s) and to identify potential Toolkit improvements. The pre-test is given after the participant registers for the training but before they begin the course content. Immediately after the participant completes the course content, they will be given the post test. The post quiz will also include a separate section with questions regarding learner's reactions to and evaluation of the Toolkit training. A post quiz score of 80% will be used as the threshold to obtain CE credits. There will be a pre/post quiz for each training module.

3. The Monthly Check-In Call. A project team member will hold a monthly check-in call with hospital liaisons and unit leaders to assess the progress of implementation of training programs and improvement initiatives at each hospital and within each unit. Check-in calls will occur monthly for up to six months. Each call will be up to 30 minutes in duration.

4. Frontline Clinical Staff Survey. A brief survey will be administered electronically to all clinicians who take the frontline staff training, both prior to training and approximately two to three months after completing it. Hospital liaisons will provide email addresses for the staff who will be invited to complete the training from each participating unit. These email addresses will be used to send clinicians the pre and post-training surveys. The survey will collect information about clinicians' self-reported use of evidence-based practices described in the frontline staff training, a self-assessment rating of their informed consent effectiveness, attitudes regarding patients' rights in informed consent, and reported learning and implementation experiences. The survey will also collect information about the clinician and their background (e.g., years in practice, practitioner type) and department. The survey will consist largely of closed-ended questions (e.g., scale or Likert response options) with several open-ended questions.

5. Interview and Site Visit Guide. Site visits and interviews will be conducted at each of the four participating hospitals. Each site visit will occur over a two-day period at least three months after sites have trained the majority of their staff on the participating units. The project team will conduct up to 18 in-depth interviews at each pilot site with hospital leaders and frontline clinicians. Leaders will include hospital champions spearheading the pilot test in their hospital (such as chiefs of surgery, department chairs, chief anesthesiologist/head of anesthesiology, nurse managers, charge nurses, nurse educators, patient safety/quality officers, legal/risk management officers) and leaders of units where the toolkit was piloted. Frontline clinician interviewees will be selected by unit leaders or hospital liaisons from the units where the toolkit was piloted. Liaisons and unit leaders will be asked to nominate a range of clinicians from those who embraced changes to those who were less willing to implement changes. Site visits will also involve limited observation (e.g., to observe documentation of informed consent completion, view new signage to remind clinicians to verify patient understanding in an informed consent discussion). The project team will also obtain relevant organizational documents (e.g., informed consent policies, training completion rates, implementation tracking data) and data (e.g., surgical cancellation rates). Interviews will capture qualitative data regarding clinician learning, toolkit implementation, behavior, and results pertaining to patient engagement.

6. Rapid Feedback Patient Survey. Hospitals participating in the pilot test will be required to implement the Rapid Feedback Patient Survey provided in the Toolkit in a subset of patients in at least one participating unit to capture patient's understanding of the information conveyed during the informed consent process, and their satisfaction with the informed consent discussion and process. Time to complete the rapid feedback patient survey is estimated at five minutes. We expect hospitals to administer this survey to at least 50 patients before implementation and 50 patients after implementation in at least one unit and randomize selection of patients to minimize potential bias.

Other outcome and output data from administrative records or electronic medical records (Secondary Data). Hospitals will also be asked to report on their rates of surgical cancellations and delays in at least one participating surgical unit, since prior research suggests that these rates can be improved (i.e., reduction in cancellations and some delays) when strategies such as teach-back were used in the informed consent process (NQF, 2005). Hospitals may also select other outcome measures of interest based on administrative records or electronic medical records. They may also report on output data such as number of informed consent forms improved or number of staff present during a teach-back or quality improvement exercise. Since these data collections involve extractions from existing clinic records or use of administrative records, they pose only minimal data collection burden to the hospital, specifically the person who needs to collect the data (i.e., hospital liaison or unit leader).

The purpose of the proposed data collection effort is to obtain information needed to modify and enhance the Informed Consent Toolkit and to provide information to hospitals considering using the toolkit to improve their informed consent processes. Since this is only a pilot study in 4 sites, outcomes or impacts will not be generalizable.

The data collected will help the project team: (1) understand the facilitators and barriers of implementing the tools and recommended improvements to informed consent policies and processes, and (2) assess the effectiveness of the toolkit in improving informed consent processes and other outcomes in four pilot implementation sites. The data collection effort may also provide insights that could guide dissemination of the toolkit. For example, if it was found that specific units (e.g., surgical units) across the pilot test hospitals strongly benefited from implementing a specific strategy suggested in the toolkit, then AHRQ could tailor and target its dissemination of the toolkit to those individuals and organizations that represent them. Once revisions are made based on results of the pilot study, the toolkit will be published on AHRQ's Web site. A manuscript describing the pilot study and its results will also be produced for publication in a peer-reviewed journal.

Estimated Annual Respondent Burden

Exhibit 1 presents estimates of the reporting burden hours for the data collection efforts. Time estimates are based on prior experiences with pilot testing materials in hospitals and what can reasonably be requested of participating hospitals. The number of respondents listed in column A, Exhibit 1 reflects a projected 80 percent response rate for data collection efforts 2a, 2b, 4, and 6 below.

1. The Hospital Informed Consent Baseline and Final Assessment will establish a baseline and final assessment of each hospital's informed consent policies and processes that is completed by the site liaisons (one per hospital) and unit leaders (four per hospital) and will take each person 30 minutes to complete each time.

2. Pre-/Post-Training Quiz will be administered after participants register for the training but before they begin the course (pre-test), and immediately after participants complete the course content (post-test). There will be a pre-post quiz for each module. Each quiz will take 20 minutes to complete:

a. Frontline Staff Pre-/Post-Training Quiz: We assumed 40 frontline staff per unit for a total of 160 staff per hospital and a total of 640 across all four hospitals. We assumed 512 frontline staff will complete the pre-/post-training quiz based on an estimated 80 percent response rate.

b. Hospital Leader Pre-/Post-Training Quiz: We assumed eight leaders per hospital for a total of 32 across all four hospitals. We assumed 26 will complete the pre-/post-training quiz based on an estimated 80 percent response rate.

3. The Monthly Cheek-In Calls will occur with hospital liaisons and four unit leaders for a total of five individuals per hospital to assess the progress of implementation of training programs at each site and within each unit. Check-in calls will occur monthly for six months and will each take 30 minutes.

4. Frontline Clinical Staff Survey. A brief survey will be emailed to all clinicians both prior to training and approximately two to three months after completing the training. We assumed 40 frontline staff per unit for a total of 160 staff per hospital and a total of 640 across all four hospitals. We assumed 512 frontline staff will complete the survey based on an 80 percent response rate. It is expected to take 15 minutes to complete.

5. Interview and Site Visit Guide. Each site visit will occur over a two-day period and include up to 18 one hour interviews in each pilot site, with:

a. Two hospital leaders (e.g., legal, risk management) and four unit leaders (six per hospital).

b. Three front-line clinicians in each of four units (12 per hospital).

6. Rapid Feedback Patient Survey. The Rapid Feedback Patient Survey will be given to 100 patients (50 patients before implementation and 50 patients after) immediately following an informed consent discussion. It should take five minutes to complete. We assumed 100 patients per hospital for a total of 400 across all four hospitals. We assumed 320 patients will complete the survey based on an 80 percent response rate.

7. Other outcome and output data from administrative records or electronic medical records (Secondary Data). These secondary data will be provided by the hospital liaison or unit leaders. We have assumed five hours for each hospital liaison and unit lead to collect and provide these data.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Data collection method or project activity	A. Number of respondents	B. Number of responses per respondent	C. Hours per response	D. Total burden hours
1. Hospital Informed Consent Baseline and Final Assessment	20	2	1	40
2a. Frontline Staff Pre-/Post-Training Quiz *	512	2	20/60	341
2b. Hospital Leader Pre-/Post-Training Quiz *	26	2	20/60	17
3. Monthly Check-in	20	6	30/60	60
4. Frontline Clinical Staff Survey *	512	1	15/60	128
5a. Interview—Clinical Staff	48	1	1	48
5b. Interview—Hospital Leaders	24	1	1	24
6. Rapid Feedback Patient Survey *	320	1	15/60	27
7. Secondary data	4	1	5	20
Total		na	na	705

* Number of respondents (Column A) reflects a sample size assuming an 80% response rate for these data collection efforts.

Exhibit 2, below, presents the estimated annualized cost burden associated with the respondents' time to participate in this research. The total cost burden is estimated to be about $25,270.

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Data collection method or project activity	Number of respondents	Total burden hours	Average hourly wage rate *	Total cost burden
1. Hospital Informed Consent Baseline and Final Assessment	20	40	$42.78	$1,711
2a. Frontline Staff Pre-/Post-Training Quiz	512	341.33	33.62	11,476
2b. Hospital Leader Pre-/Post-Training Quiz	26	17.33	51.95	900
3. Monthly Check-in	20	60	42.78	2,567
4. Frontline Clinical Staff Survey	512	128	33.62	4,303
5a. Interview—Clinical Staff	48	48	33.62	1,614
5b. Interview—Hospital Leaders	24	24	51.95	1,247
6. Rapid Feedback Patient Survey	320	26.67	22.33	596
7. Secondary data	4	20	42.78	856
Total				25,270

The average hourly wage rate of $42.78 for the informed consent baseline, readiness assessment, and monthly check-in was calculated based on the 2013 average of the mean hourly wage rate for healthcare practitioners and medical occupations (all professions) of $33.62 and mean hourly wage rate for medical and health services managers, $51.95.

The average hourly rate of $33.62 of hospital staff pre- and post-training quiz and in-depth interviews was calculated based on the 2013 average of the mean hourly wage rate for healthcare practitioners and medical occupations (all professions), $33.62.

The average hourly rate of $51.95 for hospital leaders pre- and post-training quiz and in-depth interview was calculated based on the 2013 mean hourly wage rate for medical and health services managers, $51.95.

The average hourly wage rate for patients of $22.33 was calculated on the 2013 mean hourly wage rate for all occupations. Mean hourly wage rates for these groups of occupations were obtained from the Bureau of Labor & Statistics on ''Occupational Employment and Wages, May 2013'' found at the following URL: *http://www.bls.gov/oes/current/oes_nat.htm#b29-0000.htm.*

Request for Comments

In accordance with the Paperwork Reduction Act, comments on AHRQ's information collection are requested with regard to any of the following: (a) whether the proposed collection of information is necessary for the proper performance of AHRQ health care research and healthcare information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) 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 upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: June 25, 2014.

Richard Kronick,

AHRQ Director.

[FR Doc. 2014–15807 Filed 7–8–14; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: ''Taking Efficiency Interventions in Health Services Delivery to Scale.'' In accordance with the Paperwork Reduction Act of 1995, AHRQ invites the public to comment on this proposed information collection.

This proposed information collection was previously published in the **Federal Register** on April 8th, 2014, and allowed 60 days for public comment. No comments were received. The purpose of this notice is to allow an additional 30 days for public comment.

DATES: Comments on this notice must be received by August 8, 2014.

ADDRESSES: Written comments should be submitted to: Doris Lefkowitz, Reports Clearance Officer, AHRQ, by email at *doris.lefkowitz@ahrq.hhs.gov.*

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by email at *doris.lefkowitz@ahrq.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Project

Taking Efficiency Interventions in Health Services Delivery to Scale

The primary care workforce is facing imminent clinician shortages and increased demand. With the implementation of the Affordable Care Act (ACA), Federally Qualified Health Centers (FQHCs) are expected to play a major role in addressing the large numbers of people who become eligible for health insurance as well as continue in their role as safety net providers. Thus, understanding new models of service delivery and improving efficiency within FQHCs is of national policy import. The proposed data collection supports the goal of developing a more efficient FQHC service delivery model through studying outcomes associated with a ''delegate model,'' which is designed to improve provider and team efficiency, and the spread of this model throughout a large FQHC.

Recent models of practice transformation have documented the use of an Organized Team Model that distributes responsibility for patient care among an interdisciplinary team, thereby allowing physicians to manage a larger panel size while practicing high quality care. The delegate model requires that all team members perform

at the top of their skill level, and that tasks currently performed by clinicians are delegated to non-clinician team members in a safe and effective manner. Researchers at the University of California, San Francisco have estimated that delegation may allow physicians to increase their panel size by shifting tasks to non-physician team members. More specifically, if portions of preventive and chronic care services are delegated to non-physicians, primary care practices can meet recommended quality and care guidelines while maintaining panel sizes with a limited primary care physician workforce. This study will examine the real-world implementation of such a model in order to build evidence of whether such delegation can achieve the predicted increases in panel sizes.

AHRQ is working with John Snow, Inc. (JSI) and its partner, Penobscot Community Health Center (PCHC), to evaluate the effectiveness and spread of a delegate model in 5 of PCHC's 15 primary care service sites. The model will be spread from an initial pilot physician-medical assistant team to other clinics, as well as to other teams within each clinic. PCHC is an FQHC located in Bangor, Maine that serves northeastern Maine.

Currently, PCHC's primary care providers (PCPs, which include medical doctors, osteopaths, nurse practitioners, and physician assistants) each work with a Medical Assistant (MA). Under the delegate model, a pair of PCPs will be assigned an ''administrative'' MA to enhance their team. This position will enable shifting of responsibilities among the team, with the intent of relieving the PCPs of administrative tasks and incorporating new tasks that will enhance team efficiency. Examples of tasks that an administrative MA may take on include standardized prescription renewals, schedule management, in-box management, scribing, pre-visit planning with pre-appointment laboratory tests, and identification of patients for ancillary referrals (e.g., behavioral health and case management).

This study has the following goals:

(1) To evaluate the spread and effectiveness of the delegate model in five of PCHC's primary care sites;

(2) To evaluate the influence of the delegate model on provider satisfaction, team functioning, and patient satisfaction;

(3) To assess the contextual factors influencing the above outcomes; and

(4) To disseminate findings.

This study is being conducted by AHRQ through its contractor, JSI, pursuant to AHRQ's statutory authority to conduct and support research on health care and on systems for the delivery of such care, including activities with respect to the quality, effectiveness, efficiency, appropriateness and value of health care services and with respect to quality measurement and improvement. 42 U.S.C. 299a(a)(1) and (2).

Method of Collection

AHRQ seeks approval for the following data collection activities:

- Team Survey that will be disseminated to all members of both delegate and non-delegate primary care teams to assess job satisfaction and team functioning in all participating sites at two points in time.
- Key Informant Interviews conducted with staff in each of the participating sites during two rounds of site visits, with key informants to include the Medical Director, Practice Director, members of primary care teams implementing the delegate model, and ancillary staff. A condensed version of the interview will be used for a conference call with each participating site's Medical Director and Practice Director as an interim activity between the two site visits.

The information yielded from this study is expected to inform a wide cross section of audiences and stakeholders about provider efficiency, practice redesign, team-based care, workforce strategies, and spread of an innovation. This study is not intended to make broad generalizations about the effectiveness of the delegate model of care, but rather to build initial evidence about this promising new model, its ability to increase panel size in FQHCs, and provide guidance on how similar models might be spread and evaluated.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated annualized burden for the respondents' time to participate in this research. Information will be collected through an internet-based team survey and in-person and telephone interviews. Note that some respondents may be double-counted, so the total number of respondents may be less than 80. For example, a respondent may fill out a survey as well as participate in a phone interview.

Exhibit 2 shows the estimated annualized cost burden associated with the respondents' time to participate in this research. The total annual cost burden is estimated to be $25,151.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
Team Survey:				
–Providers	21	2	15/60	11
–Other Clinical Staff	34	2	15/60	17
Total	55	2	15/60	28
Key Informant Interviews (Site visits):				
–Medical Director	2	2	30/60	2
–Practice Director	2	2	30/60	2
–Providers	5	2	30/60	5
–Other Clinical Staff	10	2	30/60	10
Total	19	2	30/60	19
Key Informant Interviews (Phone calls):				
–Medical Director	3	1	1	3
–Practice Director	3	1	1	3

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Form name	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
Total	6	1	1	6
Total	80	na	na	53

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Form name	Number of respondents	Total burden hours	Average hourly wage rate *	Total cost burden
Team Survey:				
—Providers	21	11	[a] $62.13	14,352
—Other Clinical Staff	34	17	[b] 14.69	8,491
Total	55	28	na	22,843
Key Informant Interviews (Site Visit):				
—Medical Director	2	2	[c] 92.08	368
—Practice Director	2	2	[d] 47.34	189
—Providers	5	2	[a] 62.13	621
—Other Clinical Staff	10	2	[b] 14.691	294
Total	19	8	na	1,472
Key Informant Interviews (Phone calls):				
—Medical Director	3	2	[c] 92.08	552
—Practice Director	3	2	[d] 47.34	284
Total	6	4	na	836
Total	80	na	na	25,151

* National Compensation Survey: Occupational wages in the United States May 2012, ''U.S. Department of Labor, Bureau of Labor Statistics.''
[a] Based on the average mean wages for three categories of primary care provider ($92.08—MDs; $44.45 PAs; and $43.97—NPs).
[b] Based on the mean wage of Medical Assistants.
[c] Based on the mean wages for MDs.
[d] Based on the mean wages for Medical and Health Services Managers.
[e] Based on the mean wages for Data Analyst (Computer and Information Analyst).

Request for Comments

In accordance with the Paperwork Reduction Act, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ health care research and health care information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) 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 upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: June 25, 2014.

Richard Kronick,

AHRQ Director.

[FR Doc. 2014–15806 Filed 7–8–14; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Annual Statistical Report on Children in Foster Homes and Children in Families Receiving Payment in Excess of the Poverty Income Level From a State Program Funded Under Part A of Title IV of the Social Security Act.

OMB No.: 0970–0004.

Description

The Department of Health and Human Services is required to collect these data under section 1124 of Title I of the Elementary and Secondary Education Act, as amended by Public Law 103–382. The data are used by the U.S. Department of Education for allocation of funds for programs to aid disadvantaged elementary and secondary students. Respondents include various components of State Human Service agencies.

Respondents

The 52 respondents include the 50 States, the District of Columbia, and Puerto Rico.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Annual Statistical Report on Children in Foster Homes and Children Receiving Payments in Excess of the Poverty Level From a State Program Funded Under Part A of Title IV of the Social Security Act	52	1	264.35	13,746.20

Estimated Total Annual Burden Hours: 13,746.20.

In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. Email address: *infocollection@acf.hhs.gov*. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) 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 within 60 days of this publication.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2014–15943 Filed 7–8–14; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects:

Title: Objective Progress Report (OPR) and Objective Work Plan (OWP).

OMB No.: 0970–0429.

Description: Content and formatting changes are being made to the OPR and OWP. The information in the OPR is currently collected on a quarterly basis to monitor the performance of grantees and better gauge grantee progress. The OWP is utilized by applications when they submit their proposals and then by grantees to monitor their projects once awarded. ANA has determined that the requirement for ANA Grantees to submit information about the project activities on quarterly basis creates undue burden for Grantees. Therefore, ANA has reformatted the OPR to require Grantees submit semi-annually reports instead of quarterly report. This will reduce the administrative burden on Grantees especially the smaller organizations. The majority of content being requested from the grantees essentially remain same except for the frequency of reporting.

OPR: The following are proposed content changes to the document:

Grantee Information: Report Frequency—This section of OPR will be reformatted to request semi-annual or final project data instead of quarterly information. The other sections of the document with reference to ''quarterly'' information will be changed to reflect the shift from four times a year reporting requirement to twice per year.

Objective Work Plan Update: Content is the same. No changes are proposed for this section of the OPR.

Impact indicator: Current Status of Expected Results and Current Status of Expected Benefits which are reported separately on the OPR will be combined to read ''Current Status of Expected Results and Benefits.'' The content requested in this section is similar to the previous OPR without the added burden of having the reporting organizations provide the analysis that distinguish between ''results and benefits''. Every section of the document will be rewritten to reflect this change.

OWP: ANA proposes to reformat the OWP (content is same) by swapping the Objective field with Problem Statement. In other words, this section will require respondents to begin with a concise statement about the problem the project is designed to address and will be followed by more details about the objectives of the project.

The two fields ''Results Expected and Benefits Expected'' will be combined into one field to read ''Results and Benefits Expected''. This will reduce redundancy and help reduce the burden on Grantees.

Respondents: Tribal Government, Native non-profit organizations, Tribal Colleges & Universities.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
OWP	500	1	3	1,500
OPR	275	2	1	550

Estimated Total Annual Burden Hours: 2,050.

In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the

information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. Email address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) 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 within 60 days of this publication.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2014–15927 Filed 7–8–14; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Methodology for Determining Whether an Increase in a State's Child Poverty Rate is the Result of the TANF Program

OMB No.: 0970–0186

Description

In accordance with Section 413(i) of the Social Security Act and 45 CFR part 284, the Department of Health and Human Services (HHS) intends to extend without change the following information collection requirements. For instances when Census Bureau data show that a States child poverty rate increased by 5 percent or more from one year to the next, a State may submit independent estimates of its child poverty rate. If HHS determines that the States independent estimates are not more reliable than the Census Bureau estimates, HHS will require the State to submit an assessment of the impact of the TANF program(s) in the State on the child poverty rate. If HHS determines from the assessment and other information that the child poverty rate in the State increased as a result of the TANF program(s) in the State, HHS will then require the State to submit a corrective action plan.

Respondents

The respondents are the 50 States and the District of Columbia. When reliable Census Bureau data become available for the Territories, additional respondents might include Guam, Puerto Rico, and the Virgin Islands.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Optional Submission of Data on Child Poverty from an Independent Source	51	1	8	408
Assessment of the Impact of TANF on the Increase in Child Poverty	51	1	120	6,120
Corrective Action Plan	51	1	160	8,160

Estimated Total Annual Burden Hours: 14,688.

In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. Email address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) 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 within 60 days of this publication.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2014–15944 Filed 7–8–14; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0144]

Agency Information Collection Activities; Proposed Collection; Comment Request; Certification to Accompany Drug, Biological Product, and Device Applications or Submissions

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 the requirements for certain FDA applications or submissions to be accompanied by a certification, Form FDA 3674, to ensure all applicable statutory requirements have been met.

DATES: Submit either electronic or written comments on the collection of information by September 8, 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.

Certification to Accompany Drug, Biological Product, and Device Applications or Submissions (Form FDA 3674)—(OMB Control Number 0910–0616)—Extension

The information required under section 402(j)(5)(B) of the Public Health Service Act (PHS Act) (42 U.S.C. 282(j)(5)(B)) is submitted in the form of a certification, Form FDA 3674, which accompanies applications and submissions currently submitted to FDA and is already approved by OMB. The OMB control numbers and expiration dates for submitting FDA 3674 under the following parts are: 21 CFR parts 312 and 314 (human drugs) are 0910–0014, expiring April 30, 2015, and 0910–0001, expiring September 30, 2014; 21 CFR parts 312 and 601 (biological products) are 0910–0014 and 0910–0338, expiring January 31, 2017; 21 CFR parts 807 and 814 (devices) are 0910–0120, expiring January 31, 2017, and 0910–0231, expiring January 31, 2017.

Title VIII of the Food and Drug Administration Amendments Act of 2007 (Public Law 110–85) amended the PHS Act by adding section 402(j). The provisions require additional information to be submitted to the clinical trials data bank, *http://www.clinicaltrials.gov/* (FDA has verified the Web site address, but FDA is not responsible for any subsequent changes to the Web site after this document publishes in the **Federal Register**) previously established by the National Institutes of Health/National Library of Medicine, including expanded information on clinical trials and information on the results of clinical trials. The provisions include responsibilities for FDA as well as several amendments to the Federal Food, Drug, and Cosmetic Act (the FD&C Act).

One provision, section 402(j)(5)(B) of the PHS Act, requires that a certification accompany human drug, biological, and device product submissions made to FDA. Specifically, at the time of submission of an application under sections 505, 515, or 520(m) of the FD&C Act (21 U.S.C. 355, 360e, or 360j(m)), or under section 351 of the PHS Act (42 U.S.C. 262), or submission of a report under section 510(k) of the FD&C Act (21 U.S.C. 360(k)), such application or submission must be accompanied by a certification, Form FDA 3674, that all applicable requirements of section 402(j) of the PHS Act have been met. Where available, such certification must include the appropriate National Clinical Trial (NCT) numbers.

The proposed extension of the collection of information is necessary to satisfy the previously mentioned statutory requirement. The importance of obtaining these data relates to adherence to the legal requirements for submissions to the clinical trials registry and results data bank and ensuring that individuals and organizations submitting applications or reports to FDA under the listed provisions of the FD&C Act or the PHS Act adhere to the appropriate legal and regulatory requirements for certifying to having complied with those requirements. The failure to submit the certification required by section 402(j)(5)(B) of the PHS Act, and the knowing submission of a false certification are both prohibited acts under section 301 of the FD&C Act (21 U.S.C. 331). Violations are subject to civil money penalties.

In January 2009, FDA issued ''Guidance for Sponsors, Industry, Researchers, Investigators, and Food and Drug Administration Staff—Certifications to Accompany Drug, Biological Product, and Device Applications/Submissions: Compliance With Section 402(j) of The Public Health Service Act, Added By Title VIII of the Food and Drug Administration Amendments Act of 2007'' available at *http://www.fda.gov/regulatoryInformation/guidances/ucm125335.htm*. This guidance identified the applications and submissions that FDA considered should be accompanied by the certification form, Form FDA 3674. The applications and submissions noted in the guidance are reflected in the burden analysis.

Investigational New Drug Applications

FDA's Center for Drug Evaluation and Research (CDER) received 1,564 investigational new drug applications (INDs) and 14,328 clinical protocol IND amendments in calendar year (CY) 2013. CDER anticipates that IND and clinical protocol amendment submission rates will remain at or near this level in the near future.

FDA's Center for Biologics Evaluation and Research (CBER) received 451 new INDs and 492 clinical protocol IND amendments in CY 2013. CBER anticipates that IND and clinical protocol amendment submission rates will remain at or near this level in the near future. The estimated total number of submissions (new INDs and new protocol submissions) subject to

mandatory certification requirements under section 402(j)(5)(B) of the PHS Act, is 15,892 for CDER plus 943 for CBER, or 16,835 submissions per year. The minutes per response is the estimated number of minutes that a respondent would spend preparing the information to be submitted to FDA under section 402(j)(5)(B) of the PHS Act, including the time it takes to enter the necessary information on the form.

Based on its experience with current submissions, FDA estimates that approximately 15 minutes on average would be needed per response for certifications which accompany IND applications and clinical protocol amendment submissions. It is assumed that most submissions to investigational applications will reference only a few protocols for which the sponsor/applicant/submitter has obtained a NCT number from *http://www.clinicaltrials.gov/* prior to making the submission to FDA. It is also assumed that the sponsor/applicant/submitter has electronic capabilities allowing them to retrieve the information necessary to complete the form in an efficient manner.

Marketing Applications/Submissions

In CY 2013, CDER and CBER received 226 new drug applications (NDA)/biologics license applications (BLA)/resubmissions and 932 NDA/BLA amendments for which certifications are needed. CDER and CBER received 198 efficacy supplements/resubmissions to previously approved NDAs/BLAs in CY 2013. CDER and CBER anticipate that new drug/biologic applications/resubmissions and efficacy supplement submission rates will remain at or near this level in the near future.

FDA's Center for Devices and Radiological Health (CDRH) received a total of 530 new applications for premarket approvals (PMA), 510(k) submissions containing clinical information, PMA supplements, applications for humanitarian device exemptions (HDE) and amendments in CY 2013. CDRH anticipates that application, amendment, supplement, and annual report submission rates will remain at or near this level in the near future.

FDA's Office of Generic Drugs (OGD) received 1,001 abbreviated new drug applications (ANDAs) in 2013. OGD received 989 bioequivalence amendments/supplements in 2013. OGD anticipates that application, amendment, and supplement submission rates will remain at or near this level in the near future.

Based on its experience reviewing NDAs, BLAs, PMAs, HDEs, 510(k)s, and ANDAs and experience with current submissions of Form FDA 3674, FDA estimates that approximately 45 minutes on average would be needed per response for certifications which accompany NDA, BLA, PMA, HDE, 510(k), and ANDA marketing applications and submissions. It is assumed that the sponsor/applicant/submitter has electronic capabilities allowing them to retrieve the information necessary to complete the form in an efficient manner.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

FDA center activity	Number of respondents (investigational applications)	Number of respondents (marketing applications)	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
CDER						
New Applications (IND)	1,564		1	1,546	0.25 (15 minutes)	387
Clinical Protocol Amendments (IND).	14,328		1	14,328	0.25 (15 minutes)	3,582
New Marketing Applications/R Resubmissions (NDA/BLA).		191	1	191	0.75 (45 minutes)	143
Clinical Amendments to Marketing Applications.		932	1	932	0.75 (45 minutes)	699
Efficacy Supplements/Resubmissions.		173	1	173	0.75 (45 minutes)	130
CBER						
New Applications (IND)	451		1	451	0.25 (15 minutes)	113
Clinical Protocol Amendments (IND).	492		1	492	0.25 (15 minutes)	123
New Marketing Applications/Resubmissions (NDA/BLA).		35	1	35	0.75 (45 minutes)	26
Clinical Amendments to Marketing Applications.		0	1	0	0.75 (45 minutes)	1
Efficacy Supplements/Resubmissions (BLA only).		25	1	25	0.75 (45 minutes)	19
CDRH						
New Marketing Applications (includes PMAs, HDEs, Supplements and 510(k)s expected to contain clinical data).		530	1	530	0.75 (45 minutes)	398
OGD						
Original Applications		1,001	1	1,001	0.75 (45 minutes)	751
BE Supplements/Amendments		989	1	989	0.75 (45 minutes)	742

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]—Continued

FDA center activity	Number of respondents (investigational applications)	Number of respondents (marketing applications)	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Total						7,114

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: July 2, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–15992 Filed 7–8–14; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–D–0852]

Draft Guidance for Industry: Design and Analysis of Shedding Studies for Virus or Bacteria-Based Gene Therapy and Oncolytic Products; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft document entitled ''Guidance for Industry: Design and Analysis of Shedding Studies for Virus or Bacteria-Based Gene Therapy and Oncolytic Products'' dated July 2014. The draft guidance document provides sponsors of virus or bacteria-based gene therapy products (VBGT products) and oncolytic viruses or bacteria (oncolytic products) with recommendations on how to conduct shedding studies during preclinical and clinical development.

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 November 19, 2014.

ADDRESSES: Submit written requests for single copies of the draft guidance 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 20993–0002. Send one self-addressed adhesive label to assist the office in processing your requests. The draft guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 240–402–7800. 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: Tami Belouin, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft document entitled ''Guidance for Industry: Design and Analysis of Shedding Studies for Virus or Bacteria-Based Gene Therapy and Oncolytic Products'' dated July 2014. The draft guidance document provides sponsors of oncolytic and VBGT products with recommendations on how to conduct shedding studies during preclinical and clinical development. Oncolytic and VBGT products are derived from infectious viruses or bacteria. In general, these product-based viruses and bacteria are not as infectious or as virulent as the parent strain of virus or bacterium. Nonetheless, FDA is issuing this guidance because the possibility that infectious product-based viruses and bacteria may be shed by a patient raises safety concerns related to the risk of transmission to untreated individuals. To understand the risk associated with product shedding, sponsors should collect data in the target patient population in clinical trials before licensure.

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 FDA's 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 alternative approach may be used if such approach satisfies the requirement of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

The draft guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 312 have been approved under OMB control number 0910–0014; the collections of information in 21 CFR part 600 have been approved under OMB control number 0910–0308; the collections of information in 21 CFR part 601 have been approved under OMB control number 0910–0338; and the collections of information in 21 CFR part 50 have been approved under OMB control number 0910–0755.

III. Comments

The draft guidance is being distributed for comment purposes only and is not intended for implementation at this time. Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

IV. Electronic Access

Persons with access to the Internet may obtain the draft guidance at either *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm or http://www.regulations.gov.*

Dated: July 2, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–15991 Filed 7–8–14; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–0851]

Public Meeting on Patient-Focused Drug Development for Hemophilia A, Hemophilia B, von Willebrand Disease, and Other Heritable Bleeding Disorders

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting; request for comments.

The Food and Drug Administration (FDA) is announcing a public meeting and an opportunity for public comment on Patient-Focused Drug Development for Hemophilia A, Hemophilia B, von Willebrand Disease, and other heritable bleeding disorders such as other factor deficiencies (including I, V, VII, X, XI) and platelet disorders. Patient-Focused Drug Development is an FDA performance commitment under the fifth authorization of the Prescription Drug User Fee Act (PDUFA V). The public meeting is intended to provide FDA with patients' perspectives on the impact on daily life of Hemophilia A, Hemophilia B, von Willebrand Disease, and other heritable bleeding disorders. FDA also is seeking patients' perspectives on the available therapies for these disorders.

Dates and Time: The public meeting will be held on September 22, 2014, from 9 a.m. to 5 p.m. Registration to attend the meeting must be received by September 12, 2014. Registration from those individuals interested in presenting comments as part of the panel discussions must be received by August 22, 2014 (see the **SUPPLEMENTARY INFORMATION** for instructions).

Location: The meeting will be held at the FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, the Great Room (Rm. 1503 B and C), Silver Spring, MD 20993. Entrance for public meeting participants (non-FDA employees) is through Building 1, where routine security checks will be performed. For more information on parking and security procedures, please refer to *http://www.fda.gov/AboutFDA/WorkingatFDA/BuildingsandFacilities/WhiteOakCampusInformation/ucm241740.htm.*

Submit either electronic or written comments by November 28, 2014. Submit electronic comments 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. All comments should be identified with the docket number found in brackets in the heading of this document.

FDA will post the agenda approximately 5 days before the workshop at: *http://www.fda.gov/BiologicsBloodVaccines/NewsEvents/WorkshopsMeetingsConferences/ucm401758.htm.*

Contact Person: Henry Allen, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 1125, Silver Spring, MD 20993, 240–402–8001, FAX: 301–595–1243, email: *PatientFocused_CBER@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on Patient-Focused Drug Development

FDA has selected Hemophilia A, Hemophilia B, von Willebrand Disease, and other heritable bleeding disorders as the focus of a public meeting under the Patient-Focused Drug Development initiative. This initiative involves obtaining a better understanding of patients' perspectives on the challenges posed by these disorders, and the impact of therapies for these disorders. The Patient-Focused Drug Development initiative is being conducted to fulfill FDA performance commitments that are part of the PDUFA reauthorization under Title I of the Food and Drug Safety and Innovation Act (Pub. L. 112–144). The full set of performance commitments is available on the FDA Web site at *http://www.fda.gov/downloads/forindustry/userfees/prescriptiondruguserfee/ucm270412.pdf.*

FDA has committed to obtaining the patient perspective on 20 disease areas during the course of PDUFA V. For each disease area, the Agency will conduct a public meeting to discuss the disease and its impact on patients' daily lives, the types of treatment benefits that matter most to patients, and patients' perspectives on the adequacy of the available therapies. These meetings will include participation of FDA review divisions, the relevant patient communities, and other interested stakeholders.

On April 11, 2013, FDA published a notice in the **Federal Register** (78 FR 21613) that announced the disease areas for meetings in fiscal years (FY) 2013–2015, the first 3 years of the 5-year PDUFA V timeframe. The Agency used several criteria outlined in the April 11, 2013, notice to develop the list of disease areas. FDA obtained public comment on the Agency's proposed criteria and potential disease areas through a public docket and a public meeting that was convened on October 25, 2012. In selecting the set of disease areas, FDA carefully considered the public comments received and the perspectives of review divisions at FDA. By the end of FY 2015, FDA will initiate a second public process for determining the disease areas for meetings in FY 2016–2017. More information, including the list of disease areas and a general schedule of meetings, is posted on FDA's Web site at *http://www.fda.gov/ForIndustry/UserFees/PrescriptionDrugUserFee/ucm326192.htm.*

II. Public Meeting Information

A. Purpose and Scope of the Meeting

The purpose of this Patient-Focused Drug Development meeting is to obtain input on the symptoms and other impacts that matter most to patients with Hemophilia A, Hemophilia B, von Willebrand Disease, and other heritable bleeding disorders. FDA also intends to seek patients' perspectives on current approaches to treating these disorders. FDA expects that this information will come directly from patients, caregivers, and patient advocates.

Heritable bleeding disorders are a diverse group of diseases and some involve lifelong defects in the clotting mechanism of the blood. The most frequently occurring of these disorders include Hemophilia A, Hemophilia B, and von Willebrand Disease. Less frequent yet also serious heritable bleeding disorders include Factor VII deficiency, Factor XIII deficiency, α2-antiplasmin deficiency and platelet disorders such as Gray platelet syndrome. Symptoms of heritable bleeding disorders include frequent nose bleed; prolonged and heavy menstrual bleeding; prolonged bleeding from cuts, trauma, dental extractions, and surgical procedures as well as bleeding into internal organs, muscles, and joints. Intracranial hemorrhage is a particularly serious and life-threatening manifestation. Specific treatment recommendations are determined by the type and severity of the disorder; but in general, therapies such as factor replacement, platelet transfusion, fresh frozen plasma, and cryoprecipitate are utilized.

The questions that will be asked of patients and patient stakeholders at the meeting are provided in this document. For each topic, a brief patient panel discussion will begin the dialogue. This will be followed by a facilitated discussion inviting comments from other patient and patient stakeholder

participants. In addition to input generated through this public meeting, FDA is interested in receiving patient input addressing these questions through electronic or written comments, which can be submitted to the Division of Dockets Management (see *Location*). For context, please indicate if you are commenting as a patient with a heritable bleeding disorder or on behalf of a child or loved one.

Topic 1: The effects of your bleeding disorder that matter most to you

- Of all of the symptoms that you experience because of your condition, which one to three symptoms (bleeding or non-bleeding) have the most significant impact on your life? (Examples may include joint damage/pain, infections, prolonged and heavy bleeding with menstruation, fatigue, etc.)
- Are there specific activities that are important to you, but that you cannot do at all, or as well as you would like, because of your condition? Please describe, using specific examples. (Examples may include participating in physical activities, attending work/school, and family/social activities, etc.)
- How have your condition and its symptoms changed over time?
- What worries you most about your condition?

Topic 2: Perspectives on current approaches to treatment

- What are you currently doing to treat your condition or its symptoms? (Examples may include blood transfusions, replacement therapies, over-the-counter products, and/or other therapies).
  - How well do these treatments work for you?
  - What are the most significant disadvantages or complications of your current treatments, and how do they affect your daily life?
  - How has your treatment changed over time and why?
  - What aspects of your condition are not improved by your current treatment regimen?
  - What treatment has had the most positive impact on your life?
- If you could create your ideal treatment, what would it do for you (i.e., what specific things would you look for in an ideal treatment)?
- If you had the opportunity to consider participating in a clinical trial studying experimental treatments, what things would you consider when deciding whether or not to participate?

B. Attendance and/or Participation in the Meeting

If you wish to attend this meeting, visit *https://www.eventbrite.com/e/patient-focused-public-meeting-on-heritable-bleeding-disorders-registration-11996980291.* Please register by September 12, 2014. Those who are unable to attend the meeting in person can register to view a live Webcast of the meeting. You will be asked to indicate in your registration if you plan to attend in person or via the Webcast. Your registration will also contain your complete contact information, including name, title, affiliation, address, email address, and phone number. Seating will be limited, so early registration is recommended. Registration is free and will be on a first-come, first-served basis. However, FDA may limit the number of participants from each organization based on space limitations. Registrants will receive confirmation once they have been accepted. Onsite registration on the day of the meeting will be based on space availability. If you need special accommodations because of disability, please contact Henry Allen (see *Contact Person*) at least 7 days before the meeting.

Patients and patient stakeholders who are interested in presenting comments as part of the initial panel discussions should register by August 22, 2014. You will be asked to indicate in your registration which topic(s) you wish to address. You will be asked to send a brief summary of responses to the topic questions to *PatientFocused_CBER@fda.hhs.gov.* Panelists will be notified of their selection soon after August 22, 2014. FDA will try to accommodate all patients and patient advocate participants who wish to speak, either through the panel discussion or audience participation; however, the duration of comments may be limited by time constraints.

Comments: Interested members of the public, including those who attend the meeting in person or via the Webcast, are invited to provide electronic or written responses to any or all of the questions pertaining to topics 1 and 2 to the Division of Dockets Management (see *Location*). Comments may be submitted until November 28, 2014. 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.*

Transcripts: Please be advised that as soon as a transcript is available, it will be accessible at *http://www.fda.gov/BiologicsBloodVaccines/NewsEvents/WorkshopsMeetingsConferences/ucm401761.htm* and at *http://www.regulations.gov.* It may be viewed at the Division of Dockets Management (see *Location*). A transcript will also be available in either hardcopy or on CD–ROM, after submission of a Freedom of Information request. Written requests are to be sent to the Division of Freedom of Information (ELEM–1029), Food and Drug Administration, 12420 Parklawn Dr., Element Bldg., Rockville, MD 20857.

Dated: July 2, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–15990 Filed 7–8–14; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2004–N–0451]

Food and Drug Administration Modernization Act of 1997: Modifications to the List of Recognized Standards, Recognition List Number: 036

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing a publication containing modifications the Agency is making to the list of standards FDA recognizes for use in premarket reviews (''FDA Recognized Consensus Standards''). This publication, entitled ''Modifications to the List of Recognized Standards, Recognition List Number: 036'' (''Recognition List Number: 036''), will assist manufacturers who elect to declare conformity with consensus standards to meet certain requirements for medical devices.

DATES: Submit either electronic or written comments concerning this document at any time. See section VII for the effective date of the recognition of standards announced in this document.

ADDRESSES: Submit written requests for single copies of the document entitled ''Modifications to the List of Recognized Standards, Recognition List Number: 036'' to the Division of Industry and Consumer Education, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 4613, Silver Spring,

MD 20993–0002. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–847–8149.

Submit electronic comments on this document to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. Identify comments with the docket number found in brackets in the heading of this document. An electronic copy of Recognition List Number: 036 is available on the Internet at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/Standards/ucm123792.htm.* See section VI for electronic access to the searchable database for the current list of FDA recognized consensus standards, including Recognition List Number: 036 modifications and other standards related information.

FOR FURTHER INFORMATION CONTACT:

Scott A. Colburn, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 3632, Silver Spring, MD 20993, 301–796–6287, *standards@cdrh.fda.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 204 of the Food and Drug Administration Modernization Act of 1997 (Pub. L. 105–115) amended section 514 of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360d). Amended section 514 allows FDA to recognize consensus standards developed by international and national organizations for use in satisfying portions of device premarket review submissions or other requirements.

In a notice published in the **Federal Register** of February 25, 1998 (63 FR 9561), FDA announced the availability of a guidance entitled ''Recognition and Use of Consensus Standards.'' The notice described how we would implement our standard recognition program and provided the initial list of recognized standards.

Modifications to the initial list of recognized standards, as published in the **Federal Register**, can be accessed at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/Standards/ucm123792.htm.*

These notices describe the addition, withdrawal, and revision of certain standards recognized by FDA. The Agency maintains HTML and PDF versions of the list of FDA Recognized Consensus Standards. Both versions are publicly accessible at the Agency's Internet site. See section VI for electronic access information. Interested persons should review the supplementary information sheet for the standard to understand fully the extent to which FDA recognizes the standard.

II. Modifications to the List of Recognized Standards, Recognition List Number: 036

FDA is announcing the addition, withdrawal, correction, and revision of certain consensus standards the Agency will recognize for use in premarket submissions and other requirements for devices. We will incorporate these modifications in the list of FDA Recognized Consensus Standards in the Agency's searchable database. We will use the term ''Recognition List Number: 036'' to identify these current modifications.

In table 1, we describe the following modifications: (1) The withdrawal of standards and their replacement by others, if applicable, (2) the correction of errors made by FDA in listing previously recognized standards, and (3) the changes to the supplementary information sheets of recognized standards that describe revisions to the applicability of the standards.

In section III, we list modifications the Agency is making that involve the initial addition of standards not previously recognized by FDA.

TABLE 1—MODIFICATIONS TO THE LIST OF RECOGNIZED STANDARDS

Old recognition No.	Replacement recognition No.	Title of standard [1]	Change
A. Anesthesia			
1–58	1–99	ASTM G175–13 Standard test method for evaluating the ignition sensitivity and fault tolerance of oxygen pressure regulators used for medical and emergency applications.	Withdrawn and replaced with newer version.
1–77	1–100	CGA V1:2013 Standard for compressed gas cylinder valve outlet and inlet connections.	Withdrawn and replaced with newer version.
1–80	1–101	CGA C–9:2013 Standard color marking of compressed gas containers for medical use.	Withdrawn and replaced with newer version.
B. Biocompatibility			
2–117		ANSI/AAMI/ISO 10993–3:2003/(R) 2013 Biological evaluation of medical devices—Part 3: Tests for genotoxicity, carcinogenicity, and reproductive toxicity.	Reaffirmation.
2–133		ASTM F1408–97 (Reapproved 2013) Standard practice for subcutaneous screening test for implant materials.	Reaffirmation.
2–136		ASTM E1262–88 (Reapproved 2013) Standard guide for performance of the Chinese hamster ovary cell/hypoxanthine guanine phosphoribosyl transferase gene mutation assay.	Reaffirmation.
2–141		ASTM F1984–99 (Reapproved 2013) Standard practice for testing for whole complement activation in serum by solid materials.	Reaffirmation.
2–145		ASTM F1439–03 (Reapproved 2013) Standard guide for performance of lifetime bioassay for the tumorigenic potential of implant materials.	Reaffirmation.
2–146	2–206	ASTM F2148–13 Standard practice for evaluation of delayed contact hypersensitivity using the murine local lymph node assay (LLNA).	Withdrawn and replaced with newer version.
2–153		ANSI/AAMI/ISO 10993–5:2009/(R) 2014 Biological evaluation of medical devices—Part 5: Tests for in vitro cytotoxicity.	Reaffirmation.

TABLE 1—MODIFICATIONS TO THE LIST OF RECOGNIZED STANDARDS—Continued

Old recognition No.	Replacement recognition No.	Title of standard [1]	Change
2–154	2–207	ASTM F756–13 Standard practice for assessment of hemolytic properties of materials.	Withdrawn and replaced with newer version.
2–156		ANSI/AAMI/ISO 10993–1:2009/(R) 2013 Biological evaluation of medical devices—Part 1: Evaluation and testing within a risk management process.	Reaffirmation.
2–175		ISO 10993–3 Second edition 2003–10–15, Biological evaluation of medical devices—Part 3: Tests for genotoxicity, carcinogenicity, and reproductive toxicity.	Extent of recognition.
2–199	2–208	USP 37–NF32:2014 <87> Biological reactivity test, in vitro—direct contact test.	Withdrawn and replaced with newer version.
2–200	2–209	USP 37–NF32:2014 <87> Biological reactivity test, in vitro—elution test.	Withdrawn and replaced with newer version.
2–201	2–210	USP 37–NF32:2014 <88> Biological reactivity test, in vivo, procedure preparation of sample.	Withdrawn and replaced with newer version.
2–202	2–211	USP 37–NF32:2014 <88> Biological reactivity test, in vitro, classification of plastics—intracutaneous test.	Withdrawn and replaced with newer version.
2–203	2–212	USP 37–NF32:2014 <88> Biological reactivity test, in vivo, classification of plastics—systemic injection test.	Withdrawn and replaced with newer version.
		C. Cardiovascular	
3–42		ANSI/AAMI EC13:2002/(R)2007 Cardiac monitors, heart rate meters, and alarm.	Withdrawn. See 3–101.
3–65		ANSI/AAMI EC38:2007 Medical electrical equipment—Part 2–47: Particular requirements for the safety including essential performance of ambulatory electrocardiographic systems.	Withdrawn. See 3–127.
3–72	3–129	ANSI/AAMI EC53:2013 ECG trunk cables and patient lead wires ...	Withdrawn and replaced with newer version.
3–77		ANSI/AAMI PC69:2007 Active implantable medical devices—Electromagnetic compatibility—EMC test protocols for implantable cardiac pacemakers and implantable cardioverter defibrillators.	Withdrawn. See 3–128.
3–78	3–130	ANSI/AAMI/ISO 80601–2–30:2009 and A1:2013 Medical electrical equipment—Part 2–30: Particular requirements for the basic safety and essential performance of automated non-invasive sphygmomanometers [Amendment 1:2013].	Withdrawn and replaced with newer version.
3–79		F2070–09 (Reapproved 2013) Standard test method for measuring intrinsic elastic recoil of balloon-expandable stents.	Reaffirmation.
3–82	3–125	ISO 5841 Third edition 2013–04–15 Implants for surgery—Cardiac pacemakers—Part 3: Low-profile connectors [IS–1] for implantable pacemakers.	Withdrawn and replaced with newer version.
3–95	3–126	IEC 60601–2–27 Edition 3.0 2011–03 Medical electrical equipment—Part 2–27: Particular requirements for the basic safety and essential performance of electrocardiographic monitoring equipment [Including: Corrigendum 1 (2012)].	Withdrawn and replaced with newer version including technical corrigendum.
		D. Dental/ENT	
4–92		ANSI/ADA Standard No. 88 (Reaffirmed 2012) Dental brazing alloys	Reaffirmation.
4–96		ANSI/ADA Specification No. 30 (Reaffirmed 2010) Dental zinc oxide—eugenol and zinc oxide—non-eugenol cements.	Reaffirmation.
4–97		ANSI/ADA Standard No. 57 (Reaffirmed 2012) Endodontic sealing materials.	Reaffirmation.
4–149		ANSI/ADA Specification No. 39 (Reaffirmed 2011) Pit and fissure sealants.	Reaffirmation.
4–160		ANSI S3.1 (Reaffirmed 2013) Maximum permissible ambient noise levels for audiometric test rooms.	Reaffirmation.
4–162		ANSI S3.4–2007 (Reaffirmed 2012) Procedure for the computation of loudness of steady sounds.	Reaffirmation.
4–163		ANSI S3.5–1987 (Reaffirmed 2012) American national standard methods for calculation of the speech intelligibility index.	Reaffirmation.
4–165		ANSI S3.13–1987 (Reaffirmed 2012) American national standard mechanical coupler for measurement of bone vibrators.	Reaffirmation.
4–171		ANSI S3.37–1987 (Reaffirmed 2012) American national standard preferred earhook nozzle thread for postauricular hearing aids.	Reaffirmation.
4–175	4–211	ANSI S3.46–2013 American national standard method of measurement of real-ear performance characteristics of hearing aids.	Withdrawn and replaced with newer version.
4–177		ANSI S12.65–2006 (Reaffirmed 2011) American national standard for rating noise with respect to speech interference.	Reaffirmation.

TABLE 1—MODIFICATIONS TO THE LIST OF RECOGNIZED STANDARDS—Continued

Old recognition No.	Replacement recognition No.	Title of standard [1]	Change
4–179	4–212	ISO 7405 Second edition 2008–12–15 Dentistry—Evaluation of biocompatibility of medical devices used in dentistry [Including: Amendment 1 (2013)].	Withdrawn and replaced with newer version including amendment.
4–193		ANSI/ADA Standard No. 15 (Reaffirmed 2013) Artificial teeth for dental prostheses.	Reaffirmation.
E. General I (Quality Systems/Risk Management (QS/RM))			
5–22		ISO 2768-l First edition 1999–11–15 General tolerances—Part 1: Tolerances for linear and angular dimensions without individual tolerance indications.	Withdrawn.
5–23		ISO 2768–2 First edition 1989–11–15 General tolerances—Part 2: Geometrical tolerances for features without individual tolerance indications.	Withdrawn.
5–50	5–87	IEC 62366 Edition 1.1 2014–01 Medical devices—Application of usability engineering to medical devices.	Withdrawn and replaced with newer version.
5–53	19–1	IEC 60601–1–2 Edition 3:2007–03 Medical electrical equipment—Part 1–2: General requirements for basic safety and essential performance—Collateral standard: Electromagnetic compatibility—Requirements and tests.	Transferred to General II (ES/EMC).
5–54	19–2	ANSI/AAMI/IEC 60601–1–2:2007/(R)2012 Medical electrical equipment—Part 1–2: General requirements for basic safety and essential performance—Collateral standard: Electromagnetic compatibility—Requirements and tests.	Transferred to General II (ES/EMC).
5–66	19–3	IEC 60601–1–10 Edition 1.0 2007–11 Medical electrical equipment—Part 1–10: General requirements for basic safety and essential performance—Collateral standard: Requirements for the development of physiologic closed-loop controllers.	Transferred to General II (ES/EMC).
5–77	19–4	ANSI/AAMI ES60601–1:2005/(R)2012 and A1:2012,C1:2009/(R)2012 and A2:2010/(R)2012 (consolidated text) Medical electrical equipment—Part 1: General requirements for basic safety and essential performance (IEC 60601–1:2005, mod).	Transferred to General II (ES/EMC).
5–78	19–5	ANSI/AAMI ES60601–1:2005/(R)2012 and C1:2009/(R)2012 and A2:2010/(R)2012 (consolidated text) Medical electrical equipment—Part 1: General requirements for basic safety and essential performance (IEC 60601–1:2005, mod).	Transferred to General II (ES/EMC).
5–81	5–88	ISO 2859–1 First edition 1999–11–15 Sampling procedures for inspection by attributes—Part 1: Sampling schemes indexed by acceptance quality limit (AQL) for lot-by-lot inspection [Including: Corrigendum 1 (2001), Amendment 1 (2011)].	Withdrawn and replaced with newer version including amendment.
5–82	19–6	IEC 60601–1–11 Edition 1.0 2010–04 Medical electrical equipment—Part 1–11: General requirements for basic safety and essential performance—Collateral standard: Requirements for medical electrical equipment and medical electrical systems used in the home healthcare environment [including: Technical corrigendum 1 (2011)].	Transferred to General II (ES/EMC).
5–83	19–7	ANSI/AAMI HA60601–1–11:2011 Medical electrical equipment—Part 1–11: General requirements for basic safety and essential performance—Collateral standard: Requirements for medical electrical equipment and medical electrical systems used in the home healthcare environment (IEC 60601–1–11:2010 mod).	Transferred to General II (ES/EMC).
5–85		IEC 60601–1–6 Edition 3.0 2010–01 Medical electrical equipment—Part 1–6: General requirements for basic safety and essential performance—Collateral standard: Usability.	Transition period added.
5–73	5–90	ISO 15223–1 Second edition 2012–07–01 Medical devices—Symbols to be used with medical device labels, labeling, and information to be supplied—Part 1: General requirements.	Extent of recognition.
5–75	5–91	AAMI/ANSI/ISO 15223–1:2012 Medical devices—Symbols to be used with medical devices labels, labeling, and information to be supplied—Part 1: General requirements.	Extent of recognition.
5–57		AAMI/ANSI HE75:2009 Human factors engineering—Design of medical devices.	Relevant guidance.
5–67		ANSI/AAMI/IEC 62366:2007/(R)2013 Medical devices—Application of usability engineering to medical devices.	Relevant guidance.
F. General Hospital/General Plastic Surgery			
6–180		ASTM F2407–06 (Reapproved 2013) Standard specification for surgical gowns intended for use in healthcare facilities.	Reaffirmation.

TABLE 1—MODIFICATIONS TO THE LIST OF RECOGNIZED STANDARDS—Continued

Old recognition No.	Replacement recognition No.	Title of standard [1]	Change
6–184	6–323	ASTM F1862/F1862M–13 Standard test method for resistance of medical face masks to penetration by synthetic blood (horizontal projection of fixed volume at a known velocity).	Withdrawn and replaced with newer version.
6–234	6–324	IEC 60601–2–50 Edition 2.0 2009–03 Medical electrical equipment—Part 2–50: Particular requirements for the basic safety and essential performance of infant phototherapy equipment [Including: Technical corrigendum 1 (2010)].	Withdrawn and replaced with newer version including technical corrigendum.
6–300	6–325	IEC 60601–2–21 Edition 2.0 2009–02 Medical electrical equipment—Part 2–21: Particular requirements for the basic safety and essential performance of infant radiant warmers [Including: Technical corrigendum 1 (2013)].	Withdrawn and replaced with newer version including technical corrigendum.
6–309	6–326	USP 37–NF 33:2014 Sodium chloride irrigation	Withdrawn and replaced with newer version.
6–310	6–327	USP 37–NF 33:2014 Sodium chloride injection	Withdrawn and replaced with newer version.
6–311	6–328	USP 37–NF 33:2014 Nonabsorbable surgical suture	Withdrawn and replaced with newer version.
6–312	6–329	USP 37–NF 33:2014 <881> Tensile strength	Withdrawn and replaced with newer version.
6–313	6–330	USP 37–NF 33:2014 <861> Sutures—Diameter	Withdrawn and replaced with newer version.
6–314	6–331	USP 37–NF 33:2014 <871> Sutures—Needle attachment	Withdrawn and replaced with newer version.
6–315	6–332	USP 37–NF 33:2014 Sterile water for irrigation	Withdrawn and replaced with newer version.
6–316	6–333	USP 37–NF 33:2014 Heparin lock flush solution	Withdrawn and replaced with newer version.
6–317	6–334	USP 37–NF 33:2014 Absorbable surgical suture	Withdrawn and replaced with newer version.
G. In Vitro Diagnostics			
7–48		CLSI C60–A (Formerly T/DM06–A) Blood alcohol testing in the clinical laboratory; Approved guideline.	Designation number.
7–112		CLSI POCT14–A (Formerly H49–A) Point-of-care monitoring of anticoagulation therapy; Approved guideline.	Designation number.
7–133	7–246	CLSI POCT12–A3 Point-of-care blood glucose testing in acute and chronic care facilities; Approved guideline—Third edition.	Withdrawn and replaced with newer version.
7–142		CLSI GP43–A4 (Replaces H11–A4) Procedures for the collection of arterial blood specimens; Approved standard—Fourth edition.	Designation number.
7–162		CLSI POCT14–A (Formerly H49–A) Point-of-care monitoring of anticoagulation therapy; Approved guideline.	Designation number.
7–175		CLSI C59–A (Formerly I/LA15–A) Apolipoprotein immunoassays: Development and recommended performance characteristics; Approved guideline.	Designation number.
7–201		CLSI GP41–A6 (Replaces H03–A6) Procedures for the collection of diagnostic blood specimens by venipuncture; Approved standard—Sixth edition.	Designation number.
7–203		CLSI GP42–A6 (Replaces H04–A6) Procedures and devices for the collection of diagnostic capillary blood specimens; Approved standard—Sixth edition.	Designation number.
7–213		CLSI GP44–A4 (Replaces H18–A4) Procedures for the handling and processing of blood specimens for common laboratory tests; Approved guideline—Fourth edition.	Designation number.
7–221		CLSI GP39–A6 (Replaces H01–A6) Tubes and additives for venous and capillary blood specimen collection; Approved standard—Sixth edition.	Designation number.
7–241	7–247	CLSI M100–S24 Performance standards for antimicrobial susceptibility testing; Twenty-fourth informational supplement.	Withdrawn and replaced with newer version.
H. Materials			
8–173	8–371	ASTM F601–13 Standard practice for fluorescent penetrant inspection of metallic surgical implants.	Withdrawn and replaced with newer version.
8–183	8–372	ASTM F560–13 Standard specification for unalloyed tantalum for surgical implant applications (UNS R05200, UNS R05400).	Withdrawn and replaced with newer version.
8–193		ASTM F2754/F2754M–09 (Reapproved 2013) Standard test method for measurement of camber, cast, helix, and direction of helix of coiled wire.	Reaffirmation.

TABLE 1—MODIFICATIONS TO THE LIST OF RECOGNIZED STANDARDS—Continued

Old recognition No.	Replacement recognition No.	Title of standard [1]	Change
8–198	8–373	ASTM F2102–13 Standard guide for evaluating the extent of oxidation in polyethylene fabricated forms intended for surgical implants.	Withdrawn and replaced with newer version.
8–199	8–374	ASTM F2633–13 Standard specification for wrought seamless nickel-titanium shape memory alloy tube for medical devices and surgical implants.	Withdrawn and replaced with newer version.
8–221	8–375	ASTM F2066–13 Standard specification for wrought titanium-15 molybdenum alloy for surgical implant applications (UNS R58150).	Withdrawn and replaced with newer version.
8–224	8–376	ASTM F2102–13 Standard guide for evaluating the extent of oxidation in polyethylene fabricated forms intended for surgical implants.	Withdrawn and replaced with newer version.
8–341	8–377	ASTM F136–13 Standard specification for wrought titanium-6aluminum-4vanadium ELI (extra low interstitial) alloy for surgical implant applications (UNS R56401).	Withdrawn and replaced with newer version.
8–364	8–378	ASTM D792–13 Standard test methods for density and specific gravity (relative density) of plastics by displacement.	Withdrawn and replaced with newer version.
8–366	8–379	ISO 11542–2 First edition 1998–11–15 Plastics—Ultra-high-molecular-weight polyethylene (PE–UHMW) moulding and extrusion materials—Part 2: Preparation of test specimens and determination of properties [Including: Technical corrigendum 1 (2007)].	Withdrawn and replaced with newer version including technical corrigendum.
I. Nanotechnology			
18–2		ASTM E2535–07 (Reapproved 2013) Standard guide for handling unbound engineered nanoscale particles in occupational settings.	Reaffirmation.
J. Neurology			
17–10		ANSI/AAMI/ISO 14708–3:2008/(R)2011 Implants for surgery—Active implantable medical devices—Part 3: Implantable neurostimulators.	Reaffirmation.
K. OB–GYN/Gastroenterology/Urology			
9–44		ASTM F623–99 (Reapproved 2013) Standard performance specification for Foley catheter.	Reaffirmation.
9–87	9–93	ISO 25841 Second edition 2014–01–15 Female condoms—Requirements and test methods.	Withdrawn and replaced with newer version.
9–21	9–94	ISO 8600–4 Second edition 2014–03–15 Optics and optical instruments—Medical endoscopes and certain accessories—Part 4: Determination of maximum width of insertion portion.	Withdrawn and replaced with newer version.
L. Orthopedic			
11–211	11–276	ASTM F1798–13 Standard test method for evaluating the static and fatigue properties of interconnection mechanisms and subassemblies used in spinal arthrodesis implants.	Withdrawn and replaced with newer version.
11–237	11–277	ISO 7206–6 Second edition 2013–11–15 Implants for surgery—Partial and total hip joint prostheses—Part 6: Endurance properties testing and performance requirements of neck region of stemmed femoral components.	Withdrawn and replaced with newer version.
11–255	11–278	ASTM F1717–14 Standard test methods for spinal implant constructs in a vertebrectomy model.	Withdrawn and replaced with newer version.
M. Radiology			
12–23		NEMA XR 10–1986 (R1992, R1998, R2003) Measurement of the maximum symmetrical radiation field from a rotating anode x-ray tube used for medical diagnosis.	Withdrawn.
12–24		NEMA XR 11–1993 (R1999) Test standard for determination of the limiting spatial resolution of x-ray image intensifier systems.	Withdrawn.
12–25		NEMA XR 15–1991 (R1996, R2001) Test standard for the determination of the visible entrance field size of an x-ray image intensifier system.	Withdrawn.
12–26		NEMA XR 16–1991 (R1996, R2001) Test standard for the determination of the system contrast ratio and the system veiling glare index of an x-ray image intensifier system.	Withdrawn.
12–27		NEMA XR 17–1993 (R1999) Test standard for the measurement of the image signal uniformity of an x-ray image intensifier system.	Withdrawn.

TABLE 1—MODIFICATIONS TO THE LIST OF RECOGNIZED STANDARDS—Continued

Old recognition No.	Replacement recognition No.	Title of standard [1]	Change
12–28		NEMA XR 18–1993 (R1999) Test standard for the determination of the radial image distortion of an x-ray image intensifier system.	Withdrawn.
12–29		NEMA XR 19–1993 (R1999) Electrical, thermal, and loading characteristics of x-ray tubes used for medical diagnosis.	Withdrawn.
12–66	12–271	AIUM MUS Medical ultrasound safety, third edition	Withdrawn and replaced with newer version.
12–79		NEMA XR7–1995 (R2000) High-voltage x-ray cable assemblies and receptacles.	Withdrawn.
12–80		NEMA XR 9–1984 (R1994, R2000) Power supply guidelines for x-ray machines.	Withdrawn.
12–81		NEMA XR 13–1990 (R1995, R2000) Mechanical safety standard for power driven motions of electromedical equipment.	Withdrawn.
12–82		NEMA XR 14–1990 (R1995, R2000) Recommended practices for load bearing mechanical assemblies used in diagnostic imaging.	Withdrawn.
12–100		NEMA UD 3–2004 (R2009) Standard for real time display of thermal and mechanical acoustic output indices on diagnostic ultrasound equipment.	Withdrawn
12–146	12–272	IEC 60601–2–17 Edition 3.0 2013–11 Medical electrical equipment—Part 2–17: Particular requirements for the basic safety and essential performance of automatically-controlled brachytherapy afterloading equipment.	Withdrawn and replaced with newer version.
12–168	12–273	IEC 60825–1 Edition 2.0 2007–03 Safety of laser products—Part 1: Equipment classification and requirements [Including: Technical corrigendum 1 (2008), interpretation sheet 1 (2007), interpretation sheet 2 (2007)].	Withdrawn and replaced with newer version including technical corrigendum and interpretation sheets.
12–193		AIUM AOL 2008 Acoustic output labeling standard for diagnostic ultrasound equipment revision 1—A standard for how manufacturers should specify acoustic output data.	Withdrawn.
12–194		ANSI/HPS N43.6–2007 (R2013) Sealed radioactive sources—Classification.	Reaffirmation.
12–201	12–274	IEC 60601–2–54 Edition 1.0 2009–06 Medical electrical equipment—Part 2–54: Particular requirements for the basic safety and essential performance of x-ray equipment for radiography and radioscopy [Including: Technical corrigendum 1 (2010), technical corrigendum 2 (2011)].	Withdrawn and replaced with newer version including technical corrigendum.
12–220		IEC 60825–1 (Second edition-2007) Safety of laser products—Part 1: Equipment classification and requirements corrigendum 1.	Withdrawn. See 12–273.
12–239		IEC 60825–1 (Second edition-2007) I–SH 01 Safety of laser products—Part 1: Equipment classification and requirements, interpretation sheet 1.	Withdrawn. See 12–273.
12–240		IEC 60825–1 (2007) Second edition, I–SH 02 Safety of laser products—Part 1: Equipment classification and requirements, interpretation sheet 2.	Withdrawn. See 12–273.
		N. Software/Informatics	
13–4	13–65	ANSI/UL 1998 Third edition 2013 Standard for software in programmable components.	Withdrawn and replaced with newer version.
13–15		CLSI AUTO13–A2 Laboratory instruments and data management systems: Design of software user interfaces and end-user software systems validation, operation, and monitoring; Approved guideline—second edition.	New designation number.
13–46		ASTM F2761–09 (2013) Medical devices and medical systems—Essential safety requirements for equipment comprising the patient-centric integrated clinical environment (ICE)—Part 1: General requirements and conceptual model.	Reaffirmation.
13–58	13–66	ISO/IEEE 11073–10417 First edition 2014–03–01 Health informatics—Personal health device communication—Part 10417: Device specialization: Glucose meter.	Withdrawn and replaced with newer version.
		O. Sterility	
14–181	14–432	ANSI/AAMI ST58:2013 Chemical sterilization and high-level disinfection in health care facilities.	Withdrawn and replaced with newer version.
14–228		ANSI/AAMI/ISO 11135–1:2007 Sterilization of healthcare products—Ethylene oxide—Part 1: Requirements for the development, validation, and routine control of a sterilization process for medical devices.	Withdrawn. See 14–452.

TABLE 1—MODIFICATIONS TO THE LIST OF RECOGNIZED STANDARDS—Continued

Old recognition No.	Replacement recognition No.	Title of standard [1]	Change
14–232	14–433	ASTM F2227–13 Standard test method for non-destructive detection of leaks in non-sealed and empty packaging trays by CO_2 tracer gas method.	Withdrawn and replaced with newer version.
14–233	14–434	ASTM F2228–13 Standard test method for non-destructive detection of leaks in packaging which incorporates porous barrier material by CO_2 tracer gas method.	Withdrawn and replaced with newer version.
14–256		ASTM F2095–07 (Reapproved 2013) Standard test methods for pressure decay leak test for flexible packages with and without restraining plates.	Reaffirmation.
14–257		ASTM D3078–02 (Reapproved 2013) Standard test method for determination of leaks in flexible packaging by bubble emission.	Reaffirmation.
14–259	14–435	ASTM F2251–13 Standard test method for thickness measurement of flexible packaging material.	Withdrawn and replaced with newer version.
14–261		ANSI/AAMI/ISO 17665–1:2006/(R)2013 Sterilization of health care products—Moist heat—Part 1: Requirements for the development, validation, and routine control of a sterilization process for medical devices.	Reaffirmation.
14–282		ASTM F2338–09 (Reapproved 2013) Standard test method for nondestructive detection of leaks in packages by vacuum decay method.	Reaffirmation.
14–286		ANSI/AAMI ST65:2008/(R)2013 Processing of reusable surgical textiles for use in health care facilities.	Reaffirmation.
14–288		ASTM F1886/F1886M–09 (Reapproved 2013) Standard test method for determining integrity of seals for flexible packaging by visual inspection.	Reaffirmation.
14–290		ANSI/AAMI ST24:1999/(R)2013 Automatic, general purpose ethylene oxide sterilizers and ethylene oxide sterilant sources intended for use in health care facilities.	Reaffirmation.
14–291		ANSI/AAMI/ISO 14937:2009/(R)2013 Sterilization of healthcare products—General requirements for characterization of a sterilizing agent and the development, validation, and routine control of a sterilization process for medical devices.	Reaffirmation.
14–331	14–452	ISO 11135 Second edition 2014 Sterilization of healthcare products—Ethylene oxide—Requirements for the development, validation, and routine control of a sterilization process for medical devices.	Withdrawn and replaced with newer version.
14–342		ASTM E2628–09 (E2009) Standard practice for dosimetry in radiation.	Withdrawn. See 14–436.
13–343		ASTM E2701–09 Standard guide for performance characterization of dosimeters and dosimetry systems for use in radiation processing.	Withdrawn. See 14–437.
14–348		ANSI/AAMI/ISO 13408–2:2003/(R)2013 Aseptic processing of healthcare products—Part 2: Filtration.	Reaffirmation.
14–364	14–438	ANSI/AAMI/ISO 11137–2:2013 Sterilization of health care products—Radiation—Part 2: Establishing the sterilization dose.	Withdrawn and replaced with newer version.
14–394	14–439	ANSI/AAMI ST79:2010, A1:2010, A2:2011, A3:2012, and A4:2013 (consolidated text) Comprehensive guide to steam sterilization and sterility assurance in health care facilities.	Withdrawn and replaced with newer version.
14–414	14–440	USP 37NF32:2014 Microbiological examination of nonsterile products: Microbial enumeration tests.	Withdrawn and replaced with newer version.
14–415	14–441	USP 37NF32:2014 Sterility tests	Withdrawn and replaced with newer version.
14–416	14–442	USP 37NF32:2014 Bacterial endotoxins test	Withdrawn and replaced with newer version.
14–417	14–443	USP 37NF32:2014 Pyrogen test (USP rabbit test)	Withdrawn and replaced with newer version.
14–418	14–444	USP 37NF32:2014 Transfusion and infusion assemblies and similar medical devices.	Withdrawn and replaced with newer version.
14–419	14–445	USP 37NF32:2014 Biological indicator for steam sterilization—Self-contained.	Withdrawn and replaced with newer version.
14–420	14–446	USP 37NF32:2014 Biological indicator for dry-heat sterilization, paper carrier.	Withdrawn and replaced with newer version.
14–421	14–447	USP 37NF32:2014 Biological indicator for ethylene oxide sterilization, paper carrier.	Withdrawn and replaced with newer version.
14–422	14–448	USP 37NF32:2014 Biological indicator for steam sterilization, paper carrier.	Withdrawn and replaced with newer version.
14–423	14–449	USP 37NF32:2014 Microbiological examination of nonsterile products: Tests for specified microorganisms.	Withdrawn and replaced with newer version.

TABLE 1—MODIFICATIONS TO THE LIST OF RECOGNIZED STANDARDS—Continued

Old recognition No.	Replacement recognition No.	Title of standard [1]	Change
14–425		ANSI/AAMI/ISO 13408–6:2005/(R)2013 and A1:2013 Aseptic processing of healthcare products—Part 6: Isolator systems.	Reaffirmation.
P. Tissue Engineering			
15–21	15–39	ASTM F2150–13 Standard guide for characterization and testing of biomaterial scaffolds used in tissue-engineered medical products(TEMPs).	Withdrawn and replaced with newer version.
15–26	15–40	ASTM F2211–13 Standard classification for tissue-engineered medical products (TEMPs).	Withdrawn and replaced with newer version.
15–33	15–41	ASTM F2602–13 Standard test method for determining the molar mass of chitosan and chitosan salts by size exclusion chromatography with multi-angle light scattering detection (SEC–MALS).	Withdrawn and replaced with newer version.

[1] All standard titles in this table conform to the style requirements of the respective organizations.

III. Listing of New Entries

In table 2, we provide the listing of new entries and consensus standards added as modifications to the list of recognized standards under Recognition List Number: 036.

TABLE 2—NEW ENTRIES TO THE LIST OF RECOGNIZED STANDARDS

Recognition No.	Title of standard [1]	Reference No. and date
A. Cardiovascular		
3–127	Medical electrical equipment—Part 2–47: Particular requirements for the basic safety and essential performance of ambulatory electrocardiographic systems.	ANSI/AAMI/IEC 60601–2–47:2012.
3–128	Active implantable medical devices—Electromagnetic compatibility—EMC test protocols for implantable cardiac pacemakers, implantable cardioverter defibrillators, and cardiac resynchronization devices.	ANSI/AAMI/ISO 14117:2012.
B. General I (Quality System/Risk Management (QS/RM))		
5–89	Medical electrical equipment—Part 1–6: General requirements for basic safety and essential performance—Collateral standard: Usability.	IEC 60601–1–6 Edition 3.1 2013–10.
5–92	Medical Electrical Equipment—Part 1–8: General requirements for basic safety and essential performance—Collateral standard: General requirements, tests and guidance for alarm systems in medical electrical equipment and medical electrical systems.	ANSI/AAMI/IEC 60601–1–8:2006 & A1:2012.
C. General II (Electrical Safety/Electromagnetic Compatibility (ES/EMC))		
19–1	Medical electrical equipment—Part 1–2: General requirements for basic safety and essential performance—Collateral standard: electromagnetic compatibility—requirements and tests.	IEC 60601–1–2 Edition 3:2007–03.
19–2	Medical electrical equipment—Part 1–2: General requirements for basic safety and essential performance—Collateral standard: electromagnetic compatibility—requirements and tests.	ANSI/AAMI/IEC 60601–1–2:2007/(R)2012.
19–3	Medical electrical equipment—Part 1–10: General requirements for basic safety and essential performance—Collateral standard: requirements for the development of physiologic closed-loop controllers.	IEC 60601–1–10 Edition 1.0:2007–11.
19–4	Medical electrical equipment—Part 1: General requirements for basic safety and essential performance (IEC 60601–1:2005, mod).	ANSI/AAMI ES60601–1:2005/(R)2012 and A1:2012,C1:2009/(R)2012 and A2:2010/(R)2012.
19–5	Medical electrical equipment—Part 1: General requirements for basic safety and essential performance (IEC 60601–1:2005, mod).	ANSI/AAMI ES60601–1:2005/(R)2012 and C1:2009/(R)2012 and, A2:2010/(R)2012 (Consolidated text).
19–6	Medical electrical equipment—Part 1–11: General requirements for basic safety and essential performance—Collateral standard: Requirements for medical electrical equipment and medical electrical systems used in the home healthcare environment [Including: Technical corrigendum 1 (2011)].	IEC 60601–1–11 Edition 1.0:2010–04.
19–7	Medical electrical equipment—Part 1–11: General requirements for basic safety and essential performance—Collateral standard: Requirements for medical electrical equipment and medical electrical systems used in the home healthcare environment (IEC 60601–1–11:2010 mod).	ANSI/AAMI HA60601–1–11:2011.

TABLE 2—NEW ENTRIES TO THE LIST OF RECOGNIZED STANDARDS—Continued

Recognition No.	Title of standard [1]	Reference No. and date
19–8	Medical electrical equipment—Part 1–2: General requirements for basic safety and essential performance—Collateral standard: Electromagnetic disturbances—Requirements and tests.	IEC 60601–1–2 Edition 4.0:2014–02.
19–9	Medical electrical equipment—Part 1–10: General requirements for basic safety and essential performance—Collateral standard: Requirements for the development of physiologic closed-loop controllers.	IEC 60601–1–10 Edition 1.1:2013–11.
19–10	Lithium batteries	UL 1642 5th Edition 2013.
19–11	Household and commercial batteries	UL 2054 2nd Edition 2011.
D. Orthopedics		
11–279	Standard practice for finite element analysis (FEA) of non-modular metallic orthopaedic hip femoral stems.	ASTM F2996–13.
11–280	Standard test method for static, dynamic, and wear assessment of extra-discal single level spinal constructs.	ASTM F2624–12.
E. Radiology		
12–275	Ultrasonics—Power measurement—Radiation force balances and performance requirements.	IEC 61161 Edition 3.0:2013–01.
12–276	Ultrasonics—Output test—Guide for the maintenance of ultrasound physiotherapy systems.	IEC TS 62462 First edition 2007–05.
12–277	Ultrasonics—Hydrophones—Part 1: Measurement and characterization of medical ultrasonic fields up to 40 megahertz (MHz).	IEC 62127–1 Edition 1.1:2013–02.
12–278	Ultrasonics—Hydrophones—Part 2: Calibration for ultrasonic fields up to 40 MHz (including corrigendum 1:2008 and amendment 1:2013).	IEC 62127–2 Edition 1.0:2007–08.
12–279	Ultrasonics—Hydrophones—Part 3: Properties of hydrophones for ultrasonic fields up to 40 MHz.	IEC 62127–3 Edition 1.1:2013–05.
12–280	Ultrasonics—Power measurement—High intensity therapeutic ultrasound (HITU) transducers and systems.	IEC 62555 Edition 1.0:2013–11.
12–281	Medical electrical equipment—Part 2–62: Particular requirements for the basic safety and essential performance of high intensity therapeutic ultrasound (HITU) equipment.	IEC 60601–2–62 Edition 1.0:2013–07.
12–282	Eyewear for protection against intense light sources used on humans and animals for cosmetic and medical applications—Part 1: Specification for products.	ISO 12609–1 First edition 2013–07–15.
12–283	Eyewear for protection against intense light sources used on humans and animals for cosmetic and medical applications—Part 2: Guidance for use.	ISO 12609–2 First edition 2013–07–15.
F. Software/Informatics		
13–67	Health informatics—Personal health device communication—Part 10418: Device specialization—International normalized ratio (INR) monitor.	ISO/IEEE 11073–10418 First edition 2014–03–01.
13–68	Health informatics—Point-of-care medical device communication—Part 90101: Analytical instruments—Point-of-care test.	ISO 11073–90101 First edition 2008–01–15.
13–69	Health Informatics—Personal health device communication—Part 10472: Device specialization—Medication monitor.	ISO/IEEE 11073–10472 First edition 2012–11–01.
G. Sterility		
14–436	Practice for dosimetry in radiation processing	ISO/ASTM 52628 First edition 2013–11–15.
14–437	Guide for performance characterization of dosimeters and dosimetry systems for use in radiation processing.	ISO/ASTM 52701 First edition 2013–11–15.
14–450	Biological indicators—Resistance performance tests	USP 37–NF32:2014 <55>.
14–451	Biological indicators for sterilization	USP 37–NF32:2014 <1035>.

[1] All standard titles in this table conform to the style requirements of the respective organizations.

IV. List of Recognized Standards

FDA maintains the Agency's current list of FDA Recognized Consensus Standards in a searchable database that may be accessed directly at our Internet site at *http://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfStandards/search.cfm.* We will incorporate the modifications and revisions described in this notice into the database and, upon publication in the **Federal Register,** this recognition of consensus standards will be effective. We will announce additional modifications and revisions to the list of recognized consensus standards, as needed, in the **Federal Register** once a year, or more often if necessary. Beginning with Recognition List 033, we will no longer announce minor revisions to the list of recognized consensus standards such as technical contact person, devices affected, processes affected, Code of Federal Regulations citations, and product codes.

V. Recommendation of Standards for Recognition by FDA

Any person may recommend consensus standards as candidates for

recognition under section 514 of the FD&C Act by submitting such recommendations, with reasons for the recommendation, to *www.standards@cdrh.fda.gov.* To be properly considered, such recommendations should contain, at a minimum, the following information: (1) Title of the standard, (2) any reference number and date, (3) name and address of the national or international standards development organization, (4) a proposed list of devices for which a declaration of conformity to this standard should routinely apply, and (5) a brief identification of the testing or performance or other characteristics of the device(s) that would be addressed by a declaration of conformity.

VI. Electronic Access

You may obtain a copy of ''Guidance on the Recognition and Use of Consensus Standards'' by using the Internet. The Center for Devices and Radiological Health (CDRH) maintains a site on the Internet for easy access to information including text, graphics, and files that you may download to a personal computer with access to the Internet. Updated on a regular basis, the CDRH home page includes the guidance as well as the current list of recognized standards and other standards-related documents. After publication in the **Federal Register,** this notice announcing ''Modification to the List of Recognized Standards, Recognition List Number: 036'' will be available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/Standards/ucm123792.htm.* You may access the CDRH home page at *http://www.fda.gov/MedicalDevices.*

You may access ''Guidance on the Recognition and Use of Consensus Standards,'' and the searchable database for ''FDA Recognized Consensus Standards'' at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/Standards.*

VII. Submission of Comments and Effective Date

Interested persons may submit either electronic comments regarding this document 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.* FDA will consider any comments received in determining whether to amend the current listing of modifications to the list of recognized standards, Recognition List Number: 036. These modifications to the list of recognized standards are effective upon publication of this notice in the **Federal Register.**

Dated: July 2, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–15989 Filed 7–8–14; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–0899]

Request for Notification From Industry Organizations Interested in Participating in the Selection Process for a Nonvoting Industry Representative and Request for Nominations for Nonvoting Industry Representatives on the Cellular, Tissue, and Gene Therapies Advisory Committee

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting that any industry organizations interested in participating in the selection of a nonvoting industry representative to serve on the Cellular, Tissue, and Gene Therapies Advisory Committee for the Center for Biologics Evaluation and Research notify FDA in writing. FDA is also requesting nominations for a nonvoting industry representative to serve on the Cellular, Tissue, and Gene Therapies Advisory Committee. A nominee may either be self-nominated or nominated by an organization to serve as a nonvoting industry representative. Nominations will be accepted for current or upcoming vacancies effective with this notice.

DATES: Any industry organization interested in participating in the selection of an appropriate nonvoting member to represent industry interests must send a letter stating that interest to FDA by August 8, 2014, for the vacancy listed in this notice. Concurrently, nomination materials for prospective candidates should be sent to FDA by *August 8, 2014.*

ADDRESSES: All letters of interest from industry organizations should be submitted in writing to Gail Dapolito (see **FOR FURTHER INFORMATION CONTACT**). All nominations should be submitted by logging into the FDA Advisory Committee Membership Nomination Portal: *https://www.accessdata.fda.gov/scripts/FACTRSPortal/FACTRS/index.cfm*

FOR FURTHER INFORMATION CONTACT: Gail Dapolito, Center for Biologics Evaluation and Research, 10903 New Hampshire Ave., Bldg. 71, Rm. 6124, Silver Spring, MD 20993–0002, 240–402–8046; *gail.dapolito@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: The Agency intends to add a nonvoting industry representative to the following advisory committee:

I. Cellular, Tissue, and Gene Therapies Advisory Committee

The Committee reviews and evaluates available data relating to the safety, effectiveness, and appropriate use of human cells, human tissues, gene transfer therapies and xenotransplantation products which are intended for transplantation, implantation, infusion and transfer in the prevention and treatment of a broad spectrum of human diseases and in the reconstruction, repair or replacement of tissues for various conditions. The Committee also considers the quality and relevance of FDA's research program which provides support for the regulation of these products, and makes appropriate recommendations to the Commissioner of Food and Drugs (the Commissioner).

II. Selection Procedure

Any industry organization interested in participating in the selection of an appropriate nonvoting member to represent industry interests should send a letter stating that interest to the FDA contact (see **FOR FURTHER INFORMATION CONTACT**) within 30 days of publication of this document (see **DATES**). Within the subsequent 30 days, FDA will send a letter to each organization that has expressed an interest, attaching a complete list of all such organizations, and a list of all nominees along with their current resumes. The letter will also state that it is the responsibility of the interested organizations to confer with one another and to select a candidate, within 60 days after the receipt of the FDA letter, to serve as the nonvoting member to represent industry interests for the committee. The interested organizations are not bound by the list of nominees in selecting a candidate. However, if no individual is selected within 60 days, the Commissioner will select the nonvoting member to represent industry interests.

III. Application Procedure

Individuals may self-nominate and/or an organization may nominate one or more individuals to serve as a nonvoting industry representative. Contact information, a current curriculum vitae, and the name of the committee of interest should be provided within 30 days of publication of this document (see **DATES**) by logging into the FDA Advisory Committee Membership Nomination Portal: *https://www.accessdata.fda.gov/scripts/FACTRSPortal/FACTRS/index.cfm.* FDA will forward all nominations to the organizations expressing interest in participating in the selection process for the committee. (Persons who nominate themselves as nonvoting industry representatives will not participate in the selection process).

FDA has a special interest in ensuring that women, minority groups, individuals with physical disabilities, and small businesses are adequately represented on its advisory committees, and therefore, encourages nominations for appropriately qualified candidates from these groups. Specifically, in this document, nominations for nonvoting representatives of industry interests are encouraged from the cell, tissue, and gene transfer products manufacturing industry.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: July 3, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–16038 Filed 7–8–14; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; 60-Day Comment Request; Evaluation of the NIH Academic Research Enhancement Award (NIH OD)

Summary: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Written comments and/or suggestions from the public and affected agencies are invited to address one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

To Submit Comments and for Further Information: To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project, contact: Michelle M. Timmerman, Ph.D., Director, AREA Program, Office of the Director, National Institutes of Health, 6705 Rockledge Drive, Bethesda, Maryland 20892; or call non-toll-free number 301–402–0672; or email your request, including your address to *michelle.timmerman@mail.nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

Comment Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Proposed Collection: Evaluation of the NIH Academic Research Enhancement Award, 0925-New, Office of the Director (OD), National Institutes of Health (NIH).

Need and Use of Information Collection: The Academic Research Enhancement Award (AREA) Program is a grant mechanism spanning most of the Institutes and Centers (ICs) of the National Institutes of Health (NIH). The AREA program was established by Congress in 1985 to provide support to scientists at public and private colleges and universities that receive relatively small amounts of NIH funding. The purpose of the program is to support meritorious research, expose undergraduate and graduate students to research, and strengthen the research environment of the institutions receiving the grants. In the past three years alone, the federal government has awarded approximately 78 million dollars annually in AREA grants. The evaluation will allow the NIH and Congress to assess the extent to which the AREA program is meeting its goals and make recommendations so that this significant investment of public funds may be used as effectively as possible.

The evaluation will utilize the NIH's archived data on grants, institutions, Principal Investigators (PIs), and students funded with AREA monies. The evaluation will collect new data about (1) the quantity and quality of student participation in AREA projects, (2) records of PIs' subsequent funding histories, (3) applicants' experiences with the application process, (4) PIs' experiences implementing AREA Program objectives, and (5) the impact of AREA Program research participation on student career paths and outcomes.

The results of the evaluation will indicate the extent to which the AREA Program is meeting its goals of supporting meritorious research, strengthening the research environment at institutions of higher education that are not research intensive, and recruiting and training subsequent generations of the United States' biomedical scientist workforce. Intended audiences include the United States Congress, staff at NIH ICs that make AREA awards, and staff of the NIHOD.

OMB approval is requested for one year. There are no costs to respondents other than their time. The total estimated annualized burden hours are 629.

ESTIMATES OF ANNUALIZED BURDEN HOURS

Type of respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual burden hours
Principal Investigator Survey	480	1	45/60	360
Awardee Semi-Structured Interview	50	1	45/60	38
Student Survey	301	1	30/60	151

ESTIMATES OF ANNUALIZED BURDEN HOURS—Continued

Type of respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual burden hours
Applicant Survey	240	1	20/60	80

Dated: July 2, 2014.

Lawrence A. Tabak,

Deputy Director, National Institutes of Health.

[FR Doc. 2014–16072 Filed 7–8–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Start-Up Exclusive Evaluation Option License Agreement: AAV Mediated Aquaporin-1 Gene Transfer To Treat Sjögren's Syndrome

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209 and 37 CFR part 404, that the National Institutes of Health (NIH), Department of Health and Human Services (HHS), is contemplating the grant of a Start-Up Exclusive Evaluation Option License Agreement to Milo, LLC, a company having its headquarters in Cleveland, Ohio, to practice the inventions embodied in U.S. Provisional Patent Application No. 61/695,753, filed 20 April 2011 (HHS Ref. No. E–139–2011/1–US–01]), and PCT Patent Application No. PCT/US13/57632, filed 30 August 2013 (HHS Ref. No. E–139–2011/1–PCT–02), entitled ''AAV Mediated Aquaporin-1 Gene Transfer to Treat Sjögren's Syndrome.'' The patent rights in these inventions have been assigned to or exclusively licensed to the Government of the United States of America. The territory of the prospective license may be worldwide and the field of use may be limited to: ''the use of the Licensed Patent Rights, limited to AAV mediated aquaporin-1, for the treatment of Sjögren's syndrome in humans.''

Upon the expiration or termination of the Start-Up Exclusive Evaluation Option License Agreement, Milo will have the exclusive right to execute a Start-up Exclusive Patent License Agreement which will supersede and replace the Start-up Exclusive Evaluation Option License Agreement, with no greater field of use and territory than granted in the Start-Up Exclusive Evaluation Option License Agreement.

DATES: Only written comments and/or applications for a license which are received by the NIH Office of Technology Transfer on or before July 24, 2014 will be considered.

ADDRESSES: Requests for copies of the patent application, inquiries, comments and other materials relating to the contemplated Start-Up Exclusive Evaluation Option License Agreement should be directed to: Vince Contreras, Ph.D., Licensing and Patenting Manager, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 435–4711; Facsimile: (301) 402–0220; Email: *vince.contreras@nih.gov.* A signed confidentiality nondisclosure agreement will be required to receive copies of any patent applications that have not been published or issued by the United States Patent and Trademark Office or the World Intellectual Property Organization.

SUPPLEMENTARY INFORMATION: The subject technology includes methods of treating Sjögren's syndrome by using recombinant adeno associated virus (rAAV) serotypes as vectors to deliver a gene that expresses AQP1. Aquaporin-1 is a pore protein that selectively channels water molecules across the cell membrane. Using animal models that mimic the dry mouth symptoms (xerostomia) of Sjögren's, it was discovered that there was restoration of fluid movement upon expression of AQP1. This potentially represents a long-term treatment for restoring exocrine gland function in Sjögren's patients where salivary gland activity is significantly reduced.

The prospective Start-Up Exclusive Evaluation Option License Agreement will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR part 404. The prospective Start-Up Exclusive Evaluation Option License Agreement and a subsequent Start-Up Exclusive Patent License Agreement may be granted unless the NIH receives, within fifteen (15) days from the date of this published notice, written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR part 404.

Complete applications for a license in the prospective field of use that are filed in response to this Notice will be treated as objections to the grant of the contemplated Start-Up Exclusive Evaluation Option License Agreement. Comments and objections submitted in response to this Notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: July 7, 2014.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2014–16030 Filed 7–8–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 209 and 37 CFR Part 404 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

FOR FURTHER INFORMATION CONTACT: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301–496–7057; fax: 301–402–0220. A signed Confidential Disclosure Agreement will

be required to receive copies of the patent applications.

SUPPLEMENTARY INFORMATION: Technology descriptions follow.

Interactive Clinical Protocol Services Software

Description of Technology: The invention pertains to a C/C++ and C sharp application toolkit named (Interactive Protocol Services) iPS that loads into the Allscripts HealthCare System as a Dynamic Link Library (DLL). The application provides users with a GUI that opens into a window of one of the SCM's tabs. The toolkit could be rendered compatible with any off-the-shelf healthcare system that allows loading library files. The toolkit provides healthcare professionals with a custom structure language to be used in designing customized layouts and accessing data sources within the patient care. This custom structure language is provided to iPS during the COTS (e.g., SCM) application startup process or during an interface communication transaction. Usually, the custom structured language or design layout is stored in the COTS application database system and is retrieved during the startup process of iPS. The custom structure language instructs iPS in how to build and manipulate defined User Control Widgets through properties. These defined User Control Widgets are created in object pairs. These object pairs can be accessible through the iPS application/DLL. iPS also contains a nested list of layout controls that place the User Control Widgets at certain coordinates on the display screen. Each User Control Widget contains code events that allow it to respond to user-defined events, actions, web commands and SQL procedure calls.

Potential Commercial Applications:

- COTS healthcare system.
- Medical/hospital information systems.

Competitive Advantages:

- Customized views.
- Integrates into exiting management tool libraries.

Development Stage:

- Early-stage.
- Prototype.

Inventor: Steven D. Moore (NIH–CC).

Intellectual Property: HHS Reference No. E–172–2014/0—Software. Patent protection is not being pursued for this technology.

Licensing Contact: Michael Shmilovich, Esq., CLP; 301–435–5019; *shmilovm@mail.nih.gov*.

Collaborative Research Opportunity: The NIH Clinical Center is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize Interactive Clinical Protocol Services Software. For collaboration opportunities, please contact Eric Cole at *colee@cc.nih.gov* or 301–451–4430.

Non-Contact Total Emission Detection Methods for Multiphoton Microscopy: Improved Image Fidelity and Biological Sample Analysis

Description of Technology: The technology offered for licensing and for further development is in the field of multiphoton microscopy (MPM). More specifically, the invention pertains to optical designs that can enhance and extend the capabilities of MPM in spectral imaging of biological samples. The unique design of the light collection and the detection optics maximizes the collection of emitted light, thus increasing the signal and hence the signal-to-noise ratio (SNR). Improvement in image fidelity will result in improved analysis of biological samples and thus will favorably impact medical research and possibly clinical diagnosis. The present technology is a further improvement on the TED (Total Emission Detection) technology, first disclosed by Dr. Robert Balaban et al. at the NIH in 2006 and claimed in US Patent 7,667,210 (issued February 23, 2010). The earlier NIH TED technology proposed an optical design based on enveloping the entirety of a small sample in a parabolic mirror/condenser combination so light emanated by a sample in all directions is redirected to the detector. The present technology further expands the capabilities of TED as its unique design employing parabolic, toric and conic mirrors ensures maximum light collection from large samples in cases where there is only access to one side of the tissues (e.g., in vivo or ex vivo). This is accomplished by the redirection of all attainable light (i.e., light escaping the tissue or a whole animal in the epi and sideway directions) to the detector.

Potential Commercial Applications:

- Tissue and cell analysis in biomedical research.
- Potential applications in clinical diagnostics.

Competitive Advantages:

- Increased signal-to-noise ratio.
- Enhanced image resolution due to SNR.
- Improved analytical capabilities.
- Non-contact.
- May readily be adaptable to commercial microscopes.

Development Stage:

- In vitro data available.
- Prototype.

Inventors: Jay R. Knutson, Christian A. Combs, Robert S. Balaban (all of NHLBI).

Publications:

1. Combs CA, et al. Optimization of multiphoton excitation microscopy by total emission detection using a parabolic light reflector. J Microsc. 2007 Dec;228(Pt3):330–7. [PMID 18045327]
2. Combs CA, et al. Compact non-contact total emission detection for in vivo multiphoton excitation microscopy. J Microsc. 2014 Feb;253(2):83–92. [PMID 24251437]
3. Combs CA, et al. Optimizing multiphoton fluorescence microscopy light collection from living tissue by noncontact total emission detection (epiTED). J Microsc. 2011 Feb;241(2):153–61. [PMID 21118209]

Intellectual Property: HHS Reference No. E–236–2009/0—

- US Provisional Patent Application 61/224,772 filed July 10, 2009.
- US Patent 8,759,792 issued June 24, 2014.
- European Patent Application 10797972.6 filed July 12, 2010.

Related Technology: HHS Reference No. E–257–2005/0—US Patent 7,667,210 issued February 23, 2010.

Licensing Contact: Michael Shmilovich, Esq., CLP; 301–435–5019; *shmilovm@mail.nih.gov*.

Collaborative Research Opportunity: The NHLBI Laboratory of Molecular Biophysics is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize an enhanced method of multiphoton microscopy that is suitable for the spectral imaging of biological samples. Please contact Brian W. Bailey, Ph.D. at *bbailey@mail.nih.gov* for more information.

Dated: July 7, 2014.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2014–16029 Filed 7–8–14; 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–13–385: Epigenetic Modification in Gametogenesis and Transgenerational Inheritance.

Date: July 30, 2014.

Time: 1:00 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Gary Hunnicutt, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, MSC 7892, Bethesda, MD 20892, 301–435–0229, *gary.hunnicutt@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Program Project: AIDS and AIDS Related Research.

Date: August 5, 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, (Virtual Meeting).

Contact Person: Kenneth A. Roebuck, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5106, MSC 7852, Bethesda, MD 20892, (301) 435–1166, *roebuckk@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Lipids, Obesity and Cancer.

Date: August 5, 2014.

Time: 2:00 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: Arnold Revzin, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4146, MSC 7824, Bethesda, MD 20892, (301) 435–1153, *revzina@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: July 2, 2014.

David Clary,

Program Analyst, Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–15937 Filed 7–8–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2014–0002; Internal Agency Docket No. FEMA–B–1408]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; correction.

SUMMARY: On May 13, 2014, the Federal Emergency Management Agency (FEMA) published in the **Federal Register** a notice that contained an erroneous table. Specifically, this notice provides a correction to Letter of Map Revision (LOMR) case number 13–06–3803P for the City of Denton, Denton County, Texas, to be used in lieu of the information published at 79 FR 27332. The table provided here lists a community where the addition or modification of Base Flood Elevations, base flood depths, Special Flood Hazard Area boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by FEMA for the community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a LOMR, in accordance with Title 44, part 65 of the Code of Federal Regulations (44 CFR part 65). The LOMR will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings. For rating purposes, the currently effective community number is shown in the table below and must be used for all new policies and renewals.

DATES: These flood hazard determinations will become effective on the date listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed community.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Deputy Associate Administrator for Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

ADDRESSES: The affected community is listed in the table below. Revised flood hazard information for the community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for the community is accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The specific flood hazard determinations are not described for the community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected community is listed in the following table. Flood hazard determination information for the community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for the community is accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

Correction

In the notice published at 79 FR 27332, the table contained inaccurate information for the associated community map repository address for LOMR case number 13–06–3803P for the City of Denton, Denton County, Texas, featured in the table. In this notice, FEMA is publishing a table containing the accurate information to address this prior error. The information provided below should be used in lieu of that previously published for the City of Denton.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of Letter of Map Revision	Effective date of modification	Community No.
Texas: Denton	City of Denton (13–06–3803P).	The Honorable Mark A. Burroughs Mayor, City of Denton, 215 East McKinney Street, Denton, TX 76201.	901–A Texas Street, Denton, TX 76209.	*http://*www.msc.fema.gov/lomc.*	July 28, 2014	480194

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: June 17, 2014.

Roy E. Wright,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2014–16054 Filed 7–8–14; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4173–DR; Docket ID FEMA–2014–0003]

Indiana; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Indiana (FEMA–4173–DR), dated April 22, 2014, and related determinations.

DATES: *Effective Date:* July 1, 2014.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Indiana is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of April 22, 2014.

Lake County for Public Assistance.

Lake County for snow assistance under the Public Assistance program for any continuous 48-hour period during or proximate to the incident period.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2014–16060 Filed 7–8–14; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2014–0002; Internal Agency Docket No. FEMA–B–1415]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report, once effective, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings.

DATES: Comments are to be submitted on or before October 7, 2014.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–1415, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at

www.floodmaps.fema.gov/fhm/fmx_main.html.

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *http://floodsrp.org/pdfs/srp_fact_sheet.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

I. Watershed-Based Studies

NARRAGANSETT HUC8 WATERSHED

Community	Community map repository address
Maps Available for Inspection Online at: *http//www.fema.gov/preliminaryfloodhazarddata*	
Bristol County, Massachusetts (All Jurisdictions)	
City of Attleboro	City Hall, 77 Park Street, Attleboro, MA 02703.
City of Taunton	City Hall, 15 Summer Street, Taunton, MA 02780.
Town of Acushnet	Town Hall, 122 Main Street, Acushnet, MA 02743.
Town of Berkley	Town Hall, One North Main Street, Berkley, MA 02779.
Town of Dighton	Town Hall, 979 Somerset Avenue, Dighton, MA 02715.
Town of Freetown	Town Hall, Three North Main Street, Assonet, MA 02702.
Town of Mansfield	Town Hall, Six Park Row, Mansfield, MA 02048.
Town of North Attleborough	Town Hall, 43 South Washington Street, North Attleborough, MA 02760.
Town of Norton	Town Hall, 70 East Main Street, Norton, MA 02766.
Town of Raynham	Town Hall, 558 South Main Street, Raynham, MA 02767.
Town of Seekonk	Town Hall, 100 Peck Street, Seekonk, MA 02771.
Norfolk County, Massachusetts (All Jurisdictions)	
Town of Foxborough	Town Hall, 40 South Street, Foxborough, MA 02035.
Town of Plainville	Town Hall, 142 South Street, Plainville, MA 02762.
Plymouth County, Massachusetts (All Jurisdictions)	
Town of Bridgewater	Memorial Building, 151 High Street, Bridgewater, MA 02324.
Town of East Bridgewater	Town Hall, 175 Central Street, East Bridgewater, MA 02333.
Town of Halifax	Town Hall, 499 Plymouth Street, Halifax, MA 02338.
Town of Lakeville	Town Hall, 346 Bedford Street, Lakeville, MA 02347.
Town of Middleborough	Town Hall Annex, 20 Centre Street, Middleborough, MA 02346.
Town of Rochester	Town Hall Annex, 37 Marion Way, Rochester, MA 02770.

II. Non-Watershed-Based Studies

Community	Community map repository address
Kosciusko County, Indiana, and Incorporated Areas Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
City of Warsaw	Warsaw Planning Department, 102 South Buffalo Street, Warsaw, IN 46580.
Town of Leesburg	Leesburg Town Hall, 100 East Van Buren Street, Leesburg, IN 46538.
Town of Mentone	Mentone Town Hall, 201 West Main Street, Mentone, IN 46539.

Community	Community map repository address
Town of Milford	Kosciusko County Courthouse, Kosciusko County Area Planning, 100 West Center Street, Warsaw, IN 46580.
Town of North Webster	Kosciusko County Courthouse, Kosciusko County Area Planning, 100 West Center Street, Warsaw, IN 46580.
Town of Syracuse	Kosciusko County Courthouse, Kosciusko County Area Planning, 100 West Center Street, Warsaw, IN 46580.
Town of Winona Lake	Winona Lake Town Hall, 1310 Park Avenue, Winona Lake, IN 46590.
Unincorporated Areas of Kosciusko County	Kosciusko County Courthouse, Kosciusko County Area Planning, 100 West Center Street, Warsaw, IN 46580.
Des Moines County, Iowa, and Incorporated Areas Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
City of Burlington	Development Department, 400 Washington Street, Burlington, IA 52601.
Unincorporated Areas of Des Moines County	Southeast Iowa Regional Planning Commission, 200 North Front Street, Suite 400, Burlington, IA 52601.
Louisa County, Iowa, and Incorporated Areas Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
City of Oakville	City Hall, 601 Second Street, Oakville, IA 52646.
Unincorporated Areas of Louisa County	County Courthouse, 117 South Main Street, Wapello, IA 52653.
Unincorporated Areas of Louisa County	County Courthouse, 117 South Main Street, Wapello, IA 52653.
Hancock County, Maine (All Jurisdictions) Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Bald Island	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
Bar Island	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
Beach Island	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
Bear Island	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
Big Barred Island	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
Birch Island	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
Bradbury Island	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
Butter Island	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
Chain Links Islands—North	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
Chain Links Islands—South	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
Channel Rock Island	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
City of Ellsworth	City Hall, One City Hall Plaza, Ellsworth, ME 04605.
Colt Head Island	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
Compass Island	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
Crow Island	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
Eagle Island	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.

Community	Community map repository address
Eaton Island	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
Fling Island	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
Grass Ledge Island	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
Great Spruce Head Island	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
Hardhead Island	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
Hog Island	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
Horsehead Island	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
Inner Porcupine Island	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
Little Barred Island	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
Little Marshall Island	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
Little Spruce Head	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
Marshall Island	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
Outer Porcupine Island	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
Peak Island	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
Pickering Island	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
Pond Island	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
Pumpkin Island	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
Resolution Island	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
Scott Island	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
Scrag Island	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
Sheep Island	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
Sloop Island	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
Sloop Island Ledge	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
Spectacle Island	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.

Community	Community map repository address
Sugarloaf	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
Town of Amherst	Town Office, Route 9 Airline Road, Amherst, ME 04605.
Town of Bar Harbor	Town Hall, 93 Cottage Street, Bar Harbor, ME 04609.
Town of Blue Hill	Town Office, 18 Union Street, Blue Hill, ME 04614.
Town of Brooklin	Town Office, 23 Bay Road, Brooklin, ME 04616.
Town of Brooksville	Town Office, One Town House Road, Brooksville, ME 04617.
Town of Bucksport	Town Office, 50 Main Street, Bucksport, ME 04416.
Town of Castine	Emerson Hall, 67 Court Street, Castine, ME 04421.
Town of Cranberry Isles	Town Office, 59 Main Street at Islesford, Little Cranberry Island, Islesford, ME 04646.
Town of Dedham	Town Office, 2073 Main Road, Suite A, Dedham, ME 04429.
Town of Deer Isle	Town Office, 70 Church Street, Deer Isle, ME 04627.
Town of Eastbrook	Town Office, 959 Eastbrook Road, Eastbrook, ME 04634.
Town of Franklin	Town Office, 34 Main Street, Franklin, ME 04634.
Town of Frenchboro	Town Office, One Executive Drive, Frenchboro, ME 04635.
Town of Gouldsboro	Town Office, 59 Main Street, Prospect Harbor, ME 04669.
Town of Hancock	Town Office, 18 Point Road, Hancock, ME 04640.
Town of Lamoine	Town Office, 606 Douglas Highway, Lamoine, ME 04605.
Town of Mariaville	Town Office, 1686 Mariaville Road, Mariaville, ME 04605.
Town of Mount Desert	Town Office, 21 Sea Street, Northeast Harbor, ME 04662.
Town of Orland	Town Office, 25 School House Road, Orland, ME 04472.
Town of Otis	Town Office, 132 Otis Road, Otis, ME 04605.
Town of Penobscot	Town Office, One Southern Bay Road, Penobscot, ME 04476.
Town of Sedgwick	Town Office, 719 North Sedgwick Road, Sedgwick, ME 04676.
Town of Sorrento	Town Office, 79 Pomola Avenue, Sorrento, ME 04677.
Town of Southwest Harbor	Town Office, 26 Village Green Way, Southwest Harbor, ME 04679.
Town of Stonington	Town Office, 32 Main Street, Stonington, ME 04681.
Town of Sullivan	Town Office, 1888 US Highway 1, Sullivan, ME 04664.
Town of Surry	Town Office, 741 North Bend Road, Surry, ME 04684.
Town of Swans Island	Town Office, 125 Harbor Road, Swans Island, ME 04685.
Town of Tremont	Town Office, 20 Harbor Drive, Bass Harbor, ME 04653.
Town of Trenton	Town Office, 59 Oak Point Road, Trenton, ME 04605.
Town of Verona Island	Town Hall, 16 School Street, Bucksport, ME 04416.
Town of Waltham	Town Office, 1520 Waltham Road, Waltham, ME 04605.
Town of Winter Harbor	Town Office, 20 School Street, Winter Harbor, ME 04693.
Township of Fletcher's Landing	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
Township of T07 Sd	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
Two Bush Island	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
Western Island	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.

Knox County, Maine (All Jurisdictions)

Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*

Andrews Island	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
Bar Island	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
Birch Island	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
Brig Ledge	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
Camp Cove Ledge	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
Camp Island	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
City of Rockland	City Hall, 270 Pleasant Street, Rockland, ME 04841.

Community	Community map repository address
Clam Ledges	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
Crescent Island	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
Crow Island	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
Dix Island	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
East Goose Rock	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
Egg Rock	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
Fisherman Island	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
Flag Island	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
Goose Island	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
Gooseberry Knob	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
Graffam Island	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
Great Pond Island	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
Green Ledge	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
Herring Ledge	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
Hewett Island	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
High Island	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
High Ledge	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
Hog Island	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
Large Green Island	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
Lasell Island	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
Little Green Island	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
Little Hurricane Island	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
Little Pond Island	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
Little Two Bush Island	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.

Community	Community map repository address
Malcolm Ledge	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
Marblehead Island	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
Mark Island	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
Matinicus Isle Plantation	Community Office, 17 South Road, Matinicus, ME 04853.
Metinic Green Island	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
Metinic Island	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
Mink Island	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
Mouse Island	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
Nettle Island	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
Oak Island	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
Otter Island	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
Pleasant Island	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
Pudding Island	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
Ragged Island	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
Robinson Rock	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
Saddle Island	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
Seal Island	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
Shag Ledge	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
Spectacle Island	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
Tenpound Island	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
The Nubble	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
Town of Appleton	Town Office, 2915 Sennebec Road, Appleton, ME 04862.
Town of Camden	Town Office, 29 Elm Street, Camden, ME 04843.
Town of Cushing	Town Office, 39 Cross Road, Cushing, ME 04563.
Town of Friendship	Town Office, Six Harbor Road, Friendship, ME 04547.
Town of Hope	Town Office, 441 Camden Road, Hope, ME 04847.
Town of Isle au Haut	Town Office, One Main Street, Isle au Haut, ME 04645.
Town of North Haven	Town Office, 16 Town Office Square, North Haven, ME 04853.
Town of Owls Head	Town Office, 224 Ash Point Drive, Owls Head, ME 04854.
Town of Rockport	Town Office, 101 Main Street, Rockport, ME 04856.
Town of South Thomaston	Town Office, 125 Spruce Head Road, South Thomaston, ME 04858.
Town of St. George	Town Office, Three School Street, Tenants Harbor, ME 04860.
Town of Thomaston	Town Office, 170 Main Street, Thomaston, ME 04861.
Town of Union	Town Office, 567 Common Road, Union, ME 04862.

Community	Community map repository address
Town of Vinalhaven	Town Office, 19 Washington School Road, Vinalhaven, ME 04863.
Town of Warren	Town Office, 167 Western Road, Warren, ME 04864.
Town of Washington	Town Office, 40 Old Union Road, Washington, ME 04574.
Township of Criehaven	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Agusta, ME 04333.
Township of Muscle Ridge	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
Two Bush Island	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
Wheaton Island	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
Wheeler Big Rock	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
Wooden Ball Island	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
Yellow Ledge	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
Lincoln County, Maine (All Jurisdictions) Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Bar Island	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
Haddock Island	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
Hungry Island	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
Indian Island	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
Jones Garden Island	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
Killick Stone Island	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
Louds Island	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
Marsh Island	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
Monhegan Plantation	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
Polins Ledges Island	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
Ross Island	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
Thief Island	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
Thrumcap Island	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
Town of Alna	Town Hall, 1568 Alna Road, Alna, ME 04535.
Town of Boothbay	Town Hall, 1011 Wiscasset Road, Boothbay, ME 04537.
Town of Boothbay Harbor	Town Hall, 11 Howard Street, Boothbay Harbor, ME 04538.
Town of Bremen	Town Hall, 208 Waldoboro Road, Bremen, ME 04551.
Town of Bristol	Town Hall, 1268 Bristol Road, (State Route 130), Bristol, ME 04539.
Town of Damariscotta	Town Hall, 21 School Street, Damariscotta, ME 04543.
Town of Dresden	Town Hall, 534 Gardner Road, Dresden, ME 04342.

Community	Community map repository address
Town of Edgecomb	Town Hall, 16 Town Hall Road, Edgecomb, ME 04556.
Town of Jefferson	Town Hall, 58 Washington Road, Jefferson, ME 04348.
Town of Newcastle	Town Hall, Four Pump Street, Newcastle, ME 04553.
Town of Nobleboro	Town Hall, 192 US Highway 1, Nobleboro, ME 04555.
Town of Somerville	Town Hall, 665 Patricktown Road, Suite 1, Somerville, ME 04348.
Town of South Bristol	South Bristol Town Hall, 470 Clarks Cove Road, Walpole, ME 04573.
Town of Southport	Town Hall, 361 Hendricks Hill Road, Southport, ME 04576.
Town of Waldoboro	Town Hall, 1600 Atlantic Highway, Waldoboro, ME 04572.
Town of Westport Island	Town Hall, Six Fowles Point Road, Westport Island, ME 04578.
Town of Whitefield	Town Hall, 36 Town House Road, Whitefield, ME 04353.
Town of Wiscasset	Town Hall, 51 Bath Road, Wiscasset, ME 04578.
Township of Hibberts Gore	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
Webber Dry Ledge Island	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
Western Egg Rock Island	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
Wreck Island	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
Wreck Island Ledge	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
Sagadahoc County, Maine (All Jurisdictions) Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
City of Bath	City Hall, 55 Front Street, Bath, ME 04530.
Town of Arrowsic	Town Hall, 340 Arrowsic Road, Arrowsic, ME 04530.
Town of Bowdoin	Town Hall, 23 Cornish Drive, Bowdoin, ME 04287.
Town of Bowdoinham	Town Hall, 13 School Street, Bowdoinham, ME 04008.
Town of Georgetown	Town Hall, 50 Bay Point Road, Georgetown, ME 04548.
Town of Phippsburg	Town Hall, 1042 Main Road, Phippsburg, ME 04562.
Town of Richmond	Town Hall, 26 Gardner Street, Richmond, ME 04357.
Town of Topsham	Town Hall, 100 Main Street, Topsham, ME 04086.
Town of West Bath	Town Hall, 219 Fosters Point Road, West Bath, ME 04530.
Town of Woolwich	Town Hall, 13 Nequasset Road, Woolwich, ME 04579.
Township of Perkins	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
Waldo County, Maine (All Jurisdictions) Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
City of Belfast	City Hall, 131 Church Street, Belfast, ME 04915.
Lime Island	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
Little Bermuda Island	Land Use Planning Commission, Maine Department of Agriculture, Conservation and Forestry, 18 Elkins Lane/Harlow Building, 4th Floor, State House Station 22, Augusta, ME 04333.
Town of Belmont	Town Office, 613 Back Belmont Road, Belmont, ME 04952.
Town of Brooks	Town Hall, 15 Purple Heart Highway, Brooks, ME 04921.
Town of Burnham	Town Office, 247 South Horseback Road, Burnham, ME 04922.
Town of Frankfort	Town Office, 48A Main Road South, Frankfort, ME 04438.
Town of Freedom	Town Hall, 71 Pleasant Street, Freedom, ME 04941.
Town of Islesboro	Town Office, 150 Main Road, Islesboro, ME 04848.
Town of Knox	Town Office, 10 Abbott Road, Knox, ME 04986.
Town of Liberty	Town Hall, Seven Water Street, Liberty, ME 04949.
Town of Lincolnville	Town Office, 493 Hope Road, Lincolnville, ME 04849.
Town of Monroe	Town Hall, Eight Swan Lake Avenue, Monroe, ME 04951.
Town of Montville	Town Hall, 414 Center Road, Montville, ME 04941.
Town of Morrill	Town Hall, 44 Weymouth Road, Morrill, ME 04952.
Town of Northport	Town Office, 16 Beech Hill Road, Northport, ME 04849.
Town of Palermo	Town Hall, 45 North Palermo Road, Palermo, ME 04354.
Town of Prospect	Town Office, 958 Bangor Road, Prospect, ME 04981.
Town of Searsmont	Town Office, 37 Main Street South, Searsmont, ME 04973.
Town of Searsport	Town Office, One Union Street, Searsport, ME 04974.
Town of Stockton Springs	Town Office, 217 Main Street, Stockton Springs, ME 04981.
Town of Swanville	Town Hall, Six Townhouse Road, Swanville, ME 04915.
Town of Thorndike	Town Hall, 125 Mount View Road, Thorndike, ME 04986.

Community	Community map repository address
Town of Troy	Town Office, 129 Rogers Road, Troy, ME 04987.
Town of Unity	Town Office, 84 School Street, Unity, ME 04988.
Town of Waldo	Town Office, 629 Waldo Station Road, Waldo, ME 04915.
Town of Winterport	Town Office, 20 School Street, Winterport, ME 04496.
Knox County, Nebraska, and Incorporated Areas Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
City of Bloomfield	City Hall, 101 South Broadway, Bloomfield, NE 68718.
City of Crofton	City Hall, 1210 West 2nd Street, Crofton, NE 68730.
Unincorporated Areas of Knox County	Knox County Courthouse, 206 Main Street, Center, NE 68724.
Rockingham County, New Hampshire (All Jurisdictions) Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
City of Portsmouth	City Hall, One Junkins Avenue, Portsmouth, NH 03801.
Town of Exeter	Town Office, 10 Front Street, Exeter, NH 03833.
Town of Greenland	Town Office, 575 Portsmouth Avenue, Greenland, NH 03840.
Town of Hampton	Town Office, 100 Winnacunnet Road, Hampton, NH 03842.
Town of Hampton Falls	Town Hall, One Drinkwater Road, Hampton Falls, NH 03844.
Town of New Castle	Town Office, 49 Main Street, New Castle, NH 03854.
Town of Newfields	Town Hall, 65 Main Street, Newfields, NH 03856.
Town of Newington	Town Office, 205 Nimble Hill Road, Newington, NH 03801.
Town of Newmarket	Town Hall, 186 Main Street, Newmarket, NH 03857.
Town of North Hampton	Town Office, 233 Atlantic Avenue, North Hampton, NH 03862.
Town of Rye	Town Office, 10 Central Road, Rye, NH 03870.
Town of Seabrook	Town Office, 99 Lafayette Road, Seabrook, NH 03874.
Town of Stratham	Town Office, 10 Bunker Hill Avenue, Stratham, NH 03885.
Strafford County, New Hampshire (All Jurisdictions) Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
City of Dover	City Office, 288 Central Avenue, Dover, NH 03820.
Town of Durham	Town Office, 15 Newmarket Road, Durham, NH 03824.
Town of Madbury	Town Hall, 13 Town Hall Road, Madbury, NH 03823.
Town of Rollinsford	Town Office, 667 Main Street, Rollinsford, NH 03869.
Grays Harbor County, Washington, and Incorporated Areas Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
City of Aberdeen	City Hall, 200 East Market Street, Aberdeen, WA 98520.
City of Cosmopolis	City Hall, 1300 First Street, Cosmopolis, WA 98537.
City of Hoquiam	City Hall, 609 8th Street, Hoquiam, WA 98550.
City of Ocean Shores	City Hall, 585 Point Brown Avenue, Northwest, Ocean Shores, WA 98569.
City of Westport	City Hall, 604 North Montesano Street, Westport, WA 98595.
Unincorporated Areas of Grays Harbor County	Grays Harbor Administration Building, 100 West Broadway, Suite 31, Montesano, WA 98563.
Yakima County, Washington, and Incorporated Areas Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
City of Union Gap	City Hall, 102 West Ahtanum Road, Union Gap, WA 98903.
City of Yakima	City Hall, 129 North 2nd Street, Yakima, WA 98901.
Confederated Tribes and Bands of the Yakama Nation	Yakama Nation Offices, 401 Fort Road, Toppenish, WA 98948.
Unincorporated Areas of Yakima County	Yakima County Public Services, 128 North 2nd Street, Yakima, WA 98901.
Rock County, Wisconsin, and Incorporated Areas Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
City of Beloit	City Hall, 100 State Street, Beloit, WI 53511.
Unincorporated Areas of Rock County	Rock County Courthouse, 51 South Main Street, Janesville, WI 53545.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: June 26, 2014.

Roy E. Wright,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2014–16058 Filed 7–8–14; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2014–0002; Internal Agency Docket No. FEMA–B–1419]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report, once effective, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings.

DATES: Comments are to be submitted on or before October 7, 2014.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–1419, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *http://floodsrp.org/pdfs/srp_fact_sheet.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

I. Watershed-Based Studies

LOWER SUSQUEHANNA WATERSHED

Community	Community map repository address
Lancaster County, Pennsylvania (All Jurisdictions)	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Borough of Adamstown	Borough Office, 3000 North Reading Road, Adamstown, PA 19501.
Borough of Akron	Borough Office, 117 South 7th Street, Akron, PA 17501.
Borough of Christiana	Borough Hall, 10 West Slokom Avenue, Christiana, PA 17509.
Borough of Columbia	Borough Hall, 308 Locust Street, Columbia, PA 17512.
Borough of Denver	Borough Office, 501 Main Street, Denver, PA 17517.
Borough of East Petersburg	Borough Hall, 6040 Main Street, East Petersburg, PA 17520.

LOWER SUSQUEHANNA WATERSHED—Continued

Community	Community map repository address
Borough of Elizabethtown	Borough Office, 600 South Hanover Street, Elizabethtown, PA 17022.
Borough of Ephrata	Borough Office, 124 South State Street, Ephrata, PA 17522.
Borough of Lititz	Borough Office, 7 South Broad Street, Lititz, PA 17543.
Borough of Manheim	Borough Office, 15 East High Street, Manheim, PA 17545.
Borough of Marietta	Borough Office, 111 East Market Street, Marietta, PA 17547.
Borough of Millersville	Borough Office, 100 Municipal Drive, Millersville, PA 17551.
Borough of Mount Joy	Borough Office, 21 East Main Street, Mount Joy, PA 17552.
Borough of Mountville	Borough Office, 21 East Main Street, Mountville, PA 17554.
Borough of Quarryville	Borough Office, 300 Saint Catherine Street, Quarryville, PA 17566.
Borough of Strasburg	Borough Office, 145 Precision Avenue, Strasburg, PA 17579.
City of Lancaster	Lancaster Municipal Building, 120 North Duke Street, Lancaster, PA 17608.
Township of Bart	Bart Township Office, 46 Quarry Road, Quarryville, PA 17566.
Township of Brecknock	Brecknock Township Office, 1026 Dry Tavern Road, Denver, PA 17517.
Township of Caernarvon	Caernarvon Township Office, 2147 Main Street, Narvon, PA 17555.
Township of Clay	Clay Township Office, 870 Durlach Road, Stevens, PA 17578.
Township of Colerain	Colerain Township Office, 1803 Kirkwood Pike, Kirkwood, PA 17536.
Township of Conestoga	Township Municipal Building, 3959 Main Street, Conestoga, PA 17516.
Township of Conoy	Conoy Township Office, 211 Falmouth Road, Bainbridge, PA 17502.
Township of Drumore	Township Office, 1675 Furniss Road, Drumore, PA 17518.
Township of Earl	Earl Township Office, 517 North Railroad Avenue, New Holland, PA 17557.
Township of East Cocalico	East Cocalico Township Office, 100 Hill Road, Denver, PA 17517.
Township of East Donegal	East Donegal Municipal Building, 190 Rock Point Road, Marietta, PA 17547.
Township of East Drumore	East Drumore Township Municipal Building, 925 Robert Fulton Highway, Quarryville, PA 17566.
Township of East Earl	Municipal Building, 4610 Division Highway, East Earl, PA 17519.
Township of East Hempfield	East Hempfield Township Office, 1700 Nissley Road, Landisville, PA 17538.
Township of East Lampeter	East Lampeter Township Office, 2250 Old Philadelphia Pike, Lancaster, PA 17602.
Township of Eden	Eden Township Office, 489 Stony Hill Road, Quarryville, PA 17566.
Township of Elizabeth	Elizabeth Township Office, 423 South View Drive, Lititz, PA 17543.
Township of Ephrata	Township Office, 265 Akron Road, Ephrata, PA 17522.
Township of Fulton	Fulton Municipal Building, 777 Nottingham Road, Peach Bottom, PA 17563.
Township of Lancaster	Township Municipal Building, 1240 Maple Avenue, Lancaster, PA 17603.
Township of Leacock	Leacock Township Office, 3545 West Newport Road, Intercourse, PA 17534.
Township of Little Britain	Little Britain Municipal Building, 323 Green Lane, Quarryville, PA 17566.
Township of Manheim	Manheim Township Office, 1840 Municipal Drive, Lancaster, PA 17601.
Township of Manor	Manor Township Office, 950 West Fairway Drive, Lancaster, PA 17603.
Township of Martic	Martic Municipal Building, 370 Steinman Farm Road, Pequea, PA 17565.
Township of Mount Joy	Mount Joy Township Office, 159 Merts Drive, Elizabethtown, PA 17022.
Township of Paradise	Township Office, 2 Township Drive, Paradise, PA 17562.
Township of Penn	Penn Township Office, 97 North Penryn Road, Manheim, PA 17545.
Township of Pequea	Pequea Township Office, 1028 Millwood Road, Willow Street, PA 17584.
Township of Providence	Providence Township Office, 200 Mount Airy Road, New Providence, PA 17560.
Township of Rapho	Rapho Township Office, 971 North Colebrook Road, Manheim, PA 17545.
Township of Sadsbury	Sadsbury Township Office, 7182 White Oak Road, Christiana, PA 17509.
Township of Salisbury	Salisbury Township Office, 5581 Old Philadelphia Pike, Gap, PA 17527.
Township of Strasburg	Township Office, 400 Bunker Hill Road, Strasburg, PA 17579.
Township of Upper Leacock	Upper Leacock Township Office, 36 Hillcrest Avenue, Leola, PA 17540.
Township of Warwick	Warwick Township Office, 315 Clay Road, Lititz, PA 17543.
Township of West Cocalico	West Cocalico Township Office, 156B West Main Street, Reinholds, PA 17569.
Township of West Donegal	West Donegal Township Office, 1 Municipal Drive, Elizabethtown, PA 17022.
Township of West Earl	West Earl Township Office, 157 West Metzler Road, Brownstown, PA 17508.

LOWER SUSQUEHANNA WATERSHED—Continued

Community	Community map repository address
Township of West Hempfield	West Hempfield Township Office, 3401 Marietta Avenue, Lancaster, PA 17601.
Township of West Lampeter	West Lampeter Township Office, 852 Village Road, Lampeter, PA 17537.
York County, Pennsylvania (All Jurisdictions)	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Borough of Cross Roads	Cross Roads Borough Secretary's Office, 14771 Cross Mill Road, Felton, PA 17322.
Borough of Delta	Borough Office, 101 College Avenue, Delta, PA 17314.
Borough of Dillsburg	Municipal Building, 151 South Baltimore Street, Dillsburg, PA 17019.
Borough of Dover	Borough Hall, 46 Butter Road, Dover, PA 17315.
Borough of Fawn Grove	Citizens Volunteer Fire Company, 171 South Market Street, Fawn Grove, PA 17321.
Borough of Felton	Borough Office, 88 Main Street, Felton, PA 17322.
Borough of Glen Rock	Borough Building, 1 Manchester Street, Glen Rock, PA 17327.
Borough of Goldsboro	Goldsboro Municipal Building, 53 North York Street, Etters, PA 17319.
Borough of Hallam	Borough Building, 250 West Beaver Street, Hallam, PA 17406.
Borough of Hanover	Borough Office, 44 Frederick Street, Hanover, PA 17331.
Borough of Jacobus	Borough Office, 126 North Cherry Lane, Jacobus, PA 17407.
Borough of Jefferson	Jefferson Borough Office, 48 Baltimore Street, Codorus, PA 17311.
Borough of Lewisberry	Borough Community Center, 308 Market Street, Lewisberry, PA 17339.
Borough of Manchester	Borough Hall, 225 South Main Street, Manchester, PA 17345.
Borough of Mount Wolf	Borough Office, 345 Chestnut Street, Mount Wolf, PA 17347.
Borough of New Freedom	Borough Office, 49 East High Street, New Freedom, PA 17349.
Borough of North York	North York Municipal Building, 350 East Sixth Avenue, York, PA 17404.
Borough of Railroad	Borough Office, 2 East Main Street, Railroad, PA 17355.
Borough of Seven Valleys	Borough Office, 9 Maple Street, Seven Valleys, PA 17360.
Borough of Spring Grove	Borough Office, 1 Campus Avenue, Spring Grove, PA 17362.
Borough of Wellsville	Borough Office, 299 Main Street, Wellsville, PA 17365.
Borough of Windsor	Borough Building, 2 East Main Street, Windsor, PA 17366.
Borough of Wrightsville	Municipal Office, 601 Water Street, Wrightsville, PA 17368.
Borough of Yoe	Borough Building, 150 North Maple Street, Yoe, PA 17313.
Borough of York Haven	Borough Hall, 2 Pennsylvania Avenue, Storage Room, York Haven, PA 17370.
City of York	Department of Public Works, 101 South George Street, York, PA 17401.
Township of Carroll	Carroll Township Municipal Building, 555 Chestnut Grove Road, Dillsburg, PA 17019.
Township of Chanceford	Chanceford Community Building, 51 Muddy Creek Forks Road, Brogue, PA 17309.
Township of Codorus	Codorus Township Building, 4631 Shaffers Church Road, Glenville, PA 17329.
Township of Conewago	Conewago Township Secretary's Office, 490 Copenhaffer Road, York, PA 17404.
Township of Dover	Township Building, 2480 West Canal Road, Dover, PA 17315.
Township of East Hopewell	East Hopewell Township Office, 8916 Hickory Road, Felton, PA 17322.
Township of East Manchester	East Manchester Township Office, 5080 North Sherman Street Extension, Mount Wolf, PA 17347.
Township of Fairview	Fairview Township Building, 599 Lewisberry Road, New Cumberland, PA 17070.
Township of Fawn	Fawn Township Office, 245 Alum Rock Road, New Park, PA 17352.
Township of Franklin	Franklin Township Building, 150 Century Lane, Dillsburg, PA 17019.
Township of Heidelberg	Heidelberg Township Building, 6424 York Road, Spring Grove, PA 17362.
Township of Hellam	Hellam Township Office, 44 Walnut Springs Road, York, PA 17406.
Township of Hopewell	Hopewell Township Building, 3336 Bridgeview Road, Stewartstown, PA 17363.
Township of Jackson	Jackson Township Municipal Building, 439 Roth's Church Road, Spring Grove, PA 17362.
Township of Lower Chanceford	Lower Chanceford Township Building, 4120 Delta Road, Airville, PA 17302.
Township of Lower Windsor	Lower Windsor Township Building, 2425 Craley Road, Wrightsville, PA 17368.
Township of Manchester	Manchester Township Building, 3200 Farmtrail Road, York, PA 17406.
Township of Manheim	Manheim Township Building, 5191 Wool Mill Road, Glenville, PA 17329.
Township of Monaghan	Monaghan Township Municipal Office, 202 South York Road, Dillsburg, PA 17019.

LOWER SUSQUEHANNA WATERSHED—Continued

Community	Community map repository address
Township of Newberry	Newberry Township Building, 1915 Old Trail Road, Etters, PA 17319.
Township of North Codorus	North Codorus Township Municipal Building, 1986 Stoverstown Road, Spring Grove, PA 17362.
Township of North Hopewell	North Hopewell Township Building, 13081 High Point Road, Felton, PA 17322.
Township of Paradise	Paradise Township Municipal Building, 82 Beaver Creek Road, Abbottstown, PA 17301.
Township of Peach Bottom	Peach Bottom Township Office, 529 Broad Street Extension, Delta, PA 17314.
Township of Penn	Penn Township Municipal Building, 20 Wayne Avenue, Hanover, PA 17331.
Township of Shrewsbury	Shrewsbury Township Municipal Building, 11505 Susquehanna Trail South, Glen Rock, PA 17327.
Township of Spring Garden	Spring Garden Township Zoning Office, 558 South Ogontz Street, York, PA 17403.
Township of Springettsbury	Springettsbury Township Community Development Department, 1501 Mount Zion Road, York, PA 17402.
Township of Springfield	Springfield Township Administrative Building, 9211 Susquehanna Trail South, Seven Valleys, PA 17360.
Township of Warrington	Warrington Township Municipal Builing, 3345 Rosstown Road, Wellsville, PA 17365.
Township of Washington	Washington Township Municipal Building, 14 Creek Road, East Berlin, PA 17316.
Township of West Manchester	West Manchester Township Building, 380 East Berlin Road, York, PA 17408.
Township of West Manheim	West Manheim Township Office, 2412 Baltimore Pike, Hanover, PA 17331.
Township of Windsor	Windsor Township Municipal Office, 1480 Windsor Road, Red Lion, PA 17356.
Township of York	York Township Complex, Engineering Department, 190 Oak Road, Dallastown, PA 17313.

II. Non-Watershed-Based Studies

Community	Community map repository address
Delaware County, New York (All Jurisdictions)	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Town of Andes	Town Hall, 115 Delaware Avenue, Andes, NY 13731.
Town of Bovina	Bovina Town Clerk's Office, 1866 County Highway 6, Bovina Center, NY 13740.
Town of Colchester	Colchester Town Hall, 72 Tannery Road, Downsville, NY 13755.
Town of Delhi	Town Clerk's Office, 5 Elm Street, Delhi, NY 13753.
Town of Franklin	Town Hall, 554 Main Street, Franklin, NY 13775.
Town of Hamden	Town Hall, Corner of Route 10 and Covert Hollow Road, Hamden, NY 13782.
Town of Harpersfield	Town Hall, 25399 State Highway 23, Harpersfield, NY 13786.
Town of Kortright	Kortright Town Hall, 51702 State Highway 10, Bloomville, NY 13739.
Town of Meredith	Town Hall, 4247 Turnpike Road, Meredith, NY 13806.
Town of Middletown	Middletown Building and Zoning Office, 42339 State Highway 28, Margaretville, NY 12455.
Town of Roxbury	Town Hall, 53690 State Highway 30, Roxbury, NY 12474
Town of Stamford	Stamford Town Hall, 101 Maple Avenue, Hobart, NY 13788..
Town of Tompkins	Tompkins Town Hall, 148 Bridge Street, Trout Creek, NY 13847.
Town of Walton	Town Hall, 129 North Street, Walton, NY 13856.
Village of Delhi	Village Hall, 9 Court Street, Delhi, NY 13753.
Village of Fleischmanns	Village Hall, 1017 Main Street, Fleischmanns, NY 12430.
Village of Hobart	Community Center, 80 Cornell Avenue, Hobart, NY 13788.
Village of Margaretville	Village Hall, 773 Main Street, Margaretville, NY 12455.
Village of Stamford	Village Hall, 84 Main Street, Stamford, NY 12167.
Village of Walton	Village Hall, 21 North Street, Walton, NY 13856.
Rensselaer County, New York (All Jurisdictions)	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Town of Hoosick	Hoosick Town Building Department, New York State Armory, 80 Church Street, Hoosick Falls, NY 12090.

Community	Community map repository address
Town of Pittstown	Pittstown Town Hall, 97 Tomhannock Road, Valley Falls, NY 12185.
Town of Schaghticoke	Schaghticoke Town Hall, 290 Northline Drive, Melrose, NY 12121.
Village of Hoosick Falls	Municipal Building, 24 Main Street, Hoosick Falls, NY 12090.
Village of Schaghticoke	Municipal Building, 163 Main Street, Schaghticoke, NY 12154.
Village of Valley Falls	Village Office, 11 Charles Street, Valley Falls, NY 12185.
Delaware County, Pennsylvania (All Jurisdictions)	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Borough of Eddystone	Eddystone Borough Engineering Office, 520 West MacDade Boulevard, Milmont Park, PA 19033.
Borough of Folcroft	Borough Hall, 1555 Elmwood Avenue, Folcroft, PA 19032.
Borough of Marcus Hook	Municipal Building, 1015 Green Street, Marcus Hook, PA 19061.
Borough of Norwood	Borough Hall, 10 West Cleveland Avenue, Norwood, PA 19074.
Borough of Prospect Park	Borough Building, 720 Maryland Avenue, Prospect Park, PA 19076.
Borough of Trainer	Borough Hall, 824 Main Street, Trainer, PA 19061.
City of Chester	Planning Department, 1 Fourth Street, Chester, PA 19013.
Township of Ridley	Ridley Township Office, 100 East MacDade Boulevard, Folsom, PA 19033.
Township of Tinicum	Tinicum Township Hall, 629 North Governor Printz Boulevard, Essington, PA 19029.
Bastrop County, Texas, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Unincorporated Areas of Bastrop County	Bastrop County Courthouse, 806 Water Street, Bastrop, TX 78602.
Travis County, Texas, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
City of Austin	Watershed Engineering Division, 505 Barton Springs Road, 12th Floor, Austin, TX 78704.
City of Creedmoor	City Hall, 5008 Hartung Lane, Creedmoor, TX 78610.
City of Mustang Ridge	City Offices, 12800 U.S. Highway 183 South, Mustang Ridge, TX 78610.
Unincorporated Areas of Travis County	Travis County Transportation and Natural Resources Department, 700 Lavaca Street, 5th Floor, Austin, TX 78701.
Wight County, Virginia, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Town of Smithfield	Planning, Engineering and Public Works Department, 310 Institute Street, Smithfield, VA 23430.
Unincorporated Areas of Isle of Wight County	Isle of Wight County Planning and Zoning Department, 17140 Monument Circle, Suite 201, Isle of Wight, VA 23397.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: June 26, 2014.

Roy E. Wright,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2014–16051 Filed 7–8–14; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Intertek USA, Inc., as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Intertek USA, Inc., as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that Intertek USA, Inc. has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next three years as of May 22, 2013.

DATES: *Effective Dates:* The accreditation and approval of Intertek USA, Inc., as commercial gauger and laboratory became effective on May 22, 2013. The next triennial inspection date will be scheduled for May 2016.

FOR FURTHER INFORMATION CONTACT: Approved Gauger and Accredited Laboratories Manager, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1331 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that Intertek USA, Inc., 109 Sutherland Drive, Chickasaw,

AL 36611, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Intertek USA, Inc. is approved for the following gauging procedures for petroleum and certain petroleum products per the American Petroleum Institute (API) Measurement Standards:

API chapters	Title
3	Tank gauging.
7	Temperature determination.
8	Sampling.
12	Calculations.
17	Maritime measurement.

Intertek USA, Inc. is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

CBPL No.	ASTM	Title
27–03	ASTM D 4006	Standard test method for water in crude oil by distillation.
27–04	ASTM D 95	Standard test method for water in petroleum products and bituminous materials by distillation.
27–06	ASTM D 473	Standard Test Method for Sediment in Crude Oils and Fuel Oils by the Extraction Method.
27–08	ASTM D 86	Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure.
27–11	ASTM D 445	Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (the Calculation of Dynamic Velocity).
27–13	ASTM D 4294	Standard test method for sulfur in petroleum and petroleum products by energy-dispersive x-ray fluorescence spectrometry.
27–46	ASTM D 5002	Standard test method for density and relative density of crude oils by digital density analyzer.
27–48	ASTM D 4052	Standard Test Method for Density and Relative Density of Liquids by Digital Density Meter.
27–50	ASTM D 93	Standard test methods for flash point by Pensky-Martens Closed Cup Tester.
27–53	ASTM D 2709	Standard Test Method for Water and Sediment in Middle Distillate Fuels by Centrifuge.
27–54	ASTM D 1796	Standard test method for water and sediment in fuel oils by the centrifuge method (Laboratory procedure).

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://www.cbp.gov/sites/default/files/documents/gaulist_3.pdf.*

Dated: June 17, 2014.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services Directorate.

[FR Doc. 2014–15977 Filed 7–8–14; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Intertek USA, Inc., as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Intertek USA, Inc., as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that Intertek USA, Inc. has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next three years as of March 26, 2013.

DATES: *Effective Dates:* The accreditation and approval of Intertek USA, Inc., as commercial gauger and laboratory became effective on March 26, 2013. The next triennial inspection date will be scheduled for March 2016.

FOR FURTHER INFORMATION CONTACT: Approved Gauger and Accredited Laboratories Manager, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1331 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that Intertek USA, Inc., 1211 Belgrove Dr., St. Louis, MO 63137, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Intertek USA, Inc. is approved for the following gauging procedures for petroleum and certain petroleum products per the American Petroleum Institute (API) Measurement Standards:

API chapters	Title
3	Tank gauging
7	Temperature determination
8	Sampling
12	Calculations
17	Maritime measurement

Intertek USA, Inc. is accredited for the following laboratory analysis

procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

CBPL no.	ASTM	Title
27–03	ASTM D 4006	Standard test method for water in crude oil by distillation.
27–04	ASTM D 95	Standard test method for water in petroleum products and bituminous materials by distillation
27–05	ASTM D 4928	Standard test method for water in crude oils by Coulometric Karl Fischer Titration
27–06	ASTM D 473	Standard Test Method for Sediment in Crude Oils and Fuel Oils by the Extraction Method
27–08	ASTM D 86	Standard Test Method for Distillation of Petroleum Products at Atmoshpheric Pressure
27–11	ASTM D 445	Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (and Calculation of Dynamic Velocity)
27–13	ASTM D 4294	Standard test method for sulfur in petroleum and petroleum products by energy-dispersive x-ray fluorescence spectrometry
27–46	ASTM D–5002	Standard test method for density and relative density of crude oils by digital density analyzer.
27–48	ASTM D 4052	Standard Test Method for Density and Relative Density of Liquids by Digital Density Meter
27–50	ASTM D–93	Standard test methods for flash point by Pensky-Martens Closed Cup Tester
27–53	ASTM D 2709	Standard Test Method for Water and Sediment in Middle Distillate Fuels by Centrifuge
27–54	ASTM D–1796	Standard test method for water and sediment in fuel oils by the centrifuge method (Laboratory procedure)
27–58	ASTM D 5191	Standard Test Method For Vapor Pressure of Petroleum Products (Mini Method)

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://www.cbp.gov/sites/default/files/documents/gaulist_3.pdf*

Dated: June 17, 2014.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services Directorate.

[FR Doc. 2014–15975 Filed 7–8–14; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Intertek USA, Inc., as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Intertek USA, Inc., as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that Intertek USA, Inc. has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next three years as of June 11, 2013.

DATES: *Effective Dates:* The accreditation and approval of Intertek USA, Inc., as commercial gauger and laboratory became effective on June 11, 2013. The next triennial inspection date will be scheduled for June 2016.

FOR FURTHER INFORMATION CONTACT: Approved Gauger and Accredited Laboratories Manager, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1331 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that Intertek USA, Inc., 105 Merchant Lane, Pittsburgh, PA 15205, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Intertek USA, Inc. is approved for the following gauging procedures for petroleum and certain petroleum products per the American Petroleum Institute (API) Measurement Standards:

API chapters	Title
3	Tank gauging.
7	Temperature determination.
8	Sampling.
9	Density Determination.
12	Calculations.
17	Maritime measurement.

Intertek USA, Inc. is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

CBPL No.	ASTM	Title
27–04	ASTM D 95	Standard test method for water in petroleum products and bituminous materials by distillation.
27–06	ASTM D 473	Standard Test Method for Sediment in Crude Oils and Fuel Oils by the Extraction Method.
27–08	ASTM D 86	Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure.
27–11	ASTM D 445	Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (the Calculation of Dynamic Velocity).
27–13	ASTM D 4294	Standard test method for sulfur in petroleum and petroleum products by energy-dispersive x-ray fluorescence spectrometry.
27–48	ASTM D 4052	Standard Test Method for Density and Relative Density of Liquids by Digital Density Meter.
27–54	ASTM D–1796	Standard test method for water and sediment in fuel oils by the centrifuge method (Laboratory procedure).
27–58	ASTM D 5191	Standard Test Method For Vapor Pressure of Petroleum Products (Mini Method).

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://www.cbp.gov/sites/default/files/documents/gaulist_3.pdf.*

Dated: June 17, 2014.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services Directorate.

[FR Doc. 2014–15976 Filed 7–8–14; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Intertek USA, Inc., as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Intertek USA, Inc., as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that Intertek USA, Inc. has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next three years as of August 29, 2013.

DATES: *Effective Dates:* The accreditation and approval of Intertek USA, Inc., as commercial gauger and laboratory became effective on August 29, 2013. The next triennial inspection date will be scheduled for August 2016.

FOR FURTHER INFORMATION CONTACT: Approved Gauger and Accredited Laboratories Manager, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1331 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that Intertek USA, Inc., 481–A East Shore Parkway, New Haven, CT 06512, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Intertek USA, Inc. is approved for the following gauging procedures for petroleum and certain petroleum products per the American Petroleum Institute (API) Measurement Standards:

API chapters	Title
3	Tank gauging.
7	Temperature determination.
8	Sampling.
12	Calculations.
17	Maritime measurement.

Intertek USA, Inc. is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

CBPL No.	ASTM	Title
27–04	ASTM D 95	Standard test method for water in petroleum products and bituminous materials by distillation.
27–06	ASTM D 473	Standard Test Method for Sediment in Crude Oils and Fuel Oils by the Extraction Method.
27–08	ASTM D 86	Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure.
27–13	ASTM D 4294	Standard test method for sulfur in petroleum and petroleum products by energy-dispersive x-ray fluorescence spectrometry.
27–14	ASTM D 2622	Standard Test Method for Sulfur in Petroleum Products (X-Ray Spectrographic Methods).
27–48	ASTM D 4052	Standard Test Method for Density and Relative Density of Liquids by Digital Density Meter.

CBPL No.	ASTM	Title
27–50	ASTM D 93	Standard test methods for flash point by Pensky-Martens Closed Cup Tester.
27–54	ASTM D 1796	Standard test method for water and sediment in fuel oils by the centrifuge method (Laboratory procedure).
27–57	ASTM D 7039	Standard Test Method for Sulfur in Gasoline and Diesel Fuel by Monochromatic Wavelength Dispersive X-Ray Fluorescence Spectrometry.
27–58	ASTM D 5191	Standard Test Method for Vapor Pressure of Petroleum Products (Mini Method).
N/A	ASTM D 1319	Standard Test Method for Hydrocarbon Types in Liquid Petroleum Products by Fluorescent Indicator Adsorption.
N/A	ASTM D 4815	Standard Test Method for Determination of MTBE, ETBE, TAME, DIPE, tertiary-Amyl Alcohol and C1 to C4 Alcohols in Gasoline by Gas Chromatography.
N/A	ASTM D 5453	Standard Test Method for Determination of Total Sulfur in Light Hydrocarbons, Spark Ignition Engine Fuel, Diesel Engine Fuel, and Engine Oil by Ultraviolet Fluorescence.
N/A	ASTM D 7042	Standard Test Method for Dynamic Viscosity and Density of Liquids by Stabinger Viscometer (and the Calculation of Kinematic Viscosity).
N/A	ASTM D 5599	Standard Test Method for Determination of Oxygenates in Gasoline by Gas Chromatography and Oxygen Selective Flame Ionization Detection.

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.*

Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://www.cbp.gov/sites/default/files/documents/gaulist_3.pdf.*

Dated: June 30, 2014.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services Directorate.

[FR Doc. 2014–16011 Filed 7–8–14; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Notice of Issuance of Final Determination Concerning Catheter Trays

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of final determination.

SUMMARY: This document provides notice that U.S. Customs and Border Protection (CBP) has issued a final determination concerning the country of origin of certain Foley catheter trays to be offered to the U.S. Government under an undesignated government procurement contract. The final determination found that based upon the facts presented, the country of origin of the subject trays is China and U.S.A.

DATES: The final determination was issued on June 30, 2014. A copy of the final determination is attached. Any party-at-interest as defined in 19 CFR 177.22(d), may seek judicial review of this final determination within 30 days of July 9, 2014.

FOR FURTHER INFORMATION CONTACT: Fernando Peña, Esq., Valuation and Special Programs Branch, Office of International Trade; telephone (202) 325–1511.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on June 30, 2014, pursuant to subpart B of part 177, Customs Regulations (19 CFR part 177, subpart B), CBP issued a final determination concerning the country of origin of certain Foley catheter trays to be offered to the U.S. Government under an undesignated government procurement contract. The final determination, Headquarters Ruling Letter H230416, was issued at the request of Medline Industries, Inc., under procedures set forth at 19 CFR part 177, subpart B, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511–18).

In the final determination, CBP concluded that, based upon the facts presented, the processing in Mexico of several medical instruments and accessories to create the subject ''Foley catheter trays'' does not constitute a substantial transformation into a product of Mexico for purposes of U.S. government procurement.

Section 177.29, Customs Regulations (19 CFR 177.29), provides that notice of final determinations shall be published in the **Federal Register** within 60 days of the date the final determination is issued. Section 177.30, Customs Regulations (19 CFR 177.30), provides that any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of a final determination within 30 days of publication of such determination in the **Federal Register**.

Dated: June 30, 2014.

Sandra L. Bell,

Executive Director, Regulations and Rulings, Office of International Trade.

Attachment

HQ H230416

June 30, 2014

OT:RR:CTF:VS H230416 FP

CATEGORY: Marking

Mr. Michael T. Shor
Arnold & Porter, LLP
555 12th Street, NW
Washington, DC 20004

RE: U.S. Government Procurement; Final Determination; Country of origin of catheter system trays; substantial transformation; 19 CFR Part 177

Dear Mr. Shor:

This is in response to your letter on behalf of Medline Industries, Inc. (hereinafter ''Medline''), in which you seek a final determination pursuant to subpart B of Part 177, Customs Regulations, 19 CFR 177.21 *et seq.* Under these regulations, which implement Title III of the Trade Agreements Act of 1979, as amended, (19 U.S.C. § 2411 *et seq.*), U.S. Customs and Border Protection (''CBP'') issues country of origin advisory rulings and final determinations on whether an article is or would be a product of a designated foreign country or instrumentality for the purpose of granting waivers of certain ''Buy American'' restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

This final determination concerns the country of origin of six models of Foley catheter trays, which Medline is considering

selling to the U.S. Government in an unspecified procurement tender. We note that Medline is a party-at-interest within the meaning of 19 CFR 177.22(d)(1) and is entitled to request this final determination.

Facts:

According to your submission and information provided, Medline developed its Foley catheter trays (hereinafter ''trays'') to aid in the prevention of catheter-associated urinary tract infections. Medline designed sterilized, single-use trays containing a catheter and all of the equipment necessary to insert the catheter, organized and sequenced in a way to minimize the possibility of infection. You state that each tray is intended to be used only as an entirety, for single use, after which use the individual components, other than the inserted catheter that remains in the patient, are discarded.

You state that Medline manufactures six different models of the tray, which differ principally in the materials used for the catheter. The main model sold is the silicone-elastomer coated latex Foley catheter tray. Medline also produces two latex-free models, including a 100% silicone model, and a silicone catheter with silver ions bound in the catheter's coating. Each of these three types comes in two sizes, 16Fr and 18Fr, using the industry standard French units (FR), where 1 Fr is equivalent to 0.33 mm of diameter. You state that the six tray models are otherwise similar.

With your correspondence, you provided a representative sample of the latex Foley model, together with a detailed description and a list of medical instruments and accessories (materials and components) placed into the tray. These include patient drapes, hand sanitizer, sterile gloves, a syringe prefilled with sterile water to inflate the catheter balloon, lubricating jelly, iodine swabsticks, a syringe to draw a urine sample, securement devices, and a specimen jar. In the sample, these instruments are arranged in a plastic tray, which contains indentations to hold items or group of items.

The medical instruments and accessories are sourced from China and the U.S., and imported into Mexico, where they are placed into trays, packaged, and boxed at Medline's facility in Nuevo Laredo, Mexico. Specifically for the latex Foley catheter tray, the specimen container, catheter Foley silver, gloves, and drainage bag are manufactured in China. The remaining materials are of U.S. origin.

The catheter is sourced in varying countries depending on the model. The silicone and latex catheters (as in the submitted sample of the latex Foley catheter tray) are manufactured in China. Silvertouch catheters are manufactured in India or Canada. For all models, the catheter and drainage bag are packaged together in Mexico, together with all of the medical instruments and materials needed to insert and secure the catheter, including materials to create a sterile field. The accessories of the other models and their origin were not provided.

You claim that all of the instruments and materials in the tray are intended to be used in conjunction with the insertion of the catheter, in a specific sequence, and only for one use, and thus function together as a single medical device. After their initial use, all of the included instruments and materials, as well as the instructions and plastic tray, are discarded and have no alternative use.

According to Medline the tray components are delivered to a clean room and put together by a designated line of approximately 15 specially trained technicians. The catheter is attached to the drain bag in a way that creates a closed urological system that minimizes contamination when the catheter is used on the patient. By connecting the catheter to the drain bag in Medline's sterile environment, instead of having a nurse connect the two in a hospital room environment, the risk of bacterial contamination and patient infection is minimized.

You claim that attaching the drain bag is a fundamental characteristic of a Foley catheter system, and that the design of the tray transforms the components into an assembly which promotes proper insertion of the Foley catheter, thereby minimizing patient risk. After packaging, Medline performs a quality inspection prior to wrapping, sealing and packaging operations in Mexico, before sending the finished trays for medical sterilization in the United States.

Issue:

Whether Medline's Foley catheter system management trays are considered to be products of Mexico for purposes of U.S. Government procurement.

Law and Analysis:

Under subpart B of part 177, 19 CFR 177.21 *et seq.,* which implements Title III of the Trade Agreements Act of 1979, as amended (''TAA''; 19 U.S.C. 2511 *et seq.*), CBP issues country of origin advisory rulings and final determinations on whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain ''Buy American'' restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

Under the rule of origin set forth under 19 U.S.C. 2518(4)(B):

An article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

See also, 19 CFR 177.22(a).

In rendering advisory rulings and final determinations for purposes of U.S. Government procurement, CBP applies the provisions of subpart B of Part 177 consistent with the Federal Procurement Regulations. *See* 19 CFR 177.21. In this regard, CBP recognizes that the Federal Procurement Regulations restrict the U.S. Government's purchase of products to U.S.-made or designated country end products for acquisitions subject to the TAA. *See* 48 CFR 25.403(c)(1).

In determining whether the combining of parts or materials constitutes a substantial transformation, the determinative issue is the extent of operations performed and whether the parts lose their identity and become an integral part of the new article. *Belcrest Linens* v. *Unites States,* 573 F. Supp. 1149 (CIT 1983), *aff'd,* 741 F.2d 1368 (Fed. Cir. 1984). CBP considers the totality of the circumstances and makes such decisions on a case-by-case basis. The country of origin of the article's components, extent of the processing that occurs within a given country, and whether such processing renders a product with a new name, character, or use are primary considerations in such cases. Additionally, facts such as resources expended on product design and development, extent and nature of post-assembly inspection procedures, and worker skill required during the actual manufacturing process will be considered when analyzing whether a substantial transformation has occurred; however, no one such factor is determinative.

In Headquarters Ruling Letter (HRL) 555268 dated March 6, 1991, Customs considered the eligibility for preferential tariff treatment under the Generalized System of Preferences to ''Code 6000 Infection Control Systems.'' Similar to the articles under consideration, the Code 6000 catherization tray contained the following items packaged together: Latex catheter, ''Mono-Flo'' drainage bag, lubricating jelly, latex gloves, fenestrated drape, underpad prefold, urine specimen vial, forceps, applicator rayon balls, prefilled 10 cubic centimeter syringe, a tamper band, and a package of povidone iodine solution. The tray contained sections and indentations for individual items. The paper cover of the tray, which was designed to be peeled off, listed the contents and the directions for use. Customs determined that the catheter of Malaysian origin imparted the essential character to the set and, therefore, the Code 6000 combination package was classified in subheading 9018.39.00, HTSUS. As in this case, with respect to the Code 6000 combination package, certain items in the set were imported into Mexico from the U.S. or other sources and merely packaged together with items of Mexican origin. Customs held that merely packaging the items originating outside of Mexico with items of Mexican origin clearly did not result in a substantial transformation of the non-Mexican items into ''products of'' that country. Therefore, because the entire imported entity (the set) was not the ''product of'' Mexico, as required by the GSP statute, neither the set nor any part thereof would be entitled to duty-free treatment under the GSP. As to the U.S. items in the set, it was determined that they were eligible for duty-free treatment under subheading 9801.00.10, HTSUS.

Accordingly, it is our conclusion that the operations carried out by Medline in Mexico on the imported components do not result in a substantial transformation of the items into a product of Mexico. Therefore, the origin of each item in the set will be where it was originally manufactured. Considering the sample of the latex Foley catheter tray, the specimen container, catheter foley silver,

gloves, and drain bags will remain of Chinese origin. Therefore, the finished latex Foley catheter trays will be considered a product of China and U.S.A. for purposes of U.S. Government procurement. The other five tray models will follow a similar result, but as indicated only the origin of the particular catheter was provided (India or Canada for the Silvertouch model) and the origin of the accessories was not submitted.

Holding:

On the basis of the information provided, we find that the operations in Mexico do not constitute a substantial transformation of the components in Medline's latex Foley catheter system management trays. Therefore, the country of origin of Medline's Foley catheter system management trays is China and the U.S. where the items were originally manufactured for purposes of U.S. Government procurement. The other five tray models will follow a similar result, and their country of origin will be where the items of those models were originally manufactured (India, Canada, or the U.S. as the case may be), but specific origin details were not provided for our consideration.

Notice of this final determination will be given in the **Federal Register** as required by 19 CFR 177.29. Any party-at-interest other than the party which requested this final determination may request, pursuant to 19 CFR 177.31, that CBP reexamine the matter anew and issue a new final determination. Any party-at-interest may, within 30 days after publication of the **Federal Register** notice referenced above, seek judicial review of this final determination before the Court of International Trade.

Sincerely,

Sandra L. Bell,

Executive Director, Regulations and Rulings, Office of International Trade.

[FR Doc. 2014–15978 Filed 7–8–14; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLOR957000–L63100000–HD0000–14XL1116AF: HAG14–0155]

Filing of Plats of Survey: Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Bureau of Land Management, Oregon State Office, Portland, Oregon, 30 days from the date of this publication.

Willamette Meridian

Oregon

T. 7 S., R. 3 E., accepted June 10, 2014
T. 38 S., R. 2 E., accepted June 10, 2014
T. 5 N., R. 44 E., accepted June 20, 2014
T. 2 S., R. 44 E., accepted June 20, 2014
T. 29 S., R. 9 W., accepted June 26, 2014

Washington

T. 15 N., R. 7 E., accepted June 20, 2014

ADDRESSES: A copy of the plats may be obtained from the Public Room at the Bureau of Land Management, Oregon State Office, 1220 SW., 3rd Avenue, Portland, Oregon 97204, upon required payment.

FOR FURTHER INFORMATION CONTACT: Kyle Hensley, (503) 808–6132, Branch of Geographic Sciences, Bureau of Land Management, 1220 SW., 3rd Avenue, Portland, Oregon 97204. 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: A person or party who wishes to protest against this survey must file a written notice with the Oregon State Director, Bureau of Land Management, stating that they wish to protest. A statement of reasons for a protest may be filed with the notice of protest and must be filed with the Oregon State Director within thirty days after the protest is filed. If a protest against the survey is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed or otherwise resolved.

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.

Mary J. M. Hartel,

Chief Cadastral Surveyor of Oregon/Washington.

[FR Doc. 2014–15984 Filed 7–8–14; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[14XL.LLID9570000.L14200000.BJ0000.241A.4500066542]

Idaho: Filing of Plats of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Filing of Plats of Surveys.

SUMMARY: The Bureau of Land Management (BLM) has officially filed the plats of survey of the lands described below in the BLM Idaho State Office, Boise, Idaho, effective 9:00 a.m., on the dates specified.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 1387 South Vinnell Way, Boise, Idaho, 83709–1657.

SUPPLEMENTARY INFORMATION: These surveys were executed at the request of the Bureau of Land Management to meet their administrative needs. The lands surveyed are:

The plat representing the dependent resurvey of a portion of the subdivisional lines, Township 19 North, Range 2 East, of the Boise Meridian, Idaho, Group Number 1390, was accepted April 25, 2014.

The plats representing the dependent resurvey of a portion of the township boundary between Townships 9 and 10 North, the subdivisional lines, and subdivision of certain sections, in Township 9 North, Range 17 East and Townships 9 and 10 North, Range 18 East, of the Boise Meridian, Idaho, Group Number 1386, were accepted June 3, 2014.

The plat representing the dependent resurvey of portions of the south and east boundaries, and subdivisional lines, and the metes-and-bounds surveys of Tracts 37 and 38, Township 50 North, Range 3 West, of the Boise Meridian, Idaho, Group Number 1371, was accepted June 25, 2014.

The plat representing the dependent resurvey of portions of the north boundary and subdivisional lines, and a metes-and-bounds survey in section 5, Township 31 North, Range 1 East, of the Boise Meridian, Idaho, Group Number 1379, was accepted June 25, 2014.

This survey was executed at the request of the Department of Defense to meet their administrative needs. The lands surveyed are:

The plat representing the dependent resurvey of a portion of the township boundary between Townships 4 and 5 South, the subdivisional lines and subdivision of sections, and a metes-and-bounds survey, in Townships 4 and

5 South, Range 5 East, of the Boise Meridian, Idaho, Group Number 1373, was accepted May 20, 2014.

This survey was executed at the request of the Bureau of Indian Affairs to meet their administrative needs. The lands surveyed are:

The plat representing the dependent resurvey of portions of the west boundary, subdivisional lines, and subdivision of sections 8 and 34, and the subdivision of sections 19, 32, and 33, and the further subdivision of sections 8 and 34, Township 35 North, Range 2 West, of the Boise Meridian, Idaho, Group Number 1354, was accepted June 25, 2014.

This survey was executed at the request of the Natural Resources Conservation Service to meet their administrative needs. The lands surveyed are:

The plat represents the dependent resurvey of a portions of the east boundary and subdivisional lines, and the subdivision of section 12, and the metes-and-bounds survey of a portion of U.S.D.A. NRCS easements lands, NRCS Project No. 83021112019L2, Township 5 North, Range 25 East, of the Boise Meridian, Idaho, Group Number 1394, is accepted June 12, 2014.

These surveys were executed at the request of the U.S.D.A. Forest Service to meet their administrative needs. The lands surveyed are:

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM Idaho State Office, Boise, Idaho, 30 days from the date of publication in the **Federal Register**. This survey was executed at the request of the U.S. Forest Service to meet certain administrative and management purposes.

The plat representing the dependent resurvey of a portion of Tract 39, and the survey of portions of the east boundary and subdivisional lines, Township 30 North, Range 7 East, of the Boise Meridian, Idaho, Group Number 1324, was accepted June 19, 2014.

Dated: July 1, 2014.

Jeff A. Lee,

Acting Chief Cadastral Surveyor for Idaho.

[FR Doc. 2014–15999 Filed 7–8–14; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–EQD–SSD–16140; PPWONRADE2, PMP00EI05.YP0000]

Proposed Information Collection; Comment Request: Colorado River Total Value Survey

AGENCY: National Park Service, Interior.

ACTION: Notice and request for comments.

SUMMARY: We (National Park Service) will ask the Office of Management and Budget (OMB) to approve the Information Collection Request (ICR) described below. The National Park Service (NPS) is requesting approval for a new collection that will be used to provide information. This information collection will provide data for the economic analysis that may be used to evaluate future dam operation. To comply with the Paperwork Reduction Act of 1995 and as a part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to comment on this ICR. A Federal 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: To ensure that your comments on this ICR are considered, OMB must receive them on or before August 8, 2014.

ADDRESSES: Please submit written comments on this information collection directly to the Office of Management and Budget (OMB) Office of Information and Regulatory Affairs, Attention: Desk Officer for the Department of the Interior, via email to *OIRA_Submission@omb.eop.gov* or fax at 202–395–5806; and identify your submission as 1024–COLORIV. Please also send a copy of your comments to Bret Meldrum, Chief, Social Science Program, National Park Service, 1201 Oakridge Drive, Fort Collins, CO 80525–5596 (mail); *Bret_Meldrum@nps.gov* (email); or 970–267–7295 (phone) and Phadrea Ponds, Information Collection Coordinator, National Park Service, 1201 Oakridge Drive, Fort Collins, CO 80525 (mail); or *phadrea_ponds@nps.gov* (email). Please reference Information Collection 1024–COLORIV in the subject line.

FOR FURTHER INFORMATION CONTACT: Dr. John Duffield, University of Montana, Department of Mathematical Sciences, Missoula, MT 5981; *bioecon@montana.com* (email); or: 406–721–2265 (phone). You may also access this ICR at *www.reginfo.gov*.

I. Abstract

The National Park Service (NPS) Act of 1916, 38 Stat 535, 16 USC 1, et seq., requires that the NPS preserve national parks for the use and enjoyment of present and future generations. The proposed collection is needed to update the scientific information that was used in the 1996 Record of Decision that the Department of the Interior used to inform their decisions on Dam operations. This information will be used to assist in the development of an operating plan for the Glen Canyon Dam in accordance with the Grand Canyon Protection Act to protect and improve the values for which the Grand Canyon National Park and Glen Canyon National Recreation Area were established. This notice will cover the development and pretesting of the final survey instrument.

II. Data

OMB Control Number: None. This is a new collection.

Title: Colorado River Total Value Survey.

Type of Request: New.

Affected Public: General public; individual households.

Respondent Obligation: Voluntary.

Frequency of Collection: One time.

Estimated Number of Annual Responses: 2,140.

Estimated Annual Burden Hours: 1,042 hours.

Estimated Annual Reporting and Recordkeeping ''Non-Hour Cost'': None.

III. Request For Comments

On September 23, 2013, we published a **Federal Register** notice (78 FR 58344) announcing that we would submit this ICR to OMB for approval. Public comments were solicited for 60 days ending November 23, 2013. We received three requests to review the draft versions of the survey instruments. In response to the requests, we provided a summary of the study purpose and design and informed that additional materials would be available for review once the request is submitted to OMB.

We again invite comments concerning this information collection on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;
- Ways to enhance the quality, utility, and clarity of the information to be collected; and

• Ways to minimize the burden of the collection of information on respondents.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

Dated: July 2, 2014.

Madonna L. Baucum,

Information Collection Clearance Officer, National Park Service.

[FR Doc. 2014–15987 Filed 7–8–14; 8:45 am]

BILLING CODE 4310–EH–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–SERO–CANA–15562;PPSESEROC3, PPMPSAS1Y.YP0000]

Final Environmental Impact Statement for General Management Plan, Canaveral National Seashore, Florida

AGENCY: National Park Service, Interior.

ACTION: Notice of availability.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C), the National Park Service (NPS) announces the availability of the Final Environmental Impact Statement (FEIS) for the General Management Plan (GMP) for Canaveral National Seashore (Seashore). Consistent with NPS laws, regulations, and policies and the purpose of the Seashore, the FEIS/GMP will guide the management of the Seashore over the next 20+ years.

DATES: The NPS will execute a Record of Decision (ROD) no sooner than 30 days following publication by the Environmental Protection Agency of its Notice of Availability of the FEIS/GMP in the **Federal Register**.

ADDRESSES: Electronic copies of the FEIS/GMP will be available online at *http://parkplanning.nps.gov/CANA*. To request a copy, contact Superintendent Myrna Palfrey, Canaveral National Seashore, 212 S. Washington Avenue, Titusville, FL 32796. A limited number of compact disks and printed copies of the FEIS/GMP will be made available at the Canaveral National Seashore Headquarters, 212 S. Washington Avenue, Titusville, FL 32796.

SUPPLEMENTARY INFORMATION: The FEIS/GMP responds to, and incorporates, agency and public comments received on the draft EIS/GMP, which was available for public review from August 18, 2011, through October 31, 2011. Two public meetings were held during the public review period to gather input on the draft EIS/GMP. There were 26 pieces of correspondence received during the public review period. The NPS responses to substantive agency and public comments are provided in Chapter 5, Consultation and Coordination, of the FEIS/GMP.

The FEIS/GMP evaluates four alternatives for managing use and development of the Seashore:

• Alternative A is the No-Action Alternative and is the continuation of current management.

• The NPS preferred alternative is Alternative B. Under this alternative, emphasis would be placed on retaining the national seashore's relatively undeveloped character and providing uncrowded experiences by dispersing visitors via a shuttle service or canoe, kayak, hiking and walking trails, and bicycle trails. Elements of this alternative would support the resilience of the Seashore to climate change concerns, such as sea level rise, coastal erosion, and higher storm surges, all of which may affect cultural and natural resources as well as visitor experience at the Seashore.

• Under Alternative C the Seashore would be managed as a place where visitors would explore and experience a wide range of opportunities that would be designed to provide an in-depth understanding of the natural and cultural history of eastern coastal Florida. When visitors enter the Seashore, they would be presented with choices for alternative modes of access to land- and water-based natural and cultural features, appropriate recreational opportunities, and educational pursuits. Enhanced development related to recreational opportunities and educational pursuits would be pursued.

• Under Alternative D, the Seashore would be managed to focus on enhancing the existing lands, resources, and facilities. Limited facility development would provide more efficient NPS administration and operations and enhanced visitor amenities. Coordination with partners would be increased to provide additional educational opportunities and programs for visitors and enhanced monitoring of Mosquito Lagoon resources.

FOR FURTHER INFORMATION CONTACT: Superintendent Myrna Palfrey, Canaveral National Seashore, 212 S. Washington Avenue, Titusville, FL 32796; telephone (321) 267–1110.

The responsible official for this FEIS/GMP is the Regional Director, NPS Southeast Region, 100 Alabama Street SW., 1924 Building Atlanta, Georgia 30303.

Dated: June 17, 2014.

Sherri L. Fields,

Acting Regional Director, Southeast Region.

[FR Doc. 2014–16065 Filed 7–8–14; 8:45 am]

BILLING CODE 4310–JD–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Loom Kits for Creating Linked Articles, DN 3021* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing under section 210.8(b) of the Commission's Rules of Practice and Procedure (19 CFR 210.8(b)).

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at EDIS,[1], and 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 United States International Trade Commission (USITC) at USITC.[2] The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *EDIS*.[3]

[1] Electronic Document Information System (EDIS): *http://edis.usitc.gov*.

[2] United States International Trade Commission (USITC): *http://edis.usitc.gov*.

[3] Electronic Document Information System (EDIS): *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 has received a complaint and a submission pursuant to section 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Choon's Design Inc. on July 1, 2014. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain loom kits for creating linked articles. The complaint names as respondents Wangying of China; Island In The Sun LLC of Little Rock, AR; Quality Innovations Inc. of Irwindale, CA; Yiwu Mengwang Craft & Art Factory of China; Shenzhen Xuncent Technology Co., Ltd of China; Altatac Inc. of Los Angeles, CA; My Imports USA LLC of Edison, NJ; Jayfinn LLC of Gilbert, AZ; Creative Kidstuff, LLC of Minneapolis, MN; Hongkong Haoguan Plastic Hardware Co., of China; Blinkee.com, LLC of Fairfax, CA; Eyyup Arga of Lodi, NJ and Itcoolnomore of China. The complainant requests that the Commission issue a general exclusion order and cease and desist orders.

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or section 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number (''Docket No. 3021'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *Electronic Filing Procedures* [4]). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on *EDIS.* [5]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: July 2, 2014.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2014–15941 Filed 7–8–14; 8:45 am]

BILLING CODE 7020–02–P

[4] Handbook for Electronic Filing Procedures: *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf.*

[5] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

On July 2, 2014, the Department of Justice lodged a proposed consent decree with the United States District Court for the Western District of Virginia in a lawsuit entitled *United States* v. *Appalachian Power Company and Kingsport Power Company,* Civil Action No. 1:14–CV–00044.

The proposed Consent Decree will resolve claims alleged under the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA'') against the Appalachian Power Company and Kingsport Power Company for costs incurred in responding to releases and threatened releases of hazardous substances at the Twin Cities Iron and Metal Site (the ''Site'') located in Bristol, Virginia. Under the proposed Consent Decree, the Defendants will pay the United States $250,250 to resolve the United States' claims for past costs incurred at the Site.

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* v. *Appalachian Power Company and Kingsport Power Company,* D.J. Reference No. 90–11–3–10712. 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 proposed consent decree may be examined and downloaded at this Justice Department Web site: *http://www.justice.gov/enrd/Consent_Decrees.html.*

We will provide a paper copy of the proposed 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 $6.00 (25 cents per page reproduction costs) payable to the United States Treasury. For a paper copy without the exhibits and signature pages, the cost is $4.50.

Robert Brook,

Assistant Section Chief, Environmental Enforcement Section, Environment & Natural Resources Division.

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DEPARTMENT OF JUSTICE

Antitrust Division

United States, et al. v. Martin Marietta Materials, Inc., and Texas Industries, Inc.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America, et al.* v. *Martin Marietta Materials, Inc., and Texas Industries, Inc.,* Civil Action No. 1:14–cv–01079. On June 26, 2014, the United States and the State of Texas filed a Complaint alleging that the proposed acquisition by Martin Marietta Materials of the aggregate business assets of Texas Industries, Inc. would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed the same time as the Complaint, requires the defendants to divest the North Troy quarry in Mill Creek, Oklahoma; one rail yard in Dallas, Texas; and one rail yard in Frisco, Texas. All of these assets serve parts of the Dallas, Texas area.

Copies of the Complaint, proposed Final Judgment and Competitive Impact Statement are available for inspection at the Department of Justice, Antitrust Division, Antitrust Documents Group, 450 Fifth Street NW., Suite 1010, Washington, DC 20530 (telephone: 202–514–2481), on the Department of Justice's Web site at *http://www.usdoj.gov/atr*, and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, including the name of the submitter, and responses thereto, will be posted on the U.S. Department of Justice, Antitrust Division's internet Web site, filed with the Court and, under certain circumstances, published in the **Federal Register**. Comments should be directed to Maribeth Petrizzi, Chief, Litigation II Section, Antitrust Division, Department of Justice, 450 Fifth Street NW., Suite 8700, Washington, DC 20530 (telephone: 202–307–0924).

Patricia A. Brink,

Director of Civil Enforcement.

United States District Court for the District of Columbia

United States of America, United States Department of Justice, Antitrust Division, 450 Fifth Street NW., Suite 8700, Washington, DC 20530 and *State of Texas, Office of the Attorney General, Consumer Protection Division, Antitrust Section, 300 W. 15th Street, 7th Floor, Austin, TX 78701,* Plaintiffs, v. *Martin Marietta Materials, Inc., 2710 Wycliff Road, Raleigh, North Carolina 27607* and *Texas Industries, Inc., 1503 LBJ Freeway, Suite 400, Dallas, Texas 75234,* Defendants.

Case No.: 1:14–cv–01079

Judge: Hon. John Bates

Filed: 06/26/2014

COMPLAINT

Plaintiffs, the United States of America (''United States''), acting under the direction of the Attorney General of the United States, and the State of Texas, acting by and through the Attorney General of Texas, bring this civil antitrust action against Defendants Martin Marietta Materials, Inc. (''Martin Marietta'') to enjoin Martin Marietta's proposed acquisition of Texas Industries, Inc. (''Texas Industries''). Plaintiffs complain and allege as follows:

I. INTRODUCTION

1. On January 28, 2014, Martin Marietta and Texas Industries announced a definitive merger agreement valued at approximately $2.7 billion. The merger would create the largest aggregate producer in the United States, with annual net sales of nearly $3 billion.

2. The proposed acquisition would eliminate real and potential head-to-head competition between Martin Marietta and Texas Industries on price and service in supplying aggregate in the Dallas, Texas area. For a significant number of customers in the Dallas area, Martin Marietta and Texas Industries are two of the three best sources of Texas DOT-qualified aggregate. Elimination of competition between Martin Marietta and Texas Industries likely would give Martin Marietta the ability to raise prices or decrease the quality of service provided to these customers. As a result, the proposed acquisition likely would substantially lessen competition in the production and sale of aggregate in the Dallas area, in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

II. THE PARTIES TO THE PROPOSED TRANSACTION

3. Defendant Martin Marietta is incorporated in North Carolina with its headquarters in Raleigh, North Carolina. Martin Marietta produces, distributes, and/or markets aggregate for the construction industry in 29 states. Martin Marietta also produces aggregate in Nova Scotia, Canada, and the Bahamas, which it distributes and sells at numerous terminals and yards along the East Coast of the United States. In 2013, Martin Marietta had net sales of $2.1 billion.

4. Defendant Texas Industries is incorporated in Delaware with its headquarters in Texas. Texas Industries produces, distributes, and/or markets aggregate in five states; Texas, Oklahoma, Louisiana, Arkansas and California. Texas Industries also produces asphalt concrete, ready mix concrete, and has significant cement production capabilities in California and Texas. In 2013, Texas Industries had net sales of $800 million.

III. JURISDICTION AND VENUE

5. The United States brings this action pursuant to Section 15 of the Clayton Act, 15 U.S.C. §§ 4 and 25, as amended, to prevent and restrain Defendants from violating Section 7 of the Clayton Act, 15 U.S.C. § 18.

6. The State of Texas brings this action under Section 16 of the Clayton Act, 15 U.S.C. § 26, to prevent and restrain Martin Marietta and Texas Industries from violating Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18. The State of Texas, by and through the Attorney General of Texas, brings this action as *parens patriae* on behalf of the citizens, general welfare, and economy of the State of Texas.

7. Defendants produce and sell aggregate in the flow of interstate commerce. Defendants' activity in the production and sale of aggregate substantially affects interstate commerce. The Court has subject matter jurisdiction over this action pursuant to Section 15 of the Clayton Act, 15 U.S.C. § 25, and 28 U.S.C. §§ 1331, 1337(a), and 1345.

8. Defendants have consented to venue and personal jurisdiction in this judicial district.

IV. TRADE AND COMMERCE

A. Aggregate is an Essential Input for Many Construction Projects

9. Aggregate is stone, produced at mines, quarries, and gravel pits, that is used for construction projects and in various industrial processes. The aggregate produced in quarries and mines is predominantly limestone, granite, or trap rock. Different types and sizes of rock are needed to meet different specifications for use in asphalt concrete, ready mix concrete, industrial processes, and other products. Asphalt concrete consists of approximately 95 percent aggregate, and ready mix concrete is made of up of approximately 75 percent aggregate. Aggregate thus is an integral input for road and other construction projects.

10. The customer on each construction project establishes specifications that the aggregate must meet for each application for which it is used. State Departments of Transportation (''state DOTs''), including the Texas DOT, set specifications for aggregate used to produce asphalt concrete, ready mix concrete, and road base for state DOT projects. State DOTs specify characteristics such as hardness and durability, size, polish value, and a variety of other characteristics. The specifications are intended to ensure the longevity and safety of the projects that use aggregate.

11. For Texas DOT projects, the Texas DOT tests the aggregate to ensure that the stone for an application meets proper specifications at the quarry before it is shipped, when the aggregate is sent to the purchaser to produce an end product such as asphalt concrete, and often after the end product has been produced. In addition, the Texas DOT pre-qualifies quarries according to the end uses for the aggregate. Many city, county, and commercial entities in Texas use the Texas DOT aggregate specifications when building roads, bridges, and parking lots to optimize project longevity.

B. Transportation is a Significant Component of the Cost of Aggregate

12. Aggregate is priced by the ton and is a relatively inexpensive product. Prices range from approximately five to twenty dollars per ton. A variety of approaches are used to price aggregate. For small volumes, aggregate often is sold according to a posted price. For larger volumes, customers either negotiate prices for a particular job or seek bids from multiple aggregate suppliers.

13. In areas where aggregate is locally available, it is transported from quarries to customers by truck. On a per-mile basis, trucking is the most expensive option for transporting aggregate over longer distances.

14. Aggregate is also shipped by rail from quarries to yards. It is then transported by truck from the yards to customers in the area. The rail yards, which typically are supplied by quarries that are 100 to 200 miles away, frequently are large operations that can handle 75- to 100-car unit trains and are served by large quarries located on rail lines that have automated aggregate rail-loading operations. Over longer distances, the cost of transporting aggregate by rail is significantly cheaper, on a per-mile basis, than by truck.

C. Relevant Markets

1. Texas DOT-Qualified Aggregate is a Relevant Product Market

15. Within the broad category of aggregate, different types of stone are used for different purposes. For instance, aggregate used as road base is not the same as aggregate used in asphalt concrete. Accordingly, they are not interchangeable or substitutable for one another and demand for each is separate. Thus, each type of aggregate likely is a separate line of commerce and a relevant product market within the meaning of Section 7 of the Clayton Act.

16. Texas DOT-qualified aggregate is aggregate qualified by Texas DOT for use in road construction. Aggregate that meets the standards for Texas DOT qualification differs from other aggregate in its size, physical composition, functional characteristics, customary uses, consistent availability, and pricing. A customer whose job specifies Texas DOT-qualified aggregate cannot substitute non-Texas DOT-qualified aggregate or other materials.

17. Although numerous narrower product markets exist, the competitive dynamic for each type of Texas DOT-qualified aggregate is nearly identical. Therefore, they all may be combined for analytical convenience into a single relevant product market for the purpose of evaluating the competitive impact of the acquisition.

18. A small but significant increase in the price of Texas DOT-qualified aggregate would not cause a sufficient number of customers to substitute to another type of aggregate or another material so as to make such a price increase unprofitable. Accordingly, the production and sale of Texas DOT-qualified aggregate is a line of commerce and a relevant product market within the meaning of Section 7 of the Clayton Act.

2. Dallas, Texas is a Relevant Geographic Market

19. Aggregate is a relatively low-cost product that is bulky and heavy. As a result, the cost of transporting aggregate is high compared to the value of the product.

20. When customers seek price quotes or bids, the distance from the project site or plant location will have a considerable impact on the selection of a supplier, due to the high cost of transporting aggregate relative to the low value of the product. Suppliers know the importance of transportation cost to a potential customer's selection of an aggregate supplier; they know the locations of their competitors, and they often will factor the cost of transportation from other suppliers into the price or bid that they submit.

21. The primary factor that determines the area a supplier can serve is the location of competing quarries and rail yards. When quoting prices or submitting bids, aggregate suppliers will account for the location of the project site or plant, the cost of transporting aggregate to the project site or plant, and the locations of the competitors that might bid on a job. Therefore, depending on the location of the project site or plant, suppliers are able to adjust their bids to account for the distance other competitors are from a job.

22. The size of a geographic market also can depend on whether aggregate is being transported in an urban or rural setting and on specific characteristics of the road network. Where there are multiple quarries in a region, urban traffic congestion may greatly reduce the distance aggregate can be economically transported. In such cases, geographic markets can be very small. The closest quarry or rail yard to a customer also may have higher delivery costs than a more distant quarry because of local traffic patterns that increase fuel costs. Consequently, in large cities, local markets can be small and multiple geographic markets may exist.

23. Martin Marietta owns and operates two rail yards that serve Dallas County and portions of surrounding counties (hereinafter referred to as the ''Dallas area''). Customers with plants or jobs in the Dallas area may, depending on the location of their plant or job sites, also economically procure Texas DOT-qualified aggregate from two rail yards operated by Texas Industries and from one competitor's quarry located in

Bridgeport, Texas. Other quarries cannot compete successfully on a regular basis for customers with plants or jobs in the Dallas area because they are too far away and transportation costs are too great.

24. Customers likely would be unable to switch to suppliers outside the Dallas area to defeat a small but significant price increase. Accordingly, the Dallas area is a relevant geographic market for the production and sale of Texas DOT-qualified aggregate within the meaning of Section 7 of the Clayton Act.

D. Martin Marietta's Acquisition of Texas Industries is Anticompetitive

25. Vigorous competition between Martin Marietta and Texas Industries on price and customer service in the production and sale of Texas DOT-qualified aggregate has benefitted customers in the Dallas area.

26. The competitors that could constrain Martin Marietta and Texas Industries from raising prices on Texas DOT-qualified aggregate in the Dallas area are limited to those who are qualified by the Texas DOT to supply aggregate and can economically rail or truck the aggregate into the Dallas area. Currently only one other supplier of Texas DOT-qualified aggregate consistently can sell aggregate into the Dallas area on a cost-competitive basis with Martin Marietta or Texas Industries.

27. The proposed acquisition will eliminate the competition between Martin Marietta and Texas Industries and reduce from three to two the number of suppliers of Texas DOT-qualified aggregate in the Dallas area. Further, the proposed acquisition will substantially increase the likelihood that Martin Marietta will unilaterally increase the price of Texas DOT-qualified aggregate to a significant number of customers in the Dallas area.

28. The response of other suppliers of Texas DOT-qualified aggregate will not be sufficient to constrain a unilateral exercise of market power by Martin Marietta after the acquisition.

29. For certain customers, a combined Martin Marietta and Texas Industries will have the ability to increase prices for Texas DOT-qualified aggregate. The combined firm could also decrease service for these same customers by limiting availability or delivery options. Texas DOT-qualified aggregate producers know the distance from their own quarries or yards and their competitors' yards or quarries to a customer's job site. Generally, because of transportation costs, the farther a supplier's closest competitor is from a job site, the higher the price and margin that supplier can expect for that project. Post-acquisition, in instances where Martin Marietta and Texas Industries quarries or yards are the closest locations to a customer's project, the combined firm, using the knowledge of its competitors' locations, will be able to charge such customers higher prices or decrease the level of customer service.

30. Further, Martin Marietta's elimination of Texas Industries as an independent competitor in the production and sale of Texas DOT-qualified aggregate in the Dallas area likely will facilitate anticompetitive coordination among the remaining suppliers. Texas DOT-qualified aggregate that meets a specific standard is relatively standard and homogenous, and producers often estimate competitors' output, capacity, reserves, and costs. Given these market conditions, eliminating one of the few Texas DOT-qualified aggregate suppliers is likely to further increase the ability of the remaining competitors to coordinate successfully.

31. The transaction will substantially lessen competition in the market for Texas DOT-qualified aggregate in the Dallas area, which is likely to lead to higher prices and reduced customer service for consumers of such products, in violation of Section 7 of the Clayton Act.

E. Difficulty of Entry

32. Timely, likely, and sufficient entry in the production and sale of Texas DOT-qualified aggregate in the Dallas area is unlikely, given the substantial time and cost required to open a quarry or rail yard.

33. Quarries are particularly difficult to locate and permit. Locating a quarry may take as long as four years, particularly when seeking suitable sites with rail access. Once a location is chosen, obtaining a permit to open a new quarry in Texas is difficult and time-consuming. Aggregate producers have spent over two years successfully obtaining permits and also have failed to obtain quarry permits on multiple occasions.

34. Location is also essential for a rail-served quarry, so that the aggregate can be directly loaded on the trains for transportation to the rail yard. If the quarry is not located on a rail line, the aggregate must be transported by truck, which can eliminate the transportation cost advantage of using rail. Additionally, if the haul from the quarry to the rail yard is not a ''single line'' haul, with only one railroad carrier, the cost of the multi-line haul can diminish some of the cost advantage associated with moving aggregate by rail.

35. Establishing a rail yard is difficult and may take several years in addition to the time necessary to locate, permit and open a quarry. To achieve the economies necessary to be competitive in the Dallas area, rail yards must be large and able to handle large amounts of aggregate. Obtaining the large parcels of land and permits necessary to locate a rail yard in the Dallas area is difficult, and the cost of obtaining the land and building the rail yard would be considerable. The combined cost of permitting and opening both a new rail-served quarry and a new rail yard in the Dallas area could exceed $50 million.

36. Because of the cost and difficulty of establishing a quarry and a rail yard, entry will not be timely, likely or sufficient to mitigate the anticompetitive effects of Martin Marietta's proposed acquisition of Texas Industries.

V. VIOLATION ALLEGED

37. Martin Marietta's proposed acquisition of Texas Industries likely will substantially lessen competition in the production and sale of Texas DOT-qualified aggregate in the Dallas area, in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

38. Unless enjoined, the proposed acquisition likely will have the following anticompetitive effects, among others:

(a) actual and potential competition between Martin Marietta and Texas Industries in the market for the production and sale of Texas DOT-qualified aggregate in the Dallas area will be eliminated;

(b) prices for Texas DOT-qualified aggregate likely will increase and customer service likely would decrease;

(c) the potential for unlawful anticompetitive coordination between remaining competitors in the Dallas area likely will be increased.

VI. REQUESTED RELIEF

39. Plaintiffs request that this Court:

(a) adjudge and decree that Martin Marietta's acquisition of Texas Industries would be unlawful and violate Section 7 of the Clayton Act, 15 U.S.C. § 18;

(b) preliminarily and permanently enjoin and restrain the Defendants and all persons acting on their behalf from consummating the proposed acquisition of Texas Industries by Martin Marietta, or from entering into or carrying out any other contract, agreement, plan, or understanding, the effect of which would be to combine Martin Marietta with Texas Industries;

(c) award Plaintiffs their costs for this action; and

(d) award Plaintiffs such other and further relief as the Court deems just and proper.

FOR PLAINTIFF UNITED STATES OF AMERICA:

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/s/ David I. Gelfand
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Deputy Assistant Attorney General

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Dated: June 26, 2014

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Dated: June 26, 2014

United States District Court for the District of Columbia

United States of America and *State of Texas Plaintiffs,* v. *Martin Marietta Materials, Inc.* and *Texas Industries, Inc.* Defendants.

Case No.: 1:14–cv–01079

Judge: Hon. John Bates

Filed: 06/26/2014

COMPETITIVE IMPACT STATEMENT

Plaintiff, United States of America (''United States''), pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA'' or ''Tunney Act''), 15 U.S.C. § 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. NATURE AND PURPOSE OF THE PROCEEDING

On January 28, 2014, Martin Marietta Materials, Inc. (''Martin Marietta'') and Texas Industries, Inc. (''Texas Industries'') announced a definitive merger agreement valued at approximately $2.7 billion. After investigating the competitive impact of that acquisition, the Plaintiffs filed a civil antitrust Complaint on June 26, 2014. The Complaint alleges that the acquisition likely will substantially lessen competition in the production and sale of aggregate qualified by the Texas Department of Transportation (''Texas DOT'') to customers in the Dallas, Texas area, in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18. As a result of the acquisition, prices for Texas DOT-qualified aggregate likely will increase and customer service likely will be reduced.

At the same time the Complaint was filed, Plaintiffs also filed a Hold Separate Stipulation and Order (''Hold Separate'') and a proposed Final Judgment. These filings are designed to eliminate the anticompetitive effects of Martin Marietta's acquisition of Texas Industries. The proposed Final Judgment, which is explained more fully below, requires Defendants, among other things, to divest Martin Marietta's rail yards located in Frisco, Texas and Dallas, Texas, and the quarry located in Mill Creek, Oklahoma. The terms of the Hold Separate ensure that the Divestiture Assets will be operated as a competitively independent, economically viable and ongoing business concern that will remain independent and uninfluenced by the consummation of the acquisition, and that competition is maintained during the pendency of the ordered divestiture.

Plaintiffs and Defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. DESCRIPTION OF THE EVENTS GIVING RISE TO THE ALLEGED VIOLATION

A. The Defendants and the Transaction

Defendant Martin Marietta is incorporated in North Carolina with its headquarters in Raleigh, North Carolina. Martin Marietta produces, distributes, and/or markets aggregate for the construction industry in 29 states. Martin Marietta also produces aggregate in Nova Scotia, Canada, and the Bahamas, for distribution and sale at numerous terminals and yards along the East Coast of the United States. In 2013, Martin Marietta had net sales of $2.1 billion.

Defendant Texas Industries is incorporated in Delaware with its headquarters in Dallas, Texas. Texas Industries produces, distributes, and/or markets aggregate in; Texas, Oklahoma, Louisiana, Arkansas and California. Texas Industries also produces asphalt concrete, ready mix concrete, and cement. In 2013, Texas Industries had net sales of $800 million.

The merger would create the largest aggregate producer in the United States, with annual net sales of nearly $3 billion. The proposed transaction, as initially agreed by Defendants likely will lessen competition substantially. This acquisition is the subject of the Complaint and proposed Final Judgment filed by the United States on June 26, 2014.

B. Industry Background

Aggregate is stone, produced at mines, quarries, and gravel pits, that is used for construction projects and in various industrial processes. The aggregate produced in quarries and mines is predominantly limestone, granite, or trap rock. Different types and sizes of rock are needed to meet different specifications for use in asphalt concrete, ready mix concrete, industrial processes, and other products. Asphalt concrete consists of approximately 95 percent aggregate, and ready mix concrete is made of up of approximately 75 percent aggregate. Aggregate thus is an integral input for road and other construction projects.

The customer on each construction project establishes specifications that the aggregate must meet for each application for which it is used. State Departments of Transportation (''state DOTs''), including the Texas DOT, set specifications for aggregate used to produce asphalt concrete, ready mix concrete, and road base for state DOT projects. State DOTs specify characteristics such as hardness and durability, size, polish value, and a

variety of other characteristics. The specifications are intended to ensure the longevity and safety of the projects that use aggregate.

For Texas DOT projects, the Texas DOT tests the aggregate to ensure that the stone for an application meets proper specifications at the quarry before it is shipped, when the aggregate is sent to the purchaser to produce an end product such as asphalt concrete, and often after the end product has been produced. In addition, the Texas DOT pre-qualifies quarries according to the end uses for the aggregate. Many city, county, and commercial entities in Texas use the Texas DOT aggregate specifications when building roads, bridges, and parking lots to optimize project longevity.

Aggregate is priced by the ton and is a relatively inexpensive product. Prices range from approximately five to twenty dollars per ton. A variety of approaches are used to price aggregate. For small volumes, aggregate often is sold according to a posted price. For larger volumes, customers either negotiate prices for a particular job or seek bids from multiple aggregate suppliers.

In areas where aggregate is locally available, it is transported from quarries to customers by truck. On a per-mile basis, trucking is the most expensive option for transporting aggregate over longer distances. Aggregate is also shipped by rail from quarries to yards. It is then transported by truck from the yards to customers in the area. The rail yards, which typically are supplied by quarries that are 100 to 200 miles away, frequently are large operations that can handle 75- to 100-car unit trains and are served by large quarries located on rail lines that have automated aggregate rail-loading operations. Over longer distances, the cost of transporting aggregate by rail is significantly cheaper, on a per-mile basis, than by truck.

C. Texas DOT-Qualified Aggregate is a Relevant Product Market

Within the broad category of aggregate, different types of stone are used for different purposes. For instance, aggregate used as road base is not the same as aggregate used in asphalt concrete. Accordingly, they are not interchangeable or substitutable for one another and demand for each is separate. Thus, each type of aggregate likely is a separate line of commerce and a relevant product market within the meaning of Section 7 of the Clayton Act.

Texas DOT-qualified aggregate is aggregate qualified by Texas DOT for use in road construction. Aggregate that meets the standards for Texas DOT qualification differs from other aggregate in its size, physical composition, functional characteristics, customary uses, consistent availability, and pricing. A customer whose job specifies Texas DOT-qualified aggregate cannot substitute non-Texas DOT-qualified aggregate or other materials.

Although numerous narrower product markets exist, the competitive dynamic for each type of Texas DOT-qualified aggregate is nearly identical. Therefore, they all may be combined for analytical convenience into a single relevant product market for the purpose of evaluating the competitive impact of the acquisition.

A small but significant increase in the price of Texas DOT-qualified aggregate would not cause a sufficient number of customers to substitute to another type of aggregate or another material so as to make such a price increase unprofitable. Accordingly, the production and sale of Texas DOT-qualified aggregate is a line of commerce and a relevant product market within the meaning of Section 7 of the Clayton Act.

D. Dallas, Texas is a Relevant Geographic Market

Aggregate is a relatively low-cost product that is bulky and heavy. As a result, the cost of transporting aggregate is high compared to the value of the product.

When customers seek price quotes or bids, the distance from the project site or plant location will have a considerable impact on the selection of a supplier, due to the high cost of transporting aggregate relative to the low value of the product. Suppliers know the importance of transportation cost to a potential customer's selection of an aggregate supplier; they know the locations of their competitors; and they often will factor the cost of transportation from other suppliers into the price or bid that they submit.

The primary factor that determines the area a supplier can serve is the location of competing quarries and rail yards. When quoting prices or submitting bids, aggregate suppliers will account for the location of the project site or plant, the cost of transporting aggregate to the project site or plant, and the locations of the competitors that might bid on a job. Therefore, depending on the location of the project site or plant, suppliers are able to adjust their bids to account for the distance other competitors are from a job.

The size of a geographic market also can depend on whether aggregate is being transported in an urban or rural setting and on specific characteristics of the road network. Where there are multiple quarries in a region, urban traffic congestion may greatly reduce the distance aggregate can be economically transported. In such cases, geographic markets can be very small. The closest quarry or rail yard to a customer also may have higher delivery costs than a more distant quarry because of local traffic patterns that increase fuel costs. Consequently, in large cities, local markets can be small and multiple geographic markets may exist.

Martin Marietta owns and operates two rail yards that serve Dallas County and portions of surrounding counties (hereinafter referred to as the ''Dallas area''). Customers with plants or jobs in the Dallas area may, depending on the location of their plant or job sites, also economically procure Texas DOT-qualified aggregate from two rail yards operated by Texas Industries and from one competitor's quarry located in Bridgeport, Texas. Other quarries cannot compete successfully on a regular basis for customers with plants or jobs in the Dallas area because they are too far away and transportation costs are too great.

Customers likely would be unable to switch to suppliers outside the Dallas area to defeat a small but significant price increase. Accordingly, the Dallas area is a relevant geographic market for the production and sale of Texas DOT-qualified aggregate within the meaning of Section 7 of the Clayton Act.

E. The Competitive Effects of Martin Marietta's Acquisition of Texas Industries

Customers in the Dallas area have benefited from vigorous competition between Martin Marietta and Texas Industries on price and customer service in the production and sale of Texas DOT-qualified aggregate.

The competitors that could constrain Martin Marietta and Texas Industries from raising prices on Texas DOT-qualified aggregate in the Dallas area are limited to those who are qualified by the Texas DOT to supply aggregate and can economically rail or truck the aggregate into the Dallas area. Currently only one other supplier of Texas DOT-qualified aggregate consistently can sell aggregate into the Dallas area on a cost-competitive basis with Martin Marietta or Texas Industries.

The proposed acquisition will eliminate the competition between Martin Marietta and Texas Industries and reduce from three to two the number of suppliers of Texas DOT-qualified aggregate in the Dallas area. Further, the proposed acquisition will substantially increase the likelihood that Martin Marietta will unilaterally

increase the price of Texas DOT-qualified aggregate to a significant number of customers in the Dallas area. The response of other suppliers of Texas DOT-qualified aggregate will not be sufficient to constrain a unilateral exercise of market power by Martin Marietta after the acquisition.

For certain customers, a combined Martin Marietta and Texas Industries will have the ability to increase prices for Texas DOT-qualified aggregate. The combined firm could also decrease service for these same customers by limiting availability or delivery options. Texas DOT-qualified aggregate producers know the distance from their own quarries or yards and their competitors' yards or quarries to a customer's job site. Generally, because of transportation costs, the farther a supplier's closest competitor is from a job site, the higher the price and margin that supplier can expect for that project. Post-acquisition, in instances where Martin Marietta and Texas Industries quarries or yards are the closest locations to a customer's project, the combined firm, using the knowledge of its competitors' locations, will be able to charge such customers higher prices or decrease the level of customer service.

Further, Martin Marietta's elimination of Texas Industries as an independent competitor in the production and sale of Texas DOT-qualified aggregate in the Dallas area likely will facilitate anticompetitive coordination among the remaining suppliers. Texas DOT-qualified aggregate that meets a specific standard is relatively standard and homogenous, and producers often estimate competitors' output, capacity, reserves, and costs. Given these market conditions, eliminating one of the few Texas DOT-qualified aggregate suppliers is likely to further increase the ability of the remaining competitors to coordinate successfully.

The transaction will substantially lessen competition in the market for Texas DOT-qualified aggregate in the Dallas area, which is likely to lead to higher prices and reduced customer service for consumers of such products, in violation of Section 7 of the Clayton Act. The likely anticompetitive effects of the transaction in the Dallas area will not be mitigated by entry, given the substantial time and cost required to open a quarry or rail yard. Quarries are particularly difficult to locate and permit. Locating a quarry may take as long as four years, particularly when seeking suitable sites with rail access. Once a location is chosen, obtaining a permit to open a new quarry in Texas is difficult and time-consuming. Aggregate producers have spent over two years successfully obtaining permits and also have failed to obtain quarry permits on multiple occasions.

Location is also essential for a rail-served quarry, so that the aggregate can be directly loaded on the trains for transportation to the rail yard. If the quarry is not located on a rail line, the aggregate must be transported by truck, which can eliminate the transportation cost advantage of using rail. Additionally, if the haul from the quarry to the rail yard is not a ''single line'' haul, with only one railroad carrier, the cost of the multi-line haul can diminish some of the cost advantage associated with moving aggregate by rail.

Establishing a rail yard is difficult and may take several years in addition to the time necessary to locate, permit and open a quarry. To achieve the economies necessary to be competitive in the Dallas area, rail yards must be large and able to handle large amounts of aggregate. Obtaining the large parcels of land and permits necessary to locate a rail yard in the Dallas area is difficult, and the cost of obtaining the land and building the rail yard would be considerable. The combined cost of permitting and opening both a new rail-served quarry and a new rail yard in the Dallas area could exceed $50 million.

Because of the cost and difficulty of establishing a quarry and a rail yard, entry will not be timely, likely or sufficient to counteract the anticompetitive effects of Martin Marietta's proposed acquisition of Texas Industries.

III. EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The divestiture requirement of the proposed Final Judgment will eliminate the anticompetitive effects of the acquisition in the Dallas, Texas area by establishing a new, independent, and economically viable competitor. The proposed Final Judgment requires Defendants, within 90 days after the filing of the Complaint, or five days after notice of the entry of the Final Judgment by the Court, whichever is later, to divest Martin Marietta's rail yards located in Dallas, Texas and Frisco, Texas as well as its North Troy Quarry located in Mill Creek, Oklahoma (the ''Divestiture Assets''). The Dallas yard primarily serves downtown Dallas, while the Frisco yard serves northern Dallas County and portions of the surrounding counties. The North Troy quarry serves as a source for aggregate that is distributed through the two rail yards. These assets constitute all of the assets that Martin Marietta currently uses to supply aggregate to the Dallas area, so the acquirer of these assets will be able to compete with Defendants.

While Defendants must make all of the Divestiture Assets available for purchase, Paragraph IV(B) of the proposed Final Judgment allows the acquirer to exclude from the Divestiture Assets any portion that the acquirer elects not to acquire, subject to the written approval of the United States, in its sole discretion, after consultation with the State of Texas. In this case, the rail yards are the source of direct competition between Defendants in the Dallas area; however, the rail yards cannot operate as an aggregate distribution facility without a source of aggregate, which the acquirer of the Divestiture Assets may not currently own. Paragraph IV(B) allows the acquirer of the Divestiture Assets not to purchase the North Troy quarry if it already owns or operates an aggregate source that could ship aggregate to the divested rail yards. The assets must be divested in such a way as to satisfy the United States in its sole discretion, after consultation with Texas, that the operations can and will be operated by the purchaser as a viable, ongoing business that can compete effectively in the relevant market. Defendants must take all reasonable steps necessary to accomplish the divestiture quickly and shall cooperate with prospective purchasers.

The terms of the proposed Final Judgment require Defendants to divest the Divestiture Assets within 90 days. If Defendants are unable to accomplish the divestiture within this period the United States, in its sole discretion, may grant Defendants one or more extensions of this time period not to exceed 90 days in total. The 90-day potential extension will permit the proposed acquirer to complete any testing and drilling that it may choose to conduct as part of its due diligence process. In the event that Defendants do not accomplish the divestiture within the periods prescribed in the proposed Final Judgment, the Final Judgment provides that the Court will appoint a trustee selected by the United States to effect the divestiture. If a trustee is appointed, the proposed Final Judgment provides that Defendants will pay all costs and expenses of the trustee. The trustee's commission will be structured so as to provide an incentive for the trustee based on the price obtained and the speed with which the divestiture is accomplished. After his or her appointment becomes effective, the trustee will file monthly reports with the Court and the United States setting forth his or her efforts to accomplish the divestiture. At the end of six months, if

the divestiture has not been accomplished, the trustee and the United States will make recommendations to the Court, which shall enter such orders as appropriate, in order to carry out the purpose of the trust, including extending the trust or the term of the trustee's appointment.

The divestiture provisions of the proposed Final Judgment will eliminate the anticompetitive effects of the acquisition in the production and sale of Texas DOT-qualified aggregate in the Dallas area.

IV. REMEDIES AVAILABLE TO POTENTIAL PRIVATE LITIGANTS

Section 4 of the Clayton Act, 15 U.S.C. § 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against Defendants.

V. PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED FINAL JUDGMENT

The Plaintiffs and Defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the United States Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of the United States will be filed with the Court. In addition, comments will be posted on the U.S. Department of Justice, Antitrust Division's internet Web site and, under certain circumstances, published in the **Federal Register**.

Written comments should be submitted to: Maribeth Petrizzi, Chief, Litigation II Section, Antitrust Division, United States Department of Justice, 450 Fifth Street NW., Suite 8700, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

The Plaintiffs considered, as an alternative to the proposed Final Judgment, a full trial on the merits against Defendants. The Plaintiffs could have continued the litigation and sought preliminary and permanent injunctions against Martin Marietta's acquisition of Texas Industries. The Plaintiffs are satisfied, however, that the divestiture of assets described in the proposed Final Judgment will preserve competition for the production and sale Texas DOT-qualified aggregate in the Dallas area. Thus, the proposed Final Judgment would achieve all or substantially all of the relief the Plaintiffs would have obtained through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits of the Complaint.

VII. STANDARD OF REVIEW UNDER THE APPA FOR THE PROPOSED FINAL JUDGMENT

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. § 16(e)(1). In making that determination, the court, in accordance with the statute as amended in 2004, is required to consider:

(A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

(B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e)(1)(A) & (B). In considering these statutory factors, the court's inquiry is necessarily a limited one as the government is entitled to ''broad discretion to settle with the defendant within the reaches of the public interest.'' *United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1461 (D.C. Cir. 1995); *see generally United States* v. *SBC Commc'ns, Inc.,* 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing public interest standard under the Tunney Act); *United States* v. *InBev N.V./S.A.,* 2009–2 Trade Cas. (CCH) ¶ 76,736, 2009 U.S. Dist. LEXIS 84787, No. 08–1965 (JR), at *3, (D.D.C. Aug. 11, 2009) (noting that the court's review of a consent judgment is limited and only inquires ''into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanism to enforce the final judgment are clear and manageable.'').[1]

As the United States Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See Microsoft,* 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988) (citing *United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft,* 56 F.3d at 1460–62; *United States* v. *Alcoa, Inc.,* 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *InBev,* 2009 U.S. Dist. LEXIS 84787, at *3. Courts have held that:

[1] The 2004 amendments substituted ''shall'' for ''may'' in directing relevant factors for court to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. *Compare* 15 U.S.C. § 16(e) (2004), *with* 15 U.S.C. § 16(e)(1) (2006); *see also SBC Commc'ns,* 489 F. Supp. 2d at 11 (concluding that the 2004 amendments ''effected minimal changes'' to Tunney Act review).

[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''*within the reaches of the public interest.*'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[2] In determining whether a proposed settlement is in the public interest, a district court ''must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17; *see also Microsoft,* 56 F.3d at 1461 (noting the need for courts to be ''deferential to the government's predictions as to the effect of the proposed remedies''); *United States* v. *Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States' prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case).

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees following a finding of liability in a litigated matter. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' '' *United States* v. *Am. Tel. & Tel. Co.,* 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975)), *aff'd sub nom. Maryland* v. *United States,* 460 U.S. 1001 (1983); *see also United States* v. *Alcan Aluminum Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). To meet this standard, the United States ''need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17.

Moreover, the court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft,* 56 F.3d at 1459; see also *InBev,* 2009 U.S. Dist. LEXIS 84787, at *20 (''the 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged''). Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. *Microsoft,* 56 F.3d at 1459–60. As this Court recently confirmed in *SBC Communications,* courts ''cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power.'' *SBC Commc'ns,* 489 F. Supp. 2d at 15.

In its 2004 amendments, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction that ''[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. § 16(e)(2). The language wrote into the statute what Congress intended when it enacted the Tunney Act in 1974, as Senator Tunney explained: ''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney). Rather, the procedure for the public interest determination is left to the discretion of the court, with the recognition that the court's ''scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings.'' *SBC Commc'ns,* 489 F. Supp. 2d at 11.[3]

VIII. DETERMINATIVE DOCUMENTS

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: June 26, 2014

Respectfully submitted,

/s/ Jay D. Owen
Jay D. Owen

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*Attorney of Record

United States District Court for the District Of Columbia

United States of America, and *State of Texas,* Plaintiffs, v. *Martin Marietta Materials, Inc.,* and *Texas Industries, Inc.* Defendants.

Case No.: 1:14–cv–01079

Judge: Hon. John Bates

Date Filed: 06/26/2014

PROPOSED FINAL JUDGMENT

WHEREAS, Plaintiffs, the United States of America and the State of Texas, filed their Complaint on June 26, 2014, Plaintiffs and Defendants, Martin Marietta Materials, Inc. (''Martin Marietta'') and Texas Industries, Inc. (''Texas Industries''), by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

AND WHEREAS, Defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

AND WHEREAS, the essence of this Final Judgment is the prompt and certain divestiture of certain rights or assets by Defendants to assure that

[2] *Cf. BNS,* 858 F.2d at 464 (holding that the court's ''ultimate authority under the [APPA] is limited to approving or disapproving the consent decree''); *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to ''look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass''). *See generally Microsoft,* 56 F.3d at 1461 (discussing whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest' '').

[3] *See United States* v. *Enova Corp.,* 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the ''Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone''); *United States* v. *Mid-Am. Dairymen, Inc.,* 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977) (''Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should . . . carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.''); S. Rep. No. 93–298, 93d Cong., 1st Sess., at 6 (1973) (''Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.'').

competition is not substantially lessened;

AND WHEREAS, Plaintiffs require Defendants to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

AND WHEREAS, Defendants have represented to Plaintiffs that the divestitures required below can and will be made and that Defendants will later raise no claim of mistake, hardship or difficulty of compliance as grounds for asking the Court to modify any of the provisions contained below;

NOW THEREFORE, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is ORDERED, ADJUDGED AND DECREED:

I. Jurisdiction

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against Defendants under Section 7 of the Clayton Act, as amended (15 U.S.C. § 18).

II. Definitions

As used in this Final Judgment:

A. ''Acquirer'' means the entity to whom Defendants divest the Divestiture Assets.

B. ''Martin Marietta'' means Defendant Martin Marietta Materials, Inc., a North Carolina corporation with its headquarters in Raleigh, North Carolina, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

C. ''Texas Industries'' means Defendant Texas Industries, Inc., a Delaware corporation with its headquarters in Dallas, Texas, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

D. ''Divestiture Assets'' means:

1. the aggregate quarry, including the portable plant, located at 12310 W. Holder Road, Mill Creek, Oklahoma 74856 (the ''North Troy Quarry'');

2. the rail yard located at 1760 Z Street Office, Dallas, Texas 75229 (the ''Dallas Yard'');

3. the rail yard located at 6601 Eubanks Street, Frisco, Texas 75034 (the ''Frisco Yard'');

4. all tangible assets used at or for the North Troy Quarry and the Dallas and Frisco Yards, including, but not limited to, all manufacturing equipment, tooling, and fixed assets, real property (leased or owned), mining equipment, aggregate reserves, personal property, inventory, office furniture, materials, supplies, and on- or off-site warehouses or storage facilities; all licenses, permits, and authorizations issued by any governmental organization; all contracts, agreements, leases (including renewal rights), commitments, and understandings, including sales agreements and supply agreements; all customer lists, contracts, accounts, and credit records; all other records; and, at the option of the Acquirer, a number of trucks, rail cars, and other vehicles usable at each of the North Troy Quarry and the Dallas and Frisco Yards, (limited, with respect to rail cars, to those that are used to serve the Dallas and Frisco Yards from the North Troy Quarry), equal to the average number of vehicles of each type used at the North Troy Quarry and the Dallas and Frisco Yards per month during the months of operation between January 1, 2013, and December 31, 2013 (calculated by averaging the number of each type of vehicle that was used at the North Troy Quarry and the Dallas and Frisco Yards at any time during each month of operation); and

5. all intangible assets used in the production and sale of aggregate produced at the North Troy Quarry or related to the Dallas and Frisco Yards, including, but not limited to, all contractual rights, patents, licenses and sublicenses, intellectual property, technical information, computer software (including dispatch software and management information systems) and related documentation, know-how, trade secrets, drawings, blueprints, designs, design protocols, specifications for materials, specifications for parts and devices, safety procedures for the handling of materials and substances, quality assurance and control procedures, design tools and simulation capability, all manuals and technical information provided by Defendants to their own employees, customers, suppliers, agents, or licensees, and all data (including aggregate reserve testing information) concerning the North Troy Quarry and the Dallas and Frisco Yards; provided, however, that with respect to any intellectual property, software, and systems used primarily for assets other than the Dallas and Frisco Yards and the North Troy Quarry, the Divestiture Assets shall include instead a perpetual royalty-free, non-exclusive license to all such intellectual property, software, and systems.

III. Applicability

A. This Final Judgment applies to Martin Marietta and Texas Industries, as defined above, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

B. If, prior to complying with Section IV and V of this Final Judgment, Defendants sell or otherwise dispose of all or substantially all of their assets or of lesser business units that include the Divestiture Assets, they shall require the purchaser to be bound by the provisions of this Final Judgment. Defendants need not obtain such an agreement from the acquirer of the assets divested pursuant to this Final Judgment.

IV. Divestitures

A. Defendants are ordered and directed, within 90 calendar days after the filing of the Complaint in this matter, or five (5) calendar days after notice of the entry of this Final Judgment by the Court, whichever is later, to divest the Divestiture Assets in a manner consistent with this Final Judgment to an Acquirer acceptable to the United States, in its sole discretion after consultation with the State of Texas. The United States, in its sole discretion, may agree to one or more extensions of this time period not to exceed 90 calendar days in total, and shall notify the Court in such circumstances. Defendants agree to use their best efforts to divest the Divestiture Assets as expeditiously as possible.

B. Notwithstanding the provisions of Paragraph IV(A), upon written request of Defendants, the United States, in its sole discretion, after consultation with the State of Texas, may agree, in writing, to exclude from the Divestiture Assets any portion thereof that the Acquirer, at its option, elects not to acquire.

C. In accomplishing the divestiture ordered by this Final Judgment, Defendants promptly shall make known, by usual and customary means, the availability of the Divestiture Assets. Defendants shall inform any person making inquiry regarding a possible purchase of the Divestiture Assets that they are being divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment. Defendants shall offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to the Divestiture Assets customarily provided in a due diligence process. Defendants shall make available such information to Plaintiffs at the same time that such information is made available to any other person.

D. Defendants shall provide the Acquirer and the United States with information relating to the personnel

involved in the operation of the Divestiture Assets to enable the Acquirer to make offers of employment. Defendants will not interfere with any negotiations by the Acquirer to employ any Defendant employee whose primary responsibility is the operation of the Divestiture Assets.

E. Defendants shall permit prospective Acquirers of the Divestiture Assets to have reasonable access to personnel and to make inspections of the physical facilities of the Divestiture Assets; access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

F. Defendants shall warrant to the Acquirer that each asset will be operational on the date of sale.

G. Defendants shall not take any action that will impede in any way the permitting, operation, or divestiture of the Divestiture Assets.

H. Defendants shall warrant to the Acquirer that there are no material defects in the environmental, zoning or other permits pertaining to the operation of each asset, and that following the sale of the Divestiture Assets, Defendants will not undertake, directly or indirectly, any challenges to the environmental, zoning, or other permits relating to the operation of the Divestiture Assets.

I. Unless the United States otherwise consents in writing, the divestiture pursuant to Section IV, or by trustee appointed pursuant to Section V, of this Final Judgment, shall include the entire Divestiture Assets, and shall be accomplished in such a way as to satisfy the United States, in its sole discretion, after consultation with the State of Texas, that the Divestiture Assets can and will be used by the Acquirer as part of a viable, ongoing business in the production and sale of aggregate. The divestitures, whether pursuant to Section IV or Section V of this Final Judgment,

(1) shall be made to an Acquirer that, in the United States's sole judgment, after consultation with the State of Texas, has the intent and capability (including the necessary managerial, operational, technical and financial capability) of competing effectively in the business of producing and selling aggregate; and

(2) shall be accomplished so as to satisfy the United States, in its sole discretion, after consultation with the State of Texas, that none of the terms of any agreement between an Acquirer and Defendants give Defendants the ability unreasonably to raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere in the ability of the Acquirer to compete effectively.

V. Appointment of Trustee

A. If Defendants have not divested the Divestiture Assets within the time period specified in Paragraph IV(A), Defendants shall notify the United States and the State of Texas of that fact in writing. Upon application of the United States, the Court shall appoint a trustee selected by the United States and approved by the Court to effect the divestiture of the Divestiture Assets.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the Divestiture Assets. The trustee shall have the power and authority to accomplish the divestiture to an Acquirer acceptable to the United States, after consultation with the State of Texas, at such price and on such terms as are then obtainable upon reasonable effort by the trustee, subject to the provisions of Sections IV, V, and VI of this Final Judgment, and shall have such other powers as this Court deems appropriate. Subject to Paragraph V(D) of this Final Judgment, the trustee may hire at the cost and expense of Defendants any investment bankers, attorneys, or other agents, who shall be solely accountable to the trustee, reasonably necessary in the trustee's judgment to assist in the divestiture.

C. Defendants shall not object to a sale by the trustee on any ground other than the trustee's malfeasance. Any such objections by Defendants must be conveyed in writing to the United States and the trustee no later than ten (10) calendar days after the trustee has provided the notice required under Section VI.

D. The trustee shall serve at the cost and expense of Defendants, on such terms and conditions as the United States approves, including confidentiality requirements and conflict of interest certifications. The trustee shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services yet unpaid and those of any professionals and agents retained by the trustee, all remaining money shall be paid to Defendants and the trust shall be terminated. The compensation of the trustee and any professionals and agents retained by the trustee shall be reasonable in light of the value of the Divestiture Assets and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished, but timeliness is paramount. If the trustee and Defendants are unable to reach agreement on the trustee's compensation or other terms and conditions of sale within fourteen (14) calendar days of appointment of the trustee, the United States may, in its sole discretion, take appropriate action, including making a recommendation to the Court.

E. Defendants shall use their best efforts to assist the trustee in accomplishing the required divestiture. The trustee and any consultants, accountants, attorneys, and other agents retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the assets to be divested, and Defendants shall develop financial and other information relevant to such business as the trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information. Defendants shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture.

F. After its appointment, the trustee shall file monthly reports with the United States and, as appropriate, the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person. The trustee shall maintain full records of all efforts made to divest the Divestiture Assets.

G. If the trustee has not accomplished the divestiture ordered under this Final Judgment within six (6) months after the trustee's appointment, the trustee shall promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations. To the extent such report contains information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the

United States, which shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

H. If the United States determines that the trustee has ceased to act or failed to act diligently or in a reasonably cost-effective manner, it may recommend the Court appoint a substitute trustee.

VI. Notice of Proposed Divestiture

A. Within two (2) business days following execution of a definitive divestiture agreement, Defendants or the trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the United States and the State of Texas of any proposed divestiture required by Section IV or V of this Final Judgment. If the trustee is responsible, it shall similarly notify Defendants. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Divestiture Assets, together with full details of the same.

B. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States, after consultation with the State of Texas, may request from Defendants, the proposed Acquirer, any other third party, or the trustee, if applicable, additional information concerning the proposed divestiture, the proposed Acquirer, and any other potential Acquirer. Defendants and the trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from Defendants, the proposed Acquirer, any third party, and the trustee, whichever is later, the United States shall provide written notice to Defendants and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to Defendants' limited right to object to the sale under Section V(C) of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer or upon objection by the United States, a divestiture proposed under Section IV or Section V shall not be consummated. Upon objection by Defendants under Section V(C), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. Financing

Defendants shall not finance all or any part of any purchase made pursuant to Section IV or V of this Final Judgment.

VIII. Hold Separate

Until the divestiture required by this Final Judgment has been accomplished, Defendants shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by this Court. Defendants shall take no action that would jeopardize the divestiture ordered by this Court.

IX. Affidavits

A. Within twenty (20) calendar days of the filing of the Complaint in this matter, and every thirty (30) calendar days thereafter until the divestiture has been completed under Section IV or V, Defendants shall deliver to the United States an affidavit as to the fact and manner of its compliance with Section IV or V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty (30) calendar days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts Defendants have taken to solicit buyers for the Divestiture Assets, and to provide required information to prospective Acquirers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by Defendants, including limitation on information, shall be made within fourteen (14) calendar days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, Defendants shall deliver to the United States an affidavit that describes in reasonable detail all actions Defendants have taken and all steps Defendants have implemented on an ongoing basis to comply with Section VIII of this Final Judgment. Defendants shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in Defendants' earlier affidavits filed pursuant to this section within fifteen (15) calendar days after the change is implemented.

C. Defendants shall keep all records of all efforts made to preserve and divest the Divestiture Assets until one year after such divestiture has been completed.

X. Compliance Inspection

A. For the purposes of determining or securing compliance with this Final Judgment, or of any related orders such as any Hold Separate Order, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall, upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Defendants, be permitted:

(1) access during Defendants' office hours to inspect and copy, or at the option of the United States, to require Defendants to provide hard copy or electronic copies of, all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of Defendants, relating to any matters contained in this Final Judgment; and

(2) to interview, either informally or on the record, Defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by Defendants.

B. Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, Defendants shall submit written reports or response to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, or the Texas Attorney General's Office, except in the course of legal proceedings to which the United States is a party

(including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by Defendants to the United States, Defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and Defendants mark each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,'' then the United States shall give Defendants ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XI. No Reacquisition

Defendants may not reacquire any part of the Divestiture Assets during the term of this Final Judgment.

XII. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XIII. Expiration of Final Judgment

Unless this Court grants an extension, this Final Judgment shall expire ten years from the date of its entry.

XIV. Public Interest Determination

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States's responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

Date: _____

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. § 16

_____

United States District Judge

[FR Doc. 2014–15959 Filed 7–8–14; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Employment First State Leadership Mentoring Program Community of Practice Evaluation

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Office of Disability Employment Policy (ODEP) sponsored information collection request (ICR) proposal titled, ''Employment First State Leadership Mentoring Program Community of Practice Evaluation,'' to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 et seq.). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before August 8, 2014.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201310-1230-001* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–ODEP, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–6881 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR seeks PRA authority for the Employment First State Leadership Mentoring Program Community of Practice Evaluation information collection. This information collection is designed to gauge, via a Web-based survey, the effectiveness of ODEP efforts to promote the implementation of Employment First (EF) policies and practices for persons with disabilities and to determine how well remote training and online forums facilitate the implementation of EF activities in each of the thirty participating states. Findings from this census of participating community of practice states also will provide the DOL with important information for strategic planning, program replication, and development of disability employment policies, approaches, and practices.

This proposed information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. For additional information, see the related notice published in the **Federal Register** on April 30, 2014 (79 FR 24453).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB ICR Reference Number 201310–1230–001. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: DOL–ODEP.

Title of Collection: Employment First State Leadership Mentoring Program Community of Practice Evaluation.

OMB ICR Reference Number: 201310–1230–001.

Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Respondents: 30.

Total Estimated Number of Responses: 180.

Total Estimated Annual Time Burden: 47 hours.

Total Estimated Annual Other Costs Burden: $0.

Dated: July 2, 2014.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2014–16057 Filed 7–8–14; 8:45 am]

BILLING CODE 4510–27–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Hoist Operators' Physical Fitness

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Mine Safety and Health Administration (MSHA) sponsored information collection request (ICR) titled, ''Hoist Operators' Physical Fitness,'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 et seq. Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before August 8, 2014.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201404-1219-004* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–MSHA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–6881 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov*. Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR seeks to extend PRA authority for the Hoist Operators' Physical Fitness information collection requirements codified in regulations 30 CFR 56.19057 and 57.19057 that require the annual examination and certification of a hoist operator's fitness by a qualified, licensed physician that includes documentation and recordkeeping requirements. The safety of all metal and nonmetal miners riding hoist conveyances is largely dependent upon the attentiveness and physical capabilities of the hoist operator. Improper movements, over-speed, and over-travel of a hoisting conveyance can result in serious physical harm or death to all passengers. Federal Mine Safety and Health Act of 1977 sections 101(a) and 103(h) authorize this information collection. *See* 30 U.S.C. 811(a) and 813(h).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1219–0049.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on July 31, 2014. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on February 27, 2014 (79 FR 11130).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1219–0049. The OMB is particularly interested in comments that:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: DOL–MSHA.

Title of Collection: Hoist Operators' Physical Fitness.

OMB Control Number: 1219–0049.

Affected Public: Private Sector—businesses or other for profits.

Total Estimated Number of Respondents: 75.

Total Estimated Number of Responses: 375.

Total Estimated Annual Time Burden: 13 hours.

Total Estimated Annual Other Costs Burden: $187,400.

Dated: July 2, 2014.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2014–16021 Filed 7–8–14; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (14–068)]

NASA Advisory Council; Technology, Innovation, and Engineering Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: The National Aeronautics and Space Administration (NASA) announces a meeting of the Technology, Innovation and Engineering Committee of the NASA Advisory Council (NAC).

DATES: Monday, July 28, 2014, from 12:30 p.m. to 5 p.m.; and Tuesday, July 29, 2014, from 8 a.m. to 2:30 p.m., Local Time.

ADDRESSES: NASA Langley Research Center, (LaRC), 5 Langley Boulevard, Building 2101, Room 205A, Hampton, VA 23681. NOTE: Meeting location in Building 2101 will change to Room 105A and 105B from 11 a.m. to 12 p.m. on July 29.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Green, Space Technology Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–4710, or *g.m.green@nasa.gov*.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. This meeting is also available telephonically and by WebEx. Any interested person may call the USA toll free conference call number 866–804–6184, passcode 6428446, to participate in this meeting by telephone. The WebEx link is *https://nasa.webex.com/*, the meeting number is 994 675 076, and the password is Technology14*.

The agenda for the meeting includes the following topics:

—Office of the Chief Technologist Update
—Overview of Market Study on Small Spacecraft Activities
—Space Technology Mission Directorate Update
—Briefing and Overview of NASA's STMD Knowledge Capture Planning
—Office of the Chief Engineer Update
—Update on Progress of NASA's Game Changing Development Program
—Update on NASA's Entry, Descent and Landing Projects
—A joint meeting/discussion with the NAC Science Committee to discuss a previous meeting recommendation regarding infusing new technologies into NASA science missions.

Attendees will be requested to sign a register and to comply with NASA Langley Research Center security requirements, including the presentation of a valid picture ID before receiving access to NASA Langley Research Center. Foreign nationals attending this meeting will be required to provide a copy of their passport and visa in addition to providing the following information no less than 10 working days prior to the meeting: Full name; gender; date/place of birth; citizenship; visa/green card information (number, type, expiration date); passport information (number, country, telephone); employer/affiliation information (name of institution, address, country, telephone); title/position of attendee. To expedite admittance, attendees with U.S. citizenship and Permanent Residents (green card holders) can provide identifying information 3 working days in advance by contacting Ms. Cheryl Cleghorn at *cheryl.w.cleghorn@nasa.gov* or 757–864–2497.

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Patricia D. Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2014–16015 Filed 7–8–14; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (14–069)]

NASA Advisory Council; Science Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the Science Committee of the NASA Advisory Council (NAC). This Committee reports to the NAC. The meeting will be held for the purpose of soliciting, from the science community and other persons, research and technical information relevant to program planning.

DATES: Monday, July 28, 2014, 9:30 a.m. to 5:00 p.m.; and Tuesday, July 29, 2014, 8:00 a.m. to 2:30 p.m.; Local Time.

ADDRESSES: NASA Langley Research Center, 5 Langley Boulevard, Building 2101, Room 105A and 105B, Hampton, VA 23681. NOTE: Meeting location on July 28 from 9:30 a.m. to 1:10 p.m. will be in Room 305.

FOR FURTHER INFORMATION CONTACT: Ms. Ann Delo, Administrative Officer for the Science Committee, NASA Headquarters, Washington, DC 20546, (202) 358–0750, or *ann.b.delo@nasa.gov.*

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. Any person interested in participating in the meeting by WebEx and telephone should contact Ms. Ann Delo at (202) 358–0750 for the web link, toll-free number and passcode. The agenda for the meeting includes the following topics:

- Subcommittee Reports.
- Program Status.
- Joint Session with the NAC Human Exploration and Operations Committee.
- Joint Session with the NAC Technology, Innovation and Engineering Committee.

Attendees will be requested to sign a register and to comply with NASA Langley Research Center (LaRC) security requirements, including the presentation of a valid picture ID before receiving access to NASA Langley Research Center. Foreign nationals attending this meeting will be required to provide a copy of their passport and visa in addition to providing the following information no less than 10 working days prior to the meeting: Full name; gender; date/place of birth; citizenship; visa/green card information (number, type, expiration date); passport information (number, country, telephone); employer/affiliation information (name of institution, address, country, telephone); title/position of attendee. To expedite admittance, attendees with U.S. citizenship and Permanent Residents (green card holders) can provide identifying information 3 working days in advance by contacting Ms. Cheryl Cleghorn at *cheryl.w.cleghorn@nasa.gov* or 757–864–2497. It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Patricia D. Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2014–16013 Filed 7–8–14; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (14–067)]

NASA Advisory Council; Aeronautics Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the Aeronautics Committee of the NASA Advisory Council (NAC). This Committee reports to the NAC. The meeting will be held for the purpose of soliciting, from the aeronautics community and other persons, research and technical information relevant to program planning.

DATES: Tuesday, July 29, 2014, 8:00 a.m. to 2:45 p.m.; Local Time.

ADDRESSES: NASA Langley Research Center, 5 Langley Boulevard, Building 2101, Room 300H, Hampton, VA 23681.

FOR FURTHER INFORMATION CONTACT: Ms. Susan L. Minor, Executive Secretary for the NAC Aeronautics Committee, NASA Headquarters, Washington, DC 20546, (202) 358–0566, or *susan.l.minor@nasa.gov.*

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. Any person interested in participating in the meeting by WebEx and telephone should contact Ms. Susan L. Minor at (202) 358–0566 for the web link, toll-free number and passcode. The agenda for the meeting includes the following topics:

- Low Carbon Propulsion Strategic Thrust Overview
- National Research Council Autonomy Study Outbrief
- Aeronautics Research Mission Directorate Strategic Implementation Plan
- Advanced Composites Project Update

Attendees will be requested to sign a register and to comply with NASA Langley Research Center (LaRC) security requirements, including the presentation of a valid picture ID before receiving access to NASA Langley Research Center. Foreign nationals attending this meeting will be required to provide a copy of their passport and visa in addition to providing the following information no less than 10 working days prior to the meeting: Full name; gender; date/place of birth; citizenship; visa/green card information (number, type, expiration date); passport information (number, country, telephone); employer/affiliation information (name of institution, address, country, telephone); title/position of attendee. To expedite admittance, attendees with U.S. citizenship and Permanent Residents (green card holders) can provide identifying information 3 working days in advance by contacting Ms. Cheryl Cleghorn at *cheryl.w.cleghorn@nasa.gov* or 757–864–2497. It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Patricia D. Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2014–16014 Filed 7–8–14; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Advisory Committee on Presidential Library-Foundation Partnerships

AGENCY: National Archives and Records Administration.

ACTION: Renewal of Advisory Committee on Presidential Library-Foundation Partnerships.

SUMMARY: This notice is published in accordance with the provisions of section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.) and advises of the renewal of the National Archives and Records Administration's (NARA) Advisory Committee on Presidential Library-Foundation Partnerships. In accordance with Office of Management and Budget (OMB) Circular A–135, OMB approved the inclusion of the Advisory Committee on Presidential Library-Foundation Partnerships in NARA's ceiling of discretionary advisory committees.

NARA has determined that the renewal of the Advisory Committee is in the public interest due to the expertise and valuable advice the Committee members provide on issues affecting the functioning of existing Presidential libraries and library programs and the development of future Presidential libraries. NARA will use the Committee's recommendations in its implementation of strategies for the efficient operation of the Presidential libraries.

SUPPLEMENTARY INFORMATION: NARA's acting Committee Management Officer is Patrice Little Murray. She can be reached at 301–837–2001.

Dated: July 2, 2014.

David S. Ferriero,

Archivist of the United States.

[FR Doc. 2014–16079 Filed 7–8–14; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2014–0158]

Regulatory Guide 1.37, ''Quality Assurance Requirements for Cleaning of Fluid Systems and Associated Components of Water-Cooled Nuclear Power Plants''

AGENCY: Nuclear Regulatory Commission.

ACTION: Regulatory guide; withdrawal.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is withdrawing Regulatory Guide *(RG) 1.37,* ''Quality Assurance Requirements for Cleaning of Fluid Systems and Associated Components of Water-Cooled Nuclear Power Plants,'' (Agencywide Documents Access and Management System (ADAMS) under Accession No. ML070250571). The RG is being withdrawn because its guidance and regulatory positions are contained in *RG 1.28,* Revision 4, ''Quality Assurance Program Criteria (Design and Construction)''; (ADAMS Accession No. ML100160003), and *RG 1.33,* Revision 3, ''Quality Assurance Program Requirements (Operation),'' (ADAMS Accession No. ML13109A458).

DATES: The effective date of the withdrawal of Regulatory Guide 1.37 is July 2, 2014.

ADDRESSES: Please refer to Docket ID NRC–2014–0158 when contacting the NRC about the availability of information regarding this document. You may obtain 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–2014–0158. 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 obtain publicly-available documents online in the ADAMS Publicly 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.

- *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: Andrea T. Keim, Office of New Reactors, telephone: 301–415–1671, email: *Andrea.Keim@nrc.gov;* or Stephen Burton, Office of Nuclear Regulatory Research, telephone: 301–415–7000, email: *Stephen.Burton@nrc.gov*. Both of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is withdrawing RG 1.37 because its guidance and regulatory positions are contained in RG 1.28, Revision 4, ''Quality Assurance Program Criteria (Design and Construction)''; and RG 1.33, Revision 3, ''Quality Assurance Program Requirements (Operation).'' The NRC issued RG 1.28, Revision 4 in June 2010, which endorses NQA–1–2008 and the NQA–1a–2009 Addenda, Parts I and II. NQA–1–2008 and NQA–1a–2009 Addenda Part II incorporate the requirements and regulatory positions contained in RG 1.37, Revision 1. Additionally, RG 1.33 endorses ANSI/ANS 3.2–2012. ANSI/ANS 3.2–2012, Section 1.2, ''Purpose,'' requires implementation of the applicable sections of NQA–1–2008 and NQA–1a–2009 during the operational phase of power plant operation. Any update to RG 1.37 to endorse NQA–1–2008 and NQA–1a–2009, Part II, Subpart 2.1 would be redundant since the standards are already endorsed in RG 1.28, Revision 4 and in RG 1.33, Revision 3.

II. Additional Information

The withdrawal of RG 1.37 does not alter any prior or existing licensing commitments based on its use. The guidance provided in this RG is no longer necessary. Regulatory guides may be withdrawn when their guidance no longer provides useful information, or is superseded by technological innovations, congressional actions, or other events.

Regulatory guides are revised for a variety of reasons and the withdrawal of an RG should be thought of as the final revision of the guide. Although an RG is withdrawn, current licensees may continue to use it, and withdrawal does not affect any existing licenses or agreements. Withdrawal of an RG means that the RG should not be used for future NRC licensing activities. However, although an RG is withdrawn, changes to existing licenses can be accomplished using other regulatory products.

Dated at Rockville, Maryland, this 2nd day of July, 2014.

For the Nuclear Regulatory Commission.

Harriet Karagiannis,

Acting Branch Chief, Regulatory Guidance and Generic Issues Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2014–15938 Filed 7–8–14; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2014–55; Order No. 2111]

Postal Rate Change

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning a change in rates of general applicability for Priority Mail. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* July 17, 2014.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov*. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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IV. Ordering Paragraphs

I. Introduction

On July 1, 2014, the Postal Service filed a notice pursuant to 39 CFR 3015.2 of its intention to change rates of general applicability for the competitive Priority Mail product.[1] Attached to the Notice is the Governors' Decision No. 14–03, which establishes the changes and contains proposed changes to the Mail Classification Schedule in legislative format.[2] The Notice also includes a redacted annex showing FY 2015 projected volumes, revenues, attributable costs, and cost coverage for the Priority Mail product. It includes an application for non-public treatment of the attributable cost and cost coverage data for the unredacted version of the annex, as well as the supporting materials for the data. The changes are scheduled to take effect on September 7, 2014. Notice at 1.

II. Notice of Filings

The price changes are focused on Priority Mail, primarily in ground zones (Zones 1–4) and for heavier weighted (six-to-twenty pounds) pieces. Governors' Decision at 1. Retail prices will have an average price increase of 1.7 percent, Commercial Base prices will have an average price decrease of 0.9 percent, and Commercial Plus prices will have an average price decrease of 2.3 percent. *Id.* The Governors' Decision indicates that the price decreases are targeted to attract ground volume in the six-to-twenty pound weight cells. *Id.*

The Governors' Decision also indicates that the price changes should enable each competitive product to cover its attributable costs and should result in competitive products as a whole continuing to contribute more than 5.5 percent to the Postal Service's institutional costs in compliance with 39 U.S.C. 3633(a) and 39 CFR 3015.7(c). *Id.*

III. Commission Action

The Commission establishes Docket No. CP2014–55 to consider the issues raised by the Postal Service's Notice. Interested persons may submit comments on whether the planned changes are consistent with 39 U.S.C. 3632 and 3633, and 39 CFR 3015.2. Comments are due no later than July 17, 2014. The public portions of these

[1] Notice of the United States Postal Service of Changes in Rates of General Applicability for Competitive Products Established in Governors' Decision No. 14–3, July 1, 2014 (Notice). Pursuant to 39 U.S.C. 3632(b)(2), the Postal Service is obligated to publish the Governors' Decision and record of proceedings in the **Federal Register** at least 30 days before the effective date of the new rates or classes.

[2] Decision of the Governors of the United States Postal Service on Changes in Rates of General Applicability for Competitive Products (Governors' Decision No. 14–03), June 18, 2014 (Governors' Decision).

filings can be accessed via the Commission's Web site *(http://www.prc.gov).*

Pursuant to 39 U.S.C. 505, the Commission designates Lyudmila Bzhilyanskaya to serve as Public Representative and represent the interests of the general public in this docket.

IV. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. CP2014–55 to consider the matters raised in this docket.
2. Pursuant to 39 U.S.C. 505, Lyudmila Bzhilyanskaya is appointed to serve as an officer of the Commission to represent the interests of the general public in these proceedings (Public Representative).
3. Comments are due no later than July 17, 2014.
4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

[FR Doc. 2014–16028 Filed 7–8–14; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

Change in Rates and Classes of General Applicability for Competitive Products

AGENCY: Postal Service.

ACTION: Notice of a change in rates of general applicability for competitive products.

SUMMARY: This notice sets forth changes in rates of general applicability for competitive products.

DATES: *Effective date:* September 7, 2014.

FOR FURTHER INFORMATION CONTACT: Daniel J. Foucheaux, Jr., 202–268–2989.

SUPPLEMENTARY INFORMATION: On July 1, 2014, pursuant to their authority under 39 U.S.C. 3632, the Governors of the Postal Service established prices and classification changes for competitive products. The Governors' Decision and the record of proceedings in connection with such decision are reprinted below in accordance with section 3632(b)(2).

Stanley F. Mires,

Attorney, Legal Policy & Legislative Advice.

Decision of the Governors of the United States Postal Service on Changes in Rates of General Applicability for Competitive Products (Governors' Decision No. 14–03)

June 18, 2014

Statement of Explanation and Justification

Pursuant to our authority under section 3632 of title 39, as amended by the Postal Accountability and Enhancement Act of 2006 (''PAEA''), we establish price changes for the Postal Service's shipping services (competitive products), specifically for Priority Mail. The changes are described generally below, with a detailed description of the changes in the attachment. The attachment includes the draft Mail Classification Schedule sections with changes in classification language in legislative format, and new prices displayed in the price charts.

The existing structure of Priority Mail Retail, Commercial Base, and Commercial Plus price categories is maintained. Prices in the ground zones (Zones 1–4) and heavier weights (6–20 pounds) will be adjusted to enhance Priority Mail's strategic position in the market. Retail prices will have an average prices increase of 1.7 percent. Commercial Base prices will have an average price decrease of 0.9 percent, while Commercial Plus prices will have an average price decrease of 2.3 percent. Price decreases will be targeted to attract ground volume in the six- to twenty-pound weight cells.

As shown in the nonpublic annex being filed under seal herewith, the changes we establish should enable each competitive product to cover its attributable costs (39 U.S.C. § 3633(a)(2)) and should result in competitive products as a whole complying with 39 U.S.C. § 3633(a)(3), which, as implemented by 39 C.F.R. § 3015.7(c), requires competitive products to contribute a minimum of 5.5 percent to the Postal Service's institutional costs. Accordingly, no issue of subsidization of competitive products by market dominant products should arise (39 U.S.C. § 3633(a)(1)). We therefore find that the new prices and classification changes are in accordance with 39 U.S.C. §§ 3632–3633 and 39 C.F.R. § 3015.2.

Order

The changes in prices set forth herein shall be effective at 12:01 a.m. on September 7, 2014. We direct the Secretary to have this decision published in the **Federal Register** in accordance with 39 U.S.C. § 3632(b)(2). We also direct management to file with the Postal Regulatory Commission appropriate notice of these changes.

By The Governors:

/s/

Mickey D. Barnett

Chairman

Part B

Competitive Products

2000 Competitive Product List

* * * * *

2001 Competitive Product Descriptions

* * * * *

2100 Domestic Products

* * * * *

2110 Priority Mail

* * * * *

* * * * *

2110.6 Prices

RETAIL PRIORITY MAIL ZONE/WEIGHT

Maximum weight (pounds)	Local, Zones 1 & 2 ($)	Zone 3 ($)	Zone 4 ($)	Zone 5 ($)	Zone 6 ($)	Zone 7 ($)	Zone 8 ($)	Zone 9 ($)
1	5.75	5.85	6.00	6.15	6.40	6.65	7.15	8.35
2	5.95	6.35	7.05	9.00	9.75	10.55	11.55	13.50
3	6.70	7.70	8.85	10.80	12.20	13.10	15.50	18.10
4	7.55	9.00	10.15	14.25	15.65	16.75	18.65	21.80
5	8.95	9.95	11.30	16.20	17.80	19.20	21.55	25.20
6	9.60	10.80	12.10	18.00	20.00	21.55	24.30	28.45
7	10.20	11.70	13.05	20.05	22.15	24.20	27.35	32.00
8	10.95	12.35	13.60	21.80	24.30	26.75	30.60	35.80
9	11.45	12.70	14.10	23.00	26.45	28.90	34.05	39.85
10	12.15	12.75	14.35	24.95	28.55	31.80	37.10	43.40

RETAIL PRIORITY MAIL ZONE/WEIGHT—Continued

Maximum weight (pounds)	Local, Zones 1 & 2 ($)	Zone 3 ($)	Zone 4 ($)	Zone 5 ($)	Zone 6 ($)	Zone 7 ($)	Zone 8 ($)	Zone 9 ($)
11	13.00	13.25	14.50	26.90	30.65	35.10	40.70	48.05
12	13.40	13.65	14.70	28.85	33.35	37.95	43.70	51.55
13	13.55	14.00	14.90	30.50	35.80	39.45	45.30	53.40
14	13.75	14.40	15.10	32.40	37.80	41.70	47.55	56.10
15	14.00	14.85	15.30	34.30	39.40	42.60	48.85	57.65
16	14.80	15.90	16.80	36.20	41.65	44.95	51.60	60.85
17	15.55	16.90	18.30	38.10	43.75	47.35	54.30	64.05
18	16.30	17.90	19.80	39.95	46.05	49.65	57.05	67.35
19	17.05	18.90	21.30	41.05	46.95	50.70	58.25	70.50
20	17.80	19.90	22.80	41.75	48.10	52.55	60.95	73.75
21	18.55	20.90	24.30	42.35	48.90	53.40	62.35	76.05
22	19.30	21.90	26.30	43.35	50.00	54.70	63.85	77.90
23	20.05	22.90	28.30	44.10	50.90	55.75	65.00	79.30
24	20.80	24.15	30.30	45.05	51.95	57.15	66.60	81.25
25	22.20	27.00	33.80	45.80	52.65	58.60	67.70	82.60
26	22.60	27.25	34.95	46.75	53.95	60.05	69.85	85.20
27	23.25	27.65	36.00	47.65	54.70	61.45	72.45	88.40
28	24.00	28.05	37.05	48.85	55.45	62.85	75.20	91.75
29	24.70	28.30	38.00	49.55	56.40	64.30	77.20	94.20
30	25.45	28.70	38.90	50.25	57.95	65.75	78.90	96.25
31	26.20	29.00	39.50	50.90	58.80	67.15	80.50	99.00
32	26.50	29.60	40.20	51.50	59.55	68.60	82.10	101.00
33	26.90	30.45	41.20	52.15	60.70	70.05	83.65	102.90
34	27.15	31.25	42.20	53.25	62.10	71.50	85.25	104.85
35	27.45	32.00	42.80	54.40	63.80	72.90	86.65	106.60
36	27.75	32.90	43.35	55.60	65.45	73.90	88.15	108.40
37	28.05	33.50	44.00	56.60	67.10	74.85	89.60	110.20
38	28.30	34.35	44.55	57.70	69.00	75.75	91.05	112.00
39	28.60	35.10	45.10	58.90	70.65	77.70	92.40	113.65
40	28.95	35.85	45.70	60.15	71.80	79.45	93.70	115.25
41	29.25	36.55	46.20	60.70	72.95	81.15	95.05	117.85
42	29.45	37.20	46.75	62.00	74.25	82.20	96.35	119.45
43	29.80	37.80	47.15	63.40	76.05	83.25	97.55	120.95
44	30.00	38.40	47.75	64.70	77.25	84.25	98.70	122.40
45	30.20	38.85	48.10	66.20	78.10	85.20	99.95	123.95
46	30.45	39.15	48.60	67.40	78.95	86.10	101.15	125.45
47	30.70	39.45	49.05	68.95	79.80	87.05	102.25	126.80
48	30.95	39.80	49.50	70.30	80.85	87.90	103.35	128.15
49	31.15	40.10	49.90	71.60	81.90	88.80	104.40	129.45
50	31.30	40.35	50.25	73.00	83.05	89.95	105.50	130.80
51	31.45	40.70	50.70	74.20	84.20	91.25	106.45	133.05
52	31.85	40.95	51.05	74.80	85.05	92.60	107.70	134.65
53	32.35	41.25	51.40	75.40	85.75	94.10	109.10	136.40
54	32.80	41.45	51.75	76.00	86.40	95.50	110.65	138.30
55	33.35	41.75	52.00	76.55	87.05	96.95	112.10	140.15
56	33.80	41.95	52.30	77.05	87.65	98.35	113.15	141.45
57	34.30	42.10	52.65	77.50	88.30	99.85	114.00	142.50
58	34.85	42.30	52.95	78.05	88.80	101.20	114.85	143.55
59	35.40	42.50	53.20	78.50	89.35	101.85	115.75	144.70
60	35.85	42.70	53.75	78.90	89.80	102.45	116.50	145.65
61	36.40	42.90	54.70	79.30	90.30	103.05	118.10	147.65
62	36.80	43.00	55.40	79.70	90.75	103.50	120.00	150.00
63	37.50	43.20	56.30	80.10	91.25	104.00	121.90	152.40
64	37.85	43.30	57.10	80.45	91.60	104.50	123.75	154.70
65	38.35	43.40	57.90	80.70	91.90	105.00	125.70	157.15
66	38.85	43.60	58.80	81.10	92.35	105.35	127.50	159.40
67	39.45	43.70	59.80	81.40	92.65	105.75	129.20	161.50
68	39.95	43.80	60.60	81.60	93.80	106.15	130.60	163.25
69	40.50	43.85	61.30	81.80	94.95	106.45	131.95	164.95
70	40.90	43.95	62.30	82.05	96.10	106.85	133.40	166.75

RETAIL FLAT RATE ENVELOPES [1]

	($)
Retail Regular Flat Rate Envelope, per piece	*5.75*
Retail Legal Flat Rate Envelope, per piece	*5.90*
Retail Padded Flat Rate Envelope, per piece	*6.10*

Notes

[1] The price for Regular, Legal, or Padded Flat Rate Envelopes also applies to sales of Regular, Legal, or Padded Flat Rate Envelopes, respectively, marked with Forever postage, at the time the envelopes are purchased.

RETAIL FLAT RATE BOXES [1]

Size	Delivery to domestic address ($)	Delivery to APO/FPO/DPO address ($)
Small Flat Rate Boxes	*5.95*	*5.95*
Medium Flat Rate Boxes	*12.65*	*12.65*
Large Flat Rate Boxes	*17.90*	*15.90*

Notes

[1] The price for Small, Medium, or Large Flat Rate Boxes also applies to sales of Small, Medium, or Large Flat Rate Boxes, respectively, marked with Forever postage, at the time the boxes are purchased.

REGIONAL RATE BOXES

Size	Local, Zones 1 & 2 ($)	Zone 3 ($)	Zone 4 ($)	Zone 5 ($)	Zone 6 ($)	Zone 7 ($)	Zone 8 ($)	Zone 9 ($)
A	6.07	6.19	6.59	8.30	9.01	9.73	10.72	12.71
B	6.91	8.00	8.85	11.41	14.12	15.17	17.03	20.28
C	*10.60*	*11.45*	*11.49*	*20.53*	38.13	41.64	48.18	58.14

Retail Balloon Price

In Zones 1–4 (including local), parcels weighing less than 20 pounds but measuring more than 84 inches in combined length and girth (but not more than 108 inches) are charged the applicable price for a 20-pound parcel.

Retail Dimensional Weight

In Zones 5–8, parcels exceeding one cubic foot are priced at the actual weight or the dimensional weight, whichever is greater.

For box-shaped parcels, the dimensional weight (pounds) is calculated by multiplying the length (inches) times the width (inches) times the height (inches) of the parcel, and dividing by 194.

For irregular-shaped parcels (parcels not appearing box-shaped), the dimensional weight (pounds) is calculated by multiplying the length (inches) times the width (inches) times the height (inches) at the associated maximum cross-sections of the parcel, dividing by 194, and multiplying by an adjustment factor of 0.785.

COMMERCIAL BASE PRIORITY MAIL ZONE/WEIGHT

Maximum weight (pounds)	Local, Zones 1 & 2 ($)	Zone 3 ($)	Zone 4 ($)	Zone 5 ($)	Zone 6 ($)	Zone 7 ($)	Zone 8 ($)	Zone 9 ($)
1	5.05	5.23	5.35	5.54	5.75	6.02	6.51	7.81
2	5.32	5.44	5.84	7.55	8.26	8.98	9.97	11.96
3	5.49	6.39	7.36	9.11	10.72	11.59	13.52	16.22
4	6.16	7.25	8.10	10.66	13.37	14.42	16.28	19.53
5	6.78	7.33	8.42	11.26	15.22	16.58	18.87	22.64
6	6.95	7.55	8.55	12.11	17.08	18.90	21.61	25.94
7	7.27	7.75	9.05	12.99	18.91	21.31	24.27	29.12
8	7.54	8.25	9.28	13.64	20.79	23.46	27.25	32.70
9	8.02	8.45	9.42	14.42	22.61	25.41	30.30	36.36
10	8.28	8.49	9.56	15.27	24.43	27.93	32.95	39.54
11	8.57	8.83	9.65	15.93	26.21	30.40	35.70	43.20
12	8.78	9.10	9.74	16.81	28.58	32.87	38.28	46.32
13	8.99	9.32	9.86	17.70	30.69	34.20	39.64	47.97
14	9.14	9.57	9.96	18.41	32.41	36.12	41.61	50.35
15	9.27	9.87	10.07	18.78	33.66	36.80	42.71	51.68
16	9.77	10.37	10.51	19.28	35.57	38.86	45.06	54.52
17	9.85	10.70	10.74	19.78	37.38	40.89	47.43	57.39
18	9.96	10.84	11.05	20.28	39.35	42.90	49.82	60.29
19	10.08	11.21	11.43	20.78	41.12	44.91	52.19	63.14
20	10.26	11.57	11.82	21.28	42.17	46.58	54.60	66.06
21	11.76	13.07	13.32	22.78	42.51	47.02	55.30	67.47
22	13.26	14.57	15.07	24.53	42.81	47.39	55.94	68.25
23	14.76	16.07	17.07	26.53	43.05	47.72	56.27	68.65
24	16.26	18.07	20.07	29.53	43.95	48.95	57.64	70.33
25	17.76	20.07	24.07	32.53	44.59	50.17	58.64	71.54
26	18.77	23.00	29.24	36.53	45.68	51.40	60.47	73.77
27	19.31	23.34	30.14	39.92	46.30	52.60	62.76	76.57
28	19.90	23.66	30.98	40.96	46.92	53.83	65.11	79.44

COMMERCIAL BASE PRIORITY MAIL ZONE/WEIGHT—Continued

Maximum weight (pounds)	Local, Zones 1 & 2 ($)	Zone 3 ($)	Zone 4 ($)	Zone 5 ($)	Zone 6 ($)	Zone 7 ($)	Zone 8 ($)	Zone 9 ($)
29	20.50	23.89	31.82	41.50	47.72	55.06	66.86	81.56
30	21.13	24.25	32.57	42.09	49.06	56.27	68.30	83.33
31	21.71	24.49	33.08	42.61	49.77	57.52	69.69	85.72
32	21.96	25.00	33.63	43.12	50.42	58.75	71.11	87.47
33	22.30	25.69	34.48	43.68	51.39	59.95	72.43	89.08
34	22.50	26.37	35.34	44.62	52.60	61.20	73.80	90.77
35	22.77	27.00	35.84	45.56	54.01	62.42	75.05	92.31
36	23.05	27.78	36.32	46.55	55.38	63.27	76.33	93.89
37	23.29	28.28	36.84	47.39	56.83	64.08	77.58	95.43
38	23.50	28.97	37.31	48.33	58.42	64.83	78.82	96.95
39	23.75	29.64	37.75	49.33	59.80	66.54	80.04	98.45
40	23.99	30.27	38.22	50.35	60.76	68.02	81.13	99.79
41	24.25	30.79	38.63	50.81	61.78	69.46	82.29	102.04
42	24.43	31.42	39.12	51.91	62.85	70.41	83.41	103.43
43	24.71	31.92	39.51	53.08	64.36	71.28	84.48	104.76
44	24.87	32.45	39.98	54.19	65.39	72.13	85.45	105.96
45	25.04	32.78	40.28	55.42	66.12	72.93	86.53	107.30
46	25.25	33.03	40.69	56.45	66.84	73.70	87.56	108.58
47	25.46	33.29	41.08	57.77	67.54	74.54	88.54	109.79
48	25.66	33.59	41.42	58.85	68.42	75.26	89.50	110.98
49	25.85	33.85	41.76	59.91	69.35	76.04	90.38	112.07
50	25.96	34.06	42.05	61.12	70.32	77.00	91.34	113.27
51	26.34	34.37	42.44	62.16	71.28	78.11	92.19	115.24
52	26.75	34.53	42.69	62.60	71.98	79.30	93.27	116.59
53	27.23	34.79	42.98	63.12	72.58	80.58	94.46	118.08
54	27.63	34.94	43.30	63.66	73.10	81.75	95.79	119.74
55	28.06	35.24	43.55	64.07	73.70	83.03	97.08	121.34
56	28.45	35.41	43.82	64.55	74.19	84.21	98.07	122.59
57	28.90	35.57	44.10	64.93	74.76	85.48	98.95	123.69
58	29.33	35.74	44.32	65.34	75.18	86.62	99.76	124.70
59	29.76	35.92	44.53	65.75	75.63	87.21	100.50	125.62
60	30.14	36.08	45.11	66.09	76.01	87.73	101.20	126.50
61	30.61	36.25	45.91	66.43	76.43	88.23	102.56	128.21
62	30.99	36.33	46.52	66.73	76.79	88.63	104.20	130.25
63	31.54	36.45	47.27	67.08	77.22	89.05	105.86	132.33
64	31.83	36.54	47.98	67.36	77.56	89.46	107.50	134.37
65	32.29	36.63	48.62	67.58	77.80	89.88	109.17	136.47
66	32.72	36.80	49.37	67.89	78.18	90.16	110.76	138.45
67	33.20	36.89	50.20	68.14	78.45	90.53	112.22	140.28
68	33.59	36.97	50.85	68.32	79.42	90.99	113.42	141.78
69	34.06	37.02	51.48	68.53	80.37	91.43	114.62	143.28
70	34.41	37.10	52.30	68.73	81.34	91.76	115.85	144.82

COMMERCIAL BASE FLAT RATE ENVELOPES

	($)
Commercial Base Regular Flat Rate Envelope, per piece	5.05
Commercial Base Legal Flat Rate Envelope, per piece	5.25
Commercial Base Padded Flat Rate Envelope, per piece	5.70

COMMERCIAL BASE FLAT RATE BOX

Size	Delivery to domestic address ($)	Delivery to APO/FPO/DPO address ($)
Small Flat Rate Box	5.25	5.25
Regular Flat Rate Boxes	11.30	11.30
Large Flat Rate Boxes	15.80	13.80

COMMERCIAL BASE REGIONAL RATE BOXES

Size	Local, Zones 1 & 2 ($)	Zone 3 ($)	Zone 4 ($)	Zone 5 ($)	Zone 6 ($)	Zone 7 ($)	Zone 8 ($)	Zone 9 ($)
A	5.32	5.44	5.84	7.55	8.26	8.98	9.97	11.96
B	6.16	7.25	8.10	10.66	13.37	14.42	16.28	19.53
C	*9.85*	*10.70*	*10.74*	*19.78*	37.38	40.89	47.43	57.39

Commercial Base Balloon Price

In Zones 1–4 (including local), parcels weighing less than 20 pounds but measuring more than 84 inches in combined length and girth (but not more than 108 inches) are charged the applicable price for a 20-pound parcel.

Commercial Base Dimensional Weight

In Zones 5–8, parcels exceeding one cubic foot are priced at the actual weight or the dimensional weight, whichever is greater.

For box-shaped parcels, the dimensional weight (pounds) is calculated by multiplying the length (inches) times the width (inches) times the height (inches) of the parcel, and dividing by 194.

For irregular-shaped parcels (parcels not appearing box-shaped), the dimensional weight (pounds) is calculated by multiplying the length (inches) times the width (inches) times the height (inches) at the associated maximum cross-sections of the parcel, dividing by 194, and multiplying by an adjustment factor of 0.785.

COMMERCIAL PLUS PRIORITY MAIL ZONE/WEIGHT

Maximum weight (pounds)	Local, Zones 1 & 2 ($)	Zone 3 ($)	Zone 4 ($)	Zone 5 ($)	Zone 6 ($)	Zone 7 ($)	Zone 8 ($)	Zone 9 ($)
0.5	4.58	4.65	4.74	4.99	5.23	5.47	5.82	6.98
1	4.95	5.10	5.27	5.47	5.66	5.86	6.25	7.50
2	5.09	5.35	5.74	7.17	7.68	8.29	8.99	10.78
3	5.20	5.51	5.90	8.65	10.18	11.15	12.53	15.04
4	5.30	5.56	5.95	9.28	12.36	13.62	15.52	18.63
5	5.35	5.61	6.80	9.80	14.33	15.89	18.30	21.96
6	5.40	5.66	6.88	10.54	16.07	18.33	20.36	24.43
7	5.45	5.71	7.00	11.31	17.85	20.61	23.27	27.93
8	5.50	5.76	7.18	11.87	19.37	22.61	26.11	31.34
9	5.55	5.81	7.28	12.55	20.97	24.59	29.06	34.87
10	5.60	6.56	7.40	13.29	22.71	26.77	31.73	38.07
11	5.65	6.83	7.46	13.87	24.12	28.23	32.86	39.76
12	6.79	7.04	7.53	14.63	25.99	29.68	34.28	41.47
13	6.95	7.21	7.63	15.41	27.87	30.88	35.46	42.91
14	7.07	7.40	7.70	16.03	29.36	32.64	37.23	45.05
15	7.17	7.64	7.79	16.35	30.03	32.98	38.02	46.01
16	8.70	9.24	9.37	17.58	30.72	33.72	39.00	47.18
17	8.78	9.53	9.67	18.08	31.55	34.55	39.99	48.39
18	8.87	9.66	9.85	18.43	32.15	35.22	40.95	49.55
19	8.98	9.99	10.19	18.93	32.91	36.12	41.98	50.79
20	9.14	10.31	10.53	19.38	33.54	36.80	42.89	51.90
21	9.30	10.58	10.85	20.93	34.10	37.44	43.74	53.37
22	10.03	11.37	11.87	22.68	34.86	38.30	44.82	54.68
23	10.67	11.68	12.25	23.52	35.47	38.99	45.59	55.62
24	10.88	11.95	12.64	25.46	36.20	39.89	46.74	57.02
25	11.16	12.26	12.98	26.41	36.77	40.48	47.54	58.00
26	11.42	13.15	14.03	28.25	37.57	41.32	49.06	59.85
27	11.69	13.47	14.37	29.32	38.13	41.94	50.87	62.06
28	11.90	13.79	14.83	30.01	38.64	42.57	52.74	64.34
29	12.15	14.05	15.25	30.79	39.14	43.12	54.43	66.40
30	12.45	14.40	15.71	31.89	39.70	43.74	56.26	68.64
31	13.26	15.34	16.87	32.57	40.19	44.29	58.11	71.48
32	13.32	15.67	18.15	33.52	40.75	45.36	59.93	73.71
33	13.56	16.02	18.59	34.43	41.24	46.65	61.70	75.89
34	13.64	16.38	19.01	36.21	42.47	47.94	63.51	78.12
35	13.88	16.76	20.34	36.98	43.63	49.22	65.32	80.34
36	15.42	20.15	22.50	37.81	44.73	50.57	67.14	82.58
37	17.73	21.44	23.86	38.52	45.90	51.85	68.93	84.79
38	17.98	21.76	26.26	39.28	47.18	53.08	70.76	87.04
39	18.24	22.19	28.79	40.06	48.33	54.45	72.63	89.33
40	20.91	23.57	29.43	40.89	49.43	55.66	74.33	91.42
41	21.35	24.29	32.84	41.26	50.61	57.01	76.13	94.41
42	21.75	24.78	33.28	42.15	51.71	58.35	77.94	96.65
43	22.19	25.20	33.71	43.08	53.00	59.64	79.79	98.94
44	22.58	25.69	34.15	44.07	54.08	60.97	81.58	101.15
45	22.96	26.17	34.52	45.00	55.27	62.29	83.38	103.39

COMMERCIAL PLUS PRIORITY MAIL ZONE/WEIGHT—Continued

Maximum weight (pounds)	Local, Zones 1 & 2 ($)	Zone 3 ($)	Zone 4 ($)	Zone 5 ($)	Zone 6 ($)	Zone 7 ($)	Zone 8 ($)	Zone 9 ($)
46	23.39	26.65	35.20	45.86	56.43	63.56	85.19	105.63
47	23.81	27.12	35.86	46.86	57.71	64.91	86.96	107.83
48	24.23	27.48	36.65	47.79	58.89	66.24	88.51	109.76
49	24.62	27.82	37.02	48.68	59.93	67.60	89.40	110.85
50	24.96	28.06	37.36	49.61	61.09	68.88	90.52	112.25
51	25.45	28.33	38.02	50.61	62.26	70.16	91.48	114.36
52	25.79	28.58	38.77	51.53	63.53	71.46	92.38	115.47
53	26.29	28.87	39.41	52.46	64.64	72.80	93.29	116.61
54	26.63	29.06	40.07	53.45	65.74	74.03	94.18	117.72
55	27.05	29.34	40.88	54.38	66.91	75.26	94.98	118.72
56	27.46	29.54	41.52	55.24	68.18	76.61	95.81	119.76
57	27.90	29.83	42.18	56.13	69.29	77.94	96.68	120.84
58	28.27	30.03	42.92	57.12	70.46	78.59	97.46	121.82
59	28.72	30.24	43.63	58.06	71.18	79.04	98.15	122.69
60	29.06	30.45	44.27	59.04	71.58	80.34	98.90	123.63
61	29.54	30.65	45.06	59.92	72.41	81.57	100.22	125.27
62	29.89	30.94	45.72	60.92	72.87	82.83	101.81	127.26
63	30.37	31.40	46.43	61.90	73.28	83.69	103.41	129.27
64	30.71	31.59	47.12	62.84	73.74	84.20	105.03	131.29
65	31.16	31.68	47.73	63.46	74.12	84.65	106.68	133.34
66	31.54	32.04	48.48	63.72	74.59	85.07	108.22	135.28
67	31.97	32.48	49.26	64.39	74.95	85.55	109.92	137.40
68	32.37	32.88	49.94	65.31	75.25	85.96	111.43	139.29
69	32.82	33.32	50.58	66.31	75.68	86.41	113.08	141.35
70	33.20	33.71	51.36	66.60	75.98	86.75	114.67	143.33

COMMERCIAL PLUS FLAT RATE ENVELOPE

	($)
Commercial Plus Regular Flat Rate Envelope, per piece	4.95
Commercial Plus Legal Flat Rate Envelope, per piece	4.99
Commercial Plus Padded Flat Rate Envelope, per piece	5.35

COMMERCIAL PLUS FLAT RATE BOX

Size	Delivery to domestic address ($)	Delivery to APO/FPO/DPO address ($)
Small Flat Rate Box	5.20	5.20
Medium Flat Rate Boxes	10.65	10.65
Large Flat Rate Boxes	14.80	12.80

COMMERCIAL PLUS REGIONAL RATE BOXES

Maximum cubic feet	Local, Zones 1 & 2 ($)	Zone 3 ($)	Zone 4 ($)	Zone 5 ($)	Zone 6 ($)	Zone 7 ($)	Zone 8 ($)	Zone 9 ($)
A	5.32	5.44	5.84	7.55	8.26	8.98	9.97	11.96
B	6.16	7.25	8.10	10.66	13.37	14.42	16.28	19.53
C	9.85	10.70	10.74	19.78	37.38	40.89	47.43	57.39

Commercial Plus Balloon Price

In Zones 1–4 (including local), parcels weighing less than 20 pounds but measuring more than 84 inches in combined length and girth (but not more than 108 inches) are charged the applicable price for a 20-pound parcel.

Commercial Plus Dimensional Weight

In Zones 5–8, parcels exceeding one cubic foot are priced at the actual weight or the dimensional weight, whichever is greater.

For box-shaped parcels, the dimensional weight (pounds) is calculated by multiplying the length (inches) times the width (inches) times the height (inches) of the parcel, and dividing by 194.

For irregular-shaped parcels (parcels not appearing box-shaped), the dimensional weight (pounds) is calculated by multiplying the length (inches) times the width (inches) times the height (inches) at the associated maximum cross-sections of the parcel,

dividing by 194, and multiplying by an adjustment factor of 0.785.

CRITICAL MAIL

Shape	Local, Zones 1 & 2 ($)	Zone 3 ($)	Zone 4 ($)	Zone 5 ($)	Zone 6 ($)	Zone 7 ($)	Zone 8 ($)	Zone 9 ($)
Letter	3.50	3.50	3.50	3.50	3.50	3.50	3.50	3.50
Flat	4.50	4.50	4.50	4.50	4.50	4.50	4.50	4.50
Letter with Signature	4.60	4.60	4.60	4.60	4.60	4.60	4.60	4.60
Flat with Signature	5.35	5.35	5.35	5.35	5.35	5.35	5.35	5.35

COMMERCIAL PLUS CUBIC

Maximum cubic feet	Local, Zones 1 & 2 ($)	Zone 3 ($)	Zone 4 ($)	Zone 5 ($)	Zone 6 ($)	Zone 7 ($)	Zone 8 ($)	Zone 9 ($)
0.10	4.58	4.65	4.74	4.99	5.23	5.47	5.82	6.98
0.20	4.99	5.12	5.28	5.50	5.70	5.91	6.30	7.56
0.30	5.22	5.61	6.12	7.64	8.39	9.09	9.96	11.94
0.40	5.40	6.31	7.24	9.13	10.73	11.77	13.26	15.91
0.50	6.18	7.21	8.35	11.50	13.41	14.82	16.97	20.36

Open and Distribute (PMOD)

a. DDU

Container	Local, Zones 1 & 2 ($)	Zone 3 ($)	Zone 4 ($)	Zone 5 ($)	Zone 6 ($)	Zone 7 ($)	Zone 8 ($)	Zone 9 ($)
Half Tray	7.49	9.17	11.08	17.83	18.06	19.64	21.80	27.25
Full Tray	10.18	12.74	14.83	25.95	29.83	31.69	35.36	44.20
EMM Tray	11.67	13.91	17.18	28.71	31.52	34.61	38.48	48.10
Flat Tub	16.68	20.91	25.85	43.73	52.78	57.06	63.51	79.39

b. Processing Facilities

Container	Local, Zones 1 & 2 ($)	Zone 3 ($)	Zone 4 ($)	Zone 5 ($)	Zone 6 ($)	Zone 7 ($)	Zone 8 ($)	Zone 9 ($)
Half Tray	5.94	7.52	9.24	16.10	16.45	18.00	19.32	24.15
Full Tray	7.68	9.90	12.33	22.49	26.58	28.45	31.80	39.75
EMM Tray	9.16	10.62	14.46	24.83	28.20	31.05	35.88	44.85
Flat Tub	13.11	17.33	21.95	40.09	48.96	53.30	58.63	73.29

Pickup on Demand Service

Add $20.00 for each Pickup On Demand stop.

IMpb-Noncompliance Fee

Add $0.20 for each IMpb-noncompliant parcel paying commercial prices.

[FR Doc. 2014–16012 Filed 7–8–14; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—First-Class Package Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* July 9, 2014.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on July 3, 2014, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add First-Class Package Service Contract 36 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2014–32, CP2014–57.

Stanley F. Mires,

Attorney, Legal Policy & Legislative Advice.

[FR Doc. 2014–16092 Filed 7–8–14; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* July 9, 2014.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on July 3, 2014, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Contract 83 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2014–31, CP2014–56.

Stanley F. Mires,

Attorney, Legal Policy & Legislative Advice.

[FR Doc. 2014–16104 Filed 7–8–14; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Transfer of Additional Post Office Box Locations to Competitive Fee Groups

AGENCY: Postal Service™.

ACTION: Notice with opportunity for comments.

SUMMARY: The Postal Service hereby provides notice that Post Office Box™ service for approximately 1,625 locations will be reassigned from their market-dominant fee groups to competitive fee groups.

DATES: *Effective date:* August 27, 2014.

ADDRESSES: Please address all written comments regarding this notice to United States Postal Service, Retail Services, Room 6801, 475 L'Enfant Plaza SW., Washington, DC 20260–5013.

FOR FURTHER INFORMATION CONTACT: Direct questions or comments to:

Frank Ippolito, Retail Services, *frank.p.ippolito@usps.gov,* 202–268–4681; or

David Rubin, General Counsel, *david.h.rubin@usps.gov,* 202–268–2986.

SUPPLEMENTARY INFORMATION: Locations providing Post Office Box service are classified as competitive or market-dominant and assigned to fee groups based upon the Post Office location and other criteria. Competitive fee groups provide more services than market-dominant ones, and have somewhat higher fees.

In May 2011, a *Request of the United States Postal Service* was filed with the Postal Regulatory Commission (PRC) to transfer approximately 6,800 PO Box locations from market-dominant to competitive fee groups, PRC Docket No. MC2011–25. Documents pertinent to that proceeding are available at *www.prc.gov,* Docket No. MC2011–25. At that time, the Postal Service advised the PRC that a **Federal Register** notice would be filed when future PO Box locations are transferred.

Since the original filing, the Postal Service expanded the competitive service to an additional location, *see* 79 FR 60928–60929 (Oct. 2, 2013), and is now expanding to additional locations. Competitive Post Office Box service includes several enhancements such as: electronic notification of the receipt of mail, use of an alternate street address format, signature on file for delivery of certain accountable mail, and additional hours of access and/or earlier availability of mail in some locations.

Since 2011, the Postal Service has expanded its use of competitive data to identify locations that qualify for reassignment to competitive status. This analysis identified approximately 1,625 locations which are eligible to be classified as competitive and assigned to a competitive Post Office Box fee group. These include Puerto Rican locations with nearby competitors that were omitted in 2011 but are included now. A list of affected locations, with the associated ZIP Codes, is provided in the Appendix to this notice.

Stanley F. Mires,

Attorney, Legal Policy & Legislative Advice.

Appendix

Transfer of Additional Post Office Box Locations to Competitive Fee Group—ZIP Code Listing

The following is a list of the locations which are described in the Notice above as qualifying for reassignment from market-dominant to competitive fee groups. The list is sorted by ZIP Code in ascending numerical order with geographical breaks and headers. As indicated by the column headings, this list provides the ZIP Code of the affected PO Boxes (ZIP), the office name of the location (OFFICE NAME), the city where the PO Boxes are located (CITY), the current market-dominant fee group (CFG), and the new competitive fee group (NFG).

Please note that there are more ZIP Codes than locations being moved to competitive fee groups, because some locations serve more than one ZIP Code. These locations can be identified whenever multiple ZIP Codes are listed for a single office name.

TRANSFER OF ADDITIONAL POST OFFICE BOX LOCATIONS TO COMPETITIVE FEE GROUP—ZIP CODE LISTING

ZIP	Office name	City	CFG	NFG
		PUERTO RICO		
00601	ADJUNTAS	ADJUNTAS	3	33
00602	AGUADA	AGUADA	2	32
00604	RAMEY	AGUADILLA	3	33
00605	AGUADILLA	AGUADILLA	3	33
00605	VICTORIA	AGUADILLA	3	33
00606	MARICAO	MARICAO	3	33
00610	ANASCO	ANASCO	4	34
00611	ANGELES	ANGELES	4	34
00613	ARECIBO PUEBLO	ARECIBO	3	33
00613	COTTO	ARECIBO	3	33
00614	ARECIBO	ARECIBO	3	33
00616	BAJADERO	BAJADERO	5	35
00617	BARCELONETA	BARCELONETA	3	33
00623	CABO ROJO	CABO ROJO	2	32
00624	PENUELAS	PENUELAS	3	33
00627	CAMUY	CAMUY	3	33
00637	SABANA GRANDE	SABANA GRANDE	2	32
00638	CIALES	CIALES	3	33
00641	UTUADO	UTUADO	3	33
00646	DORADO	DORADO	3	33
00647	ENSENADA	ENSENADA	3	33

TRANSFER OF ADDITIONAL POST OFFICE BOX LOCATIONS TO COMPETITIVE FEE GROUP—ZIP CODE LISTING—Continued

ZIP	Office name	City	CFG	NFG
00650	FLORIDA	FLORIDA	3	33
00652	GARROCHALES	GARROCHALES	6	36
00653	GUANICA	GUANICA	2	32
00656	GUAYANILLA	GUAYANILLA	3	33
00659	HATILLO	HATILLO	3	33
00660	HORMIGUEROS	HORMIGUEROS	3	33
00662	ISABELA	ISABELA	3	33
00667	LAJAS	LAJAS	3	33
00669	LARES	LARES	1	31
00670	LAS MARIAS	LAS MARIAS	5	35
00674	MANATI	MANATI	3	33
00676	MOCA	MOCA	3	33
00676	VOLADORAS CONTRACT STATION	MOCA	3	40
00677	RINCON	RINCON	2	32
00678	QUEBRADILLAS	QUEBRADILLAS	3	33
00680	SALUD CONTRACT	MAYAGUEZ	2	39
00681	MARINA	MAYAGUEZ	2	32
00681	MAYAGUEZ	MAYAGUEZ	2	32
00683	SAN GERMAN	SAN GERMAN	3	33
00685	JUNCAL CONTRACT	SAN SEBASTIAN	2	39
00685	SAN SEBASTIAN	SAN SEBASTIAN	2	32
00687	MOROVIS	MOROVIS	3	33
00688	SABANA HOYOS	SABANA HOYOS	5	35
00690	SAN ANTONIO	SAN ANTONIO	2	32
00692	BO MARICAO	VEGA ALTA	3	33
00692	VEGA ALTA	VEGA ALTA	3	33
00694	VEGA BAJA	VEGA BAJA	3	33
00698	YAUCO	YAUCO	2	32
00703	AGUAS BUENAS	AGUAS BUENAS	3	33
00704	AGUIRRE	AGUIRRE	3	33
00705	AIBONITO	AIBONITO	3	33
00707	MAUNABO	MAUNABO	3	33
00714	ARROYO	ARROYO	3	33
00715	MERCEDITA	MERCEDITA	2	32
00718	NAGUABO	NAGUABO	2	32
00719	NARANJITO	NARANJITO	2	32
00721	PALMER	PALMER	3	33
00723	PATILLAS	PATILLAS	3	33
00726	CAGUAS	CAGUAS	3	33
00726	NORTH	CAGUAS	3	33
00729	CANOVANAS	CANOVANAS	3	33
00732	PONCE	PONCE	4	34
00733	ATOCHA	PONCE	3	33
00735	CEIBA	CEIBA	2	32
00737	CAYEY	CAYEY	3	33
00738	FAJARDO	FAJARDO	2	32
00739	CIDRA	CIDRA	3	33
00740	PUERTO REAL	PUERTO REAL	3	33
00741	PUNTA SANTIAGO	PUNTA SANTIAGO	2	32
00744	RIO BLANCO	RIO BLANCO	6	36
00745	RIO GRANDE	RIO GRANDE	3	33
00751	SALINAS	SALINAS	2	32
00754	SAN LORENZO	SAN LORENZO	2	32
00757	SANTA ISABEL	SANTA ISABEL	1	31
00766	VILLALBA	VILLALBA	3	33
00767	YABUCOA	YABUCOA	3	33
00769	COAMO	COAMO	2	32
00771	LAS PIEDRAS	LAS PIEDRAS	3	33
00772	LOIZA	LOIZA	3	33
00773	LUQUILLO	LUQUILLO	3	33
00777	JUNCOS	JUNCOS	3	33
00778	GURABO	GURABO	3	33
00780	COTO LAUREL	COTO LAUREL	2	32
00782	COMERIO	COMERIO	3	33
00783	COROZAL	COROZAL	3	33
00785	GUAYAMA	GUAYAMA	3	33
00792	HUMACAO	HUMACAO	3	33
00794	BARRANQUITAS	BARRANQUITAS	2	32
00795	JUANA DIAZ	JUANA DIAZ	3	33
00902	OLD SAN JUAN	SAN JUAN	4	34
00906	OLD SAN JUAN	SAN JUAN	4	34
00908	SANTURCE	SAN JUAN	2	32

TRANSFER OF ADDITIONAL POST OFFICE BOX LOCATIONS TO COMPETITIVE FEE GROUP—ZIP CODE LISTING—Continued

ZIP	Office name	City	CFG	NFG
00910	FERNANDEZ JUNCOS	SAN JUAN	4	34
00914	LOIZA STREET	SAN JUAN	3	33
00916	BARRIO OBRERO	SAN JUAN	3	33
00919	HATO REY	SAN JUAN	3	33
00922	CAPARRA HEIGHTS	GUAYNABO	3	33
00927	SAN FRANCISCO DLBU	SAN JUAN	4	41
00928	RIO PIEDRAS	SAN JUAN	4	34
00929	65TH INFANTRY	SAN JUAN	3	33
00931	RIO PIEDRAS	SAN JUAN	4	34
00934	CAPARRA HEIGHTS	GUAYNABO	3	33
00934	FORT BUCHANAN	FORT BUCHANAN	4	34
00936	SAN JUAN	SAN JUAN	3	33
00937	SAN JUAN AIRPORT RETAIL	CAROLINA	4	34
00940	MINILLAS CENTER	SAN JUAN	3	33
00950	TOA BAJA	TOA BAJA	2	32
00951	TOA BAJA PUEBLO	TOA BAJA	2	32
00952	SABANA SECA	SABANA SECA	5	35
00954	TOA ALTA	TOA ALTA	3	33
00957	BAYAMON GDNS	BAYAMON	3	33
00960	BAYAMON	BAYAMON	3	33
00961	BAYAMON CONTRACT STATION	BAYAMON	3	40
00963	CATANO	CATANO	4	34
00970	GUAYNABO	GUAYNABO	2	32
00977	TRUJILLO ALTO	TRUJILLO ALTO	3	33
00981	SAN JUAN AIRPORT RETAIL	CAROLINA	4	34
00984	CAROLINA	CAROLINA	2	32
00986	CAROLINA PUEBLO	CAROLINA	4	34
00988	PLAZA CAROLINA	CAROLINA	2	32
	MASSACHUSETTS			
01027	EASTHAMPTON	EASTHAMPTON	4	34
01035	HADLEY	HADLEY	5	35
01038	HATFIELD	HATFIELD	5	35
01061	NORTHAMPTON	NORTHAMPTON	4	34
01062	FLORENCE	FLORENCE	3	33
01230	GREAT BARRINGTON	GREAT BARRINGTON	2	32
01237	LANESBORO	LANESBORO	5	35
01257	SHEFFIELD	SHEFFIELD	5	35
01258	SOUTH EGREMONT	SOUTH EGREMONT	5	35
01266	WEST STOCKBRIDGE	WEST STOCKBRIDGE	5	35
01505	BOYLSTON	BOYLSTON	4	34
01507	CHARLTON	CHARLTON	4	34
01509	CHARLTON	CHARLTON	4	34
01518	FISKDALE	FISKDALE	4	34
01525	LINWOOD	LINWOOD	4	34
01534	NORTHBRIDGE	NORTHBRIDGE	4	34
01538	NORTH UXBRIDGE	NORTH UXBRIDGE	5	35
01540	OXFORD	OXFORD	1	31
01550	SOUTHBRIDGE	SOUTHBRIDGE	1	31
01566	STURBRIDGE	STURBRIDGE	4	34
01568	UPTON	UPTON	4	34
01569	UXBRIDGE	UXBRIDGE	1	31
01590	SUTTON	SUTTON	4	34
01746	HOLLISTON	HOLLISTON	1	31
01748	HOPKINTON	HOPKINTON	1	31
01756	MENDON	MENDON	4	34
01757	MILFORD	MILFORD	1	31
01876	TEWKSBURY	TEWKSBURY	1	31
01921	BOXFORD	BOXFORD	4	34
01931	GLOUCESTER	GLOUCESTER	2	32
01966	ROCKPORT	ROCKPORT	1	31
01971	EAST INDIA SQUARE MALL	SALEM	2	32
02020	OCEAN BLUFF	OCEAN BLUFF	1	31
02035	FOXBORO	FOXBORO	1	31
02041	GREEN HARBOR	GREEN HARBOR	4	34
02048	MANSFIELD	MANSFIELD	1	31
02050	MARSHFIELD	MARSHFIELD	1	31
02051	MARSHFIELD HILLS	MARSHFIELD HILLS	5	35
02065	OCEAN BLUFF	OCEAN BLUFF	1	31
02331	SNUG HARBOR	DUXBURY	4	34
02455	NORTH WALTHAM BRANCH	WALTHAM	2	32

TRANSFER OF ADDITIONAL POST OFFICE BOX LOCATIONS TO COMPETITIVE FEE GROUP—ZIP CODE LISTING—Continued

ZIP	Office name	City	CFG	NFG
02537	EAST SANDWICH	EAST SANDWICH	5	35
02539	EDGARTOWN	EDGARTOWN	4	34
02543	WOODS HOLE	WOODS HOLE	2	32
02563	SANDWICH	SANDWICH	5	35
02722	FALL RIVER	FALL RIVER	1	31
02726	SOMERSET	SOMERSET	1	31
02738	MARION	MARION	4	34
02764	NORTH DIGHTON	NORTH DIGHTON	4	34
02766	NORTON	NORTON	4	34
02770	ROCHESTER	ROCHESTER	4	34
02780	TAUNTON FINANCE	TAUNTON	1	31
	RHODE ISLAND			
02835	JAMESTOWN	JAMESTOWN	3	33
02840	BROADWAY	NEWPORT	2	32
02840	NEWPORT	NEWPORT	2	32
02842	MIDDLETOWN	MIDDLETOWN	2	32
02857	NORTH SCITUATE	NORTH SCITUATE	6	36
02879	WAKEFIELD	WAKEFIELD	3	33
	NEW HAMPSHIRE			
03031	AMHERST	AMHERST	4	34
03045	GOFFSTOWN	GOFFSTOWN	1	31
03054	MERRIMACK	MERRIMACK	4	34
03055	MILFORD	MILFORD	1	31
03087	WINDHAM	WINDHAM	4	34
03217	ASHLAND	ASHLAND	5	35
03221	BRADFORD	BRADFORD	5	35
03222	BRISTOL	BRISTOL	3	33
03223	CAMPTON	CAMPTON	5	35
03245	HOLDERNESS	HOLDERNESS	5	35
03255	NEWBURY	NEWBURY	5	35
03257	NEW LONDON	NEW LONDON	5	35
03266	RUMNEY	RUMNEY	5	35
03272	NEWBURY	NEWBURY	5	35
03446	SWANZEY	SWANZEY	5	35
03603	CHARLESTOWN	CHARLESTOWN	5	35
03766	LEBANON	LEBANON	2	32
03773	NEWPORT	NEWPORT	3	33
03782	SUNAPEE	SUNAPEE	5	35
03813	CENTER CONWAY	CENTER CONWAY	5	35
03818	CONWAY	CONWAY	5	35
03821	DOVER	DOVER	1	31
03825	BARRINGTON	BARRINGTON	4	34
03833	EXETER	EXETER	1	31
03838	GLEN	GLEN	5	35
03845	INTERVALE	INTERVALE	5	35
03847	INTERVALE	INTERVALE	5	35
03856	NEWFIELDS	NEWFIELDS	4	34
03866	ROCHESTER	ROCHESTER	1	31
03878	SOMERSWORTH	SOMERSWORTH	1	31
	MAINE			
03901	BERWICK	BERWICK	4	34
04027	LEBANON	LEBANON	4	34
04032	FREEPORT	FREEPORT	2	32
04064	OLD ORCHARD BEACH	OLD ORCHARD BEACH	2	32
04071	RAYMOND	RAYMOND	4	34
04079	HARPSWELL	HARPSWELL	4	34
04211	AUBURN	AUBURN	2	32
04212	GREAT FALLS	AUBURN	2	32
04241	SOUTH LEWISTON	LEWISTON	2	32
04243	LEWISTON	LEWISTON	2	32
04268	NORWAY	NORWAY	2	32
04281	SOUTH PARIS	SOUTH PARIS	2	32
04345	GARDINER	GARDINER	2	32
04609	BAR HARBOR	BAR HARBOR	2	32
04668	PRINCETON	PRINCETON	4	34
04730	HOULTON	HOULTON	2	32

TRANSFER OF ADDITIONAL POST OFFICE BOX LOCATIONS TO COMPETITIVE FEE GROUP—ZIP CODE LISTING—Continued

ZIP	Office name	City	CFG	NFG
04761	HOULTON	HOULTON	2	32
04769	PRESQUE ISLE	PRESQUE ISLE	2	32
04849	LINCOLNVILLE	LINCOLNVILLE	4	34
04915	BELFAST	BELFAST	1	31
04974	SEARSPORT	SEARSPORT	4	34
		VERMONT		
05001	WHITE RIVER JUNCTION	WHITE RIVER JUNCTION	3	33
05088	WILDER	WILDER	4	34
05089	WINDSOR	WINDSOR	1	31
05156	SPRINGFIELD	SPRINGFIELD	1	31
05601	MONTPELIER	MONTPELIER	3	33
05641	BARRE	BARRE	3	33
05702	RUTLAND MAIN OFFICE	RUTLAND	3	33
		CONNECTICUT		
06057	NEW HARTFORD	NEW HARTFORD	4	34
06098	WINSTED	WINSTED	1	31
06237	COLUMBIA	COLUMBIA	5	35
06250	MANSFIELD CENTER	MANSFIELD CENTER	5	35
06260	PUTNAM	PUTNAM	4	34
06281	WOODSTOCK	WOODSTOCK	5	35
06330	BALTIC	BALTIC	4	34
06333	EAST LYME	EAST LYME	5	35
06339	LEDYARD	LEDYARD	5	35
06351	JEWETT CITY	JEWETT CITY	2	32
06357	NIANTIC	NIANTIC	2	32
06360	NORWICH	NORWICH	3	33
06371	OLD LYME	OLD LYME	5	35
06382	UNCASVILLE	UNCASVILLE	3	33
06405	BRANFORD	BRANFORD	2	32
06412	CHESTER	CHESTER	4	34
06415	COLCHESTER	COLCHESTER	3	33
06420	COLCHESTER	COLCHESTER	3	33
06423	EAST HADDAM	EAST HADDAM	5	35
06426	ESSEX	ESSEX	2	32
06450	MERIDEN	MERIDEN	3	33
06468	MONROE	MONROE	4	34
06470	NEWTOWN	NEWTOWN	1	31
06471	NORTH BRANFORD	NORTH BRANFORD	4	34
06475	OLD SAYBROOK	OLD SAYBROOK	2	32
06482	NEWTOWN	NEWTOWN	1	31
06704	PLAZA	WATERBURY	2	32
06716	WOLCOTT	WOLCOTT	3	33
06720	WATERBURY	WATERBURY	4	34
06721	WATERBURY	WATERBURY	4	34
06722	WATERBURY	WATERBURY	4	34
06723	WATERBURY	WATERBURY	4	34
06724	WATERBURY	WATERBURY	4	34
06756	GOSHEN	GOSHEN	4	34
06759	LITCHFIELD	LITCHFIELD	4	34
06762	MIDDLEBURY	MIDDLEBURY	4	34
06784	SHERMAN	SHERMAN	4	34
06896	WEST REDDING	REDDING	4	34
		NEW JERSEY		
07101	NEWARK	NEWARK	6	36
07421	HEWITT	HEWITT	4	34
07728	FREEHOLD	FREEHOLD	4	34
07853	LONG VALLEY	LONG VALLEY	4	34
08004	ATCO	ATCO	3	33
08009	BERLIN	BERLIN	3	33
08016	BURLINGTON	BURLINGTON	3	33
08046	WILLINGBORO	WILLINGBORO	3	33
08085	SWEDESBORO	SWEDESBORO	3	33
08088	VINCENTOWN	SOUTHAMPTON	3	33
08094	WILLIAMSTOWN	WILLIAMSTOWN	2	32
08223	MARMORA	MARMORA	5	35
08226	OCEAN CITY POST OFFICE	OCEAN CITY	3	33

TRANSFER OF ADDITIONAL POST OFFICE BOX LOCATIONS TO COMPETITIVE FEE GROUP—ZIP CODE LISTING—Continued

ZIP	Office name	City	CFG	NFG
08230	OCEAN VIEW	OCEAN VIEW	5	35
08270	WOODBINE	WOODBINE	5	35
08302	BRIDGETON	BRIDGETON	3	33
08318	ELMER	ELMER	6	36
08332	MILLVILLE	MILLVILLE	3	33
08344	NEWFIELD	NEWFIELD	5	35
08758	WARETOWN	WARETOWN	5	35
08831	MONROE TOWNSHIP	MONROE TOWNSHIP	2	32
		NEW YORK		
10451	BRONX	BRONX	3	33
10504	ARMONK	ARMONK	1	31
10506	BEDFORD	BEDFORD	4	34
10516	COLD SPRING	COLD SPRING	1	31
10576	POUND RIDGE	POUND RIDGE	4	34
10912	GREENWOOD LAKE	GREENWOOD LAKE	4	34
10919	CIRCLEVILLE	CIRCLEVILLE	5	35
10921	FLORIDA	FLORIDA	3	33
10924	GOSHEN	GOSHEN	3	33
10925	GREENWOOD LAKE	GREENWOOD LAKE	4	34
10930	HIGHLAND MILLS	HIGHLAND MILLS	5	35
10973	SLATE HILL	SLATE HILL	5	35
10987	TUXEDO PARK	TUXEDO PARK	5	35
10990	WARWICK	WARWICK	3	33
10992	WASHINGTONVILLE	WASHINGTONVILLE	3	33
11004	GLEN OAKS	GLEN OAKS	1	31
11205	PRATT	BROOKLYN	1	31
11209	FORT HAMILTON	BROOKLYN	2	32
11218	KENSINGTON	BROOKLYN	1	31
11229	KINGSWAY STATION	BROOKLYN	1	31
11576	ROSLYN	ROSLYN	1	31
11690	FAR ROCKAWAY	FAR ROCKAWAY	3	33
11692	ARVERNE	ARVERNE	2	32
11694	ROCKAWAY PARK	ROCKAWAY PARK	1	31
11695	ROCKAWAY PARK	ROCKAWAY PARK	1	31
11901	RIVERHEAD	RIVERHEAD	3	33
11931	AQUEBOGUE	AQUEBOGUE	4	34
11932	BRIDGEHAMPTON	BRIDGEHAMPTON	4	34
11933	CALVERTON	CALVERTON	4	34
11963	SAG HARBOR	SAG HARBOR	4	34
11978	WESTHAMPTON BEACH	WESTHAMPTON BEACH	3	33
12054	DELMAR	DELMAR	3	33
12078	GLOVERSVILLE MAIN OFFICE	GLOVERSVILLE	3	33
12095	JOHNSTOWN MAIN OFFICE	JOHNSTOWN	3	33
12186	VOORHEESVILLE	VOORHEESVILLE	4	34
12449	LAKE KATRINE	LAKE KATRINE	5	35
12472	ROSENDALE	ROSENDALE	5	35
12515	CLINTONDALE	CLINTONDALE	5	35
12525	GARDINER	GARDINER	5	35
12529	HILLSDALE	HILLSDALE	5	35
12540	LAGRANGEVILLE	LAGRANGEVILLE	5	35
12542	MARLBORO	MARLBORO	5	35
12545	MILLBROOK	MILLBROOK	5	35
12547	MILTON	MILTON	5	35
12548	MODENA	MODENA	5	35
12561	NEW PALTZ	NEW PALTZ	3	33
12569	PLEASANT VALLEY	PLEASANT VALLEY	5	35
12801	GLENS FALLS	GLENS FALLS	3	33
12803	GLENS FALLS	GLENS FALLS	3	33
12804	QUEENSBURY	QUEENSBURY	3	33
13166	WEEDSPORT	WEEDSPORT	5	35
13612	BLACK RIVER	BLACK RIVER	5	35
13745	CHENANGO BRIDGE	CHENANGO BRIDGE	4	34
13820	ONEONTA MAIN OFFICE	ONEONTA	4	34
13833	PORT CRANE	PORT CRANE	5	35
13902	BINGHAMTON	BINGHAMTON	4	34
13904	BINGHAMTON	BINGHAMTON	4	34
13905	BINGHAMTON	BINGHAMTON	4	34
14021	BATAVIA MAIN OFFICE	BATAVIA	3	33
14048	DUNKIRK	DUNKIRK	3	33
14063	FREDONIA	FREDONIA	3	33

TRANSFER OF ADDITIONAL POST OFFICE BOX LOCATIONS TO COMPETITIVE FEE GROUP—ZIP CODE LISTING—Continued

ZIP	Office name	City	CFG	NFG
14072	GRAND ISLAND	GRAND ISLAND	4	34
14132	SANBORN	SANBORN	4	34
14166	DUNKIRK	DUNKIRK	3	33
14231	WILLIAMSVILLE	BUFFALO	2	32
14468	HILTON MAIN OFFICE	HILTON	3	33
14478	KEUKA PARK	KEUKA PARK	5	35
14502	MACEDON	MACEDON	5	35
14514	NORTH CHILI MAIN OFFICE	NORTH CHILI	3	33
14519	ONTARIO	ONTARIO	5	35
14527	PENN YAN	PENN YAN	4	34
14559	SPENCERPORT MAIN OFFICE	SPENCERPORT	3	33
14718	CASSADAGA	CASSADAGA	5	35
14902	DOWNTOWN STA ELMIRA	ELMIRA	2	32
14905	DOWNTOWN STA ELMIRA	ELMIRA	2	32
		PENNSYLVANIA		
15116	GLENSHAW MAIN OFFICE	GLENSHAW	2	32
15301	WASHINGTON	WASHINGTON	3	33
15401	UNIONTOWN MAIN OFFICE	UNIONTOWN	3	33
15522	BEDFORD	BEDFORD	4	34
16146	SHARON	SHARON	4	34
16148	HERMITAGE	HERMITAGE	4	34
16441	WATERFORD	WATERFORD	4	34
16603	ALTOONA	ALTOONA	5	35
16635	DUNCANSVILLE	DUNCANSVILLE	5	35
16648	HOLLIDAYSBURG	HOLLIDAYSBURG	4	34
16823	BELLEFONTE	BELLEFONTE	4	34
17016	CORNWALL	CORNWALL	5	35
17042	LEBANON	LEBANON	3	33
17815	BLOOMSBURG	BLOOMSBURG	4	34
17839	BLOOMSBURG	BLOOMSBURG	4	34
18017	BUTZTOWN	BETHLEHEM	4	34
18051	FOGELSVILLE	FOGELSVILLE	5	35
18064	NAZARETH	NAZARETH	4	34
18326	CRESCO	CRESCO	4	34
18327	DELAWARE WATER GAP	DELAWARE WATER GAP	5	35
18360	STROUDSBURG	STROUDSBURG	3	33
44036	TREXLERTOWN	TREXLERTOWN	5	35
18640	PITTSTON	PITTSTON	4	34
18642	PITTSTON	PITTSTON	4	34
18643	PITTSTON	PITTSTON	4	34
18644	PITTSTON	PITTSTON	4	34
18840	SAYRE MAIN OFFICE	SAYRE	4	34
18914	CHALFONT	CHALFONT	3	33
18933	POINT PLEASANT	POINT PLEASANT	4	34
18947	PIPERSVILLE	PIPERSVILLE	4	34
18950	POINT PLEASANT	POINT PLEASANT	4	34
19007	BRISTOL	BRISTOL	3	33
19016	CHESTER	CHESTER	3	33
19061	BOOTHWYN	UPPER CHICHESTER	3	33
19078	RIDLEY PARK	RIDLEY PARK	3	33
19122	SPRING GARDEN	PHILADELPHIA	4	34
19128	ROXBOROUGH	PHILADELPHIA	3	33
19135	TACONY	PHILADELPHIA	3	33
19148	SNYDER PLAZA	PHILADELPHIA	3	33
19320	COATESVILLE	COATESVILLE	3	33
19520	ELVERSON	ELVERSON	5	35
19533	LEESPORT	LEESPORT	5	35
19606	READING STATION	READING	3	33
		DELAWARE		
19939	DAGSBORO	DAGSBORO	4	34
19943	FELTON	FELTON	5	35
19947	GEORGETOWN	GEORGETOWN	3	33
19963	MILFORD	MILFORD	3	33
19966	MILLSBORO	MILLSBORO	5	35
19968	MILTON	MILTON	2	32
19973	SEAFORD	SEAFORD	3	33

TRANSFER OF ADDITIONAL POST OFFICE BOX LOCATIONS TO COMPETITIVE FEE GROUP—ZIP CODE LISTING—Continued

ZIP	Office name	City	CFG	NFG
		MARYLAND		
20639	HUNTINGTOWN	HUNTINGTOWN	5	35
20678	PRINCE FREDERICK	PRINCE FREDERICK	4	34
20689	HUNTINGTOWN	HUNTINGTOWN	5	35
20753	DISTRICT HEIGHTS	DISTRICT HEIGHTS	1	31
20773	UPPER MARLBORO	UPPER MARLBORO	1	31
20775	KETTERING	UPPER MARLBORO	1	31
20777	HIGHLAND	HIGHLAND	5	35
20791	HAMPTON PARK	CAPITOL HEIGHTS	2	32
20792	LARGO	UPPER MARLBORO	1	31
20812	GLEN ECHO	GLEN ECHO	4	34
20837	POOLESVILLE	POOLESVILLE	4	34
20839	POOLESVILLE	POOLESVILLE	4	34
21001	ABERDEEN	ABERDEEN	3	33
21005	ABERDEEN PROVING GROUND	ABERDEEN PROVING GROUND	3	33
21009	ABINGDON	ABINGDON	5	35
21028	CHURCHVILLE	CHURCHVILLE	5	35
21040	EDGEWOOD	EDGEWOOD	3	33
21042	ENCHANTED FOREST	ELLICOTT CITY	3	33
21048	FINKSBURG	FINKSBURG	5	35
21071	GLYNDON	GLYNDON	5	35
21074	HAMPSTEAD	HAMPSTEAD	5	35
21078	HAVRE DE GRACE	HAVRE DE GRACE	3	33
21085	JOPPA	JOPPA	3	33
21102	MANCHESTER	MANCHESTER	5	35
21111	MONKTON	MONKTON	4	34
21131	PHOENIX	PHOENIX	5	35
21136	REISTERSTOWN	REISTERSTOWN	3	33
21152	SPARKS GLENCOE	SPARKS GLENCOE	5	35
21220	MIDDLE RIVER	MIDDLE RIVER	3	33
21221	ESSEX	ESSEX	3	33
21222	DUNDALK SPARROWS POINT	DUNDALK	3	33
21401	LEGION AVENUE	ANNAPOLIS	3	33
21619	CHESTER	CHESTER	4	34
21638	GRASONVILLE	GRASONVILLE	5	35
21662	ROYAL OAK	ROYAL OAK	5	35
21663	SAINT MICHAELS	SAINT MICHAELS	4	34
21666	STEVENSVILLE	STEVENSVILLE	5	35
21717	BUCKEYSTOWN	BUCKEYSTOWN	5	35
21734	FUNKSTOWN	FUNKSTOWN	5	35
21740	HAGERSTOWN	HAGERSTOWN	3	33
21742	NORTHERN	HAGERSTOWN	3	33
21767	MAUGANSVILLE	MAUGANSVILLE	5	35
21774	NEW MARKET	NEW MARKET	5	35
21793	WALKERSVILLE	WALKERSVILLE	5	35
21795	WILLIAMSPORT	WILLIAMSPORT	3	33
21811	OCEAN PINES	BERLIN	3	33
21862	OCEAN PINES	BERLIN	3	33
21903	PERRYVILLE	PERRYVILLE	4	34
		VIRGINIA		
20159	HAMILTON	HAMILTON	5	35
20182	NOKESVILLE	NOKESVILLE	5	35
22060	NORTH POST	FORT BELVOIR	2	32
22134	QUANTICO	QUANTICO	2	32
22202	EADS FINANCE	ARLINGTON	1	31
22727	MADISON	MADISON	5	35
22952	LYNDHURST	LYNDHURST	5	35
22968	RUCKERSVILLE	RUCKERSVILLE	5	35
22973	STANARDSVILLE	STANARDSVILLE	5	35
23069	HANOVER	HANOVER	5	35
23093	LOUISA	LOUISA	5	35
23116	ATLEE	MECHANICSVILLE	4	34
23117	MINERAL	MINERAL	5	35
23150	SANDSTON	SANDSTON	5	35
23168	TOANO	TOANO	4	34
23170	LOUISA	LOUISA	5	35
23511	NAVAL BASE	NORFOLK	4	34
23604	FORT EUSTIS	FORT EUSTIS	3	33
23607	NEWPORT NEWS	NEWPORT NEWS	6	36

TRANSFER OF ADDITIONAL POST OFFICE BOX LOCATIONS TO COMPETITIVE FEE GROUP—ZIP CODE LISTING—Continued

ZIP	Office name	City	CFG	NFG
23665	LANGLEY AFB	HAMPTON	3	33
23883	SURRY	SURRY	5	35
24151	ROCKY MOUNT	ROCKY MOUNT	4	34
24184	WIRTZ	WIRTZ	5	35
24236	DAMASCUS	DAMASCUS	5	35
24250	GATE CITY	GATE CITY	5	35
24251	GATE CITY	GATE CITY	5	35
24319	CHILHOWIE	CHILHOWIE	5	35
24340	GLADE SPRING	GLADE SPRING	5	35
24354	MARION	MARION	4	34
24361	MEADOWVIEW	MEADOWVIEW	5	35
24370	SALTVILLE	SALTVILLE	5	35
24416	BUENA VISTA	BUENA VISTA	4	34
24450	LEXINGTON	LEXINGTON	4	34
24477	STUARTS DRAFT	STUARTS DRAFT	5	35
24555	GLASGOW	GLASGOW	5	35
		WEST VIRGINIA		
25271	RIPLEY	RIPLEY	4	34
25302	STONEWALL	CHARLESTON	4	34
25362	STONEWALL	CHARLESTON	4	34
25402	MARTINSBURG	MARTINSBURG	4	34
25825	COOL RIDGE	COOL RIDGE	5	35
25827	CRAB ORCHARD	CRAB ORCHARD	5	35
25832	DANIELS	DANIELS	5	35
25918	SHADY SPRING	SHADY SPRING	5	35
26164	RAVENSWOOD	RAVENSWOOD	4	34
26507	DOWNTOWN MORGANTOWN	MORGANTOWN	4	34
26531	DELLSLOW	DELLSLOW	5	35
26588	RIVESVILLE	RIVESVILLE	5	35
26726	KEYSER	KEYSER	4	34
		NORTH CAROLINA		
27214	BROWNS SUMMIT	BROWNS SUMMIT	5	35
27235	COLFAX	COLFAX	5	35
27253	GRAHAM	GRAHAM	3	33
27258	HAW RIVER	HAW RIVER	5	35
27278	HILLSBOROUGH	HILLSBOROUGH	4	34
27301	MC LEANSVILLE	MC LEANSVILLE	5	35
27302	MEBANE	MEBANE	4	34
27310	OAK RIDGE	OAK RIDGE	5	35
27312	PITTSBORO	PITTSBORO	5	35
27357	STOKESDALE	STOKESDALE	5	35
27359	GRAHAM	GRAHAM	3	33
27377	WHITSETT	WHITSETT	6	36
27416	SPRING VALLEY	GREENSBORO	3	33
27501	ANGIER MAIN OFFICE	ANGIER	4	34
27504	BENSON	BENSON	4	34
27536	HENDERSON	HENDERSON	3	33
27544	KITTRELL	KITTRELL	5	35
27576	SELMA	SELMA	4	34
27577	SMITHFIELD	SMITHFIELD	4	34
27592	WILLOW SPRING	WILLOW SPRING	5	35
27623	WESTGATE	RALEIGH	4	34
27675	WESTGATE	RALEIGH	4	34
27703	EAST DURHAM	DURHAM	4	34
27822	ELM CITY	ELM CITY	5	35
27851	LUCAMA	LUCAMA	5	35
27856	NASHVILLE	NASHVILLE	3	33
27858	CPU SOUTH PARK	GREENVILLE	4	41
28001	ALBEMARLE MAIN OFFICE	ALBEMARLE	3	33
28002	ALBEMARLE MAIN OFFICE	ALBEMARLE	3	33
28016	BESSEMER CITY	BESSEMER CITY	4	34
28034	DALLAS	DALLAS	4	34
28039	EAST SPENCER	EAST SPENCER	5	35
28072	GRANITE QUARRY	GRANITE QUARRY	5	35
28081	KANNAPOLIS	KANNAPOLIS	4	34
28082	KANNAPOLIS	KANNAPOLIS	4	34
28111	MONROE	MONROE	4	34
28159	SPENCER	SPENCER	4	34

TRANSFER OF ADDITIONAL POST OFFICE BOX LOCATIONS TO COMPETITIVE FEE GROUP—ZIP CODE LISTING—Continued

ZIP	Office name	City	CFG	NFG
28164	STANLEY	STANLEY	4	34
28173	WAXHAW	WAXHAW	5	35
28302	FAYETTEVILLE	FAYETTEVILLE	3	33
28311	TOKAY ANNEX	FAYETTEVILLE	3	33
28326	CAMERON	CAMERON	5	35
28329	CLINTON	CLINTON	3	33
28337	ELIZABETHTOWN	ELIZABETHTOWN	5	35
28351	LAUREL HILL	LAUREL HILL	5	35
28364	MAXTON	MAXTON	3	33
28379	ROCKINGHAM MAIN OFFICE	ROCKINGHAM	3	33
28380	ROCKINGHAM MAIN OFFICE	ROCKINGHAM	3	33
28398	WARSAW	WARSAW	4	34
28402	WILMINGTON MAIN	WILMINGTON	4	34
28429	CASTLE HAYNE	CASTLE HAYNE	5	35
28433	CLARKTON	CLARKTON	5	35
28441	GARLAND	GARLAND	5	35
28451	LELAND	LELAND	5	35
28453	MAGNOLIA	MAGNOLIA	5	35
28458	ROSE HILL	ROSE HILL	5	35
28465	OAK ISLAND	OAK ISLAND	3	40
28466	WALLACE	WALLACE	3	33
28531	HARKERS ISLAND	HARKERS ISLAND	4	34
28532	CHERRY POINT	HAVELOCK	3	33
28532	HAVELOCK	HAVELOCK	3	33
28539	HUBERT	HUBERT	5	35
28540	JACKSONVILLE	JACKSONVILLE	3	33
28540	NORTHWOODS	JACKSONVILLE	3	33
28541	JACKSONVILLE	JACKSONVILLE	3	33
28570	NEWPORT	NEWPORT	5	35
28651	MILLERS CREEK	MILLERS CREEK	4	34
28654	MORAVIAN FALLS	MORAVIAN FALLS	5	35
28655	MORGANTON MAIN OFFICE	MORGANTON	3	33
28659	NORTH WILKESBORO	NORTH WILKESBORO	3	33
28697	WILKESBORO	WILKESBORO	3	33
28728	ENKA	ENKA	5	35
28731	FLAT ROCK	FLAT ROCK	5	35
28738	HAZELWOOD	WAYNESVILLE	4	34
28742	HORSE SHOE	HORSE SHOE	5	35
28745	LAKE JUNALUSKA	LAKE JUNALUSKA	5	35
28768	PISGAH FOREST	PISGAH FOREST	5	35
28777	SPRUCE PINE	SPRUCE PINE	3	33
28784	ZIRCONIA	ZIRCONIA	4	34
28786	HAZELWOOD	WAYNESVILLE	4	34
28786	WAYNESVILLE	WAYNESVILLE	4	34
28790	ZIRCONIA	ZIRCONIA	4	34
28793	HENDERSONVILLE	HENDERSONVILLE	3	33
28904	HAYESVILLE	HAYESVILLE	5	35
	SOUTH CAROLINA			
29078	LUGOFF	LUGOFF	5	35
29161	TIMMONSVILLE	TIMMONSVILLE	4	34
29376	ROEBUCK	ROEBUCK	5	35
29388	WOODRUFF	WOODRUFF	4	34
29438	EDISTO ISLAND	EDISTO ISLAND	5	35
29451	ISLE OF PALMS	ISLE OF PALMS	4	34
29461	MONCKS CORNER	MONCKS CORNER	4	34
29503	FEDERAL FLORENCE	FLORENCE	4	34
29540	DARLINGTON	DARLINGTON	4	34
29568	LONGS	LONGS	5	35
29578	MYRTLE BEACH	MYRTLE BEACH	4	34
29587	SURFSIDE BEACH	SURFSIDE BEACH	4	34
29588	SOCASTEE	MYRTLE BEACH	3	33
29644	FOUNTAIN INN	FOUNTAIN INN	4	34
29657	LIBERTY	LIBERTY	4	34
29690	TRAVELERS REST	TRAVELERS REST	4	34
29691	WALHALLA	WALHALLA	4	34
29693	WESTMINSTER	WESTMINSTER	4	34
29696	WEST UNION	WEST UNION	5	35
29708	TEGA CAY CONTRACT	FORT MILL	4	41
29710	LAKE WYLIE	CLOVER	4	41
29745	YORK	YORK	4	34

TRANSFER OF ADDITIONAL POST OFFICE BOX LOCATIONS TO COMPETITIVE FEE GROUP—ZIP CODE LISTING—Continued

ZIP	Office name	City	CFG	NFG
29861	NORTH AUGUSTA	NORTH AUGUSTA	4	34
29920	SAINT HELENA ISLAND	SAINT HELENA ISLAND	5	35
	GEORGIA			
30012	OLDE TOWN	CONYERS	4	34
30054	OXFORD	OXFORD	6	36
30066	MARKET SQUARE	MARIETTA	5	35
30070	PORTERDALE	PORTERDALE	6	36
30120	NORTH CORNERS	CARTERSVILLE	5	35
30137	EMERSON	EMERSON	6	36
30162	ROME	ROME	4	34
30164	WEST ROME	ROME	4	34
30175	TALKING ROCK	TALKING ROCK	6	36
30180	VILLA RICA	VILLA RICA	4	34
30184	WHITE	WHITE	6	36
30187	WINSTON	WINSTON	6	36
30228	HAMPTON	HAMPTON	6	36
30228	LOVEJOY	HAMPTON	5	35
30250	LOVEJOY	HAMPTON	5	35
30257	MILNER	MILNER	5	35
30268	PALMETTO	PALMETTO	6	36
30272	RED OAK	RED OAK	5	35
30276	SENOIA	SENOIA	6	36
30284	SUNNY SIDE	SUNNY SIDE	6	36
30286	THOMASTON	THOMASTON	4	34
30290	TYRONE	TYRONE	6	36
30292	WILLIAMSON	WILLIAMSON	5	35
30294	ELLENWOOD	ELLENWOOD	6	36
30302	CENTRAL CITY	ATLANTA	4	34
30312	CENTRAL CITY	ATLANTA	4	34
30317	EASTWOOD	ATLANTA	5	35
30319	NORTH ATLANTA	ATLANTA	4	34
30320	L&DC	ATLANTA	2	32
30321	ATLANTA	ATLANTA	4	34
30337	COLLEGE PARK	ATLANTA	4	34
30349	OLD NATIONAL	ATLANTA	4	34
30354	HAPEVILLE	ATLANTA	5	35
30513	BLUE RIDGE	BLUE RIDGE	6	36
30514	BLAIRSVILLE	BLAIRSVILLE	6	36
30525	CLAYTON	CLAYTON	5	35
30527	CLERMONT	CLERMONT	5	35
30528	CLEVELAND	CLEVELAND	6	36
30546	HIAWASSEE	HIAWASSEE	6	36
30552	LAKEMONT	LAKEMONT	5	35
30559	MINERAL BLUFF	MINERAL BLUFF	6	36
30560	MORGANTON	MORGANTON	5	35
30562	MOUNTAIN CITY	MOUNTAIN CITY	5	35
30564	MURRAYVILLE	MURRAYVILLE	5	35
30568	RABUN GAP	RABUN GAP	5	35
30576	TIGER	TIGER	6	36
30582	YOUNG HARRIS	YOUNG HARRIS	5	35
30677	WATKINSVILLE	WATKINSVILLE	5	35
30703	CALHOUN	CALHOUN	4	34
30722	DALTON	DALTON	4	34
30725	FLINTSTONE	FLINTSTONE	5	35
30736	RINGGOLD	RINGGOLD	4	34
30740	ROCKY FACE	ROCKY FACE	5	35
30752	TRENTON	TRENTON	6	36
30755	TUNNEL HILL	TUNNEL HILL	5	35
30815	HEPHZIBAH	HEPHZIBAH	5	35
30903	AUGUSTA	AUGUSTA	4	34
30905	FORT GORDON	FORT GORDON	3	33
30916	PEACH ORCHARD	AUGUSTA	4	34
31010	CORDELE	CORDELE	4	34
31069	PERRY GA	PERRY	4	34
31092	VIENNA	VIENNA	4	34
31301	ALLENHURST	ALLENHURST	5	35
31315	FORT STEWART	FORT STEWART	3	33
31320	MIDWAY	MIDWAY	5	35
31501	WAYCROSS MAIN POST OFFICE	WAYCROSS	4	34
31502	WAYCROSS MAIN POST OFFICE	WAYCROSS	4	34

TRANSFER OF ADDITIONAL POST OFFICE BOX LOCATIONS TO COMPETITIVE FEE GROUP—ZIP CODE LISTING—Continued

ZIP	Office name	City	CFG	NFG
31547	CPU KINGS BAY	KINGS BAY	4	41
31569	WOODBINE	WOODBINE	5	35
31598	JESUP	JESUP	4	34
31626	BOSTON	BOSTON	6	36
31763	LEESBURG	LEESBURG	5	35
31793	TIFTON	TIFTON	4	34
31804	CATAULA	CATAULA	5	35
31808	FORTSON	FORTSON	5	35
31820	MIDLAND	MIDLAND	5	35
31995	FORT BENNING	FORT BENNING	4	34
39818	BAINBRIDGE	BAINBRIDGE	4	34
39851	FORT GAINES	FORT GAINES	6	36
39854	GEORGETOWN	GEORGETOWN	6	36
39897	WHIGHAM	WHIGHAM	5	35
		FLORIDA		
32043	GREEN COVE SPRINGS	GREEN COVE SPRINGS	3	33
32110	BUNNELL	BUNNELL	4	34
32136	FLAGLER BEACH	FLAGLER BEACH	5	35
32145	HASTINGS	HASTINGS	5	35
32195	WEIRSDALE	WEIRSDALE	4	34
32345	MONTICELLO	MONTICELLO	4	34
32358	SOPCHOPPY	SOPCHOPPY	4	34
32531	BAKER	BAKER	5	35
32533	CANTONMENT	CANTONMENT	3	33
32536	CRESTVIEW	CRESTVIEW	3	33
32569	MARY ESTHER	MARY ESTHER	3	33
32617	ANTHONY	ANTHONY	4	34
32644	CHIEFLAND	CHIEFLAND	5	35
32693	TRENTON	TRENTON	4	34
32721	DELAND	DELAND	3	33
32735	GRAND ISLAND	GRAND ISLAND	7	37
32744	LAKE HELEN	LAKE HELEN	3	33
32759	OAK HILL	OAK HILL	4	34
32776	SORRENTO	SORRENTO	7	37
32862	ORLANDO MOWU	ORLANDO	4	34
32948	FELLSMERE	FELLSMERE	4	34
32949	GRANT	GRANT	4	34
32954	MERRITT ISLAND	MERRITT ISLAND	4	34
33034	FLORIDA CITY	HOMESTEAD	4	34
33051	KEY COLONY BEACH	KEY COLONY BEACH	3	33
33149	KEY BISCAYNE	KEY BISCAYNE	1	31
33470	LOXAHATCHEE	LOXAHATCHEE	4	34
33524	CRYSTAL SPRINGS	CRYSTAL SPRINGS	5	35
33526	DADE CITY	DADE CITY	4	34
33539	ZEPHYRHILLS	ZEPHYRHILLS	4	34
33576	SAN ANTONIO	SAN ANTONIO	6	36
33839	EAGLE LAKE	EAGLE LAKE	5	35
33840	EATON PARK	EATON PARK	5	35
33845	HAINES CITY	HAINES CITY	3	33
33858	LOUGHMAN	LOUGHMAN	3	33
33862	LAKE PLACID	LAKE PLACID	5	35
33884	FLORENCE VILLA	WINTER HAVEN	4	34
33885	FLORENCE VILLA	WINTER HAVEN	4	34
33956	SAINT JAMES CITY	SAINT JAMES CITY	4	34
33970	LEHIGH ACRES POST OFFICE	LEHIGH ACRES	4	34
33994	TICE	FORT MYERS	4	34
34107	COCO RIVER	NAPLES	4	34
34108	COCO RIVER	NAPLES	4	34
34216	ANNA MARIA	ANNA MARIA	4	34
34229	OSPREY	OSPREY	5	35
34430	DUNNELLON	DUNNELLON	5	35
34436	FLORAL CITY	FLORAL CITY	5	35
34447	HOMOSASSA SPRINGS	HOMOSASSA	5	35
34451	INVERNESS	INVERNESS	4	34
34483	MARICAMP	OCALA	4	34
34484	OXFORD	OXFORD	5	35
34489	SILVER SPRINGS	SILVER SPRINGS	5	35
34610	CPU SHADY HILLS	SPRING HILL	4	41
34639	LAND O LAKES	LAND O LAKES	5	35
34740	OAKLAND	OAKLAND	7	37

TRANSFER OF ADDITIONAL POST OFFICE BOX LOCATIONS TO COMPETITIVE FEE GROUP—ZIP CODE LISTING—Continued

ZIP	Office name	City	CFG	NFG
34756	MONTVERDE	MONTVERDE	5	35
34758	POINCIANA	KISSIMMEE	6	36
34760	OAKLAND	OAKLAND	7	37
34785	WILDWOOD	WILDWOOD	4	34
34789	HAINES CREEK	LEESBURG	4	34
34948	ORANGE AVENUE	FORT PIERCE	4	34
34954	ORANGE AVENUE	FORT PIERCE	4	34
34979	FORT PIERCE	FORT PIERCE	4	34
ALABAMA				
35007	ALABASTER	ALABASTER	5	35
35023	HUEYTOWN	BESSEMER	4	34
35080	HELENA	HELENA	5	35
35127	PLEASANT GROVE	PLEASANT GROVE	5	35
35210	IRONDALE	IRONDALE	4	34
35217	TARRANT	BIRMINGHAM	4	34
35220	CENTER POINT	CENTER POINT	4	34
35601	CPU BELTLINE	DECATUR	4	41
35602	DECATUR	DECATUR	4	34
35612	ATHENS	ATHENS	4	34
35640	HARTSELLE	HARTSELLE	4	34
35671	TANNER	TANNER	5	35
35742	CAPSHAW	CAPSHAW	5	35
35748	GURLEY	GURLEY	5	35
35749	HARVEST	HARVEST	5	35
35762	NORMAL	NORMAL	5	35
35808	REDSTONE ARSENAL	HUNTSVILLE	4	34
35812	REDSTONE ARSENAL	HUNTSVILLE	4	34
35902	GADSDEN	GADSDEN	4	34
35906	GADSDEN	GADSDEN	4	34
35968	FORT PAYNE	FORT PAYNE	4	34
35976	GUNTERSVILLE	GUNTERSVILLE	4	34
36072	EUFAULA	EUFAULA	4	34
36302	DOTHAN POST OFFICE	DOTHAN	4	34
36310	ABBEVILLE	ABBEVILLE	4	34
36317	ABBEVILLE	ABBEVILLE	4	34
36361	OZARK	OZARK	4	34
36420	ANDALUSIA	ANDALUSIA	4	34
36511	BON SECOUR	BON SECOUR	5	35
36530	ELBERTA	ELBERTA	5	35
36541	GRAND BAY	GRAND BAY	5	35
36544	IRVINGTON	IRVINGTON	5	35
36568	SAINT ELMO	SAINT ELMO	5	35
36575	SEMMES	SEMMES	5	35
36611	CHICKASAW	MOBILE	4	34
36803	OPELIKA	OPELIKA	4	34
36856	FORT MITCHELL	FORT MITCHELL	5	35
TENNESSEE				
37042	RINGGOLD MILL	CLARKSVILLE	3	33
37074	HARTSVILLE	HARTSVILLE	3	33
37083	LAFAYETTE	LAFAYETTE	3	33
37086	LA VERGNE	LA VERGNE	5	35
37116	MADISON	MADISON	3	33
37135	NOLENSVILLE	NOLENSVILLE	5	35
37167	SMYRNA	SMYRNA	4	34
37186	WESTMORELAND	WESTMORELAND	5	35
37310	CHARLESTON	CHARLESTON	6	36
37320	CLEVELAND	CLEVELAND	3	33
37324	DECHERD	DECHERD	6	36
37364	DOWNTOWN CLEVELAND	CLEVELAND	3	33
37377	SIGNAL MOUNTAIN	SIGNAL MOUNTAIN	3	33
37398	WINCHESTER	WINCHESTER	3	33
37615	GRAY	JOHNSON CITY	3	33
37617	BLOUNTVILLE	BLOUNTVILLE	6	36
37717	CLINTON	CLINTON	4	34
37748	HARRIMAN	HARRIMAN	3	33
37763	KINGSTON	KINGSTON	3	33
37774	LOUDON	LOUDON	4	34
37777	LOUISVILLE	LOUISVILLE	5	35

TRANSFER OF ADDITIONAL POST OFFICE BOX LOCATIONS TO COMPETITIVE FEE GROUP—ZIP CODE LISTING—Continued

ZIP	Office name	City	CFG	NFG
37802	MARYVILLE	MARYVILLE	5	35
37840	OLIVER SPRINGS	OLIVER SPRINGS	6	36
37874	SWEETWATER	SWEETWATER	3	33
37885	VONORE	VONORE	6	36
37938	HALLS STATION	KNOxVILLE	5	35
38083	MILLINGTON	MILLINGTON	4	34
38167	FRAYSER	MEMPHIS	4	34
38186	WHITEHAVEN	MEMPHIS	4	34
38190	MALLORY	MEMPHIS	4	34
38281	UNION CITY	UNION CITY	3	33
38302	JACKSON	JACKSON	3	33
38303	TOM MURRAY	JACKSON	3	33
38343	HUMBOLDT	HUMBOLDT	4	34
38355	MEDINA	MEDINA	6	36
38358	MILAN	MILAN	5	35
38372	SAVANNAH	SAVANNAH	3	33
38402	COLUMBIA	COLUMBIA	3	33
38502	COOKEVILLE	COOKEVILLE	3	33
38503	BROAD ST STA	COOKEVILLE	3	33
38506	ALGOOD	COOKEVILLE	3	33
38557	CROSSVILLE	CROSSVILLE	3	33
MISSISSIPPI				
38611	BYHALIA	BYHALIA	5	35
38834	CORINTH	CORINTH	4	34
38835	CORINTH	CORINTH	4	34
38863	PONTOTOC	PONTOTOC	4	34
39043	BRANDON	BRANDON	4	34
39046	CANTON	CANTON	4	34
39047	RESERVOIR	BRANDON	4	34
39073	FLORENCE	FLORENCE	6	36
39154	RAYMOND	RAYMOND	5	35
39283	DELTA STATION	JACKSON	4	34
39284	SOUTHWEST	JACKSON	4	34
39302	MERIDIAN MAIN OFFICE	MERIDIAN	4	34
39403	DOWNTOWN HATTIESBURG	HATTIESBURG	4	34
39465	PETAL	PETAL	4	34
39466	PICAYUNE	PICAYUNE	4	34
39475	PURVIS	PURVIS	6	36
39482	SUMRALL	SUMRALL	6	36
39483	FOXWORTH	FOXWORTH	6	36
39505	GULFPORT	GULFPORT	4	34
39574	SAUCIER	SAUCIER	6	36
KENTUCKY				
40121	FORT KNOX	FORT KNOX	4	34
40159	RADCLIFF	RADCLIFF	3	33
40342	LAWRENCEBURG	LAWRENCEBURG	5	35
40383	VERSAILLES	VERSAILLES	5	35
40476	TANNERSVILLE	TANNERSVILLE	4	34
40476	RICHMOND MAIN OFFICE	RICHMOND	5	35
40512	LEXINGTON	LEXINGTON	5	35
40574	LEXINGTON	LEXINGTON	5	35
40575	LEXINGTON	LEXINGTON	5	35
40576	LEXINGTON	LEXINGTON	5	35
40577	LEXINGTON	LEXINGTON	5	35
40578	LEXINGTON	LEXINGTON	5	35
40579	LEXINGTON	LEXINGTON	5	35
40580	LEXINGTON	LEXINGTON	5	35
40581	LEXINGTON	LEXINGTON	5	35
40582	LEXINGTON	LEXINGTON	5	35
40583	LEXINGTON	LEXINGTON	5	35
41048	HEBRON	HEBRON	5	35
41051	INDEPENDENCE	INDEPENDENCE	5	35
41091	UNION	UNION	5	35
41183	WORTHINGTON	WORTHINGTON	6	36
42002	AVONDALE	PADUCAH	4	34
42025	BENTON	BENTON	5	35
42102	BOWLING GREEN	BOWLING GREEN	4	34
42223	FORT CAMPBELL	FORT CAMPBELL	4	34

TRANSFER OF ADDITIONAL POST OFFICE BOX LOCATIONS TO COMPETITIVE FEE GROUP—ZIP CODE LISTING—Continued

ZIP	Office name	City	CFG	NFG
42234	GUTHRIE	GUTHRIE	6	36
42241	HOPKINSVILLE	HOPKINSVILLE	4	34
42302	POSTAL STORE	OWENSBORO	4	34
42304	OWENSBORO	OWENSBORO	4	34
42502	SOMERSET	SOMERSET	4	34
42519	BURNSIDE	BURNSIDE	6	36
42558	BURNSIDE	BURNSIDE	6	36
42564	WEST SOMERSET	SOMERSET	3	33
OHIO				
43022	GAMBIER	GAMBIER	6	36
43125	GROVEPORT	GROVEPORT	2	32
43512	DEFIANCE	DEFIANCE	4	34
43702	ZANE STREET	ZANESVILLE	4	34
44026	CHESTERLAND	CHESTERLAND	3	33
44036	ELYRIA MAIN OFFICE	ELYRIA	4	34
44123	NOBLE	EUCLID	4	34
44132	NOBLE	EUCLID	4	34
44137	BEDFORD	BEDFORD	4	34
44139	SOLON	SOLON	3	33
44140	BAY VILLAGE	BAY VILLAGE	3	33
44146	BEDFORD	BEDFORD	4	34
44302	FIVE POINTS	AKRON	3	33
44308	AKRON	AKRON	4	34
44309	AKRON	AKRON	4	34
44320	FIVE POINTS	AKRON	3	33
44408	COLUMBIANA	COLUMBIANA	4	34
44420	GIRARD	GIRARD	4	34
44452	NORTH LIMA	NORTH LIMA	5	35
44501	YOUNGSTOWN	YOUNGSTOWN	3	33
44506	YOUNGSTOWN	YOUNGSTOWN	3	33
44507	YOUNGSTOWN	YOUNGSTOWN	3	33
44622	DOVER	DOVER	5	35
45041	MIAMITOWN	MIAMITOWN	4	34
45224	COLLEGE HL	CINCINNATI	4	34
45344	NEW CARLISLE	NEW CARLISLE	4	34
45371	TIPP CITY	TIPP CITY	3	33
45669	PROCTORVILLE	PROCTORVILLE	5	35
45802	LIMA	LIMA	3	33
INDIANA				
46018	ANDERSON	ANDERSON	4	34
46052	LEBANON	LEBANON	3	33
46122	DANVILLE	DANVILLE	3	33
46176	SHELBYVILLE	SHELBYVILLE	4	34
46303	CEDAR LAKE	CEDAR LAKE	7	37
46304	CHESTERTON	CHESTERTON	5	35
46342	HOBART	HOBART	3	33
46401	GARY	GARY	6	36
46402	GARY	GARY	6	36
46703	ANGOLA	ANGOLA	5	35
46706	AUBURN	AUBURN	5	35
46952	MARION	MARION	5	35
46953	MARION	MARION	5	35
46992	WABASH	WABASH	5	35
47542	HUNTINGBURG	HUNTINGBURG	5	35
47547	JASPER	JASPER	4	34
47610	CHANDLER	CHANDLER	7	37
47629	NEWBURGH	NEWBURGH	5	35
47708	EVANSVILLE	EVANSVILLE	4	34
MICHIGAN				
48059	BIRCHWOOD MALL	FORT GRATIOT	5	35
48062	RICHMOND	RICHMOND	4	34
48127	DEARBORN HEIGHTS	DEARBORN HEIGHTS	4	34
48128	DEARBORN HEIGHTS	DEARBORN HEIGHTS	4	34
48180	TAYLOR MAIN OFFICE	TAYLOR	4	34
48189	WHITMORE LAKE	WHITMORE LAKE	7	37
48204	NORTHWESTERN	DETROIT	5	35

TRANSFER OF ADDITIONAL POST OFFICE BOX LOCATIONS TO COMPETITIVE FEE GROUP—ZIP CODE LISTING—Continued

ZIP	Office name	City	CFG	NFG
48212	HAMTRAMCK	HAMTRAMCK	4	34
48234	MOUNT ELLIOTT	DETROIT	4	34
48239	REDFORD	REDFORD	4	34
48240	REDFORD	REDFORD	4	34
48242	TAYLOR MAIN OFFICE	TAYLOR	4	34
48657	SANFORD	SANFORD	7	37
48707	BAY CITY	BAY CITY	4	34
48820	DEWITT	DEWITT	7	37
48854	MASON	MASON	4	34
49019	WESTWOOD	KALAMAZOO	3	33
49053	GALESBURG	GALESBURG	7	37
49065	LAWTON	LAWTON	7	37
49077	OSHTEMO	KALAMAZOO	7	37
49083	RICHLAND	RICHLAND	5	35
49087	SCHOOLCRAFT	SCHOOLCRAFT	7	37
49091	STURGIS	STURGIS	4	34
49103	BERRIEN SPRINGS	BERRIEN SPRINGS	5	35
49106	BRIDGMAN	BRIDGMAN	7	37
49112	EDWARDSBURG	EDWARDSBURG	7	37
49130	EDWARDSBURG	EDWARDSBURG	7	37
49283	SPRING ARBOR	SPRING ARBOR	7	37
49315	BYRON CENTER	BYRON CENTER	5	35
49316	CALEDONIA	CALEDONIA	5	35
49345	SPARTA	SPARTA	3	33
49415	FRUITPORT	FRUITPORT	7	37
49422	HOLLAND	HOLLAND	2	32
49734	GAYLORD	GAYLORD	5	35
49740	HARBOR SPRINGS	HARBOR SPRINGS	3	33
49770	CPU BAY VIEW	PETOSKEY	5	42
49849	ISHPEMING	ISHPEMING	4	34
49858	MENOMINEE	MENOMINEE	5	35
	IOWA			
50036	BOONE MAIN OFFICE	BOONE	5	35
50036	BOONE MAIN OFFICE	BOONE	5	35
50099	BOONE MAIN OFFICE	BOONE	5	35
50112	GRINNELL	GRINNELL	5	35
50226	POLK CITY	POLK CITY	7	37
50801	CRESTON	CRESTON	5	35
51301	SPENCER	SPENCER	6	36
52244	IOWA CITY	IOWA CITY	5	35
52601	BURLINGTON	BURLINGTON	5	35
52761	MUSCATINE	MUSCATINE	5	35
52778	WILTON	WILTON	6	36
	WISCONSIN			
53095	WEST BEND	WEST BEND	4	34
53147	LAKE GENEVA	LAKE GENEVA	3	33
53589	STOUGHTON	STOUGHTON	4	34
53593	VERONA	VERONA	3	33
53913	BARABOO MAIN OFFICE	BARABOO	3	33
54130	KAUKAUNA	KAUKAUNA	4	34
54143	MARINETTE	MARINETTE	4	34
54324	HANSEN ROAD STATION	GREEN BAY	4	34
54402	WAUSAU MAIN OFFICE	WAUSAU	3	33
54449	MARSHFIELD	MARSHFIELD	4	34
54538	LAC DU FLAMBEAU	LAC DU FLAMBEAU	5	35
54548	MINOCQUA	MINOCQUA	5	35
54568	WOODRUFF	WOODRUFF	5	35
	MINNESOTA			
55014	CIRCLE PINES	CIRCLE PINES	5	35
55042	LAKE ELMO	LAKE ELMO	6	36
55056	NORTH BRANCH	NORTH BRANCH	5	35
55082	STILLWATER	STILLWATER	4	34
55083	STILLWATER	STILLWATER	4	34
55303	ANOKA	ANOKA	4	34
55720	CLOQUET	CLOQUET	3	33
55803	MOUNT ROYAL	DULUTH	4	34

TRANSFER OF ADDITIONAL POST OFFICE BOX LOCATIONS TO COMPETITIVE FEE GROUP—ZIP CODE LISTING—Continued

ZIP	Office name	City	CFG	NFG
55987	WINONA	WINONA	4	34
55988	WINONA	WINONA	4	34
56007	ALBERT LEA	ALBERT LEA	4	34
56258	MARSHALL	MARSHALL	4	34
56377	SARTELL	SARTELL	5	35
56379	SAUK RAPIDS	SAUK RAPIDS	4	34
56401	BRAINERD	BRAINERD	4	34
56502	DETROIT LAKES	DETROIT LAKES	3	33
56649	INTERNATIONAL FALLS	INTERNATIONAL FALLS	4	34
		SOUTH DAKOTA		
57042	MADISON	MADISON	4	34
57325	CHAMBERLAIN	CHAMBERLAIN	4	34
57402	ABERDEEN	ABERDEEN	4	34
		NORTH DAKOTA		
58402	JAMESTOWN	JAMESTOWN	3	33
58502	BISMARCK DOWNTOWN	BISMARCK	3	33
58506	BISMARCK DOWNTOWN	BISMARCK	3	33
58507	BISMARCK DOWNTOWN	BISMARCK	3	33
58554	MANDAN	MANDAN	4	34
58680	MORGANTON MAIN OFFICE	MORGANTON	3	33
58763	NEW TOWN	NEW TOWN	5	35
58802	WILLISTON	WILLISTON	4	34
58803	BADLANDS	WILLISTON	5	34
58854	WATFORD CITY	WATFORD CITY	5	35
		MONTANA		
59635	EAST HELENA	EAST HELENA	5	35
59923	LIBBY	LIBBY	4	34
		ILLINOIS		
60041	INGLESIDE	INGLESIDE	5	35
60083	WADSWORTH	WADSWORTH	5	35
60099	ZION	ZION	4	34
60115	DEKALB	DEKALB	5	35
60410	CHANNAHON	CHANNAHON	6	36
60447	MINOOKA	MINOOKA	7	37
60554	SUGAR GROVE	SUGAR GROVE	7	37
60617	JOHN BUCHANAN	CHICAGO	4	34
60805	EVERGREEN PARK	EVERGREEN PARK	4	34
61105	DOWNTOWN ROCKFORD	ROCKFORD	3	33
61264	MILAN	MILAN	4	34
61462	MONMOUTH	MONMOUTH	4	34
61834	DANVILLE	DANVILLE	4	34
62294	TROY	TROY	3	33
62629	CHATHAM	CHATHAM	4	34
62651	JACKSONVILLE MAIN OFFICE	JACKSONVILLE	4	34
62801	CENTRALIA	CENTRALIA	4	34
		MISSOURI		
63016	CEDAR HILL	CEDAR HILL	4	34
63050	HILLSBORO	HILLSBORO	5	35
63069	PACIFIC	PACIFIC	3	33
63383	WARRENTON	WARRENTON	2	32
63390	WRIGHT CITY	WRIGHT CITY	4	34
64079	PLATTE CITY	PLATTE CITY	5	35
64089	SMITHVILLE	SMITHVILLE	6	36
64093	WARRENSBURG	WARRENSBURG	5	35
64114	WALDO	KANSAS CITY	4	34
64116	NORTH KANSAS CITY	KANSAS CITY	4	34
64836	CARTHAGE	CARTHAGE	5	35
65026	ELDON	ELDON	5	35
65043	HOLTS SUMMIT	HOLTS SUMMIT	6	36
65052	LINN CREEK	LINN CREEK	6	36
65065	OSAGE BEACH	OSAGE BEACH	7	37
65079	SUNRISE BEACH	SUNRISE BEACH	7	37
65102	JEFFERSON CITY	JEFFERSON CITY	5	35

TRANSFER OF ADDITIONAL POST OFFICE BOX LOCATIONS TO COMPETITIVE FEE GROUP—ZIP CODE LISTING—Continued

ZIP	Office name	City	CFG	NFG
65110	CAPITOL VIEW STA	JEFFERSON CITY	4	34
65473	FORT LEONARD WOOD	FORT LEONARD WOOD	5	35
65686	KIMBERLING CITY	KIMBERLING CITY	7	37
65708	MONETT	MONETT	5	35
65721	OZARK	OZARK	7	37
65742	ROGERSVILLE	ROGERSVILLE	6	36
65753	SPARTA	SPARTA	7	37
65757	STRAFFORD	STRAFFORD	6	36
65775	WEST PLAINS	WEST PLAINS	6	36
		KANSAS		
66012	BONNER SPRINGS	BONNER SPRINGS	3	33
66103	ROSEDALE	KANSAS CITY	3	33
66119	ROSEDALE	KANSAS CITY	3	33
66441	JUNCTION CITY	JUNCTION CITY	4	34
67114	NEWTON	NEWTON	4	34
67204	NORTH WICHITA	WICHITA	3	33
67277	GMF RETAIL WINDOW	WICHITA	5	35
67846	GARDEN CITY	GARDEN CITY	4	34
		NEBRASKA		
68010	BOYS TOWN	OMAHA	5	35
68131	SADDLE CREEK	OMAHA	5	35
68154	BOYSTOWN	OMAHA	5	35
68902	HASTINGS	HASTINGS	4	34
		LOUISIANA		
70047	DESTREHAN	DESTREHAN	5	35
70057	HAHNVILLE	HAHNVILLE	5	35
70070	LULING	LULING	5	35
70184	LAKEVIEW FINANCE STATION	NEW ORLEANS	4	34
70343	BOURG	BOURG	5	35
70420	ABITA SPRINGS	ABITA SPRINGS	5	35
70452	PEARL RIVER	PEARL RIVER	5	35
70454	PONCHATOULA	PONCHATOULA	4	34
70505	OIL CENTER	LAFAYETTE	3	33
70529	DUSON	DUSON	5	35
70555	MAURICE	MAURICE	6	36
70571	OPELOUSAS MAIN OFFICE	OPELOUSAS	4	34
70612	MOSS BLUFF	LAKE CHARLES	4	34
70704	BAKER	BAKER	4	34
70767	PORT ALLEN	PORT ALLEN	3	33
70777	SLAUGHTER	SLAUGHTER	5	35
70835	OLD HAMMOND	BATON ROUGE	5	35
70874	SCOTLANDVILLE	BATON ROUGE	3	33
71137	INDUSTRIAL	SHREVEPORT	4	34
71211	MONROE	MONROE	4	34
71213	MONROE	MONROE	4	34
71443	LEESVILLE MAIN OFFICE	LEESVILLE	3	33
71496	LEESVILLE MAIN OFFICE	LEESVILLE	3	33
		ARKANSAS		
71910	HOT SPRINGS VILLAGE	HOT SPRINGS VILLAGE	4	34
72002	ALEXANDER	ALEXANDER	7	37
72023	CABOT	CABOT	4	34
72078	JACKSONVILLE	JACKSONVILLE	4	34
72081	JUDSONIA	JUDSONIA	6	36
72103	MABELVALE	MABELVALE	7	37
72160	STUTTGART	STUTTGART	5	35
72216	SOUTHSIDE	LITTLE ROCK	4	34
72219	INDUSTRIAL	LITTLE ROCK	4	34
72316	BLYTHEVILLE MAIN OFFICE	BLYTHEVILLE	5	35
72451	PARAGOULD	PARAGOULD	5	35
72521	CAVE CITY	CAVE CITY	6	36
72632	EUREKA SPRINGS	EUREKA SPRINGS	5	35
72662	OMAHA	OMAHA	6	36
72745	LOWELL	LOWELL	7	37
72830	CLARKSVILLE	CLARKSVILLE	4	34

TRANSFER OF ADDITIONAL POST OFFICE BOX LOCATIONS TO COMPETITIVE FEE GROUP—ZIP CODE LISTING—Continued

ZIP	Office name	City	CFG	NFG
72834	DARDANELLE	DARDANELLE	5	35
72846	LAMAR	LAMAR	6	36
72913	GMF FORT SMITH	FORT SMITH	4	34
72914	MIDLAND FORT SMITH	FORT SMITH	4	34
72917	GMF FORT SMITH	FORT SMITH	4	34
	OKLAHOMA			
73023	CHICKASHA	CHICKASHA	4	34
73084	SPENCER	SPENCER	4	34
73093	WASHINGTON	WASHINGTON	6	36
73502	LAWTON	LAWTON	4	34
73503	FORT SILL	FORT SILL	4	34
73506	SHERIDAN LAWTON	LAWTON	4	34
73522	ALTUS	ALTUS	4	34
73540	SHERIDAN LAWTON	LAWTON	4	34
73702	ENID	ENID	4	34
73773	WAUKOMIS	WAUKOMIS	5	35
74015	CATOOSA	CATOOSA	5	35
74070	SKIATOOK	SKIATOOK	5	35
74073	SPERRY	SPERRY	7	37
74344	GROVE MAIN OFFICE	GROVE	6	36
74345	GROVE MAIN OFFICE	GROVE	6	36
74451	PARK HILL	PARK HILL	5	35
74730	CALERA	CALERA	5	35
74802	SHAWNEE	SHAWNEE	4	34
74851	MCLOUD	MCLOUD	6	36
74855	MEEKER	MEEKER	5	35
74873	TECUMSEH	TECUMSEH	4	34
74953	POTEAU	POTEAU	4	34
	TEXAS			
75009	CELINA	CELINA	5	35
75054	WESTCHESTER	GRAND PRAIRIE	3	33
75068	LITTLE ELM	LITTLE ELM	5	35
75078	PROSPER	PROSPER	5	35
75114	CRANDALL	CRANDALL	5	35
75124	EUSTACE	EUSTACE	6	36
75126	FORNEY	FORNEY	5	35
75141	HUTCHINS	HUTCHINS	5	35
75143	CPU SEVEN POINTS	KEMP	5	42
75151	CORSICANA	CORSICANA	6	36
75154	RED OAK	RED OAK	5	35
75159	SEAGOVILLE	DALLAS	3	33
75160	TERRELL	TERRELL	4	34
75189	ROYSE CITY	ROYSE CITY	5	35
75209	MOCKINGBIRD FINANCE	DALLAS	3	33
75211	BEVERLY HILLS	DALLAS	3	33
75219	MOCKINGBIRD FINANCE	DALLAS	3	33
75241	HIGHLAND HILLS DALLAS	DALLAS	3	33
75336	SEAGOVILLE	DALLAS	3	33
75339	DR CAESAR A W CLARK SR	DALLAS	3	33
75357	MEDRANO	DALLAS	3	33
75376	JOE POOL	DALLAS	3	33
75407	PRINCETON	PRINCETON	5	35
75410	ALBA	ALBA	6	36
75440	EMORY	EMORY	6	36
75459	HOWE	HOWE	6	36
75472	POINT	POINT	6	36
75483	SULPHUR SPRINGS	SULPHUR SPRINGS	5	35
75504	DOWNTOWN TEXARKANA	TEXARKANA	4	34
75650	HALLSVILLE	HALLSVILLE	6	36
75684	OVERTON	OVERTON	4	34
75762	FLINT	FLINT	6	36
75938	COLMESNEIL	COLMESNEIL	6	36
75979	WOODVILLE	WOODVILLE	4	34
76052	HASLET	HASLET	4	34
76098	AZLE	AZLE	4	34
76140	SOUTHEAST	FORT WORTH	2	32
76204	TEXAS WOMANS UNIVERSITY	DENTON	2	32
76225	ALVORD	ALVORD	4	34

TRANSFER OF ADDITIONAL POST OFFICE BOX LOCATIONS TO COMPETITIVE FEE GROUP—ZIP CODE LISTING—Continued

ZIP	Office name	City	CFG	NFG
76249	KRUM	KRUM	4	34
76266	SANGER	SANGER	3	33
76272	VALLEY VIEW	VALLEY VIEW	6	36
76528	GATESVILLE	GATESVILLE	4	34
76544	FORT HOOD	FORT HOOD	4	34
76554	LITTLE RIVER ACADEMY	LITTLE RIVER ACADEMY	6	36
76559	NOLANVILLE	NOLANVILLE	6	36
76643	HEWITT	HEWITT	7	37
76655	LORENA	LORENA	6	36
77207	BROADWAY	HOUSTON	4	34
77213	GRANVILLE W ELDER	HOUSTON	5	35
77228	ROY ROYALL	HOUSTON	5	35
77229	GRANVILLE W ELDER	HOUSTON	5	35
77262	HARRISBURG	HOUSTON	4	34
77293	ROY ROYALL	HOUSTON	5	35
77335	GOODRICH	GOODRICH	6	36
77342	DOWNTOWN HUNTSVILLE	HUNTSVILLE	5	35
77358	NEW WAVERLY	NEW WAVERLY	6	36
77404	BAY CITY	BAY CITY	5	35
77418	BELLVILLE	BELLVILLE	5	35
77422	BRAZORIA	BRAZORIA	7	37
77423	BROOKSHIRE	BROOKSHIRE	7	37
77441	FULSHEAR	FULSHEAR	7	37
77474	SEALY	SEALY	6	36
77510	SANTA FE	SANTA FE	7	37
77512	ALVIN	ALVIN	5	35
77516	ANGLETON	ANGLETON	6	36
77518	BACLIFF	BACLIFF	6	36
77522	BAYTOWN	BAYTOWN	5	35
77522	STATION A BAYTOWN	BAYTOWN	5	35
77530	CHANNELVIEW	CHANNELVIEW	5	35
77535	DAYTON	DAYTON	5	35
77542	FREEPORT	FREEPORT	5	35
77547	GALENA PARK	GALENA PARK	4	34
77562	HIGHLANDS	HIGHLANDS	4	34
77563	HITCHCOCK	HITCHCOCK	4	34
77565	KEMAH	KEMAH	6	36
77568	LA MARQUE	LA MARQUE	5	35
77580	MONT BELVIEU	MONT BELVIEU	6	36
77670	VIDOR	VIDOR	5	35
77725	SOUTH END	BEAUMONT	4	34
77902	VICTORIA	VICTORIA	6	36
78003	BANDERA	BANDERA	7	37
78025	INGRAM MAIN OFFICE	INGRAM	6	36
78104	BEEVILLE MAIN OFFICE	BEEVILLE	5	35
78124	MARION	MARION	5	35
78163	BULVERDE	BULVERDE	5	35
78216	CPU COUNTRYSIDE PLAZA	SAN ANTONIO	5	42
78224	FRANK M TEJEDA	SAN ANTONIO	5	35
78335	ARANSAS PASS	ARANSAS PASS	5	35
78368	MATHIS	MATHIS	5	35
78370	ODEM	ODEM	6	36
78374	PORTLAND	PORTLAND	4	34
78380	ROBSTOWN	ROBSTOWN	5	35
78390	TAFT	TAFT	4	34
78426	FIVE POINTS DPOBU	CORPUS CHRISTI	4	34
78460	FIVE POINTS DPOBU	CORPUS CHRISTI	4	34
78480	FLOUR BLUFF	CORPUS CHRISTI	4	34
78516	ALAMO	ALAMO	4	34
78522	DOWNTOWN BROWNSVILLE	BROWNSVILLE	5	35
78526	RESACA VLG DPOBU	BROWNSVILLE	5	35
78540	EDINBURG	EDINBURG	5	35
78566	LOS FRESNOS	LOS FRESNOS	4	34
78575	OLMITO	OLMITO	6	36
78576	PENITAS	PENITAS	6	36
78579	PROGRESO	PROGRESO	6	36
78582	RIO GRANDE CITY	RIO GRANDE CITY	4	34
78584	ROMA	ROMA	6	36
78586	SAN BENITO	SAN BENITO	5	35
78597	SOUTH PADRE ISLAND	SOUTH PADRE ISLAND	4	34
78602	BASTROP	BASTROP	5	35
78611	BURNET	BURNET	4	34

TRANSFER OF ADDITIONAL POST OFFICE BOX LOCATIONS TO COMPETITIVE FEE GROUP—ZIP CODE LISTING—Continued

ZIP	Office name	City	CFG	NFG
78634	HUTTO	HUTTO	7	37
78653	MANOR	MANOR	6	36
78655	MARTINDALE	MARTINDALE	6	36
78657	HORSESHOE BAY	HORSESHOE BAY	4	34
78669	SPICEWOOD	SPICEWOOD	6	36
78676	WIMBERLEY	WIMBERLEY	7	37
79066	PAMPA	PAMPA	6	36
79702	DOWNTOWN MIDLAND	MIDLAND	5	35
79704	VILLAGE	MIDLAND	4	34
79710	CLAYDESTA	MIDLAND	4	34
79758	GARDENDALE	GARDENDALE	5	35
79769	WEST ODESSA	ODESSA	6	36
79782	STANTON	STANTON	6	36
79835	CANUTILLO	CANUTILLO	5	35
79929	SOCORRO	SOCORRO	5	35
	COLORADO			
80026	LAFAYETTE	LAFAYETTE	3	33
80107	ELIZABETH	ELIZABETH	5	35
80116	FRANKTOWN	FRANKTOWN	6	36
80117	KIOWA	KIOWA	5	35
80135	SEDALIA	SEDALIA	5	35
80403	CPU CRESCENT	GOLDEN	5	42
80435	DILLION	DILLON	5	35
80443	FRISCO	FRISCO	5	35
80455	NEDERLAND	NEDERLAND	6	36
80466	NEDERLAND	NEDERLAND	6	36
80497	SILVERTHORNE	SILVERTHORNE	5	35
80498	SILVERTHORNE	SILVERTHORNE	5	35
80512	BELLVUE	BELLVUE	5	35
80516	ERIE	ERIE	5	35
80535	LAPORTE	LAPORTE	5	35
80817	FOUNTAIN	FOUNTAIN	3	33
80840	USAF ACADEMY	USAF ACADEMY	3	33
80841	USAF ACADEMY	USAF ACADEMY	3	33
80902	FORT CARSON	COLORADO SPRINGS	3	33
80931	SECURITY	COLORADO SPRINGS	3	33
81004	SUNSET	PUEBLO	4	34
81005	SUNSET	PUEBLO	4	34
81230	GUNNISON	GUNNISON	4	34
81321	CORTEZ	CORTEZ	4	34
81419	HOTCHKISS	HOTCHKISS	6	36
81612	ASPEN	ASPEN	4	34
81615	SNOWMASS VILLAGE	SNOWMASS VILLAGE	3	33
81621	BASALT	BASALT	5	35
81645	MINTURN	MINTURN	6	36
	WYOMING			
82003	AIRPORT	CHEYENNE	5	35
82003	CAPITOL STA	CHEYENNE	5	35
82435	POWELL	POWELL	5	35
82636	EVANSVILLE	EVANSVILLE	7	37
82701	NEWCASTLE	NEWCASTLE	5	35
82941	PINEDALE	PINEDALE	6	36
	IDAHO			
83202	GATEWAY STATION	POCATELLO	4	34
83206	GATEWAY STATION	POCATELLO	4	34
83328	FILER	FILER	5	35
83338	JEROME	JEROME	4	34
83341	KIMBERLY	KIMBERLY	5	35
83347	PAUL	PAUL	5	35
83353	SUN VALLEY	SUN VALLEY	5	35
83354	SUN VALLEY	SUN VALLEY	5	35
83355	WENDELL	WENDELL	5	35
83403	IDAHO FALLS	IDAHO FALLS	4	34
83405	EAGLE ROCK	IDAHO FALLS	4	34
83606	CALDWELL	CALDWELL	4	34
83611	CASCADE	CASCADE	6	36

TRANSFER OF ADDITIONAL POST OFFICE BOX LOCATIONS TO COMPETITIVE FEE GROUP—ZIP CODE LISTING—Continued

ZIP	Office name	City	CFG	NFG
83615	DONNELLY	DONNELLY	5	35
83619	FRUITLAND	FRUITLAND	6	36
83638	MCCALL	MCCALL	6	36
83644	MIDDLETON	MIDDLETON	5	35
83661	PAYETTE	PAYETTE	5	35
83669	STAR	STAR	4	34
83805	BONNERS FERRY	BONNERS FERRY	6	36
83837	KELLOGG	KELLOGG	4	34
83839	KINGSTON	KINGSTON	5	35
83850	PINEHURST	PINEHURST	5	35
83858	RATHDRUM	RATHDRUM	5	35
UTAH				
84026	FORT DUCHESNE	FORT DUCHESNE	5	35
84043	LEHI	LEHI	3	33
84049	MIDWAY	MIDWAY	5	35
84066	ROOSEVELT	ROOSEVELT	3	33
84078	VERNAL	VERNAL	3	33
84079	VERNAL	VERNAL	3	33
84310	EDEN	EDEN	5	35
84341	NORTH LOGAN	LOGAN	4	34
84532	MOAB	MOAB	4	34
84603	PROVO	PROVO	3	33
84653	SALEM	SALEM	5	35
84765	SANTA CLARA	SANTA CLARA	5	35
ARIZONA				
85117	APACHE JUNCTION	APACHE JUNCTION	7	37
85130	CASA GRANDE	CASA GRANDE	5	35
85132	FLORENCE	FLORENCE	6	36
85178	APACHE JUNCTION	APACHE JUNCTION	7	37
85324	BLACK CANYON CITY	BLACK CANYON CITY	5	35
85326	BUCKEYE	BUCKEYE	4	34
85334	EHRENBERG	EHRENBERG	5	35
85343	BUCKEYE	BUCKEYE	4	34
85344	PARKER	PARKER	3	33
85346	QUARTZSITE	QUARTZSITE	5	35
85350	SOMERTON	SOMERTON	5	35
85359	QUARTZSITE	QUARTZSITE	5	35
85547	PAYSON	PAYSON	3	33
85602	BENSON	BENSON	5	35
85608	DOUGLAS	DOUGLAS	3	33
85628	NOGALES	NOGALES	4	34
85629	SAHUARITA	SAHUARITA	5	35
85648	RIO RICO	RIO RICO	4	34
85652	CORTARO	CORTARO	6	36
85902	SHOW LOW MAIN OFFICE	SHOW LOW	5	35
85929	LAKESIDE	LAKESIDE	5	35
85935	PINETOP	PINETOP	5	35
86025	HOLBROOK	HOLBROOK	3	33
86322	CAMP VERDE	CAMP VERDE	5	35
86324	CLARKDALE	CLARKDALE	5	35
86327	DEWEY	DEWEY	5	35
86333	MAYER	MAYER	5	35
86335	RIMROCK	RIMROCK	5	35
86427	FORT MOHAVE	FORT MOHAVE	3	33
86441	DOLAN SPRINGS	DOLAN SPRINGS	4	34
86446	MOHAVE VALLEY	MOHAVE VALLEY	2	32
NEW MEXICO				
87001	BERNALILLO	BERNALILLO	4	34
87004	BERNALILLO	BERNALILLO	4	34
87013	CUBA	CUBA	4	34
87043	PLACITAS	PLACITAS	5	35
87185	KIRTLAND AFB	ALBUQUERQUE	2	32
87325	TOHATCHI	TOHATCHI	5	35
87326	VANDERWAGEN	VANDERWAGEN	3	40
87499	FARMINGTON	FARMINGTON	3	33
87529	EL PRADO	EL PRADO	5	35

TRANSFER OF ADDITIONAL POST OFFICE BOX LOCATIONS TO COMPETITIVE FEE GROUP—ZIP CODE LISTING—Continued

ZIP	Office name	City	CFG	NFG
87544	LOS ALAMOS	LOS ALAMOS	4	34
87557	RANCHOS DE TAOS	RANCHOS DE TAOS	5	35
87574	TESUQUE	TESUQUE	5	35
88003	UNIVERSITY PARK	LAS CRUCES	3	33
88008	SANTA TERESA	SANTA TERESA	5	35
88013	COMMERCE	LAS CRUCES	3	33
88031	DEMING	DEMING	4	34
88032	DONA ANA	DONA ANA	5	35
88033	FAIRACRES	FAIRACRES	5	35
88046	MESILLA	MESILLA	5	35
88221	CARLSBAD	CARLSBAD	4	34
88241	HOBBS	HOBBS	4	34
88311	ALAMOGORDO	ALAMOGORDO	3	33
88312	ALTO	ALTO	5	35
88337	LA LUZ	LA LUZ	5	35
88340	MESCALERO	MESCALERO	5	35
88346	RUIDOSO DOWNS	RUIDOSO DOWNS	5	35
88355	HOLLYWOOD	RUIDOSO	4	34
88355	RUIDOSO	RUIDOSO	4	34
		NEVADA		
89041	HOMESTEAD	PAHRUMP	5	35
89060	SIMKINS	PAHRUMP	5	35
89408	FERNLEY	FERNLEY	5	35
89411	GENOA	GENOA	4	34
89423	MINDEN	MINDEN	5	35
89510	RENO	RENO	3	33
89515	RENO	RENO	3	33
89803	ELKO	ELKO	2	32
89815	SPRING CREEK	SPRING CREEK	2	32
		CALIFORNIA		
91903	ALPINE	ALPINE	5	35
91906	CAMPO	CAMPO	5	35
91916	DESCANSO	DESCANSO	4	34
91935	JAMUL	JAMUL	5	35
91963	POTRERO	POTRERO	5	35
91979	LA MESA	SPRING VALLEY	4	34
91980	TECATE	TECATE	4	34
92003	BONSALL	BONSALL	4	34
92059	PALA	PALA	4	34
92061	PAUMA VALLEY	PAUMA VALLEY	6	36
92082	VALLEY CENTER	VALLEY CENTER	6	36
92145	MCAS MIRAMAR	SAN DIEGO	3	33
92220	BANNING	BANNING	3	33
92226	BLYTHE	BLYTHE	4	34
92244	EL CENTRO	EL CENTRO	4	34
92252	JOSHUA TREE	JOSHUA TREE	3	33
92256	MORONGO VALLEY	MORONGO VALLEY	4	34
92274	THERMAL	THERMAL	5	35
92283	WINTERHAVEN	WINTERHAVEN	5	35
92285	LANDERS	LANDERS	2	32
92286	YUCCA VALLEY	YUCCA VALLEY	2	32
92301	ADELANTO	ADELANTO	2	32
92312	BARSTOW	BARSTOW	4	34
92314	BIG BEAR CITY	BIG BEAR CITY	4	34
92316	BLOOMINGTON	BLOOMINGTON	3	33
92342	HELENDALE	HELENDALE	6	36
92352	LAKE ARROWHEAD	LAKE ARROWHEAD	5	35
92372	PINON HILLS	PINON HILLS	6	36
92402	SAN BERNARDINO	SAN BERNARDINO	3	33
92406	UPTOWN	SAN BERNARDINO	2	32
92411	WESTSIDE	SAN BERNARDINO	2	32
92423	SAN BERNARDINO MO WINDOWS	SAN BERNARDINO	3	33
92518	MARCH AIR RESERVE BASE	MARCH AIR RESERVE BASE	3	33
92536	AGUANGA	AGUANGA	4	34
92572	PERRIS	PERRIS	2	32
92596	WINCHESTER	WINCHESTER	4	34
92609	EL TORO	LAKE FOREST	5	35
92676	SILVERADO	SILVERADO	4	34

TRANSFER OF ADDITIONAL POST OFFICE BOX LOCATIONS TO COMPETITIVE FEE GROUP—ZIP CODE LISTING—Continued

ZIP	Office name	City	CFG	NFG
92684	BOLSA STATION	WESTMINSTER	3	33
93016	FILLMORE	FILLMORE	4	34
93024	OJAI	OJAI	3	33
93066	SOMIS	SOMIS	5	35
93140	MILPAS NEW	SANTA BARBARA	3	33
93202	ARMONA	ARMONA	5	35
93203	ARVIN	ARVIN	3	33
93241	LAMONT	LAMONT	2	32
93245	LEMOORE	LEMOORE	3	33
93263	SHAFTER	SHAFTER	4	34
93267	STRATHMORE	STRATHMORE	5	35
93280	WASCO	WASCO	4	34
93313	PUMPKIN CENTER	BAKERSFIELD	5	42
93387	BRUNDAGE	BAKERSFIELD	4	34
93428	CAMBRIA	CAMBRIA	3	33
93430	CAYUCOS	CAYUCOS	3	33
93441	LOS OLIVOS	LOS OLIVOS	5	35
93456	SANTA MARIA	SANTA MARIA	3	33
93460	SANTA YNEZ	SANTA YNEZ	5	35
93465	TEMPLETON	TEMPLETON	5	35
93502	MOJAVE	MOJAVE	5	35
93504	CALIFORNIA CITY	CALIFORNIA CITY	3	33
93510	ACTON	ACTON	4	34
93532	LAKE HUGHES	LAKE HUGHES	4	34
93539	LANCASTER	LANCASTER	2	32
93543	LITTLEROCK	LITTLEROCK	6	36
93553	PEARBLOSSOM	PEARBLOSSOM	4	34
93556	RIDGECREST	RIDGECREST	5	35
93560	ROSAMOND	ROSAMOND	5	35
93581	TEHACHAPI	TEHACHAPI	3	33
93584	CEDAR	LANCASTER	3	33
93590	TOWN SQUARE	PALMDALE	2	32
93618	DINUBA	DINUBA	3	33
93630	KERMAN	KERMAN	4	34
93644	OAKHURST	OAKHURST	6	36
93648	PARLIER	PARLIER	4	34
93654	REEDLEY	REEDLEY	6	36
93657	SANGER	SANGER	4	34
93745	CALWA	FRESNO	3	33
93747	EAST FRESNO	FRESNO	3	33
93926	GONZALES	GONZALES	4	34
93927	GREENFIELD	GREENFIELD	6	36
94015	WESTLAKE	DALY CITY	1	31
94141	BRYANT STREET	SAN FRANCISCO	3	33
94508	ANGWIN	ANGWIN	5	35
94573	RUTHERFORD	RUTHERFORD	5	35
94574	SAINT HELENA	SAINT HELENA	3	33
94576	ANGWIN	ANGWIN	5	35
94661	MONTCLAIR STATION (STATION E)	OAKLAND	2	32
94923	BODEGA BAY	BODEGA BAY	5	35
95004	AROMAS	AROMAS	4	34
95012	CASTROVILLE	CASTROVILLE	2	32
95039	MOSS LANDING	MOSS LANDING	4	34
95045	SAN JUAN BAUTISTA	SAN JUAN BAUTISTA	4	34
95127	FOOTHILL ANNEX	SAN JOSE	3	33
95156	FOOTHILL ANNEX	SAN JOSE	3	33
95220	ACAMPO	ACAMPO	5	35
95310	COLUMBIA	COLUMBIA	5	35
95321	GROVELAND	GROVELAND	5	35
95322	GUSTINE	GUSTINE	4	34
95324	HILMAR	HILMAR	5	35
95327	JAMESTOWN	JAMESTOWN	5	35
95334	LIVINGSTON	LIVINGSTON	4	34
95338	MARIPOSA	MARIPOSA	5	35
95360	NEWMAN	NEWMAN	4	34
95422	CLEARLAKE	CLEARLAKE	5	35
95423	CLEARLAKE OAKS	CLEARLAKE OAKS	5	35
95424	CLEARLAKE PARK	CLEARLAKE PARK	5	35
95436	FORESTVILLE	FORESTVILLE	4	34
95441	GEYSERVILLE	GEYSERVILLE	5	35
95451	KELSEYVILLE	KELSEYVILLE	5	35
95457	LOWER LAKE	LOWER LAKE	5	35

TRANSFER OF ADDITIONAL POST OFFICE BOX LOCATIONS TO COMPETITIVE FEE GROUP—ZIP CODE LISTING—Continued

ZIP	Office name	City	CFG	NFG
95518	ARCATA	ARCATA	4	34
95524	BAYSIDE	BAYSIDE	5	35
95531	CRESCENT CITY	CRESCENT CITY	4	34
95534	CUTTEN	EUREKA	4	34
95542	GARBERVILLE	GARBERVILLE	4	34
95560	REDWAY	REDWAY	5	35
95612	CLARKSBURG	CLARKSBURG	4	34
95614	COOL	COOL	4	34
95638	HERALD	HERALD	5	35
95663	PENRYN	PENRYN	5	35
95683	SLOUGHHOUSE	SLOUGHHOUSE	4	34
95684	SOMERSET	SOMERSET	5	35
95901	MARYSVILLE	MARYSVILLE	4	34
95938	DURHAM	DURHAM	6	36
95953	LIVE OAK	LIVE OAK	3	33
95954	MAGALIA	MAGALIA	5	35
96007	ANDERSON	ANDERSON	4	34
96019	SHASTA LAKE	SHASTA LAKE	4	34
96022	COTTONWOOD	COTTONWOOD	5	35
96073	PALO CEDRO	PALO CEDRO	5	35
96151	SOUTH LAKE TAHOE	SOUTH LAKE TAHOE	6	36
96155	MEYERS	SOUTH LAKE TAHOE	6	36
96156	SOUTH LAKE TAHOE	SOUTH LAKE TAHOE	6	36
96158	SOUTH LAKE TAHOE	SOUTH LAKE TAHOE	6	36
96158	TAHOE VALLEY	SOUTH LAKE TAHOE	6	36
	HAWAII			
96708	HAIKU	HAIKU	5	35
96712	HALEIWA	HALEIWA	1	31
96714	HANALEI	HANALEI	5	35
96720	DOWNTOWN HILO	HILO	2	32
96720	HILO	HILO	2	32
96721	DOWNTOWN HILO	HILO	2	32
96722	PRINCEVILLE	PRINCEVILLE	5	35
96725	HOLUALOA	HOLUALOA	3	33
96733	KAHULUI	KAHULUI	2	32
96738	WAIKOLOA	WAIKOLOA	4	34
96743	KAMUELA	KAMUELA	4	34
96749	KEAAU	KEAAU	5	35
96750	KEALAKEKUA	KEALAKEKUA	4	34
96754	KILAUEA	KILAUEA	4	34
96755	KAPAAU	KAPAAU	5	35
96756	KOLOA	KOLOA	3	33
96760	KURTISTOWN	KURTISTOWN	4	34
96768	MAKAWAO	MAKAWAO	6	36
96771	MOUNTAIN VIEW	MOUNTAIN VIEW	4	34
96778	PAHOA	PAHOA	4	34
96779	PAIA	PAIA	3	33
96784	PUUNENE	PUUNENE	4	34
96786	WAHIAWA	WAHIAWA	3	33
96788	PUKALANI	MAKAWAO	6	36
96790	KULA	KULA	4	34
96791	WAIALUA	WAIALUA	4	34
96792	NANAKULI	WAIANAE	3	33
96793	WAILUKU	WAILUKU	1	31
	OREGON			
97002	AURORA	AURORA	5	35
97004	BEAVERCREEK	BEAVERCREEK	5	35
97009	BORING	BORING	5	35
97018	COLUMBIA CITY	COLUMBIA CITY	4	34
97019	CORBETT	CORBETT	4	34
97023	ESTACADA	ESTACADA	6	36
97026	GERVAIS	GERVAIS	5	35
97040	MOSIER	MOSIER	5	35
97048	RAINIER	RAINIER	5	35
97051	SAINT HELENS	SAINT HELENS	4	34
97056	SCAPPOOSE	SCAPPOOSE	5	35
97058	THE DALLES	THE DALLES	4	34
97101	AMITY	AMITY	5	35

TRANSFER OF ADDITIONAL POST OFFICE BOX LOCATIONS TO COMPETITIVE FEE GROUP—ZIP CODE LISTING—Continued

ZIP	Office name	City	CFG	NFG
97103	ASTORIA	ASTORIA	3	33
97111	CARLTON	CARLTON	5	35
97114	DAYTON	DAYTON	4	34
97127	LAFAYETTE	LAFAYETTE	4	34
97133	NORTH PLAINS	NORTH PLAINS	5	35
97137	SAINT PAUL	SAINT PAUL	5	35
97148	YAMHILL	YAMHILL	5	35
97303	KEIZER	KEIZER	3	33
97305	OAK PARK 97305 PO BOXES	SALEM	4	34
97307	KEIZER	KEIZER	3	33
97321	ALBANY	ALBANY	5	35
97321	CPU PLAZA POSTAL & SHIPPING	ALBANY	5	42
97338	DALLAS	DALLAS	4	34
97352	JEFFERSON	JEFFERSON	5	35
97355	LEBANON	LEBANON	5	35
97364	NEOTSU	NEOTSU	5	35
97365	NEWPORT	NEWPORT	3	33
97366	SOUTH BEACH	SOUTH BEACH	4	34
97367	LINCOLN CITY	LINCOLN CITY	2	32
97370	PHILOMATH	PHILOMATH	5	35
97374	SCIO	SCIO	6	36
97376	SEAL ROCK	SEAL ROCK	5	42
97391	TOLEDO	TOLEDO	3	33
97392	TURNER	TURNER	5	35
97411	BANDON	BANDON	5	35
97415	BROOKINGS	BROOKINGS	5	35
97415	HARBOR	BROOKINGS	5	42
97432	DILLARD	DILLARD	5	35
97439	FLORENCE	FLORENCE	5	35
97462	OAKLAND	OAKLAND	5	35
97479	SUTHERLIN	SUTHERLIN	5	35
97495	WINCHESTER	WINCHESTER	5	35
97496	WINSTON	WINSTON	5	35
97503	WHITE CITY	WHITE CITY	3	33
97524	EAGLE POINT	EAGLE POINT	5	35
97537	ROGUE RIVER	ROGUE RIVER	5	35
97540	TALENT	TALENT	5	35
97602	KLAMATH FALLS 97602 PO BOXES	KLAMATH FALLS	4	34
97707	SUNRIVER	BEND	3	33
97708	BEND	BEND	4	34
97709	BEND DOWNTOWN	BEND	4	34
97739	LA PINE	LA PINE	5	35
97741	MADRAS	MADRAS	4	34
97754	PRINEVILLE	PRINEVILLE	4	34
97759	SISTERS	SISTERS	5	35
97760	TERREBONNE	TERREBONNE	5	35
97801	PENDLETON	PENDLETON	3	33
97826	ECHO	ECHO	5	35
97838	HERMISTON	HERMISTON	3	33
97875	STANFIELD	STANFIELD	5	35
97882	UMATILLA	UMATILLA	6	36
97914	ONTARIO	ONTARIO	4	34
	WASHINGTON			
98010	BLACK DIAMOND	BLACK DIAMOND	5	35
98022	ENUMCLAW	ENUMCLAW	3	33
98024	FALL CITY	FALL CITY	5	35
98051	RAVENSDALE	RAVENSDALE	4	34
98070	VASHON	VASHON	4	34
98204	PAINE FIELD	EVERETT	4	34
98221	ANACORTES	ANACORTES	4	34
98231	BLAINE	BLAINE	3	33
98232	BOW	BOW	5	35
98236	CLINTON	CLINTON	4	34
98240	CUSTER	CUSTER	4	34
98243	DEER HARBOR	DEER HARBOR	5	35
98247	EVERSON	EVERSON	5	35
98248	FERNDALE	FERNDALE	5	35
98249	FREELAND	FREELAND	5	35
98250	FRIDAY HARBOR	FRIDAY HARBOR	5	35
98252	GRANITE FALLS	GRANITE FALLS	5	35

TRANSFER OF ADDITIONAL POST OFFICE BOX LOCATIONS TO COMPETITIVE FEE GROUP—ZIP CODE LISTING—Continued

ZIP	Office name	City	CFG	NFG
98260	LANGLEY	LANGLEY	5	35
98264	LYNDEN	LYNDEN	3	33
98276	EVERSON	EVERSON	5	35
98284	SEDRO WOOLLEY	SEDRO WOOLLEY	4	34
98295	SUMAS	SUMAS	5	35
98312	WEST HILLS	BREMERTON	2	32
98315	BANGOR SUBMARINE BASE	SILVERDALE	4	34
98321	BUCKLEY	BUCKLEY	4	34
98322	BURLEY	BURLEY	4	34
98324	CARLSBORG	CARLSBORG	5	35
98325	CHIMACUM	CHIMACUM	5	35
98338	GRAHAM	GRAHAM	4	34
98339	PORT HADLOCK	PORT HADLOCK	5	35
98340	HANSVILLE	HANSVILLE	4	34
98346	KINGSTON	KINGSTON	4	34
98359	OLALLA	OLALLA	4	34
98365	PORT LUDLOW	PORT LUDLOW	5	35
98376	QUILCENE	QUILCENE	5	35
98380	SEABECK	SEABECK	4	34
98433	FORT LEWIS	JOINT BASE LEWIS MCCHORD	2	32
98501	CPU SAFEWAY 7	TUMWATER	3	40
98524	ALLYN	ALLYN	5	35
98528	BELFAIR	BELFAIR	5	35
98537	COSMOPOLIS	COSMOPOLIS	5	35
98550	HOQUIAM	HOQUIAM	4	34
98580	ROY	ROY	4	34
98584	SHELTON	SHELTON	4	34
98592	UNION	UNION	5	35
98601	AMBOY	AMBOY	4	34
98626	KELSO	KELSO	3	33
98629	LA CENTER	LA CENTER	5	35
98635	LYLE	LYLE	5	35
98642	RIDGEFIELD	RIDGEFIELD	5	35
98672	WHITE SALMON	WHITE SALMON	5	35
98674	WOODLAND	WOODLAND	5	35
98675	YACOLT	YACOLT	5	35
98826	LEAVENWORTH	LEAVENWORTH	3	33
98831	MANSON	MANSON	5	35
98841	OMAK	OMAK	5	35
98847	PESHASTIN	PESHASTIN	5	35
98908	CPU WIDE HOLLOW	YAKIMA	4	41
98922	CLE ELUM	CLE ELUM	4	34
98936	MOXEE	MOXEE	5	35
98937	NACHES	NACHES	5	35
98942	SELAH	SELAH	4	34
98944	SUNNYSIDE	SUNNYSIDE	3	33
98951	WAPATO	WAPATO	4	34
99004	CHENEY	CHENEY	4	34
99021	MEAD	MEAD	5	35
99025	NEWMAN LAKE	NEWMAN LAKE	5	35
99139	IONE	IONE	5	35
99157	NORTHPORT	NORTHPORT	5	35
99301	DOWNTOWN PASCO	PASCO	4	34
99301	PASCO	PASCO	4	34
99302	PASCO	PASCO	4	34
99402	ASOTIN	ASOTIN	5	35
ALASKA				
99611	KENAI	KENAI	2	32
99623	MEADOW LAKE	WASILLA	2	32
99635	NIKISKI	NIKISKI	1	31
99654	BRENTWOOD	WASILLA	2	32
99901	KETCHIKAN	KETCHIKAN	1	31

[FR Doc. 2014–16091 Filed 7–8–14; 8:45 am]

BILLING CODE 7710–12–P

PRIVACY AND CIVIL LIBERTIES OVERSIGHT BOARD

[Notice–PCLOB–2014–04 Docket No. 2014–0001; Sequence 4]

Sunshine Act Meetings

TIME AND DATE: Wednesday, July 23, 2014 from 1:00 p.m. through 3:00 p.m. (Eastern Standard Time).

PLACE: Will be announced on the PCLOB's Web site *www.pclob.gov*.

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED: The Privacy and Civil Liberties Oversight Board will meet for the disposition of official business. The meeting is being held for three items of business. First, the Board will consider and vote on the release of its third semi-annual report to the President and Congress. Second, the Board will announce its short-term agenda. Third, the Board will receive the views of non-governmental organizations, the business community and the general public on its mid-term and long-term agenda.

Procedures for Public Observation

The meeting is open to the public. Pre-registration is not required. Individuals wishing to address the meeting orally must provide advance notice to Sharon Bradford Franklin, at *info@pclob.gov* no later than 5:00 p.m. Friday, July 18, 2014, Eastern Standard Time. The notice must include the individual's name, title, organization, and a concise summary of the subject matter to be presented. Oral presentations may not exceed ten (10) minutes. The time for individual presentations will be reduced proportionately, if necessary, to afford all participants who have submitted a timely request an opportunity to be heard. Participants wishing to submit a written statement for the record must submit a copy of such statement no later than 11:59 p.m. Friday, August 29, 2014, Eastern Standard Time. Such statement must be typewritten, double-spaced, and may not exceed ten (10) pages. The Board will prepare an agenda, which will be available at the hearing, that identifies speakers and the time allotted for each presentation. Individuals who plan to attend and require special assistance should contact Sharon Bradford Franklin, Executive Director, 202–331–1986, at least 72 hours prior to the meeting date.

ADDRESSES: Submit comments identified by Notice PCLOB 2014–04, Sunshine Act Meeting by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching ''PCLOB 2014–04''. Select the link ''Comment Now'' that corresponds with ''Notice PCLOB 2014–04, Sunshine Act Meeting''. Follow the instructions provided on the screen. Please include your name, company name (if any), and ''Notice PCLOB 2014–04, Sunshine Act Meeting'', on your attached document.
- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405. ATTN: Ms. Flowers/Notice PCLOB 2014–04, Sunshine Act Meeting.
- *Instructions:* Please submit comments only and cite

Notice PCLOB 2014–04, Sunshine Act Meeting, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

CONTACT PERSON FOR MORE INFORMATION: Sharon Bradford Franklin, Executive Director, 202–331–1986.

Dated: July 7, 2014.

Peter Winn,

Acting General Counsel, Privacy and Civil Liberties Oversight Board.

[FR Doc. 2014–16155 Filed 7–7–14; 4:15 pm]

BILLING CODE 3820–B3–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: U.S. Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 15g–9; SEC File No. 270–325, OMB Control No. 3235–0385.

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'') is soliciting comment on the collection of information described below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Section 15(c)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (the ''Exchange Act'') authorizes the Commission to promulgate rules that prescribe means reasonably designed to prevent fraudulent, deceptive, or manipulative practices in connection with over-the-counter (''OTC'') securities transactions. Pursuant to this authority, the Commission in 1989 adopted Rule 15a–6,which was subsequently redesignated as Rule 15g–9, 17 CFR 240.15g–9 (the ''Rule''). The Rule requires broker-dealers to produce a written suitability determination for, and to obtain a written customer agreement to, certain recommended transactions in penny stocks that are not registered on a national securities exchange, and whose issuers do not meet certain minimum financial standards. The Rule is intended to prevent the indiscriminate use by broker-dealers of fraudulent, high pressure telephone sales campaigns to sell penny stocks to unsophisticated customers.

The Commission staff estimates that there are approximately 221 broker-dealers subject to the Rule. The burden of the Rule on a respondent varies widely depending on the frequency with which new customers are solicited. On the average for all respondents, the staff has estimated that respondents process three new customers per week, or approximately 156 new customer suitability determinations per year. We also estimate that a broker-dealer would expend approximately one-half hour per new customer in obtaining, reviewing, and processing (including transmitting to the customer) the information required by Rule 15g–9, and each respondent would consequently spend 78 hours annually (156 customers × .5 hours) obtaining the information required in the rule. We determined, based on the estimate of 221 broker-dealer respondents, that the current annual burden of Rule 15g–9 is 17,238 hours (221 respondents × 78 hours).

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 shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents; 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 unless it displays a currently valid OMB control number.

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 comments may be sent by email to: *PRA_Mailbox@sec.gov*.

Dated: July 2, 2014.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2014–15965 Filed 7–8–14; 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 17a–10, SEC File No. 270–154, OMB Control No. 3235–0122.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (''PRA''), the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in Rule 17a–10, Report of Revenue and Expenses (17 CFR 240.17a–10), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Exchange Act''). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

The primary purpose of Rule 17a–10 is to obtain the economic and statistical data necessary for an ongoing analysis of the securities industry. Paragraph (a)(1) of Rule 17a–10 generally requires broker-dealers that are exempted from the requirement to file monthly and quarterly reports pursuant to paragraph (a) of Exchange Act Rule 17a–5 (17 CFR 240.17a–5) to file with the Commission the Facing Page, a Statement of Income (Loss), and balance sheet from Part IIA of Form X–17A–5 [1] (17 CFR 249.617), and Schedule I of Form X–17A–5 not later than 17 business days after the end of each calendar year.

Paragraph (a)(2) of Rule 17a–10 requires a broker-dealer subject to Rule 17a–5(a) to submit Schedule I of Form X–17A–5 with its Form X–17A–5 for the calendar quarter ending December 31 of each year. The burden associated with filing Schedule I of Form X–17A–5 is accounted for in the PRA filing associated with Rule 17a–5.

Paragraph (b) of Rule 17a–10 provides that the provisions of paragraph (a) do not apply to members of national securities exchanges or registered national securities associations that maintain records containing the information required by Form X–17A–5 and which transmit to the Commission copies of the records pursuant to a plan which has been declared effective by the Commission.

The Commission estimates that approximately 38 broker-dealers will spend an average of 12 hours per year complying with Rule 17a–10. Thus, the total compliance burden is estimated to be approximately 456 hours per year.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549, or send an email to: *PRA_Mailbox@sec.gov*.

Dated: July 2, 2014.

Jill M. Peteson,

Assistant Secretary.

[FR Doc. 2014–15967 Filed 7–8–14; 8:45 am]

BILLING CODE 8011–01–P

[1] Form X–17A–5 is the Financial and Operational Combined Uniform Single Report (''FOCUS Report''), which is used by broker-dealers to provide certain required information to the Commission.

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 17a–7, OMB Control No. 3235–0214, SEC File No. 270–238.

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 the existing collection of information to the Office of Management and Budget for extension and approval.

Rule 17a–7 (17 CFR 270.17a–7) (the ''rule'') under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) (the ''Act'') is entitled ''Exemption of certain purchase or sale transactions between an investment company and certain affiliated persons thereof.'' It provides an exemption from section 17(a) of the Act for purchases and sales of securities between registered investment companies (''funds''), that are affiliated persons (''first-tier affiliates'') or affiliated persons of affiliated persons (''second-tier affiliates''), or between a fund and a first- or second-tier affiliate other than another fund, when the affiliation arises solely because of a common investment adviser, director, or officer. Rule 17a–7 requires funds to keep various records in connection with purchase or sale transactions effected in reliance on the rule. The rule requires the fund's board of directors to establish procedures reasonably designed to ensure that the rule's conditions have been satisfied. The board is also required to determine, at least on a quarterly basis, that all affiliated transactions effected during the preceding quarter in reliance on the rule were made in compliance with these established procedures. If a fund enters into a purchase or sale transaction with an affiliated person, the rule requires the fund to compile and maintain written records of the transaction.[1] The Commission's

[1] The written records are required to set forth a description of the security purchased or sold, the identity of the person on the other side of the transaction, and the information or materials upon which the board of directors' determination that the transaction was in compliance with the procedures was made.

examination staff uses these records to evaluate for compliance with the rule.

While most funds do not commonly engage in transactions covered by rule 17a–7, the Commission staff estimates that nearly all funds have adopted procedures for complying with the rule.[2] Of the approximately 3318 currently active funds, the staff estimates that virtually all have already adopted procedures for compliance with rule 17a–7. This is a one-time burden, and the staff therefore does not estimate an ongoing burden related to the policies and procedures requirement of the rule for funds.[3] The staff estimates that there are approximately 150 new funds that register each year, and that each of these funds adopts the relevant policies and procedures. The staff estimates that it takes approximately 4 hours to develop and adopt these policies and procedures. Therefore, the total annual burden related to developing and adopting these policies and procedures would be approximately 600 hours.[4]

Of the 3318 existing funds, the staff assumes that approximately 25%, (or 830) enter into transactions affected by rule 17a–7 each year (either by the fund directly or through one of the fund's series), and that the same percentage (25%, or 38 funds) of the estimated 150 funds that newly register each year will also enter into these transactions, for a total of 868[5] companies that are affected by the recordkeeping requirements of rule 17a–7. These funds must keep records of each of these transactions, and the board of directors must quarterly determine that all relevant transactions were made in compliance with the company's policies and procedures. The rule generally imposes a minimal burden of collecting and storing records already generated for other purposes.[6] The staff estimates that the burden related to making these records and for the board to review all transactions would be 3 hours annually for each respondent, (2 hours spent by compliance attorneys and 1 hour spent by the board of directors) [7] or 2604 total hours each year.[8]

Based on these estimates, the staff estimates the combined total annual burden hours associated with rule 17a–7 is 3204 hours.[9] The staff also estimates that there are approximately 1018 respondents and 7094 total responses.[10]

The estimates of 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. The collection of information required by rule 17a–7 is necessary to obtain the benefits of the rule. Responses 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 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: July 2, 2014.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2014–15966 Filed 7–8–14; 8:45 am]

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[2] Unless stated otherwise, these estimates are based on conversations with the examination and inspections staff of the Commission and fund representatives.

[3] Based on our reviews and conversations with fund representatives, we understand that funds rarely, if ever, need to make changes to these policies and procedures once adopted, and therefore we do not estimate a paperwork burden for such updates.

[4] This estimate is based on the following calculations: (4 hours × 150 new funds = 600 hours).

[5] This estimate is based on the following calculation: (830 + 38 = 868).

[6] Commission staff believes that rule 17a–7 does not impose any costs associated with record preservation in addition to the costs that funds already incur to comply with the record preservation requirements of rule 31a–2 under the Act. Rule 31a–2 requires companies to preserve certain records for specified periods of time.

[7] The staff estimates that funds that rely on rule 17a–7 annually enter into an average of 8 rule 17a–7 transactions each year. The staff estimates that the compliance attorneys of the companies spend approximately 15 minutes per transaction on this recordkeeping, and the board of directors spends a total of 1 hour annually in determining that all transactions made that year were done in compliance with the company's policies and procedures.

[8] This estimate is based on the following calculation: (3 hours × 868 companies = 2604 hours).

[9] This estimate is based on the following calculation: (600 hours + 2604 hours = 3204 total hours).

[10] This estimate is based on the following calculations: (150 newly registered funds + 868 funds that engage in rule 17a–7 transactions = 1018); (868 funds that engage in rule 17a–7 transactions × 8 times per year = 6944); (6944 + 150 = 7094 responses).

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Form N–PX, OMB Control No. 3235–0582, SEC File No. 270–524

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 collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

The title for the collection of information is ''Form N–PX (17 CFR 274.129) under the Investment Company Act of 1940, Annual Report of Proxy Voting Record.'' Rule 30b1–4 (17 CFR 270.30b1–4) under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) requires every registered management investment company, other than a small business investment company registered on Form N–5 (''Funds''), to file Form N–PX not later than August 31 of each year. Funds use Form N–PX to file annual reports with the Commission containing their complete proxy voting record for the most recent twelve-month period ended June 30.

The Commission estimates that there are approximately 2,500 Funds registered with the Commission, representing approximately 10,000 Fund portfolios, which are required to file Form N–PX.[1] The 10,000 portfolios

[1] The estimate of 2,500 Funds is based on the number of management investment companies currently registered with the Commission. We estimate, based on data from the Investment Company Institute and other sources, that there are approximately 5,700 Fund portfolios that invest primarily in equity securities, 500 ''hybrid'' or bond portfolios that may hold some equity securities, 3,200 bond Funds that hold no equity securities, and 600 money market Funds, for a total of 10,000 portfolios required to file Form N–PX.

are comprised of 6,200 portfolios holding equity securities and 3,800 portfolios holding no equity securities. The staff estimates that portfolios holding no equity securities require approximately a 0.17 hour burden per response and those holding equity securities require 7.2 hours per response. The overall estimated annual burden is therefore approximately 45,300 hours ((6,200 responses × 7.2 hours per response for equity holding portfolios) + (3,800 responses × 0.17 hours per response for non-equity holding portfolios)). Based on the estimated wage rate, the total cost to the industry of the hour burden for complying with Form N–PX would be approximately $14.5 million.

The Commission also estimates that portfolios holding equity securities will bear an external cost burden of $1,000 per portfolio to prepare and update Form N–PX. Based on this estimate, the Commission estimates that the total annualized cost burden for Form N–PX is $6.2 million (6,200 responses × $1,000 per response = $6,200,000).

The collection of information under Form N–PX is mandatory. The information provided under the form is not 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 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: July 3, 2014.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2014–16040 Filed 7–8–14; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: U.S. Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 15g–2, SEC File No. 270–381, OMB Control No. 3235–0434.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (''PRA''), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for extension of the previously approved collection of information provided for in Rule 15g–2 (17 CFR 240.15g–2) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Exchange Act''). Rule 15g–2 (The ''Penny Stock Disclosure Rule'') requires broker-dealers to provide their customers with a risk disclosure document, as set forth in Schedule 15G, prior to their first non-exempt transaction in a ''penny stock.'' As amended, the rule requires broker-dealers to obtain written acknowledgement from the customer that he or she has received the required risk disclosure document. The amended rule also requires broker-dealers to maintain a copy of the customer's written acknowledgement for at least three years following the date on which the risk disclosure document was provided to the customer, the first two years in an accessible place. Rule 15g–2 also requires a broker-dealer, upon request of a customer, to furnish the customer with a copy of certain information set forth on the Commission's Web site.

The risk disclosure documents are for the benefit of the customers, to assure that they are aware of the risks of trading in ''penny stocks'' before they enter into a transaction. The risk disclosure documents are maintained by the broker-dealers and may be reviewed during the course of an examination by the Commission.

There are approximately 221 broker-dealers that could potentially be subject to current Rule 15g–2. The Commission estimates that approximately 5% of registered broker-dealers are engaged in penny stock transactions, and thereby subject to the Rule (5% × approximately 4,410 registered broker-dealers = 221 broker-dealers). The Commission estimates that each one of these firms processes an average of three new customers for penny stocks per week. Thus, each respondent processes approximately 156 penny stock disclosure documents per year. If communications in tangible form alone are used to satisfy the requirements of Rule 15g–2, then the copying and mailing of the penny stock disclosure document takes no more than two minutes. Thus, the total associated burden is approximately 2 minutes per response, or an aggregate total of 312 minutes per respondent. Since there are 221 respondents, the current annual burden is 68,952 minutes (312 minutes per each of the 221 respondents) or 1,150 hours for this third party disclosure burden. In addition, broker-dealers incur a recordkeeping burden of approximately two minutes per response when filing the completed penny stock disclosure documents as required pursuant to the Rule 15(g)(2)(c), which requires a broker-dealer to preserve a copy of the written acknowledgement pursuant to Rule 17a–4(b) of the Exchange Act. Since there are approximately 156 responses for each respondent, the respondents incur an aggregate recordkeeping burden of 68,952 minutes (221 respondents × 156 responses for each × 2 minutes per response) or 1,150 hours, under Rule 15g–2. Accordingly, the current aggregate annual hour burden associated with Rule 15g–2 (assuming that all respondents provide tangible copies of the required documents) is approximately 2,300 hours (1,150 third party disclosure hours + 1,150 recordkeeping hours).

The burden hours associated with Rule 15g–2 may be slightly reduced when the penny stock disclosure document required under the rule is provided through electronic means such as e-mail from the broker-dealer (*e.g.*, the broker-dealer respondent may take only one minute, instead of the two minutes estimated above, to provide the penny stock disclosure document by e-mail to its customer). In this regard, if each of the customer respondents estimated above communicates with his or her broker-dealer electronically, the total ongoing respondent burden is approximately 1 minute per response, or an aggregate total of 156 minutes (156 customers × 1 minutes per respondent). Assuming 221 respondents, the annual third party disclosure burden, if electronic communications were used by all customers, is 34,476 minutes (156 minutes per each of the 221 respondents) or 575 hours. If all respondents were to use electronic means, the recordkeeping burden would be 68,952 minutes or 1,150 hours (the

same as above). Thus, if all broker-dealer respondents obtain and send the documents required under the rules electronically, the aggregate annual hour burden associated with Rule 15g–2 is 1,725 (575 hours + 1,150 hours).

In addition, if the penny stock customer requests a paper copy of the information on the Commission's Web site regarding microcap securities, including penny stocks, from his or her broker-dealer, the printing and mailing of the document containing this information takes no more than two minutes per customer. Because many investors have access to the Commission's Web site via computers located in their homes, or in easily accessible public places such as libraries, then, at most, a quarter of customers who are required to receive the Rule 15g–2 disclosure document request that their broker-dealer provide them with the additional microcap and penny stock information posted on the Commission's Web site. Thus, each broker-dealer respondent processes approximately 39 requests for paper copies of this information per year or an aggregate total of 78 minutes per respondent (2 minutes per customer × 39 requests per respondent). Since there are 221 respondents, the estimated annual burden is 17,238 minutes (78 minutes per each of the 221 respondents) or 288 hours. This is a third party disclosure type of burden.

We have no way of knowing how many broker-dealers and customers will choose to communicate electronically. Assuming that 50 percent of respondents continue to provide documents and obtain signatures in tangible form and 50 percent choose to communicate electronically to satisfy the requirements of Rule 15g–2, the total aggregate burden hours would be 2,301 ((aggregate burden hours for sending disclosure documents and obtaining signed customer acknowledgments in tangible form × 0.50 of the respondents = 1,150 hours) + (aggregate burden hours for electronically signed and transmitted documents × 0.50 of the respondents = 863 hours) + (288 burden hours for those customers making requests for a copy of the information on the Commission's Web site)).

The Commission does not maintain the risk disclosure document. Instead, it must be retained by the broker-dealer for at least three years following the date on which the risk disclosure document was provided to the customer, the first two years in an accessible place. The collection of information required by the rule is mandatory. The risk disclosure document is otherwise governed by the internal policies of the broker-dealer regarding confidentiality, etc.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following Web site: *http://www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, D.C. 20503, or by sending an e-mail 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 by sending an e-mail to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: July 3, 2014.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2014–16039 Filed 7–8–14; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Form N–54C, OMB Control No. 3235–0236, SEC File No. 270–184.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (the ''PRA''), 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 for extension and approval.

Under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) (the ''Investment Company Act''), certain investment companies can elect to be regulated as business development companies, as defined in Section 2(a)(48) of the Investment Company Act (15 U.S.C. 80a–2(a)(48)). Under Section 54(a) of the Investment Company Act (15 U.S.C. 80a–53(a)), any company defined in Section 2(a)(48)(A) and (B) of the Investment Company Act (15 U.S.C. 80a–2(a)(48)), may, if it meets certain enumerated eligibility requirements, elect to be subject to the provisions of Sections 55 through 65 of the Investment Company Act (15 U.S.C. 80a–54 to 80a–64) by filing with the Commission a notification of election on Form N–54A (17 CFR 274.53). Under Section 54(c) of the Investment Company Act (15 U.S.C. 80a–53(c)), any business development company may voluntarily withdraw its election under Section 54(a) of the Investment Company Act (15 U.S.C. 80a–53(a)) by filing a notice of withdrawal of election with the Commission. The Commission has adopted Form N–54C (17 CFR 274.54) as the form for notification of withdrawal of election to be subject to Sections 55 through 65 of the Investment Company Act.

The purpose of Form N–54C is to notify the Commission that the business development company withdraws its election to be subject to Sections 55 through 65 of the Investment Company Act, enabling the Commission to administer those provisions of the Investment Company Act to such companies.

The Commission estimates that on average approximately 10 business development companies file these notifications each year. Each of those business development companies need only make a single filing of Form N–54C. The Commission further estimates that this information collection imposes a burden of one hour, resulting in a total annual PRA burden of 10 hours. Based on the estimated wage rate, the total cost to the business development industry of the hour burden for complying with Form N–54C would be approximately $3,200.

The collection of information under Form N–54C is mandatory. The information provided by the form is not 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 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: July 2, 2014.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2014–15968 Filed 7–8–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 31144; File No. 812–14284]

KraneShares Trust and Krane Funds Advisors, LLC; Notice of Application

July 2, 2014.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application 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, as well as from certain disclosure requirements.

SUMMARY OF APPLICATION: Applicants request an order that would permit them to enter into and materially amend subadvisory agreements with Wholly-Owned Sub-Advisers (as defined below) and non-affiliated sub-advisers without shareholder approval and would grant relief from certain disclosure requirements.

APPLICANTS: KraneShares Trust (the ''Trust'') and Krane Funds Advisors, LLC (the ''Initial Adviser'').

DATES: *Filing Dates:* The application was filed on February 27, 2014, and amended on June 12, 2014.

Hearing or Notification of Hearing: An order granting the requested relief 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 July 28, 2014, and should be accompanied by proof of service on 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, 1350 Avenue of the Americas, 2nd Floor, New York, New York 10019.

FOR FURTHER INFORMATION CONTACT: Jill Ehrlich, Senior Counsel, at (202) 551–6819, or David P. Bartels, 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 for 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 is organized as a Delaware statutory trust and is registered with the Commission as an open-end management investment company under the Act. The Trust may offer one or more series of shares (each, a ''Fund'' and collectively the ''Funds'') with its own distinct investment objectives, policies and restrictions.[1] Currently, the Trust has registered twelve Funds, three of which are operational. Applicants state that each Fund that has commenced operations to date operates as a passively-managed exchange-traded fund in reliance on a previously granted exemptive order.[2] The Adviser is a limited liability company organized under the laws of the State of Delaware and is registered with the Commission as an investment adviser under the Investment Advisers Act of 1940 (the ''Advisers Act'').

2. Applicants request an order to permit the Adviser,[3] subject to the approval of the board of trustees of the Trust (the ''Board''), including a majority of the trustees who are not ''interested persons'' of the Funds or the Adviser as defined in section 2(a)(19) of the Act (the ''Independent Trustees''), to, without obtaining shareholder approval: (i) select Sub-Advisers[4] to manage all or a portion of the assets of a Fund and enter into Sub-Advisory Agreements (as defined below) with the Sub-Advisers, and (ii) materially amend Sub-Advisory Agreements with the Sub-Advisers.[5] Applicants request that the relief apply to the named applicants, as well as to any future Fund and any other existing or future registered open-end management investment company or series thereof that is advised by the Adviser, uses the multi-manager structure described in the application, and complies with the terms and conditions set forth in the application (each, a ''Subadvised Funds'').[6] The requested relief will not extend to any sub-adviser, other than a Wholly-Owned Sub-Adviser, who is an affiliated person, as defined in section 2(a)(3) of the Act, of the Subadvised Fund, of any Feeder Fund, or of the Adviser, other than by reason of serving as a sub-adviser to one or more of the Subadvised Funds (''Affiliated Sub-Adviser'').

[1] Future Funds may be operated as a master-feeder structure pursuant to section 12(d)(1)(E) of the Act. In such a structure, certain Funds (each, a ''Feeder Fund'') may invest substantially all of their assets in a Fund (a ''Master Fund'') pursuant to section 12(d)(1)(E) of the Act. No Feeder Fund will engage any sub-advisers other than through approving the engagement of one or more of the Master Fund's sub-advisers.

[2] Krane Funds Advisors, et al., Investment Company Act Release Nos. 30425 (March 14, 2013) (Notice) and 30452 (April 8, 2013) (Order).

[3] The term ''Adviser'' includes (i) the Initial Adviser and (ii) any entity controlling, controlled by or under common control with, the Initial Adviser or its successors that serves as investment adviser to the Funds. For purposes of the requested order, ''successor'' is limited to an entity that results from a reorganization into another jurisdiction or a change in the type of business organization.

[4] A ''Sub-Adviser'' for a Fund is (1) an indirect or direct ''wholly owned subsidiary'' (as such term is defined in the Act) of the Adviser for that Fund, or (2) a sister company of the Adviser for that Fund that is an indirect or direct ''wholly-owned subsidiary'' (as such term is defined in the Act) of the same company that, indirectly or directly, wholly owns the Adviser (each of (1) and (2) a ''Wholly-Owned Sub-Adviser'' and collectively, the ''Wholly-Owned Sub-Advisers''), or (3) not an ''affiliated person'' (as such term is defined in section 2(a)(3) of the Act) of the Fund, any Feeder Fund invested in a Master Fund, the Trust, or the Adviser, except to the extent that an affiliation arises solely because the Sub-Adviser serves as a sub-adviser to a Fund (each, a ''Non-Affiliated Sub-Adviser'').

[5] Shareholder approval will continue to be required for any other sub-adviser changes (not otherwise permitted by rule or other action of the Commission or staff) and material amendments to an existing Sub-Advisory Agreement with any sub-adviser other than a Non-Affiliated Sub-Adviser or Wholly-Owned Sub-Adviser (all such changes referred to as ''Ineligible Sub-Adviser Changes'').

[6] All registered open-end investment companies that currently intend to rely on the requested order are named as applicants. All Funds that currently are, or that currently intend to be, Subadvised Funds are identified in the application. Any entity that relies on the requested order will do so only in accordance with the terms and conditions contained in the application. If the name of any Subadvised Fund contains the name of a Sub-Adviser, the name of the Adviser that serves as the primary adviser to the Subadvised Fund, or a trademark or trade name that is owned by or publicly used to identify that Adviser, will precede the name of the Sub-Adviser.

3. The Adviser serves as the investment adviser to each Fund pursuant to an investment advisory agreement with the Trust (''Investment Management Agreement''). Any other Adviser will be registered with the Commission as an investment adviser under the Advisers Act. The Investment Management Agreement was approved by the Board, including a majority the Independent Trustees, and by the shareholders of each Fund in the manner required by sections 15(a) and 15(c) of the Act and rule 18f–2 thereunder. The terms of the Investment Management Agreement comply with section 15(a) of the Act. Each other investment management agreement with respect to a Fund (included in the term ''Investment Management Agreement'') will comply with section 15(a) of the Act and will be similarly approved.

4. Pursuant to the terms of the Investment Management Agreement, the Adviser, subject to the supervision of the Board, provides continuous investment management of the assets of each Fund. The Adviser periodically reviews a Fund's investment policies and strategies and, based on the need of a particular Fund, may recommend changes to the investment policies and strategies of the Fund for consideration by the Board. For its services to each Fund under the Investment Management Agreement, the Adviser receives an investment management fee from that Fund. Consistent with the terms of the Investment Management Agreement, the Adviser may, subject to the approval of the Board, including a majority of the Independent Trustees, and the shareholders of the applicable Subadvised Fund (if required), delegate portfolio management responsibilities of all or a portion of the assets of a Subadvised Fund to one or more Sub-Advisers. The Adviser continues to have overall responsibility for the management and investment of the assets of each Subadvised Fund, and the Adviser's responsibilities include, for example, recommending the removal or replacement of Sub-Advisers and determining the portion of that Subadvised Fund's assets to be managed by any given Sub-Adviser and reallocating those assets as necessary from time to time.

5. The Adviser has entered into sub-advisory agreements with various Sub-Advisers (''Sub-Advisory Agreements'') on behalf of the Subadvised Funds. The Adviser may also, in the future, enter into Sub-Advisory Agreements on behalf of other Funds. The Sub-Advisory Agreements were approved by the Board, including a majority of the Independent Trustees, and the shareholders of the applicable Subadvised Fund in accordance with sections 15(a) and 15(c) of the Act and rule 18f–2 thereunder. In addition, the terms of each Sub-Advisory Agreement comply fully with the requirements of section 15(a) of the Act. The Sub-Advisers, subject to the supervision of the Adviser and oversight of the Board, determine the securities and other instruments to be purchased, sold or entered into by a Subadvised Fund's portfolio or a portion thereof, and place orders with brokers or dealers that they select. The Adviser will compensate each Sub-Adviser out of the fee paid to the Adviser under the Investment Management Agreement.

6. Subadvised Funds will inform shareholders of the hiring of a new Sub-Adviser pursuant to the following procedures (''Modified Notice and Access Procedures''): (a) within 90 days after a new Sub-Adviser is hired for any Subadvised Fund, that Subadvised Fund will send its shareholders [7] either a Multi-manager Notice or a Multi-manager Notice and Multi-manager Information Statement; [8] and (b) the Subadvised 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 state that, in the circumstances described in the application, a proxy solicitation to approve the appointment of new Sub-Advisers provides no more meaningful information to shareholders than the proposed Multi-manager Information Statement. Applicants also state that each Board would comply with the requirements of sections 15(a) and 15(c) of the Act before entering into or amending Sub-Advisory Agreements.

7. Applicants also request an order under section 6(c) of the Act exempting the Subadvised Funds from certain disclosure obligations that may require each Subadvised Fund to disclose fees paid by the Adviser to each Sub-Adviser. Applicants seek relief to permit each Subadvised Fund to disclose (as a dollar amount and a percentage of the Subadvised Fund's net assets): (a) The aggregate fees paid to the Adviser and any Wholly-Owned Sub-Advisers; (b) the aggregate fees paid to Non-Affiliated Sub-Advisers; and (c) the fee paid to each Affiliated Sub-Adviser (collectively, the ''Aggregate Fee Disclosure''). An exemption is requested to permit the Funds to include only the Aggregate Fee Disclosure. All other items required by sections 6–07(2)(a), (b) and (c) of Regulation S–X will be disclosed.

Applicants' Legal Analysis

1. Section 15(a) of the Act states, in 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, which contract, whether with such registered company or with an investment adviser of such registered company, has been approved by the vote of a majority of the outstanding voting securities of such registered company.'' Rule 18f–2 under the Act provides that each series or class of stock in a series investment company affected by a matter must approve that matter if the Act requires shareholder approval.

2. Form N–1A is the registration statement used by open-end investment companies. Item 19(a)(3) of Form N–1A requires a registered investment company to disclose in its statement of additional information the method of computing the ''advisory fee payable'' by the investment company, including the total dollar amounts that the investment company ''paid to the adviser (aggregated with amounts paid to affiliated advisers, if any), and any advisers who are not affiliated persons of the adviser, under the investment advisory contract for the last three fiscal years.''

3. Rule 20a–1 under the Act requires proxies solicited with respect to a registered investment company to comply with Schedule 14A under the Exchange Act. Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8) and 22(c)(9) of Schedule 14A, taken together, require a proxy statement for a shareholder

[7] If the Subadvised Fund is a Master Fund, for purposes of the Modified Notice and Access Procedures, ''shareholders'' include both the shareholders of the applicable Master Fund and the shareholders of its Feeder Funds.

[8] 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 Sub-Adviser; (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 Subadvised Fund.

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 with the Commission via the EDGAR system.

meeting at which the advisory contract will be voted upon to include the ''rate of compensation of the investment adviser,'' the ''aggregate amount of the investment adviser's fee,'' a description of the ''terms of the contract to be acted upon,'' and, if a change in the advisory fee is proposed, the existing and proposed fees and the difference between the two fees.

4. Regulation S–X sets forth the requirements for financial statements required to be included as part of investment company registration statements and shareholder reports filed with the Commission. Sections 6–07(2)(a), (b) and (c) of Regulation S–X require registered investment companies to include in their financial statements information about investment advisory fees.

5. Section 6(c) of the Act provides that the Commission by order upon application may conditionally or unconditionally 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 their requested relief meets this standard for the reasons discussed below.

6. Applicants assert that the shareholders expect the Adviser, subject to the review and approval of the Board, to select the Sub-Advisers who are in the best position to achieve the Subadvised Funds' investment objectives. Applicants assert that, from the perspective of the shareholder, the role of the Sub-Advisers is substantially equivalent to the role of the individual portfolio managers employed by an investment adviser to a traditional investment company. Applicants believe that permitting the Adviser to perform the duties for which the shareholders of the Subadvised Fund are paying the Adviser—the selection, supervision and evaluation of the Sub-Advisers—without incurring unnecessary delays or expenses is appropriate in the interest of the Subadvised Fund's shareholders and will allow such Subadvised Fund to operate more efficiently. Applicants state that the Investment Management Agreement will continue to be fully subject to section 15(a) of the Act and rule 18f–2 under the Act and approved by the Board, including a majority of the Independent Trustees, in the manner required by sections 15(a) and 15(c) of the Act. Applicants are not seeking an exemption with respect to the Investment Management Agreement.

7. Applicants assert that disclosure of the individual fees that the Adviser would pay to the Sub-Advisers of Subadvised Funds that operate in the multi-manager structure described in the application does not serve any meaningful purpose. Applicants contend that the primary reasons for requiring disclosure of individual fees paid to Sub-Advisers are to inform shareholders of expenses to be charged by a particular Subadvised Fund and to enable shareholders to compare the fees to those of other comparable investment companies. Applicants believe that the requested relief satisfies these objectives because the advisory fee paid to the Adviser will be fully disclosed and, therefore, shareholders will know what the Subadvised Fund's fees and expenses are and will be able to compare the advisory fees a Subadvised Fund is charged to those of other investment companies. Applicants assert that the requested disclosure relief would benefit shareholders of the Subadvised Fund because it would improve the Adviser's ability to negotiate the fees paid to Sub-Advisers. Applicants state that if the Adviser is not required to disclose the Sub-Advisers' fees to the public, the Adviser may be able to negotiate rates that are below a Sub-Adviser's ''posted'' amounts. Applicants assert that the relief will also encourage Sub-Advisers to negotiate lower sub-advisory fees with the Adviser if the lower fees are not required to be made public.

8. Applicants submit that the requested relief meets the standards for relief under section 6(c) of the Act. Applicants state that each Subadvised Fund will be required to obtain shareholder approval to operate as a ''multiple manager'' fund as described in the application before relying on the requested order. Applicants assert that conditions 6, 10, and 11 are designed to provide the Board with sufficient independence and the resources and information it needs to monitor and address any conflicts of interest. Applicants state that, accordingly, they believe the requested relief 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' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:[9]

1. Before a Subadvised Fund may rely on the order requested in the application, the operation of the Subadvised Fund in the manner described in the application, including the hiring of Wholly-Owned Sub-Advisers, will be approved by a majority of the Subadvised Fund's outstanding voting securities as defined in the Act, which in the case of a Master Fund will include voting instructions provided by shareholders of the Feeder Funds investing in such Master Fund or other voting arrangements that comply with section 12(d)(1)(E)(iii)(aa) of the Act or, in the case of a new Subadvised 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 the Subadvised Fund's shares to the public.

2. The prospectus for each Subadvised Fund, and in the case of a Master Fund relying on the requested relief, the prospectus for each Feeder Fund investing in such Master Fund, will disclose the existence, substance and effect of any order granted pursuant to the application. Each Subadvised Fund (and any such Feeder Fund) will hold itself out to the public as employing the multi-manager structure described in the application. Each prospectus will prominently disclose that the Adviser has the ultimate responsibility, subject to oversight by the Board, to oversee the Sub-Advisers and recommend their hiring, termination, and replacement.

3. The Adviser will provide general management services to a Subadvised Fund, including overall supervisory responsibility for the general management and investment of the Subadvised Fund's assets. Subject to review and approval of the Board, the Adviser will (a) set a Subadvised Fund's overall investment strategies, (b) evaluate, select, and recommend Sub-Advisers to manage all or a portion of a Subadvised Fund's assets, and (c) implement procedures reasonably designed to ensure that Sub-Advisers comply with a Subadvised Fund's investment objective, policies and restrictions. Subject to review by the Board, the Adviser will (a) when appropriate, allocate and reallocate a Subadvised Fund's assets among Sub-

[9] Applicants will only comply with conditions 7, 8, 9, and 12 if they rely on the relief that would allow them to provide Aggregate Fee Disclosure.

Advisers; and (b) monitor and evaluate the performance of Sub-Advisers.

4. A Subadvised Fund will not make any Ineligible Sub-Adviser Changes without such agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Subadvised Fund, which in the case of a Master Fund will include voting instructions provided by shareholders of the Feeder Fund investing in such Master Fund or other voting arrangements that comply with section 12(d)(1)(E)(iii)(aa) of the Act.

5. Subadvised Funds will inform shareholders, and if the Subadvised Fund is a Master Fund, shareholders of any Feeder Funds, of the hiring of a new Sub-Adviser within 90 days after the hiring of the new Sub-Adviser pursuant to the Modified Notice and Access Procedures.

6. At all times, at least a majority of the Board will be Independent Trustees, and the selection and nomination of new or additional Independent Trustees will be placed within the discretion of the then-existing Independent Trustees.

7. Independent Legal Counsel, as defined in rule 0–1(a)(16) under the Act, will be engaged to represent the Independent Trustees. The selection of such counsel will be within the discretion of the then-existing Independent Trustees.

8. The Adviser will provide the Board, no less frequently than quarterly, with information about the profitability of the Adviser on a per Subadvised Fund basis. The information will reflect the impact on profitability of the hiring or termination of any sub-adviser during the applicable quarter.

9. Whenever a sub-adviser is hired or terminated, the Adviser will provide the Board with information showing the expected impact on the profitability of the Adviser.

10. Whenever a sub-adviser change is proposed for a Subadvised Fund with an Affiliated Sub-Adviser or a Wholly-Owned Sub-Adviser, the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the Board minutes, that such change is in the best interests of the Subadvised Fund and its shareholders, and if the Subadvised Fund is a Master Fund, the best interests of any applicable Feeder Funds and their respective shareholders, and does not involve a conflict of interest from which the Adviser or the Affiliated Sub-Adviser or Wholly-Owned Sub-Adviser derives an inappropriate advantage.

11. No Trustee or officer of the Trust, a Fund or a Feeder Fund, or partner, 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 Sub-Adviser except for (a) ownership of interests in the Adviser or any entity, except a Wholly-Owned Sub-Adviser, 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 Sub-Adviser or an entity that controls, is controlled by, or under common control with a Sub-Adviser.

12. Each Subadvised Fund and any Feeder Fund that invests in a Subadvised Fund that is a Master Fund will disclose the Aggregate Fee Disclosure in its registration statement.

13. Any new Sub-Advisory Agreement or any amendment to a Subadvised Fund's existing Investment Management Agreement or Sub-Advisory Agreement that directly or indirectly results in an increase in the aggregate advisory fee rate payable by the Subadvised Fund will be submitted to the Subadvised Fund's shareholders for approval.

14. In the event the Commission adopts a rule under the Act providing substantially similar relief to that 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.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2014–15969 Filed 7–8–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 31145; File No. 812–14294]

Janus Investment Fund, et al.; Notice of Application

July 2, 2014.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application 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, as well as from certain disclosure requirements.

SUMMARY OF APPLICATION: Applicants request an order that would permit them to enter into and materially amend subadvisory agreements with Wholly-Owned Sub-Advisers (as defined below) and non-affiliated sub-advisers without shareholder approval and would grant relief from certain disclosure requirements.

APPLICANTS: Janus Investment Fund and Janus Aspen Series (each a ''Trust''), and Janus Capital Management (''the Adviser'').

DATES: *Filing Dates:* The application was filed on March 31, 2014, and amended on June 2, 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 July 28, 2014, and should be accompanied by proof of service on 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: Janus Capital Management LLC, 151 Detroit Street, Denver, CO 80206.

FOR FURTHER INFORMATION CONTACT: Linda A. Schneider, Senior Counsel, at (202) 551–6859, or Holly Hunter-Ceci, Branch Chief, at (202) 551–6869 (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. Janus Investment Fund is organized as a Massachusetts business trust and Janus Aspen Series is registered Delaware statutory trust. Each Trust is registered under the Act as an open-end management investment company. Each Trust currently has, or intends to introduce, at least one series of shares (each, a ''Series'') with its own distinct investment objective, policies and restrictions that would operate under a multi-manager structure. The Adviser is a Delaware limited liability company

and is registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act'').[1] The Adviser is a direct subsidiary of Janus Capital Group Inc. (''JCGI''). JCGI maintains an asset management presence through wholly-owned subsidiaries, including the Adviser.

2. Each Series has or will have, as its investment adviser, the Adviser, or an entity controlling, controlled by or under common control with the Adviser or its successors (included in the term, the ''Adviser'').[2] The Adviser will serve as the investment adviser to each Series pursuant to an investment advisory agreement with the relevant Trust (''Investment Management Agreement''). Each Investment Management Agreement has been or will be approved by the board of trustees of the relevant Trust (''Board''),[3] including a majority of the members of the Board who are not ''interested persons,'' as defined in section 2(a)(19) of the Act, of the Series or the Adviser (''Independent Board Members'') and by the shareholders of the relevant Series as required by sections 15(a) and 15(c) of the Act and rule 18f–2 thereunder. The terms of these Investment Management Agreements comply or will comply with section 15(a) of the Act.

3. Under the terms of each Investment Management Agreement, the Adviser, subject to the supervision of the Board, will provide continuous investment management of the assets of each Series. The Adviser will periodically review a Series' investment policies and strategies, and based on the need of a particular Series may recommend changes to the investment policies and strategies of the Series for consideration by the Board. For its services to each Series under the applicable Investment Management Agreement, the Adviser will receive an investment management fee from that Series. Each Investment Management Agreement provides that the Adviser may, subject to the approval of the Board, including a majority of the Independent Board Members, and the shareholders of the applicable Subadvised Series (if required), delegate portfolio management responsibilities of all or a portion of the assets of a Subadvised Series to one or more Sub-Advisers.[4]

4. Applicants request an order to permit the Adviser, subject to the approval of the Board of the relevant Trust, including a majority of the Independent Board Members, to, without obtaining shareholder approval: (i) Select Sub-Advisers to manage all or a portion of the assets of a Series and enter into Sub-Advisory Agreements (as defined below) with the Sub-Advisers, and (ii) materially amend Sub-Advisory Agreements with the Sub-Advisers.[5] The requested relief will not extend to any sub-adviser, other than a Wholly-Owned Sub-Adviser, who is an affiliated person, as defined in section 2(a)(3) of the Act, of the Subadvised Series, the applicable Trust, or of the Adviser, other than by reason of serving as a sub-adviser to one or more of the Subadvised Series (''Affiliated Sub-Adviser'').

5. Pursuant to each Investment Management Agreement, the Adviser has overall responsibility for the management and investment of the assets of each Subadvised Series. These responsibilities include recommending the removal or replacement of Sub-Advisers, determining the portion of that Subadvised Series' assets to be managed by any given Sub-Adviser and reallocating those assets as necessary from time to time.

6. The Adviser may enter into sub-advisory agreements with various Sub-Advisers (''Sub-Advisory Agreements'') to provide investment management services to the Subadvised Series. The terms of each Sub-Advisory Agreement comply or will comply fully with the requirements of section 15(a) of the Act and have been or will be approved by the Board, including a majority of the Independent Board Members and the initial shareholder of the applicable Subadvised Series, in accordance with sections 15(a) and 15(c) of the Act and rule 18f–2 thereunder. The Sub-Advisers, subject to the supervision of the Adviser and oversight of the Board, will determine the securities and other investments to be purchased or sold by a Subadvised Series and place orders with brokers or dealers that they select. The Adviser will compensate each Sub-Adviser out of the fee paid to the Adviser under the applicable Investment Management Agreement.

7. Subadvised Series will inform shareholders of the hiring of a new Sub-Adviser pursuant to the following procedures (''Modified Notice and Access Procedures''): (a) within 90 days after a new Sub-Adviser is hired for any Subadvised Series, that Subadvised Series will send its shareholders either a Multi-manager Notice or a Multi-manager Notice and Multi-manager Information Statement;[6] and (b) the Subadvised Series 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. In the circumstances described in the application, a proxy solicitation to

[1] Applicants request that the relief apply to applicants, as well as to any future Series and any other existing or future registered open-end management investment company or series thereof that is advised by the Adviser, uses the multi-manager structure described in the application, and complies with the terms and conditions of the application (''Subadvised Series''). All registered open-end investment companies that currently intend to rely on the requested order are named as applicants. Any entity that relies on the requested order will do so only in accordance with the terms and conditions contained in the application. If the name of any Subadvised Series contains the name of a Sub-Adviser (as defined below), the name of the Adviser that serves as the primary adviser to the Subadvised Series, or a trademark or trade name that is owned by or publicly used to identify that Adviser, will precede the name of the Sub-Adviser.

[2] Each Adviser is, or will be, registered with the Commission as an investment adviser under the Advisers Act. For purposes of the requested order, ''successor'' is limited to an entity that results from a reorganization into another jurisdiction or a change in the type of business organization.

[3] The term ''Board'' also includes the board of trustees or directors of a future Subadvised Series.

[4] A ''Sub-Adviser'' is (a) an indirect or direct ''wholly-owned subsidiary'' (as such term is defined in the Act) of the Adviser for that Series; (b) a sister company of the Adviser for that Series that is an indirect or direct ''wholly-owned subsidiary'' (as such term is defined in the Act) of the same company that, indirectly or directly, wholly owns the Adviser (each of (a) and (b), a ''Wholly-Owned Sub-Adviser'' and collectively, the ''Wholly-Owned Sub-Advisers''), or (c) an investment sub-adviser for that Series that is not an ''affiliated person'' (as such term is defined in section 2(a)(3) of the Act) of the Series or the Adviser, except to the extent that an affiliation arises solely because the sub-adviser serves as a sub-adviser to one or more Series (each, a ''Non-Affiliated Sub-Adviser'').

[5] Shareholder approval will continue to be required for any other sub-adviser change (not otherwise permitted by rule or other action of the Commission or staff) and material amendments to an existing Sub-Advisory Agreement with any sub-adviser other than a Non-Affiliated Sub-Adviser or a Wholly-Owned Sub-Adviser (all such changes referred to as ''Ineligible Sub-Adviser Changes'').

[6] 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 Sub-Adviser (except as modified to permit Aggregate Fee Disclosure (as defined below); (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 Subadvised Series. 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, except as modified by the order to permit Aggregate Fee Disclosure. Multi-manager Information Statements will be filed with the Commission via the EDGAR system.

approve the appointment of new Sub-Advisers provides no more meaningful information to shareholders than the proposed Multi-manager Information Statement. Applicants state that each Board would comply with the requirements of sections 15(a) and 15(c) of the Act before entering into or amending Sub-Advisory Agreements.

8. Applicants also request an order exempting the Subadvised Series from certain disclosure obligations that may require each Subadvised Series to disclose fees paid by the Adviser to each Sub-Adviser. Applicants seek relief to permit each Subadvised Series to disclose (as a dollar amount and a percentage of the Subadvised Series' net assets): (a) The aggregate fees paid to the Adviser and any Wholly-Owned Sub-Advisers; (b) the aggregate fees paid to Non-Affiliated Sub-Advisers; and (c) the fee paid to each Affiliated Sub-Adviser (collectively, the ''Aggregate Fee Disclosure'').

Applicants' Legal Analysis

1. Section 15(a) of the Act states, in 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, which contract, whether with such registered company or with an investment adviser of such registered company, has been approved by the vote of a majority of the outstanding voting securities of such registered company.'' Rule 18f–2 under the Act provides that each series or class of stock in a series investment company affected by a matter must approve that matter if the Act requires shareholder approval.

2. Form N–1A is the registration statement used by open-end investment companies. Item 19(a)(3) of Form N–1A requires a registered investment company to disclose in its statement of additional information the method of computing the ''advisory fee payable'' by the investment company, including the total dollar amounts that the investment company ''paid to the adviser (aggregated with amounts paid to affiliated advisers, if any), and any advisers who are not affiliated persons of the adviser, under the investment advisory contract for the last three fiscal years.''

3. Rule 20a–1 under the Act requires proxies solicited with respect to a registered investment company to comply with Schedule 14A under the Exchange Act. Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8) and 22(c)(9) of Schedule 14A, taken together, require a proxy statement for a shareholder meeting at which the advisory contract will be voted upon to include the ''rate of compensation of the investment adviser,'' the ''aggregate amount of the investment adviser's fee,'' a description of the ''terms of the contract to be acted upon,'' and, if a change in the advisory fee is proposed, the existing and proposed fees and the difference between the two fees.

4. Regulation S–X sets forth the requirements for financial statements required to be included as part of a registered investment company's registration statement and shareholder reports filed with the Commission. Sections 6–07(2)(a), (b), and (c) of Regulation S–X require a registered investment company to include in its financial statement information about the investment advisory fees.

5. Section 6(c) of the Act provides that the Commission by order upon application may conditionally or unconditionally 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 their requested relief meets this standard for the reasons discussed below.

6. Applicants assert that the shareholders expect the Adviser, subject to the review and approval of the Board, to select the Sub-Advisers who are in the best position to achieve the Subadvised Series' investment objective. Applicants assert that, from the perspective of the shareholder, the role of the Sub-Advisers is substantially equivalent to the role of the individual portfolio managers employed by an investment adviser to a traditional investment company. Applicants believe that permitting the Adviser to perform the duties for which the shareholders of the Subadvised Series are paying the Adviser the selection, supervision and evaluation of the Sub-Advisers without incurring unnecessary delays or expenses is appropriate in the interest of the Subadvised Series' shareholders and will allow such Subadvised Series to operate more efficiently. Applicants state that each Investment Management Agreement will continue to be fully subject to section 15(a) of the Act and rule 18f-2 under the Act and approved by the Board, including a majority of the Independent Board Members, in the manner required by sections 15(a) and 15(c) of the Act. Applicants are not seeking an exemption with respect to the Investment Management Agreements.

7. Applicants assert that disclosure of the individual fees that the Adviser would pay to the Sub-Advisers of Subadvised Series that operate under the multi-manager structure described in the application would not serve any meaningful purpose. Applicants contend that the primary reasons for requiring disclosure of individual fees paid to Sub-Advisers are to inform shareholders of expenses to be charged by a particular Subadvised Series and to enable shareholders to compare the fees to those of other comparable investment companies. Applicants believe that the requested relief satisfies these objectives because the advisory fee paid to the Adviser will be fully disclosed and, therefore, shareholders will know what the Subadvised Series' fees and expenses are and will be able to compare the advisory fees a Subadvised Series is charged to those of other investment companies. Applicants assert that the requested disclosure relief ''would benefit shareholders of the Subadvised Series because it would improve the Adviser's ability to negotiate the fees paid to Sub-Advisers. Applicants state that the Adviser may be able to negotiate rates that are below a Sub-Adviser's ''posted'' amounts if the Adviser is not required to disclose the Sub-Advisers' fees to the public. Applicants submit that the relief requested to use Aggregate Fee Disclosure will encourage Sub-Advisers to negotiate lower subadvisory fees with the Adviser if the lower fees are not required to be made public.

8. For the reasons discussed above, applicants submit that the requested relief meets the standards for relief under section 6(c) of the Act. Applicants state that the operation of the Subadvised Series in the manner described in the application must be approved by shareholders of a Subadvised Series before that Subadvised Series may rely on the requested relief. In addition, applicants state that the proposed conditions to the requested relief are designed to address any potential conflicts of interest, including any posed by the use of Wholly-Owned Sub-Advisers, and provide that shareholders are informed when new Sub-Advisers are hired. Applicants assert that conditions 6, 10 and 11 are designed to provide the Board with sufficient independence and the resources and information it needs to monitor and address any conflicts of interest with affiliated persons of the Adviser, including Wholly-Owned Sub-Advisers. Applicants state that, accordingly, they believe the requested relief 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' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:[7]

1. Before a Subadvised Series may rely on the order requested in the application, the operation of the Subadvised Series in the manner described in the application, including the hiring of Wholly-Owned Sub-Advisers, will be, or has been, approved by a majority of the Subadvised Series' outstanding voting securities as defined in the Act, or, in the case of a new Subadvised Series whose public shareholders purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the sole initial shareholder before offering the Subadvised Series' shares to the public.

2. The prospectus for each Subadvised Series will disclose the existence, substance, and effect of any order granted pursuant to the application. Each Subadvised Series will hold itself out to the public as employing the multi-manager structure described in the application. Each prospectus will prominently disclose that the Adviser has the ultimate responsibility, subject to oversight by the Board, to oversee the Sub-Advisers and recommend their hiring, termination and replacement.

3. The Adviser will provide general management services to a Subadvised Series, including overall supervisory responsibility for the general management and investment of the Subadvised Series' assets. Subject to review and approval of the Board, the Adviser will (a) set a Subadvised Series' overall investment strategies, (b) evaluate, select, and recommend Sub-Advisers to manage all or a portion of a Subadvised Series' assets, and (c) implement procedures reasonably designed to ensure that Sub-Advisers comply with a Subadvised Series' investment objective, policies and restrictions. Subject to review by the Board, the Adviser will (a) when appropriate, allocate and reallocate a Subadvised Series' assets among multiple Sub-Advisers; and (b) monitor and evaluate the performance of Sub-Advisers.

4. A Subadvised Series will not make any Ineligible Sub-Adviser Changes without the approval of the shareholders of the applicable Subadvised Series.

5. Subadvised Series will inform shareholders of the hiring of a new Sub-Adviser within 90 days after the hiring of the new Sub-Adviser pursuant to the Modified Notice and Access Procedures.

6. At all times, at least a majority of the Board will be Independent Board Members, and the selection and nomination of new or additional Independent Board Members will be placed within the discretion of the then-existing Independent Board Members.

7. Independent Legal Counsel, as defined in rule 0–1(a)(6) under the Act, will be engaged to represent the Independent Board Members. The selection of such counsel will be within the discretion of the then-existing Independent Board Members.

8. The Adviser will provide the Board, no less frequently than quarterly, with information about the profitability of the Adviser on a per Subadvised Series basis. The information will reflect the impact on profitability of the hiring or termination of any sub-adviser during the applicable quarter.

9. Whenever a sub-adviser is hired or terminated, the Adviser will provide the Board with information showing the expected impact on the profitability of the Adviser.

10. Whenever a sub-adviser change is proposed for a Subadvised Series with an Affiliated Sub-Adviser or a Wholly-Owned Sub-Adviser, the Board, including a majority of the Independent Board Members, will make a separate finding, reflected in the Board minutes, that such change is in the best interests of the Subadvised Series and its shareholders, and does not involve a conflict of interest from which the Adviser or the Affiliated Sub-Adviser or Wholly-Owned Sub-Adviser derives an inappropriate advantage.

11. No Board member or officer of a Subadvised Series, or director 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 Sub-Adviser, except for (a) ownership of interests in the Adviser or any entity, other than a Wholly-Owned Sub-Adviser, 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 a publicly traded company that is either a Sub-Adviser or an entity that controls, is controlled by, or is under common control with a Sub-Adviser.

12. Each Subadvised Series will disclose the Aggregate Fee Disclosure in its registration statement.

13. In the event the Commission adopts a rule under the Act providing substantially similar relief to that requested in the application, the requested order will expire on the effective date of that rule.

14. Any new Sub-Advisory Agreement or any amendment to a Subadvised Series' existing Investment Management Agreement or Sub-Advisory Agreement that directly or indirectly results in an increase in the aggregate advisory rate payable by the Subadvised Series will be submitted to the Subadvised Series' shareholders for approval.

For the Commission, by the Division of Investment Management, under delegated authority.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2014–15970 Filed 7–8–14; 8:45 am]

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[7] Applicants will only comply with conditions 7, 8, 9 and 12 if they rely on the relief that would allow them to provide Aggregate Fee Disclosure.

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 31146; File No. 812–14217]

BMO Funds, Inc., et al.; Notice of Application

July 2, 2014.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order pursuant to (a) section 6(c) of the Investment Company Act of 1940 (''Act'') granting an exemption from sections 18(f) and 21(b) of the Act; (b) section 12(d)(1)(J) of the Act granting an exemption from section 12(d)(1) of the Act; (c) sections 6(c) and 17(b) of the Act granting an exemption from sections 17(a)(1), 17(a)(2) and 17(a)(3) of the Act; and (d) section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint arrangements.

SUMMARY OF THE APPLICATION: Applicants request an order that would permit certain registered open-end management investment companies to participate in a joint lending and borrowing facility.

APPLICANTS: BMO Fund, Inc. (''Company'' or ''BMO''), BMO Asset Management Corp. (''Adviser''), and BMO Harris Bank N.A. (''Bank'').

DATES: *Filing Dates:* The application was filed on September 25, 2013, and amended on February 14, 2014 and June 6, 2014. Applicants have agreed to file an amendment during the notice period,

the substance of which is reflected in this notice.

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 July 28, 2014, and should be accompanied by proof of service on 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 BMO Funds, Inc., 111 East Kilbourn Avenue, Milwaukee, WI 53202.

FOR FURTHER INFORMATION CONTACT: Emerson S. Davis, Senior Counsel, at (202) 551–6868 or Daniele Marchesani, 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 for 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 Company is organized as a Wisconsin corporation and is registered under the Act as an open-end management investment company. The Company consists of multiple series, three of which comply with Rule 2a–7 under the Act and hold themselves out as money market funds (''Money Market Funds''). BMO Asset Management Corp. is a wholly-owned subsidiary of BMO Financial Corp, which is an indirectly wholly-owned subsidiary of the Bank of Montreal, a Canadian bank holding company. BMO Asset Management Corp. is, and any other Adviser will be registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act'') and serve as the investment adviser to the Funds.[1] The Adviser may engage one or more affiliated or unaffiliated subadvisers and each will be registered as an investment adviser under the Advisers Act or not be subject to registration. BMO Harris Bank, an affiliate of BMO Asset Management Corp. and an indirect wholly-owned subsidiary of BMO Financial Corp., serves as custodian for the Company and the Funds.

2. At any particular time, while some Funds are entering into repurchase agreements, or purchasing other short-term instruments, other Funds may need to borrow money from the same or similar banks for temporary purposes to satisfy redemption requests, to cover unanticipated cash shortfalls such as a trade ''fail'' in which cash payment for a security sold by a Fund has been delayed, or for other temporary purposes. The Company, on behalf of the Funds, has entered into a Loan Agreement, as amended, with State Street Bank & Trust Company (the ''Loan Agreement'') under which the Company has access to a $50 million standby line of credit on behalf of the Funds.

3. When a Fund borrows money from a bank or under the Loan Agreement, it pays interest on the loan at a rate that is higher than the rate that is earned by other (non-borrowing) Funds on investments in repurchase agreements or other short-term instruments of the same maturity as the bank loan or loan under the Loan Agreement. Applicants assert that this differential represents the profit earned by the lender on loans and is not attributable to any material difference in the credit quality or risk of such transactions.

4. The Funds seek to enter into master interfund lending agreements (''Interfund Lending Agreements'') with each other that would permit each Fund to lend money directly to and borrow money directly from other Funds through a credit facility for temporary purposes. The Money Market Funds will not participate as borrowers in the proposed credit facility. Applicants state that the proposed credit facility would both reduce the Funds' potential borrowing costs and enhance the ability of the lending Funds to earn higher rates of interest on their short-term lendings. Although the proposed credit facility would reduce the Funds' need to borrow from banks, the Funds would be free to establish and maintain committed lines of credit or other borrowing arrangements with unaffiliated banks.

5. Applicants anticipate that the proposed credit facility would provide a borrowing Fund with significant savings at times when the cash position of the borrowing Fund is insufficient to meet temporary cash requirements. This situation could arise when shareholder redemptions exceed anticipated volumes and certain Funds have insufficient cash on hand to satisfy such redemptions. When the Funds liquidate portfolio securities to meet redemption requests, they often do not receive payment in settlement for up to three days (or longer for certain foreign transactions). However, redemption requests normally are effected immediately. The proposed credit facility would provide a source of immediate, short-term liquidity pending settlement of the sale of portfolio securities.

6. Applicants also anticipate that a Fund could use the proposed credit facility when a sale of securities ''fails'' due to circumstances beyond the Fund's control, such as a delay in the delivery of cash to the Fund's custodian or improper delivery instructions by the broker effecting the transaction. ''Sales fails'' may present a cash shortfall if the Fund has undertaken to purchase a security using the proceeds from securities sold. Alternatively, the Fund could ''fail'' on its intended purchase due to lack of funds from the previous sale, resulting in additional cost to the Fund, or sell a security on a same-day settlement basis, earning a lower return on the investment. Use of the proposed credit facility under these circumstances would enable the Fund to have access to immediate short-term liquidity.

7. While bank borrowings could generally supply needed cash to cover unanticipated redemptions and sales fails, under the proposed credit facility, a borrowing Fund would pay lower interest rates than those that would be payable under short-term loans offered by banks. In addition, Funds making short-term cash loans directly to other Funds would earn interest at a rate higher than they otherwise could obtain from investing their cash in repurchase agreements or purchasing shares of a money market fund. Thus, applicants assert that the proposed credit facility would benefit both borrowing and lending Funds.

[1] Applicants request that the relief apply to each existing and future series of the Company, any other registered open-end investment company or series thereof (''Funds'') for which BMO Asset Management Corp., including any successor entity thereto, or a person controlling, controlled by, or under common control (within the meaning of section 2(a)(9) of the Act) with BMO Asset Management Corp. serves as investment adviser (collectively, the ''Adviser''); and (c) BMO Asset Management Corp. The term ''successor'' is limited to entities that result from a reorganization into another jurisdiction or a change in the type of business organization. All entities that currently intend to rely on the requested relief are named as applicants. Any other entity that relies on the order in the future will comply with the terms and conditions set forth in the application.

8. The interest rate to be charged to the Funds on any Interfund Loan (the ''Interfund Loan Rate'') would be the average of the ''Repo Rate'' and the ''Bank Loan Rate,'' both as defined below. The Repo Rate for any day would be the highest rate available to a lending Fund, directly or through a joint account, from investment in overnight repurchase agreements. The Bank Loan Rate for any day would be calculated by the Credit Facility Team (as defined below) each day an Interfund Loan is made according to a formula established by each Fund's board of directors (the ''Board'') and intended to approximate the lowest interest rate at which bank short-term loans would be available to the Funds. The formula would be based upon a publicly available rate (e.g., federal funds plus 25 basis points) and would vary with this rate so as to reflect changing bank loan rates. The initial formula and any subsequent modifications to the formula would be subject to the approval of each Fund's Board. In addition, each Fund's Board would periodically review the continuing appropriateness of using the formula to determine the Bank Loan Rate, as well as the relationship between the Bank Loan Rate and current bank loan rates that would be available to the Funds.

9. The proposed credit facility would be administered by the Funds' president, chief compliance officer and treasurer and chief compliance officer and an investment professional within the Adviser who serves as a portfolio manager for the Money Market Funds (the ''Money Market Manager'') (collectively, the ''Credit Facility Team''). No other portfolio manager of any Fund will serve as a member of the Credit Facility Team. On any day on which a Fund intends to borrow money, the Credit Facility Team would make an Interfund Loan from a lending Fund to a borrowing Fund only if the Interfund Loan Rate is (i) more favorable to the lending Fund than the Repo Rate and, if applicable, the yield of any money market fund in which a lending Fund could otherwise invest and (ii) more favorable to the borrowing Fund than the Bank Loan Rate. Under the proposed credit facility, the portfolio managers for each participating Fund could provide standing instructions to participate daily as a borrower or lender. The Money Market Funds would not participate as borrowers. The Credit Facility Team on each business day would collect data on the uninvested cash and borrowing requirements of all participating Funds. The Credit Facility Team would allocate loans among borrowing Funds without any further communication from the portfolio managers of the Funds (other than the Money Market Manager acting in his or her capacity as a member of the Credit Facility Team). All allocations made by the Credit Facility Team will require the approval of at least one member of the Credit Facility Team, who is a high level employee and who is not the Money Market Manager. Applicants anticipate that there typically will be far more available uninvested cash each day than borrowing demand. Therefore, after the Credit Facility Team has allocated cash for Interfund Loans, any remaining cash will be invested in accordance with the standing instructions of portfolio managers or such remaining amounts will be invested directly by the portfolio managers of the Funds and returned to the Funds.

10. The Credit Facility Team would allocate borrowing demand and cash available for lending among the Funds on what the Credit Facility Team believes to be an equitable basis, subject to certain administrative procedures applicable to all Funds, such as the time of filing requests to participate, minimum loan lot sizes, and the need to minimize the number of transactions and associated administrative costs. To reduce transaction costs, each InterFund Loan normally would be allocated in a manner intended to minimize the number of participants necessary to complete the loan transaction. The method of allocation and related administrative procedures would be approved by each Fund's Board, including a majority of directors who are not ''interested persons'' of the Fund, as that term is defined in section 2(a)(19) of the Act (''Independent Directors''), to ensure that both borrowing and lending Funds participate on an equitable basis.

11. The Credit Facility Team would: (a) Monitor the Interfund Loan Rate and the other terms and conditions of the loans; (b) limit the borrowings and loans entered into by each Fund to ensure that they comply with the Fund's investment policies and limitations; (c) ensure equitable treatment of each Fund; and (d) make quarterly reports to each Fund's Board concerning any transactions by the Fund under the proposed credit facility and the Interfund Loan Rate charged.

12. The Adviser and BMO Harris Bank, through the Credit Facility Team, would administer the proposed credit facility as a disinterested fiduciary as part of its duties under the relevant advisory or administrative contract with each Fund and would receive no additional fee as compensation for its services in connection with the administration of the proposed credit facility. They may collect standard pricing, record keeping, bookkeeping and accounting fees associated with the transfer of cash and/or securities in connection with repurchase and lending transactions generally, including transactions effected through the proposed credit facility. Such fees would be no higher than those applicable for comparable bank loan transactions.

13. No Fund may participate in the proposed credit facility unless: (a) The Fund has obtained shareholder approval for its participation, if such approval is required by law; (b) the Fund has fully disclosed all material information concerning the credit facility in its prospectus and/or statement of additional information; and (c) the Fund's participation in the credit facility is consistent with its investment objectives, limitations and organizational documents.

14. In connection with the credit facility, applicants request an order under section 6(c) of the Act exempting them from the provisions of sections 18(f) and 21(b) of the Act; under section 12(d)(1)(J) of the Act exempting them from section 12(d)(1) of the Act; under sections 6(c) and 17(b) of the Act exempting them from sections 17(a)(1), 17(a)(2), and 17(a)(3) of the Act; and under section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint arrangements.

Applicants' Legal Analysis

1. Section 17(a)(3) of the Act generally prohibits any affiliated person of a registered investment company, or affiliated person of an affiliated person, from borrowing money or other property from the registered investment company. Section 21(b) of the Act generally prohibits any registered management company from lending money or other property to any person, directly or indirectly, if that person controls or is under common control with that company. Section 2(a)(3)(C) of the Act defines an ''affiliated person'' of another person, in part, to be any person directly or indirectly controlling, controlled by, or under common control with, such other person. Section 2(a)(9) of the Act defines ''control'' as the ''power to exercise a controlling influence over the management or policies of a company,'' but excludes circumstances in which ''such power is solely the result of an official position with such company.'' Applicants state that the Funds may be under common control by virtue of having the Adviser as their common investment adviser

and/or by having common officers, directors and/or trustees.

2. Section 6(c) of the Act provides that an exemptive order may be granted where an 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. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) provided that the terms of the transaction, including the consideration to be paid or received, are fair and reasonable and do not involve overreaching on the part of any person concerned, and the transaction is consistent with the policy of the investment company as recited in its registration statement and reports filed under the Act, and with the general purposes of the Act. Applicants believe that the proposed arrangements satisfy these standards for the reasons discussed below.

3. Applicants assert that sections 17(a)(3) and 21(b) of the Act were intended to prevent a party with strong potential adverse interests to, and some influence over the investment decisions of, a registered investment company from causing or inducing the investment company to engage in lending transactions that unfairly inure to the benefit of such party and that are detrimental to the best interests of the investment company and its shareholders. Applicants assert that the proposed credit facility transactions do not raise these concerns because: (a) The Adviser and BMO Harris Bank, through the Credit Facility Team, would administer the program as a disinterested fiduciary as part of its duties under the relevant advisory contract with each Fund and a disinterested party, respectively, as part of its duties under the relevant advisory or administrative contract with each Fund; (b) all Interfund Loans would consist only of uninvested cash reserves that the lending Fund otherwise would invest in short-term repurchase agreements or other short-term instruments either directly or through a money market fund; (c) the Interfund Loans would not involve a significantly greater risk than other such investments; (d) the lending Fund would receive interest at a rate higher than it could otherwise obtain through such other investments; and (e) the borrowing Fund would pay interest at a rate lower than otherwise available to it under its bank loan agreements and avoid the up-front commitment fees associated with committed lines of credit. Moreover, applicants assert that the other terms and conditions that applicants propose also would effectively preclude the possibility of any Fund obtaining an undue advantage over any other Fund.

4. Section 17(a)(1) of the Act generally prohibits an affiliated person of a registered investment company, or any affiliated person of such a person, from selling securities or other property to the investment company. Section 17(a)(2) of the Act generally prohibits an affiliated person of a registered investment company, or any affiliated person of such a person, from purchasing securities or other property from the investment company. Section 12(d)(1) of the Act generally prohibits a registered investment company from purchasing or otherwise acquiring any security issued by any other investment company except in accordance with the limitations set forth in that section.

5. Applicants state that the obligation of a borrowing Fund to repay an Interfund Loan could be deemed to constitute a security for the purposes of sections 17(a)(1) and 12(d)(1) of the Act. Applicants also state that a pledge of assets in connection with an Interfund Loan could be construed as a purchase of the borrowing Fund's securities or other property for purposes of section 17(a)(2) of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt persons or transactions from any provision of section 12(d)(1) if and to the extent that such exemption is consistent with the public interest and the protection of investors. Applicants contend that the standards under sections 6(c), 17(b), and 12(d)(1)(J) are satisfied for all the reasons set forth above in support of their request for relief from sections 17(a)(3) and 21(b) and for the reasons discussed below. Applicants also state that the requested relief from section 17(a)(2) of the Act meets the standards of section 6(c) and 17(b) because any collateral pledged to secure an Interfund Loan would be subject to the same conditions imposed by any other lender to a Fund that imposes conditions on the quality of or access to collateral for a borrowing (if the lender is another Fund) or the same or better conditions (in any other circumstance).

6. Applicants state that section 12(d)(1) was intended to prevent the pyramiding of investment companies in order to avoid imposing on investors additional and duplicative costs and fees attendant upon multiple layers of investments. Applicants submit that the proposed credit facility does not involve these abuses. Applicants note that there will be no duplicative costs or fees to the Funds or their shareholders, and that the Adviser and BMO Harris Bank will receive no additional compensation for its services in administering the credit facility. Applicants also note that the purpose of the proposed credit facility is to provide economic benefits for all the participating Funds and their shareholders.

7. Section 18(f)(1) of the Act prohibits open-end investment companies from issuing any senior security except that a company is permitted to borrow from any bank, provided, that immediately after the borrowing, there is asset coverage of at least 300 per centum for all borrowings of the company. Under section 18(g) of the Act, the term ''senior security'' generally includes any bond, debenture, note or similar obligation or instrument constituting a security and evidencing indebtedness. Applicants request exemptive relief under section 6(c) from section 18(f)(1) to the limited extent necessary to permit a Fund to lend to or borrow directly from other Funds.

8. Applicants believe that granting relief under section 6(c) is appropriate because the Funds would remain subject to the requirement of section 18(f)(1) that all borrowings of a Fund, including combined interfund and bank borrowings, have at least 300% asset coverage. Based on the conditions and safeguards described in the application, applicants also submit that to allow the Funds to borrow from other Funds pursuant to the proposed credit facility is consistent with the purposes and policies of section 18(f)(1).

9. Section 17(d) of the Act and rule 17d–1 under the Act generally prohibit an affiliated person of a registered investment company, or any affiliated person of such a person, when acting as principal, from effecting any joint transaction in which the investment company participates, unless, upon application, the transaction has been approved by the Commission. Rule 17d–1(b) under the Act provides that in passing upon an application filed under the rule, the Commission will consider whether the participation of the registered investment company in a joint enterprise, joint arrangement, or profit-sharing plan on the basis proposed is consistent with the provisions, policies and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of the other participants.

10. Applicants assert that the purpose of section 17(d) is to avoid overreaching by and unfair advantage to insiders. Applicants assert that the proposed credit facility is consistent with the provisions, policies and purposes of the Act in that it offers both reduced

borrowing costs and enhanced returns on loaned funds to all participating Funds and their shareholders. Applicants note that each Fund would have an equal opportunity to borrow and lend on equal terms consistent with its investment policies and fundamental investment limitations. Applicants assert that each Fund's participation in the proposed credit facility would be on terms that are no different from or less advantageous than that of other participating Funds.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The Interfund Loan Rate will be the average of the Repo Rate and the Bank Loan Rate.

2. On each business day, the Credit Facility Team will compare the Bank Loan Rate with the Repo Rate and will make cash available for Interfund Loans only if the Interfund Loan Rate is: (a) More favorable to the lending Fund than the Repo Rate; and, if applicable, the yield of the highest yielding money market fund in which the lending Fund could otherwise invest and (b) more favorable to the borrowing Fund than the Bank Loan Rate.

3. If a Fund has outstanding bank borrowings, any Interfund Loans to the Fund: (a) will be at an interest rate equal to or lower than the interest rate of any outstanding bank loan; (b) will be secured at least on an equal priority basis with at least an equivalent percentage of collateral to loan value as any outstanding bank loan that requires collateral; (c) will have a maturity no longer than any outstanding bank loan (and in any event not over seven days); and (d) will provide that, if an event of default by the Fund occurs under any agreement evidencing an outstanding bank loan to the Fund, that event of default will automatically (without need for action or notice by the lending Fund) constitute an immediate event of default under the Interfund Lending Agreement entitling the lending Fund to call the Interfund Loan (and exercise all rights with respect to any collateral) and that such call will be made if the lending bank exercises its right to call its loan under its agreement with the borrowing Fund.

4. A Fund may make an unsecured borrowing through the proposed credit facility if its outstanding borrowings from all sources immediately after the interfund borrowing total 10% or less of its total assets, provided that if the Fund has a secured loan outstanding from any other lender, including but not limited to another Fund, the Fund's interfund borrowing will be secured on at least an equal priority basis with at least an equivalent percentage of collateral to loan value as any outstanding loan that requires collateral. If a Fund's total outstanding borrowings immediately after an interfund borrowing would be greater than 10% of its total assets, the Fund may borrow through the proposed credit facility only on a secured basis. A Fund may not borrow through the proposed credit facility or from any other source if its total outstanding borrowings immediately after the interfund borrowing would be more than 33 1/3% of its total assets.

5. Before any Fund that has outstanding interfund borrowings may, through additional borrowings, cause its outstanding borrowings from all sources to exceed 10% of its total assets, the Fund must first secure each outstanding Interfund Loan by the pledge of segregated collateral with a market value at least equal to 102% of the outstanding principal value of the loan. If the total outstanding borrowings of a Fund with outstanding Interfund Loans exceed 10% of its total assets for any other reason (such as a decline in net asset value or because of shareholder redemptions), the Fund will within one business day thereafter: (a) Repay all of its outstanding Interfund Loans; (b) reduce its outstanding indebtedness to 10% or less of its total assets; or (c) secure each outstanding Interfund Loan by the pledge of segregated collateral with a market value at least equal to 102% of the outstanding principal value of the loan until the Fund's total outstanding borrowings cease to exceed 10% of its total assets, at which time the collateral called for by this condition (5) shall no longer be required. Until each Interfund Loan that is outstanding at any time that a Fund's total outstanding borrowings exceed 10% is repaid or the Fund's total outstanding borrowings cease to exceed 10% of its total assets, the Fund will mark the value of the collateral to market each day and will pledge such additional collateral as is necessary to maintain the market value of the collateral that secures each outstanding Interfund Loan at least equal to 102% of the outstanding principal value of the Interfund Loan.

6. No Fund may lend to another Fund through the proposed credit facility if the loan would cause its aggregate outstanding loans through the proposed credit facility to exceed 15% of the lending Fund's current net assets at the time of the loan.

7. A Fund's Interfund Loans to any one Fund shall not exceed 5% of the lending Fund's net assets.

8. The duration of Interfund Loans will be limited to the time required to receive payment for securities sold, but in no event more than seven days. Loans effected within seven days of each other will be treated as separate loan transactions for purposes of this condition.

9. A Fund's borrowings through the proposed credit facility, as measured on the day when the most recent loan was made, will not exceed the greater of 125% of the Fund's total net cash redemptions for the preceding seven calendar days or 102% of the Fund's sales fails for the preceding seven calendar days.

10. Each Interfund Loan may be called on one business day's notice by a lending Fund and may be repaid on any day by a borrowing Fund.

11. A Fund's participation in the proposed credit facility must be consistent with its investment objectives and limitations and organizational documents.

12. The Credit Facility Team will calculate total Fund borrowing and lending demand through the proposed credit facility, and allocate loans on an equitable basis among the Funds, without the intervention of any portfolio manager of the Funds (other than the Money Market Manager acting in his or her capacity as a member of the Credit Facility Team). All allocations will require the approval of at least one member of the Credit Facility Team, who is a high level employee and who is not the Money Market Manager. The Credit Facility Team will not solicit cash for the proposed credit facility from any Fund or prospectively publish or disseminate loan demand data to portfolio managers (except to the extent that the Money Market Manager has access to loan demand data). The Credit Facility Team will invest any amounts remaining after satisfaction of borrowing demand in accordance with the instructions of each of the relevant portfolio manager or such remaining amounts will be invested directly by the portfolio managers of the Funds or the Credit Facility Team will return remaining amounts to the Funds.

13. The Credit Facility Team will monitor the interest rates charged and the other terms and conditions of the Interfund Loans and will make a quarterly report to the Board of each Fund concerning the participation of the Funds in the proposed credit facility and the terms and other conditions of any extensions of credit under the credit facility.

14. The Board of each Fund, including a majority of the Independent Directors, will:

(a) Review, no less frequently than quarterly, each Fund's participation in the proposed credit facility during the preceding quarter for compliance with the conditions of any order permitting such transactions;

(b) establish the Bank Loan Rate formula used to determine the interest rate on Interfund Loans and review, no less frequently than annually, the continuing appropriateness of the Bank Loan Rate formula; and

(c) review, no less frequently than annually, the continuing appropriateness of the Fund's participation in the proposed credit facility.

15. In the event an Interfund Loan is not paid according to its terms and the default is not cured within two business days from its maturity or from the time the lending Fund makes a demand for payment under the provisions of the Interfund Lending Agreement, the Credit Facility Team will promptly refer the loan for arbitration to an independent arbitrator selected by the Board of each Fund involved in the loan who will serve as arbitrator of disputes concerning Interfund Loans.[2] The arbitrator will resolve any problem promptly, and the arbitrator's decision will be binding on both Funds. The arbitrator will submit, at least annually, a written report to the Board of each Fund setting forth a description of the nature of any dispute and the actions taken by the Funds to resolve the dispute.

16. Each Fund will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any transaction by it under the proposed credit facility occurred, the first two years in an easily accessible place, written records of all such transactions setting forth a description of the terms of the transactions, including the amount, the maturity and the Interfund Loan Rate, the rate of interest available at the time each Interfund Loan is made on overnight repurchase agreements and bank borrowings, the yield of any money market fund in which the lending Fund could otherwise invest, and such other information presented to the Fund's Board in connection with the review required by conditions 13 and 14.

17. The Credit Facility Team will prepare and submit to the Board of each Fund for review an initial report describing the operations of the proposed credit facility and the procedures to be implemented to ensure that all Funds are treated fairly. After the commencement of the proposed credit facility, the Credit Facility Team will report on the operations of the proposed credit facility at each Board's quarterly meetings.

Each Fund's chief compliance officer, as defined in Rule 38a–1(a)(4) under the Act, shall prepare an annual report for its Board each year that the Fund participates in the proposed credit facility, which report evaluates the Fund's compliance with the terms and conditions of the application and the procedures established to achieve such compliance. Each Fund's chief compliance officer will also annually file a certification pursuant to Item 77Q3 of Form N–SAR, as such Form may be revised, amended, or superseded from time to time, for each year that the Fund participates in the proposed credit facility, that certifies that the Fund and Adviser have established procedures reasonably designed to achieve compliance with the terms and conditions of the application. In particular, such certification will address procedures designed to achieve the following objectives:

(a) That the Interfund Loan Rate will be higher than the Repo Rate and, if applicable, the yield of the highest yielding Money Market Funds, but lower than the Bank Loan Rate;

(b) compliance with the collateral requirements as set forth in the application;

(c) compliance with the percentage limitations on interfund borrowing and lending;

(d) allocation of interfund borrowing and lending demand in an equitable manner and in accordance with procedures established by the Board of each Fund; and

(e) that the Interfund Loan Rate does not exceed the interest rate on any third party borrowings of a borrowing Fund at the time of the Interfund Loan.

Additionally, each Fund's independent public accountants, in connection with their Fund audit examinations, will review the operation of the proposed credit facility for compliance with the conditions of this application and their review will form the basis, in part, of the auditor's report on internal accounting controls in Form N–SAR.

18. No Fund will participate in the proposed credit facility upon receipt of requisite regulatory approval unless it has fully disclosed in its prospectus and/or statement of additional information all material facts about its intended participation.

For the Commission, by the Division of Investment Management, under delegated authority.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2014–15971 Filed 7–8–14; 8:45 am]

BILLING CODE 8011–01–P

[2] If the dispute involves Funds with different Boards of Directors, the respective Board of each Fund will select an independent arbitrator that is satisfactory to each Fund.

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, July 10, 2014 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or her designee, has certified that, in her opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matter at the Closed Meeting.

Commissioner Stein, as duty officer, voted to consider the items listed for the Closed Meeting in closed session.

The subject matter of the Closed Meeting will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 551–5400.

Dated: July 3, 2014.

Lynn M. Powalski,

Deputy Secretary.

[FR Doc. 2014–16107 Filed 7–7–14; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72523; File No. SR–NYSEArca–2014–37]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to Listing and Trading of the Shares of iShares 2020 S&P AMT-Free Municipal Series Under NYSE Arca Equities Rule 5.2(j)(3), Commentary .02

July 2, 2014.

I. Introduction

On May 2, 2014, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca''), through its wholly-owned subsidiary NYSE Arca Equities, Inc. (''NYSE Arca Equities'' or ''Corporation''), filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of the iShares 2020 S&P AMT-Free Municipal Series (''Fund''). On May 14, 2014, the Exchange filed Amendment No. 1 to the proposed rule change, which amended and replaced the proposed rule change in its entirety.[3] The proposed rule change, as modified by Amendment No. 1 thereto, was published for comment in the **Federal Register** on May 21, 2014.[4] The Commission received no comments on the proposed rule change. This order grants approval of the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange proposes to list and trade Shares of the Fund pursuant to NYSE Arca Equities Rule 5.2(j)(3), Commentary .02, which governs the listing and trading of Investment Company Units (''Units'') based on fixed income securities indexes. The Fund is a series of the iShares Trust (''Trust'').[5] Blackrock Fund Advisors (''BFA'') is the investment adviser for the Fund.[6]

According to the Exchange, the Fund will seek investment results that correspond generally to the price and yield performance, before fees and expenses, of the S&P AMT-Free Municipal Series 2020 Index™ (''Index'').[7] The Fund will not seek to return any pre-determined amount at maturity.

According to the Exchange, the Index measures the performance of investment-grade U.S. municipal bonds maturing in 2020. As of February 28, 2014, there were 1,427 issues in the Index. The Index includes municipal bonds primarily from issuers that are state or local governments or agencies such that the interest on the bonds is exempt from U.S. federal income taxes and the federal alternative minimum tax (''AMT''). Each bond must have a rating of at least BBB- by S&P, Baa3 by Moody's Investors Service, Inc. (''Moody's''), or BBB- by Fitch, Inc. and must have a minimum maturity par amount of $2 million to be eligible for inclusion in the Index. To remain in the Index, bonds must maintain a minimum par amount greater than or equal to $2 million as of each rebalancing date. All bonds in the Index will mature between June 1 and August 31 of 2020. When a bond matures in the Index, an amount representing its value at maturity will be included in the Index throughout the remaining life of the Index, and any such amount will be assumed to earn a rate equal to the performance of the S&P's Weekly High Grade Index, which consists of Moody's Investment Grade-1 municipal tax-exempt notes that are not subject to federal AMT. The Exchange states that, by August 31, 2020, the Index is expected to consist entirely of cash carried in this manner. The Index is a market value weighted index and is rebalanced after the close on the last business day of each month.

The Exchange represents that the Index for the Fund does not meet all of the ''generic'' listing requirements of Commentary .02(a) to NYSE Arca Equities Rule 5.2(j)(3) applicable to the listing of Units based on fixed income securities indexes. Specifically, the Index does not meet the requirement set forth in Commentary .02(a)(2), which provides that components that in the aggregate account for at least 75% of the weight of the index or portfolio each must have a minimum original principal amount outstanding of $100 million or more. Contrary to this requirement, as of February 28, 2014, only 6.25% of the weight of the Index components has a minimum original principal amount outstanding of $100 million or more.

The Exchange represents that the Fund generally will invest at least 80% of its assets in the securities of the Index, except during the last months of the Fund's operations. The Fund may at times invest up to 20% of its assets in cash and cash equivalents (including money market funds affiliated with BFA), as well as in municipal bonds not included in the Index, but which BFA believes will help the Fund track the Index. For example, the Fund may invest in municipal bonds not included in the Index in order to reflect prospective changes in the Index (such as Index reconstitutions, additions, and deletions). The Fund will generally hold municipal bond securities issued by state and local municipalities whose interest payments are exempt from U.S. federal income tax, the federal AMT and, effective beginning in 2013, a federal Medicare contribution tax of 3.8% on ''net investment income,'' including dividends, interest, and capital gains. In addition, the Fund may invest any cash assets in one or more affiliated municipal money market

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange: (a) Clarified that the net asset value (''NAV'') of the Fund normally will be determined once each business day as of the regularly scheduled close of business of the New York Stock Exchange (''NYSE'') (normally, 4:00 p.m. Eastern time) on each day the NYSE is open for trading; (b) provided additional information describing the NAV calculation pertaining to money market funds; (c) clarified that a common identifier such as CUSIP or ISIN (if applicable) will be included in the Disclosed Portfolio (as defined herein); and (d) made certain technical edits correcting typographical and other similar types of clerical errors.

[4] *See* Securities Exchange Act Release No. 72172 (May 15, 2014), 79 FR 29241 (''Notice'').

[5] *See* Post-Effective Amendment No. 1004 to the Trust's registration statement on Form N–1A under the Securities Act of 1933 and the Investment Company Act of 1940 (''1940 Act''), dated December 16, 2013 (File Nos. 333–92935 and 811–09729) (''Registration Statement''). According to the Exchange, the Trust has obtained certain exemptive relief from the Commission under the 1940 Act. *See* Investment Company Act Release No. 27608 (December 21, 2006) (File No. 812–13208).

[6] 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, BFA and its related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act, which requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of their relationship with their clients as well as compliance with other applicable securities laws. Accordingly, investment advisers must have procedures designed to prevent the communication and misuse of non-public information, 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.

[7] The Exchange represents that the Index is sponsored by Standard & Poor's Financial Services LLC (''S&P'' or ''Index Provider''), which is independent of the *Fund* and BFA. The Index Provider determines the composition and relative weightings of the securities in the Index and publishes information regarding the market value of the Index. The Index Provider is not a broker-dealer or affiliated with a broker-dealer, and has implemented procedures designed to prevent the use and dissemination of material, non-public information regarding the Index.

funds. In the last months of operation, as the bonds held by the Fund mature, the proceeds will not be reinvested in bonds but instead will be held in cash and cash equivalents, including without limitation AMT-free tax-exempt municipal notes, variable rate demand notes and obligations, tender option bonds, and municipal commercial paper. These cash equivalents may not be included in the Index. According to the Exchange, on or about August 31, 2020, the Fund will wind up and terminate, and its net assets will be distributed to then-current shareholders.

Additional information regarding the Trust, the Fund, and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings, distributions, and taxes, among other things, is included in the Notice and Registration Statement, as applicable.[8]

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act[9] and the rules and regulations thereunder applicable to a national securities exchange.[10] In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[11] which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission notes that the Fund and the Shares must comply with the applicable requirements of NYSE Arca Equities Rules 5.2(j)(3) and 5.5(g)(2) to be listed and traded on the Exchange.

The Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,[12] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities. Quotation and last-sale information for the Shares will be available via the Consolidated Tape Association (''CTA'') high-speed line. The current value of the Index will be widely disseminated by one or more major market data vendors[13] at least once per day, as required by NYSE Arca Equities Rule 5.2(j)(3), Commentary .02(b)(ii). In addition, an Intraday Indicative Value (''IIV'') for the Shares of the Fund will be disseminated by one or more major market data vendors and updated at least every 15 seconds during the Core Trading Session (9:30 a.m. to 4:00 p.m. Eastern Time).[14] 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, and 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 information for investment company securities (excluding exchange-traded funds) may be obtained through nationally recognized pricing services through subscription agreements or from brokers and dealers who make markets in such securities. Price information regarding municipal bonds, AMT-free tax-exempt municipal notes, variable rate demand notes and obligations, tender option bonds, and municipal commercial paper is available from third party pricing services and major market data vendors. On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund will disclose on its Web site the portfolio that will form the basis for the Fund's calculation of NAV at the end of the business day.[15] The Web site for the Fund also will include the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information. The NAV of the Fund normally will be determined once each business day as of the regularly scheduled close of business of the NYSE (normally, 4:00 p.m. Eastern time) on each day the NYSE is open for trading.[16]

The Commission believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Exchange states that the Index Provider is not a broker-dealer or affiliated with a broker-dealer, and has implemented procedures designed to prevent the use and dissemination of material, non-public information regarding the Index.[17] 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. With respect to trading halts, if the Exchange becomes aware that the NAV is not being disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV is available to all market participants. In addition, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Funds. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. The Exchange represents that, if the IIV or the Index value is not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the IIV or Index value occurs. If the interruption to the dissemination of the IIV or Index value persists past the trading day in which it occurred, the Exchange will halt trading. Moreover, 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. Further, trading in the

[8] *See* Notice and Registration Statement, *supra* notes 4 and 5, respectively.

[9] 15 U.S.C. 78f.

[10] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[11] 17 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[13] The Exchange further states that the components of the Index and their percentage weighting will be available from major market data vendors.

[14] *See* NYSE Arca Equities Rule 5.2(j)(3), Commentary .02(c). According to the Exchange, several major market data vendors display and/or make widely available IIVs taken from the CTA or other data feeds. *See* Notice, *supra* note 4, at n.13.

[15] On a daily basis, the Fund will disclose for each portfolio security or other financial instrument of the Fund the following information on the Fund's Web site: Ticker symbol (if applicable), name of security and financial instrument, a common identifier such as CUSIP or ISIN (if applicable), number of shares (if applicable), dollar value of securities and financial instruments 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.

[16] For purposes of calculating NAV of the Shares, the Fund will value fixed income portfolio securities, including municipal bonds, AMT-free tax-exempt municipal notes, variable rate demand notes and obligations, tender option bonds, and municipal commercial paper using prices provided directly from independent third-party pricing services, which may use matrix pricing and valuation models to derive values or from one or more broker-dealers or market makers. Certain short-term debt securities may be valued on the basis of amortized cost. Shares of municipal money market funds will be valued at NAV.

[17] *See supra* note 7 and accompanying text.

Shares will be subject to NYSE Arca Equities Rule 7.34, which sets forth additional circumstances under which Shares of the Funds may be halted. The Exchange states that it has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The Exchange may obtain information via the Intermarket Surveillance Group (''ISG'') from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement.

Based on the Exchange's representations, the Commission believes that the Index is sufficiently broad-based and liquid to deter potential manipulation. As of February 28, 2014, there were 1,427 issues in the Index. As of the same date, 76.77% of the weight of the Index components was comprised of individual maturities that were part of an entire municipal bond offering with a minimum original principal amount outstanding of $100 million or more for all maturities of the offering.[18] In addition, the total dollar amount outstanding of issues in the Index was approximately $12.06 billion, and the average dollar amount outstanding of issues in the Index was approximately $8.46 million. Further, the most heavily weighted component represents 1.21% of the weight of the Index, and the five most heavily weighted components represent 5.39% of the weight of the Index.[19] In addition, the average daily notional trading volume for Index components for the period December 31, 2012, to December 31, 2013, was $49 million, and the sum of the notional trading volumes for the same period was approximately $12.4 billion. As of March 17, 2014, 61.14% of the Index weight consisted of issues with a rating of AA/Aa2 or higher. The Commission notes that the Fund shares similar characteristics of other exchange-traded funds, the shares of which are currently listed and trading on the Exchange.[20]

In support of this proposal, the Exchange has made representations, including:

(1) Except for Commentary .02(a)(2) to NYSE Arca Equities Rule 5.2(j)(3), the Shares of the Funds currently satisfy all of the generic listing standards under NYSE Arca Equities Rule 5.2(j)(3).

(2) The continued listing standards under NYSE Arca Equities Rules 5.2(j)(3) and 5.5(g)(2) applicable to Units shall apply to the Shares.

(3) The Shares will comply with all other requirements applicable to Units including, but not limited to, requirements relating to the dissemination of key information, such as the value of the Index and IIV, rules governing the trading of equity securities, trading hours, trading halts, surveillance, and the Information Bulletin to Equity Trading Permit Holders (each as described in more detail in the Notice and Registration Statement, as applicable), as set forth in Exchange rules applicable to Units and prior Commission orders approving the generic listing rules applicable to the listing and trading of Units.

(4) 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.[21] 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.

(5) FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares with other markets or other entities that are members of ISG, and FINRA may obtain trading information regarding trading in the Shares from such markets or entities. FINRA also can access data obtained from the Municipal Securities Rulemaking Board relating to municipal bond trading activity for surveillance purposes in connection with trading in the Shares. In addition, FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA's Trade Reporting and Compliance Engine. The Exchange also may obtain information regarding trading in the Shares from markets or other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

(6) For initial and continued listing of the Shares, the Trust is required to comply with Rule 10A–3 under the Act.[22]

(7) The Fund generally will invest at least 80% of its assets in the securities of the Index.

(8) Over time the Fund's tracking error[23] will not exceed 5%.

(9) The Fund may at times invest up to 20% of its assets in cash and cash equivalents (including money market funds affiliated with BFA), as well as in municipal bonds not included in the Index, but which BFA believes will help the Fund track the Index.

(10) On or about August 31, 2020, the Fund will wind up and terminate, and its net assets will be distributed to the then-current shareholders.

This approval order is based on all of the Exchange's representations, including those set forth above and in the Notice, and the Exchange's description of the Funds.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 1 thereto, is consistent with Section 6(b)(5) of the Act[24] and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[25] that the proposed rule change (SR–NYSEArca–2014–37), as modified by Amendment No. 1 thereto, be, and it hereby is, approved.

[18] According to the Exchange, when bonds are close substitutes for one another, pricing vendors can use executed trade information from all similar bonds as pricing inputs for an individual security. This can make individual securities more liquid, because valuations for a single security are better estimators of actual trading prices when they are informed by trades in a large group of closely related securities. As a result, securities are more likely to trade at prices close to their valuation when they need to be sold. *See* Notice, *supra* note 4, at n.11.

[19] Commentary .02(a)(4) to NYSE Arca Equities Rule 5.2(j)(3) provides that no component fixed-income security (excluding Treasury Securities and GSE Securities, as defined therein) shall represent more than 30% of the weight of the index or portfolio, and the five most heavily weighted component fixed-income securities in the index or portfolio shall not in the aggregate account for more than 65% of the weight of the index or portfolio.

[20] The Commission previously has approved a proposed rule change relating to listing and trading on the Exchange of Units based on similar municipal bond indexes. *See* Securities Exchange Act Release No. 67985 (October 4, 2012), 77 FR 61804 (October 11, 2012) (SR–NYSEArca–2012–92) (order approving proposed rule change relating to the listing and trading of shares of the iShares 2018 S&P AMT-Free Municipal Series and iShares 2019 S&P AMT-Free Municipal Series under NYSE Arca Equities Rule 5.2(j)(3), Commentary .02).

[21] According to the Exchange, 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.

[22] *See* 17 CFR 240.10A–3.

[23] According to the Exchange, tracking error is the difference between the performance (return) of the Fund's portfolio and that of the Index.

[24] 15 U.S.C. 78f(b)(5).

[25] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2014–15962 Filed 7–8–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72534; File No. SR–NYSE–2014–12]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving Proposed Rule Change Amending Rule 98 To Adopt a Principles-based Approach To Prohibit the Misuse of Material Nonpublic Information and Make Conforming Changes to Other Exchange Rules

July 3, 2014.

On March 18, 2014, New York Stock Exchange LLC (''NYSE'' or the ''Exchange''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] filed with the Securities and Exchange Commission (the ''Commission'') a proposed rule change to amend Rule 98. The proposed rule change was published for public comment in the **Federal Register** on April 7, 2014.[3] On May 21, 2014, the Commission designated a longer period for Commission action on the proposed rule change.[4] The Commission received one comment on the proposal.[5] This order approves the proposed rule change.

I. Background and Introduction

The Exchange adopted Rule 98 in 1986, when NYSE specialist firms, which had been independent member-owned entities, increasingly became affiliates of larger member organizations. Because of the specialists'' position in the market, Rule 98 required an organizational separation between a specialist and its affiliates. The purpose of that separation was to eliminate or control conflicts of interest between the business activities of affiliates of the specialist and the specialist's responsibilities to the market and to any customer orders the specialist represented as agent.[6]

In 2008, the NYSE amended Rule 98 to adopt a more flexible, principles-based approach that among other things: (1) Redefined the persons to whom the rule applied; (2) allowed DMM operations to be integrated into better-capitalized member organizations; (3) permitted a DMM unit to share non-trading-related services with its parent member organization or approved persons; and (4) provided flexibility to member organizations and their approved persons in conducting risk management of DMM operations.[7] The principal effect of the 2008 Amendments was that affiliates of a DMM unit that were walled-off from the DMM unit were no longer prohibited from acting as an options market maker in a security in which the affiliated DMM was registered. However, the amended Rule 98 continued to prohibit the integrated unit from coordinating market making between its DMM and its options market maker.

The Exchange now proposes to further amend Rule 98 in order to provide DMM units with greater flexibility in structuring their operations and to move further toward a principles-based approach and away from prescribing particular structures for DMM units. Under this proposed rule change, certain information barriers would continue to be required (for example, between a DMM unit and an affiliated investment-banking desk), and other required protections, in addition to information barriers, would address the role of DMMs and the trading floor in the NYSE's market. Proposed Rule 98 would, however, contain fewer prescriptions relating to the structure of DMM units, and it would instead—like similar rules relating to market-making firms on other exchanges [8]—impose a more general requirement that a member organization operating a DMM unit maintain and enforce written policies and procedures reasonably designed, taking into consideration the nature of the member organization's business, (i) to prevent the misuse of material, non-public information by the member organization or persons associated with it and (ii) to ensure compliance with applicable federal laws and regulations and with Exchange rules.

The Exchange asserts that the instant proposal should provide member organizations operating DMM units with the means to better manage risk across a firm—for example, by integrating DMM unit positions and quoting information with other quotes and positions by other units within the firm. The Exchange posits that a member organization operating a DMM unit, in the context of risk management [9] and consistent with protections against the misuse of material non-public information,[10] should be able to consider the outstanding quotes of the DMM unit as well as traded positions for purposes of calculating net positions consistent with Rule 200 of Regulation SHO [11] and calculating intra-day net capital positions. Further, the Exchange asserts that a member organization should be able to integrate its DMM unit operations with its customer-facing operations because the instant proposal, in tandem with existing NYSE conduct rules,[12] FINRA's ongoing surveillances for manipulative conduct, and FINRA's program to examine member firms that act as DMMs and to review and approve their policies and procedures for complying with Rule 98, should provide a regulatory framework that guards customer interests and protects against the misuse of material non-public information, while increasing the operational flexibility of member organizations.

II. Description of the Proposed Amendments to Rule 98

Proposed Rule 98(a)(1) provides that the rule shall apply to all member organizations seeking to operate a DMM unit at the Exchange and to any approved person that may provide services to a DMM unit.

[26] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 71837 (Apr. 1, 2014), 75 FR 19146.

[4] See Securities Exchange Act Release No. 72203, 79 FR 30667 (May 28, 2014).

[5] See E-mail from Dr. Leee Jackson, Esq. (Apr. 15, 2014) (''Jackson Comment''). The Commission does not believe the Jackson Comment raises any material or substantive issues.

[6] *See* Securities Exchange Act Release No. 23768 (Nov. 3, 1986), 51 FR 41183 (Nov. 13, 1986) (SR–NYSE–85–25).

[7] *See* Securities Exchange Act Release No. 58328 (Aug. 7, 2008), 34 FR 58328 (Aug. 18, 2008) (SR–NYSE–2008–45) (''2008 Amendments'').

[8] *See, e.g.*, NYSEArca Equities Rule 6.3 and BATS Rule 5.5.

[9] *See, e.g.*, 17 CFR part 240.15c3–5 (Risk Management Controls for Brokers or Dealers with Market Access).

[10] *See, e.g.*, 15 U.S.C. 78o(g). Section 15(g) of the Act requires every registered broker or dealer to ''establish, maintain, and enforce written policies and procedures reasonably designed, taking into consideration the nature of such broker's or dealer's business, to prevent the misuse . . . of material, nonpublic information by such broker or dealer or any person associated with such broker or dealer.''

[11] 17 CFR 242.200. Under Regulation SHO, determination of a seller's net position is based on the seller's positions in the security in all proprietary accounts. See Exchange Act Release No. 50103 (July 28, 2004), 69 FR 48008, 48010 n.22 (Aug. 6, 2004); see also Exchange Act Release No. 48709 (Oct. 29, 2003), 68 FR 62972, 62991 and 62994 (Nov. 6, 2003); Letter from Richard R. Lindsey, Director, Division of Market Regulation, to Roger D. Blanc, Wilkie Farr & Gallagher, SEC No-Action Letter, 1998 SEC No-Act. LEXIS 1038, p. 5 (Nov. 23, 1998); Exchange Act Release No. 30772 (June 3, 1992), 57 FR 24415, 24419 n.47 (June 9, 1992); Exchange Act Release No. 27938 (Apr. 23, 1990), 55 FR 17949, 17950 (Apr. 30, 1990).

[12] *See, e.g.*, NYSE Rule 5320 (''Manning Rule'').

Proposed Rule 98(b) revises, deletes, and adds certain definitions to provide member organizations operating a DMM unit with the flexibility to integrate their DMM operations with other units of the firm. Currently, Rule 98 defines the terms ''non-public order information'' and ''DMM confidential information'' separately. Non-public order information captures any information relating to order flow at the Exchange—including verbal indications of interest made with an expectation of privacy, electronic order interest, e-quotes, reserve interest, and information about imbalances at the Exchange—that is not publicly-available on a real-time basis via an Exchange-provided datafeed, such as NYSE OpenBook,[13] or otherwise publicly available. ''DMM confidential information'' refers to principal or proprietary trading activity of a DMM unit at the Exchange in the securities allocated to it pursuant to Rule 103B, including the unit's positions in those securities, decisions relating to trading or quoting in those securities, and any algorithm or computer system that is responsible for such trading activity and that interfaces with Exchange systems.

The Exchange proposes to replace the term ''non-public information'' with ''Floor-based non-public information.'' As discussed in more detail below, the Exchange proposes to maintain restrictions in proposed Rule 98(c)(3) to address the Floor-based activities of DMM units, and it proposes to use the term ''Floor-based non-public order information'' to identify the information those provisions are intended to protect.[14] The Exchange also proposes to delete the definition of ''DMM confidential information,'' arguing that proposed Rule 98(c)(2) would sufficiently protect against the misuse of material non-public information. Further the Exchange notes that, to the extent a DMM on the Floor may have access to Floor-based non-public order information, proposed Rule 98(c)(3) would continue to specify required protections against the misuse of such information by the member organization.

The Exchange proposes to amend the term ''DMM unit'' to mean a trading unit within a member organization that is approved pursuant to Rule 103 to act as a DMM unit, and it proposes to eliminate the requirement that a DMM unit be an ''aggregation unit,'' which is currently defined to mean any trading or market-making department, division, or desk that meets the requirements of the definition of ''independent trading unit'' pursuant to Rule 200 of Regulation SHO.[15] The Exchange proposes to decouple the Rule 98 definition from Regulation SHO, in part because the two rules have different regulatory purposes.[16] Similarly, the Exchange proposed to delete the term ''integrated proprietary aggregation unit'' because this term contemplates a DMM unit being part of an aggregation unit that only engages in proprietary trading activity, which, under the proposal, would be an organizational structure that is permitted, but not required. The Exchange also proposes to delete the definitions for ''DMM API,'' ''DMM account,'' ''customer-facing department,''[17] and ''non-trading related services.''[18] The Exchange asserts that the terms ''DMM API'' and ''DMM account'' are obsolete as they were based on NYSE Rule 104 before it was amended in 2008.[19]

Proposed Rule 98(c) would govern the operation of a DMM unit. Proposed Rule 98(c)(1) provides that a member organization will be permitted to operate a DMM unit, provided that the member organization has obtained prior written approval from the Exchange.[20] The Exchange notes that all member organizations currently operating DMM units already have written policies and procedures to comply with Rule 98 in its current form, and such policies and procedures have been approved by NYSE Regulation.[21] In addition, FINRA has an exam program that reviews member organizations operating DMM units for compliance with such policies and procedures. Because proposed Rule 98(a) would continue to require Exchange approval of any policies and procedures to protect against the misuse of material nonpublic information, if a member organization chose to modify its DMM operations consistent with proposed Rule 98, its revised policies and procedures would be subject to Exchange review before implementation. In addition, the Exchange represents that FINRA would continue to monitor a member organization's compliance with those policies and procedures consistent with the current exam-based regulatory program associated with Rule 98.[22]

Proposed Rule 98(c)(2) specifies that a member organization seeking approval to operate a DMM unit pursuant to Rule 98 must maintain and enforce written policies and procedures reasonably designed, taking into consideration the nature of such member organization's business, (i) to prevent the misuse of material, non-public information by such member organizations or persons associated with such member organization and (ii) to ensure compliance with applicable federal laws and regulations and with Exchange rules.[23] Proposed Rule 98(c)(2) also provides examples of conduct that would constitute the misuse of material, non-public information, including, but not limited to: (A) trading in any securities issued by a corporation, or in any related products, while in possession of material-non-public information concerning the issuer; (B)

[13] NYSE OpenBook provides aggregated limit-order volume that has been entered on the Exchange at price points for all NYSE-traded securities.

[14] The Exchange proposes non-substantive changes to this definition that it believes better reflect how its systems currently operate. Specifically, the Exchange asserts that concept of trading in ''slow mode'' is duplicative of the remaining rule text, which covers any order information that is made available to DMMs but that is not available to other market participants.

[15] The Exchange proposes to delete rule provisions that reference the terms ''aggregation unit'' and ''integrated proprietary aggregation unit.'' *See, e.g.*, Rule 98(c)(2)(B).

[16] *See* 17 CFR 242.200(f). Rule 200(f) of Regulation SHO sets forth the requirements for qualifying as an ''independent trading unit'' for the purpose of order marking requirements under Rule 200. The Commission notes that a member organization must comply with the requirements of Regulation SHO regardless of how its operations are structured for purposes of compliance with Rule 98.

[17] The Exchange asserts that, because the proposed rule changes are intended to provide principles-based requirements for the operation of a DMM unit, the amended rule would no longer need to define terms, such as ''customer-facing department,'' that support the current, more prescriptive rule text.

[18] Because these protections for Floor-based non-public order information are retained in the proposed revisions to Rule 98 and are applicable to approved persons pursuant to proposed amended Rule 98(a)(1), the Exchange asserts that current Rule 98(e), which concerns the sharing of non-trading related services, is redundant of existing regulatory requirements governing the operations of a broker-dealer.

[19] The Exchange also proposes to delete the definitions of ''DMM'' and ''approved person'' as duplicative of the definitions set forth in Rules 2(i) and 2(c). The Exchange proposes to make non-substantive edits to the definition of ''related products'' and make conforming amendments to Rule 2(j).

[20] Pursuant to NYSE Rule 0, the term ''Exchange'' may also mean FINRA staff working on behalf of the Exchange and NYSE Regulation, Inc. pursuant to a regulatory services agreement. The Exchange also proposes to revise Rule 98(c)(1) to replace the term ''NYSE Regulation, Inc.'' with the term ''Exchange.''

[21] FINRA currently approves Rule 98 procedures on behalf of NYSE Regulation, Inc. pursuant to a regulatory services agreement.

[22] The Exchange represents that FINRA currently has surveillances designed to monitor for manipulative activity, and the Exchange asserts that, because DMM market-making activity is not materially different from market-making on other exchanges, these existing programs are reasonably designed to address any concerns that may be raised by a DMM unit being integrated with market-making operations.

[23] Proposed Rule 98(c)(2) is based on NYSE Arca Equities Rule 6.3 (Prevention of the Misuse of Material Nonpublic Information) and BATS Rule 5.5 (Prevention of the Misuse of Material, Non-Public Information).

trading in a security or related product, while in possession of material non-public information concerning imminent transactions in the security or related product; or (C) disclosing to another person or entity any material, non-public information involving a corporation whose shares are publicly traded or an imminent transaction in an underlying security or related product for the purpose of facilitating the possible misuse of such material, non-public information.

Proposed Rule 98(c)(3) pertains to restrictions on trading for member organizations operating a DMM unit. Proposed Rule 98(c)(3)(A) would generally provide that a member organization shall protect against the misuse of Floor-based non-public order information. The rule would further specify that only the Floor-based employees of the DMM unit and individuals responsible for the direct supervision of the DMM unit's Floor-based operations may have access (as permitted pursuant to Rule 104) to Floor-based non-public order information.

Proposed Rule 98(c)(3)(B) specifies the restrictions applicable to employees of the DMM unit while on the trading floor. Proposed Rule 98(c)(3)(B)(i) provides that, while on the trading floor of the Exchange, employees of the DMM unit, except as provided for in Rule 36.30, may trade only DMM securities and may do so only on or through the systems and facilities of the Exchange, as permitted by Exchange Rules. Proposed Rule 98(c)(3)(B)(ii) would specify that, while on the trading floor, Floor-based employees may not communicate with individuals or systems responsible for making trading decisions for related products or for away-market trading in DMM securities. Proposed Rule 98(c)(3)(B)(iii) adds a new restriction that, while on the trading floor, employees of the DMM unit shall not have access to customer information or the DMM unit's position in related products.

Proposed Rule 98(c)(3)(C) would provide that a Floor-based employee of a DMM unit who moves to a location off the trading floor of the Exchange, or any person who provides risk management oversight or supervision of the Floor-based operations of the DMM unit and becomes aware of Floor-based non-public order information, shall not (1) make such information available to customers, (2) make such information available to individuals or systems responsible for making trading decisions in DMM securities in away markets or related products, or (3) use any such information in connection with making trading decisions in DMM securities in away markets or related products. The proposed rule would cover an individual that leaves the trading floor, as well as a manager providing oversight or supervision of the Floor-based operations of the DMM unit. The Exchange's proposed amendments to Rule 98 would replace the concept of a person having ''access to'' information with that of a person being ''aware of'' information,[24] asserting that the change will clarify the governing standard for member organizations and make Rule 98 generally more consistent with federal rules.[25] The Exchange also argues that a person cannot misuse material, non-public information unless the person is ''aware of'' the information. Proposed Rule 98(c)(3)(C) would also maintain and consolidate the Exchange's current ''wall-crossing'' provisions related to a non-Floor based individual who becomes aware of Floor-based non-public order information.

Proposed Rule 98(c)(3)(D) would provide that a DMM unit may make available to a Floor broker associated or affiliated with an approved person or member organization any information that the DMM would be permitted under Exchange rules to provide to an unaffiliated Floor Broker.

Proposed Rule 98(c)(4) would provide that any interest entered by the DMM unit in DMM securities at the Exchange must be entered through systems that identify such interest as DMM interest. The Exchange asserts that it is unnecessary to prescribe or require specific systems that a DMM unit must use, but this rule would require that the DMM unit's interest be identifiable and available for Exchange review through the system that the DMM unit elects to use.

Proposed Rule 98(c)(5) would require that a member organization provide the Exchange with real-time unit position information for any trading in DMM securities by the DMM unit and any independent trading unit.[26] The Exchange represents that this provision should enhance its ability to monitor for Rule 104 compliance.[27] For example, if a DMM unit is part of an independent trading unit that engages in trading on other markets in DMM securities, the member organization's real-time position update would need to incorporate any away-market transactions in DMM securities by that independent trading unit.

Proposed Rule 98(c)(6) would specify that a DMM unit may not operate as a specialist or market maker on the Exchange or the NYSE MKT LLC (''NYSE MKT'') equities or options trading floors in related products, unless specifically permitted in Exchange rules.[28] The Exchange notes that a member organization that operates a DMM unit may be a specialist or market maker on NYSE MKT, provided that it maintains appropriate information barriers. Currently, Rule 98 permits an integrated proprietary aggregation unit to engage in options market making (electronic only), provided that the DMM unit is walled off from the options market making trading desk.

Proposed Rule 98(c)(7) would maintain the existing requirement that the member organization maintain information barriers between the DMM unit and any investment banking or research departments. Proposed Rule 98(c)(7) would also continue to provide that no DMM or DMM unit may be directly supervised or controlled by an individual associated with an approved person or the member organization who is assigned to any investment banking or research departments.

Proposed Rule 98(d) would specify that DMM rules would only apply to the DMM unit's quoting or trading in their DMM securities for their own accounts at the Exchange. The Exchange represents that this provision is intended to clarify that DMM rule restrictions are not applicable to any customer orders routed to the Exchange by that member organization as agent.

The Exchange proposes to delete in its entirety Rule 98(e), which concerns the sharing of non-trading related services. The Exchange states that the focus of proposed Rule 98 on protecting against the misuse of material non-public information obviates the need to specify how a member organization or an

[24] The concept of a person having ''access to'' information is incorporated into several subsections of current Rule 98. *See, e.g.*, current Rule 98(c)(2)(E)(i), (d)(2)(B), and (f)(1)(A)(3).

[25] See 17 CFR 240.10b5–1(b) (specifying that a purchase or sale of securities constitutes trading on the basis of material nonpublic information when the person making the purchase or sale was aware of the material nonpublic information when the person made the purchase or sale).

[26] The Exchange proposes to delete Rule 98(d)(4) from the rule both because the Exchange does not believe it needs to separately identify DMM audit trail requirements and because Rule 132B no longer exists.

[27] NYSE Rule 104 obligations relate to whether a DMM is long or short and are applicable to the DMM unit's position in DMM securities, together with any position of a Regulation SHO independent trading unit of which the DMM unit may be included.

[28] Currently, the Exchange represents, the only time that a DMM unit may engage in market making in a related products under Exchange rules is on the NYSE MKT exchange, pursuant to NYSE MKT Rule 504(b)(5)—Equities. NYSE does not have a similar exception.

approved person provides back-office support operations, such as clearing, stock loan, and compliance, for the DMM unit. Rather, the Exchange asserts that how a member organization or approved person provides back-office operations to the DMM unit should not differ from how such services are provided to other trading units within that member organization or approved person. The Exchange also notes that, if a person in the member organization or an approved person is providing non-trading related services to the DMM unit and, as a result of such relationship, becomes aware of Floor-based non-public order information, such person would be subject to the wall-crossing provisions of proposed Rule 98(c)(3)(C), which is applicable to any person who is aware of such information. In addition, the Exchange notes that the protections for Floor-based non-public order information are retained in the proposed revisions to Rule 98 and are applicable to approved persons pursuant to proposed amended Rule 98(a)(1). The Exchange proposes conforming amendments to Rule 36.30.

As part of the proposed restructuring of Rule 98, current Rule 98(g) would be renumbered as proposed Rule 98(e), existing Rule 98(h) would be renumbered as proposed Rule 98(f), and existing Rule 98(j) would be renumbered as proposed Rule 98(g). The Exchange proposes conforming changes to these sections, such as updating cross-references and changing the rule's reference to ''the Division of Market Surveillance'' and ''NYSE Regulation'' to a reference to ''the Exchange.'' [29]

The Exchange proposes to delete Rule 98 Former, as well as any references thereto, because it is obsolete: All DMM firms operate pursuant to the current Rule 98.[30] In addition, the Exchange proposes to amend Rule 105 to delete Rule 105(b)–(d) and the Guidelines for DMM's Registered Security Option and Single Stock Futures Transactions Pursuant to Rule 105 (''Rule 105 Guidelines'') and to make conforming amendments to Rule 36.30.[31] Rule 105 currently sets forth hedging guidelines to permit a DMM to trade from the trading floor listed options or single-stock futures that overlie DMM securities. Under Rule 98(f)(1), a DMM unit can obtain an exemption from the Rule 105 Guidelines to trade options or futures, provided that such trading is conducted by a walled-off, off-Floor trading desk.

Under the proposed revisions to Rule 98, a DMM unit would no longer need to apply for an exemption from Rule 105 trading restrictions because, as discussed above, while on the trading floor, Floor-based employees may trade only DMM securities (*i.e.*, they may not trade in related products) and may trade only on or through the systems and facilities of the Exchange. Because there would not be any Floor-based trading in listed options or single-stock futures, the Rule 105 Guidelines specifying how such Floor-based trading may occur would be moot. Accordingly, the Exchange proposes to delete these rules. To conform other Exchange rules to this proposal, the Exchange also proposes to delete section (b) from each of Rules 1300 (streetTRACKS Gold Shares), 1300A (Currency Trust Shares), and 1300B (Commodity Trust Shares). Each of these subsections cross-references Rule 105 Guidelines subsection (m) and would similarly be mooted by proposed Rule 98(c)(2)(B)(i). The Exchange proposes further conforming amendments to Rules 900(b) and (d).

In addition, because DMM units no longer have customer relationships, the Exchange proposes to delete in its entirety the DMM Booth Wire Policy, which is set forth in Rule 123B and which is now obsolete.

III. Commission Findings

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[32] The Commission believes that the proposal is consistent with Section 6(b)(5) [33] 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, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Generally, the Exchange proposes to amend Rule 98 in order to provide DMM units with greater flexibility in structuring their operations, moving further toward a principles-based approach and away from prescribing particular structures. Under the proposed rule change, certain information barriers would continue to be required,[34] but amended Rule 98 would generally contain fewer prescriptions than current Rule 98 and would instead require that a member organization operating a DMM unit maintain and enforce written policies and procedures reasonably designed, taking into consideration the nature of the member organization's business, (i) to prevent the misuse of material, non-public information by the member organization or persons associated with it and (ii) to ensure compliance with applicable federal laws and regulations and with Exchange rules.[35] The Exchange represents that the instant proposed rule change prescribes specific protections that reflect the unique role of DMMs and the trading floor at the Exchange, while treating the off-floor market-making activity of member organizations with DMM units similarly to the rules that govern equity market makers on NYSE Arca, Nasdaq, and BATS.[36]

In patricular, proposed Rule 98(a) provides that a member organization will be permitted to operate a DMM unit provided that the member organization has obtained prior written approval from the Exchange. The Exchange represents that, although all member organizations currently operating DMM units under Rule 98 have written policies and procedures that have been approved by NYSE Regulation, Inc., the policies and procedures of member organizations that choose to modify their DMM operations consistent with proposed Rule 98 would be subject to Exchange review prior to implementation. In addition, the Exchange represents that FINRA would continue to monitor member organizations for compliance with such policies and procedures consistent with the current exam-based regulatory program associated with Rule 98.

[29] Pursuant to Rule 0, the reference to the Exchange in this rule may also mean FINRA.

[30] See, *e.g.*, NYSE Rules 98A Former, 99 Former, and 104T(a)(Former) and supplementary material .13 (Former), Rule 900, Rule 98(a) and 105.

[31] The Exchange proposes to amend Rule 105(a) to clarify that the restriction on pool dealing applies to the DMM unit for securities registered to that unit.

[32] In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

[33] 15 U.S.C. 78f(b)(5).

[34] See proposed Rules 98(c)(3) and 98(c)(7).

[35] See proposed Rule 98(c)(2).

[36] See Securities Exchange Act Release No. 60604 (Sept. 2, 2009), 76 FR 46272 (Sept. 8, 2009) (SR–NYSEArca–2009–78) (Order approving elimination of NYSE Arca rule that required market makers to establish and maintain specifically prescribed information barriers, including discussion of NYSE Arca and Nasdaq rules) (''NYSE Arca Order''). See *also* Securities Exchange Act Release No. 61574 (Feb. 23, 2010), 75 FR 9455 (Mar. 2, 2010) (SR–BATS–2010–003) (Order approving amendments to BATS Exchange, Inc. (''BATS'') Rule 5.5 to move to a principles-based approach to protecting against the misuse of material, non-public information, and noting that the proposed change is consistent with the approaches of NYSE Arca and Nasdaq) (''BATS Order'').

Proposed Rule 98(c)(2) would replace the current, more prescriptive approach of current Rule 98 and would provide member organizations operating a DMM unit with greater organizational and operational flexibility, while still requiring that member organizations comply with their existing regulatory obligations. Specifically, proposed NYSE Rule 98(c)(2) would require a member organization seeking approval to operate a DMM unit to maintain and enforce written policies and procedures reasonably designed, taking into consideration the nature of such member organization's business, (i) to prevent the misuse of material, non-public information by such member organizations or persons associated with such member organization and (ii) to ensure compliance with applicable federal laws and regulations and with Exchange rules. In addition, proposed Rule 98(c)(2) would specify that conduct constituting the misuse of material, non-public information includes, but is not limited to: (A) trading in any securities issued by a corporation, or in any related product, while in possession of material-non-public information concerning the issuer; or (B) trading in a security or related product, while in possession of material non-public information concerning imminent transactions in the security or related product; or (C) disclosing to another person or entity any material, non-public information involving a corporation whose shares are publicly traded or an imminent transaction in an underlying security or related product for the purpose of facilitating the possible misuse of such material, non-public information. Although the Exchange proposes to move to a more principles-based approach, and although certain information barriers may no longer be required, the Commission notes, and the Exchange acknowledges, that a member organization's business model or business activities may dictate that an information barrier or functional separation be part of the appropriate set of policies and procedures that would be reasonably designed to achieve compliance with applicable securities laws and regulations and with applicable Exchange rules.[37] In addition, the Commission notes that all member organizations of the Exchange are subject to the requirements of Section 15(g) of the Act, regardless of how their operations are structured.[38]

The Commission notes that amended Rule 98 would delete the defined term ''DMM confidential information'' and would replace the defined term ''non-public information'' with the term ''Floor-based non-public information.'' In the Commission's view, these definitional modifications should not reduce investor protections or market integrity. Instead, consistent with proposed Rule 98(c)(2) and Section 15(g) of the Act,[39] member organizations will continue to have obligations to implement reasonably designed policies and procedures to prevent the misuse of material, non-public information, and they will continue to be subject to Exchange rules regarding front-running, limit-order display, and trading ahead, as well as FINRA surveillances to detect violations of these rules.

The Commission notes that proposed Rule 98(c)(2) is substantially similar to and expressly based on NYSE Arca Rule 6.3 and BATS Rule 5.5. NYSE's market structure, however differs from that of NYSE Arca and BATS, in that the Exchange continues to have a physical trading floor. Accordingly, the Commission believes that it is appropriate that proposed Rule 98 continues to include certain prescriptions that address the role of the DMM and the trading floor in its market. Specifically, as described above, proposed Rule 98(c)(3) relates to restrictions on trading for member organizations operating a DMM unit; proposed Rule 98(c)(4) would provide that any interest entered by the DMM unit in DMM securities at the Exchange must be entered through systems that identify such interest as DMM interest; proposed Rule 98(c)(5) would require that a member organization provide the Exchange with real-time unit position information for any trading in DMM securities by the DMM unit and any independent trading unit; proposed Rule 98(c)(6) would specify that a DMM unit may not operate as a specialist or market maker on the Exchange or the NYSE MKT equities or options trading floors in related products, unless specifically permitted in Exchange rules; and proposed Rule 98(c)(7) would maintain the existing requirement that the member organization maintain information barriers between the DMM unit and any investment banking or research departments.

Under this proposed rule change, member organizations could integrate DMM units with other trading operations within the member organization, including, if applicable, a customer-facing operation. The Commission notes that a DMM unit that is integrated with other market-making operations would be subject to existing rules that prohibit member organizations from disadvantaging their customers or other market participants by improperly capitalizing on a member organization's access to the receipt of material, non-public information. For instance, NYSE Rule 5320 generally prohibits a member organization from trading for its own account ahead of customer orders, which means that a member organization operating both a DMM unit, which engages in trading for its own account, and customer-facing operations would need to comply with the Manning Rule[40] or meet one of the specified exceptions.[41] Moreover, the Commission notes that (1) the Exchange has represented that FINRA currently has surveillances designed to monitor for manipulative activity, that DMM market-making activity off the trading floor is not materially different from market-making on other exchanges, and that, therefore, the existing regulatory framework is reasonably designed to address any concerns that may be raised by a DMM unit being integrated with market-making operations and (2) the Exchange has represented that FINRA currently conducts a program that approves and examines Rule 98 policies and procedures.

The Commission believes that the proposed rule change is consistent with the Act. The principles-based regulatory approach in the proposal is substantially similar to the existing regulatory approach of NYSE Arca and BATS, while also accounting for the market structure differences (*i.e.*, the role of DMM units and the trading floor on the Exchange) that raise additional regulatory and policy considerations. While proposed Rule 98 permits member organizations greater flexibility in structuring their business and compliance operations, the rule continues to require the maintenance of certain appropriate information barriers,

[37] This aspect of Exchange's proposal and of the Commission's findings is consistent with similar rules at other exchanges. *See* NYSE Arca Order at 46275 and BATS Order at 9459.

[38] 15 U.S.C. 78o(g). Section 15(g) of the Act requires brokers and dealers to ''establish, maintain, and enforce written policies and procedures reasonably designed, taking into consideration the nature of such broker's or dealer's business, to prevent the misuse . . . of material, nonpublic information by such broker or dealer or any person associated with such broker or dealer.''

[39] 15 U.S.C. 78o(g).

[40] See Manning Rule, supra, note 12.

[41] NYSE Rule 5320 further provides that, if a member organization trades at a price for its own account ahead of the customer order, it must execute the customer order up to the size and at a price that is the same as, or better than, the price at which the organization traded for its own account.

and it clearly requires that all member organizations have policies and procedures that are reasonably designed to prevent the misuse of material, non-public information.[42]

The Commission notes that the policies and procedures required proposed Rule 98 will be subject to oversight by the Exchange and review by FINRA, and the Commission emphasizes that a member organization operating a DMM unit should be proactive in assuring that its policies and procedures reflect the current state of its business and continue to be reasonably designed to achieve compliance with applicable federal securities law and regulations and with applicable Exchange and FINRA rules. Finally, the Commission notes that existing Exchange rules also prohibit particular misuses of material, non-public information—for example, front-running customer orders—and that FINRA surveillances seek to detect violations of those rules.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–NYSE–2014–012), is hereby approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[43]

Jill M. Peterson,

Assistant Secretary.

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[42] The Commission notes that such policies and procedures may include the programming and operation of a member organization's trading algorithms to protect against the misuse of material non-public information.

[43] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72535; File No. SR–NYSEMKT–2014–22]

Self-Regulatory Organizations; NYSE MKT LLC; Order Approving Proposed Rule Change Amending Rule 98 To Adopt a Principles-Based Approach To Prohibit the Misuse of Material Nonpublic Information and Make Conforming Changes to Other Exchange Rules

July 3, 2014.

On March 18, 2014, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] filed with the Securities and Exchange Commission (the ''Commission'') a proposed rule change to amend Rule 98—Equities (''Rule 98''). The proposed rule change was published for public comment in the **Federal Register** on April 7, 2014.[3] On May 21, 2014, the Commission designated a longer period for Commission action on the proposed rule change.[4] The Commission received one comment on the proposal.[5] This order approves the proposed rule change.

I. Background and Introduction

The New York Stock Exchange LLC (''NYSE'') adopted Rule 98 (''NYSE Rule 98'') in 1986 when NYSE specialist firms, which had been independent member-owned entities, increasingly became affiliates of larger member organizations. Because of the specialists' position in the market, Rule 98 required an organizational separation between a specialist and its affiliates. The purpose of that separation was to eliminate or control conflicts of interest between the business activities of affiliates of the specialist and the specialist's responsibilities to the market and to any customer orders the specialist represented as agent.[6]

In 2008, the NYSE amended NYSE Rule 98 to adopt a more flexible, principles-based approach that among other things: (1) Redefined the persons to whom the Rule applied; (2) allowed DMM operations to be integrated into better-capitalized member organizations; (3) permitted a DMM unit to share non-trading-related services with its parent member organization or approved persons; and (4) provided flexibility to member organizations and their approved persons in conducting risk management of DMM operations.[7] The principal effect of the 2008 Amendments was that affiliates of a DMM unit that were walled-off from the DMM unit were no longer prohibited from acting as an options market maker in a security in which the affiliated DMM was registered. However, the amended NYSE Rule 98 continued to prohibit the integrated unit from coordinating market making between its DMM and its options market maker. In 2008, the Exchange (f/k/a NYSE Alternext US LLC) submitted a proposed rule change to, among other things, conform their rules to NYSE Rule 98.[8]

The Exchange now proposes to further amend Rule 98 in order to provide DMM units with greater flexibility in structuring their operations and to move further toward a principles-based approach and away from prescribing particular structures for DMM units. Under this proposed rule change, certain information barriers would continue to be required (for example, between a DMM unit and an affiliated investment-banking desk), and other required protections, in addition to information barriers, would address the role of DMMs and the trading floor in the Exchange's market. Proposed Rule 98 would, however, contain fewer prescriptions relating to the structure of DMM units, and it would instead, like similar rules relating to market-making firms on other exchanges,[9] impose a more general requirement that a member organization operating a DMM unit maintain and enforce written policies and procedures reasonably designed, taking into consideration the nature of the member organization's business, (i) to prevent the misuse of material, non-public information by the member organization or persons associated with it and (ii) to ensure compliance with applicable federal laws and regulations and with Exchange rules.

The Exchange asserts that the instant proposal should provide member organizations operating DMM units with the means to better manage risk across a firm—for example, by integrating DMM unit positions and quoting information with other quotes and positions by other units within the firm. The Exchange posits that a member organization operating a DMM unit, in the context of risk management[10] and consistent with protections against the misuse of material non-public information,[11] should be able to consider the outstanding quotes of the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 71837 (Apr. 1, 2014), 75 FR 19146.

[4] *See* Securities Exchange Act Release No. 72202, 79 FR 30671 (May 28, 2014).

[5] *See* Email from Dr. Leee Jackson, Esq. (April 15, 2014) (''Jackson Comment''). The Commission does not believe the Jackson Comment raises any material or substantive issues.

[6] *See* Securities Exchange Act Release No. 23768 (Nov. 3, 1986), 51 FR 41183 (Nov. 13, 1986) (SR–NYSE–85–25).

[7] *See* Securities Exchange Act Release No. 58328 (Aug. 7, 2008), 34 FR 58328 (Aug. 18, 2008)(SR–NYSE–2008–45)(''2008 Amendments'').

[8] *See* Securities Exchange Act Release No. 59022 (Nov. 26, 2008), 73 FR 73683 (Dec. 3, 2008)(SR–NYSEALTR–2008–10).

[9] *See, e.g.,* NYSEArca Equities Rule 6.3 and BATS Rule 5.5.

[10] *See e.g.,* 17 CFR Part 240.15c3–5 (Risk Management Controls for Brokers or Dealers with Market Access).

[11] *See e.g.,* 15 U.S.C. 78o(g). Section 15(g) of the Act requires every registered broker or dealer to ''establish, maintain, and enforce written policies and procedures reasonably designed, taking into consideration the nature of such broker's or dealer's business, to prevent the misuse . . . of material, nonpublic information by such broker or dealer or any person associated with such broker or dealer.''

DMM unit as well as traded positions for purposes of calculating net positions consistent with Rule 200 of Regulation SHO [12] and calculating intra-day net capital positions. Further, the Exchange asserts that a member organization should be able to integrate its DMM unit operations with its customer-facing operations because the instant proposal, in tandem with existing NYSE MKT conduct rules,[13] FINRA's ongoing surveillances for manipulative conduct, and FINRA's program to examine member firms that act as DMMs and to review and approve their policies and procedures for complying with Rule 98, should provide a regulatory framework that guards customer interests and protects against the misuse of material non-public information, while increasing operational flexibility of member organizations.

II. Description of the Proposed Amendments to Rule 98

Proposed Rule 98(a)(1) provides that the rule shall apply to all member organizations seeking to operate a DMM unit at the Exchange and to any approved person that may provide services to a DMM unit.

Proposed Rule 98(b) revises, deletes and adds certain definitions to provide member organizations operating a DMM unit with the flexibility to integrate their DMM operations with other units of the firm. Currently, Rule 98 defines the terms ''non-public order information'' and ''DMM confidential information'' separately. Non-public order information captures any information relating to order flow at the Exchange—including verbal indications of interest made with an expectation of privacy, electronic order interest, e-quotes, reserve interest, and information about imbalances at the Exchange—that is not publicly-available on a real-time basis via an Exchange-provided datafeed, such as NYSE OpenBook®,[14] or otherwise publicly available. ''DMM confidential information'' refers to principal or proprietary trading activity of a DMM unit at the Exchange in the securities allocated to it pursuant to Rule 103B—Equities, including the unit's positions in those securities, decisions relating to trading or quoting in those securities, and any algorithm or computer system that is responsible for such trading activity and that interfaces with Exchange systems.

The Exchange proposes to replace the term ''non-public information'' with ''Floor-based non-public information.'' As discussed in more detail below, the Exchange proposes to maintain restrictions in proposed Rule 98(c)(3) to address the Floor-based activities of DMM units and proposes to use the term ''Floor-based non-public order information'' to identify the information those provisions are intended to protect.[15] The Exchange also proposes to delete the definition of ''DMM confidential information,'' arguing that proposed Rule 98(c)(2) would sufficiently protect against the misuse of material non-public information. Further the Exchange notes that to the extent a DMM on the Floor may have access to Floor-based non-public order information, proposed Rule 98(c)(3) would continue to specify required protections against the misuse of such information by the member organization.

The Exchange proposes to amend the term ''DMM unit'' to mean a trading unit within a member organization that is approved pursuant to Rule 103—Equities to act as a DMM unit, and it proposes to eliminate the requirement that a DMM unit be an ''aggregation unit,'' which is currently defined to mean any trading or market-making department, division or desk that meets the requirements of the definition of ''independent trading unit'' pursuant to Rule 200 of Regulation SHO.[16] The Exchange proposes to decouple the Rule 98 definition from Regulation SHO, in part because the two rules have different regulatory purposes.[17] Similarly, the Exchange proposed to delete the term ''integrated proprietary aggregation unit'' because this term contemplates a DMM unit being part of an aggregation unit that only engages in proprietary trading activity, which, under the proposal, would be an organizational structure that is permitted, but not required. The Exchange also proposes to delete the definitions for ''DMM API,'' ''DMM account,'' ''customer-facing department,'' [18] and ''non-trading related services.'' [19] The Exchange asserts that the terms ''DMM API'' and ''DMM account'' are obsolete as they were based on Rule 104 before it was amended in 2008.[20]

Proposed Rule 98(c) would govern the operation of a DMM unit. Proposed Rule 98(c)(1) provides that a member organization will be permitted to operate a DMM unit provided that the member organization has obtained prior written approval from the Exchange.[21] The Exchange notes that all member organizations currently operating DMM units already have written policies and procedures to comply with Rule 98 in its current form, and such policies and procedures have been approved by NYSE Regulation.[22] In addition, FINRA has an exam program that reviews member organizations operating DMM units for compliance with such policies and procedures. Because proposed Rule 98(a) would continue to require Exchange approval of any policies and procedures to protect against the misuse of material nonpublic information, if a

[12] 17 CFR 242.200. Under Regulation SHO, determination of a seller's net position is based on the seller's positions in the security in all proprietary accounts. *See* Exchange Act Release No. 50103 (July 28, 2004), 69 FR 48008, 48010 n.22 (Aug. 6, 2004); *see also* Exchange Act Release No. 48709 (Oct. 29, 2003), 68 FR 62972, 62991 and 62994 (Nov. 6, 2003); Letter from Richard R. Lindsey, Director, Division of Market Regulation, to Roger D. Blanc, Wilkie Farr & Gallagher, SEC No-Action Letter, 1998 SEC No-Act. LEXIS 1038, p. 5 (Nov. 23, 1998); Exchange Act Release No. 30772 (June 3, 1992), 57 FR 24415, 24419 n.47 (June 9, 1992); Exchange Act Release No. 27938 (Apr. 23, 1990), 55 FR 17949, 17950 (Apr. 30, 1990).

[13] *See e.g.,* NYSE MKT Rule 5320—Equities (''Manning Rule'').

[14] NYSE OpenBook® provides aggregated limit-order volume that has been entered on the Exchange at price points for all NYSE MKT-traded securities.

[15] The Exchange proposes non-substantive changes to this definition that it believes better reflect how its systems currently operate. Specifically, the Exchange asserts that the concept of trading in ''slow mode'' is duplicative of the remaining rule text, which covers any order information that is made available to DMMs but that is not available to other market participants.

[16] The Exchange proposes to delete rule provisions that reference the terms ''aggregation unit'' and ''integrated proprietary aggregation unit.'' *See, e.g.,* Rule 98(c)(2)(B).

[17] *See* 17 CFR 242.200(f). Rule 200(f) of Regulation SHO sets forth the requirements for qualifying as an ''independent trading unit'' for the purpose of order marking requirements under Rule 200. The Commission notes that a member organization must comply with the requirements of Regulation SHO regardless of how its operations are structured for purposes of compliance with Rule 98.

[18] The Exchange asserts that, because the proposed rule changes are intended to provide principles-based requirements for the operation of a DMM unit, the amended rule would no longer need to define terms, such as ''customer-facing department,'' that support the current, more prescriptive rule text.

[19] Because these protections for Floor-based non-public order information are retained in the proposed revisions to Rule 98 and are applicable to approved persons pursuant to proposed amended Rule 98(a)(1), the Exchange asserts that current Rule 98(e), which concerns the sharing of non-trading related services, is redundant of existing regulatory requirements governing the operations of a broker-dealer.

[20] The Exchange also proposes to delete the definitions of ''DMM'' and ''approved person'' as duplicative of the definitions set forth in Rules 2(i)—Equities and 2(c)—Equities. The Exchange proposes to make non-substantive edits to the definition of ''related products'' and make conforming amendments to Rule 2(j)—Equities.

[21] Pursuant to Rule 0(c), the term ''Exchange'' may also mean FINRA staff working on behalf of the Exchange and NYSE Regulation, Inc. pursuant to a regulatory services agreement. The Exchange also proposes to revise Rule 98(c)(1) to replace the term ''NYSE Regulation, Inc.'' with the term ''Exchange.''

[22] FINRA currently approves Rule 98 procedures on behalf of NYSE Regulation, Inc. pursuant to a regulatory services agreement.

member organization chose to modify its DMM operations consistent with proposed Rule 98, its revised policies and procedures would be subject to Exchange review before implementation. In addition, the Exchange represents that FINRA would continue to monitor a member organization's compliance with those policies and procedures consistent with the current exam-based regulatory program associated with Rule 98.[23]

Proposed Rule 98(c)(2) specifies that a member organization seeking approval to operate a DMM unit pursuant to Rule 98 must maintain and enforce written policies and procedures reasonably designed, taking into consideration the nature of such member organization's business, (i) to prevent the misuse of material, non-public information by such member organizations or persons associated with such member organization and (ii) to ensure compliance with applicable federal laws and regulations and with Exchange rules.[24] Proposed Rule 98(c)(2) also provides examples of conduct that would constitute the misuse of material, non-public information, including, but not limited to: (A) Trading in any securities issued by a corporation, or in any related products, while in possession of material-non-public information concerning the issuer; (B) trading in a security or related product, while in possession of material non-public information concerning imminent transactions in the security or related product; or (C) disclosing to another person or entity any material, non-public information involving a corporation whose shares are publicly traded or an imminent transaction in an underlying security or related product for the purpose of facilitating the possible misuse of such material, non-public information.

Proposed Rule 98(c)(3) pertains to restrictions on trading for member organizations operating a DMM unit. Proposed Rule 98(c)(3)(A) would generally provide that a member organization shall protect against the misuse of Floor-based non-public order information. The rule would further specify that only the Floor-based employees of the DMM unit and individuals responsible for the direct supervision of the DMM unit's Floor-based operations may have access (as permitted pursuant to Rule 104) to Floor-based non-public order information.

Proposed Rule 98(c)(3)(B) specifies the restrictions applicable to employees of the DMM unit while on the trading floor. Proposed Rule 98(c)(3)(B)(i) provides that, while on the trading floor of the Exchange, employees of the DMM unit, except as provided for in Rule 36.30—Equities, may trade only DMM securities and may do so only on or through the systems and facilities of the Exchange, as permitted by Exchange Rules. Proposed Rule 98(c)(3)(B)(ii) would specify that while on the trading floor, Floor-based employees may not communicate with individuals or systems responsible for making trading decisions for related products or for away-market trading in DMM securities. Proposed Rule 98(c)(3)(B)(iii) adds a new restriction that while on the trading floor, employees of the DMM unit shall not have access to customer information or the DMM unit's position in related products.

Proposed Rule 98(c)(3)(C) would provide that a Floor-based employee of a DMM unit who moves to a location off the trading floor of the Exchange, or any person who provides risk management oversight or supervision of the Floor-based operations of the DMM unit and becomes aware of Floor-based non-public order information, shall not (1) make such information available to customers, (2) make such information available to individuals or systems responsible for making trading decisions in DMM securities in away markets or related products, or (3) use any such information in connection with making trading decisions in DMM securities in away markets or related products. The proposed rule would cover an individual that leaves the trading floor, as well as a manager providing oversight or supervision of the Floor-based operations of the DMM unit. The Exchange's proposed amendments to Rule 98 would replace the concept of a person having ''access to'' information with that of a person being ''aware of'' information,[25] asserting that the change will clarify the governing standard for member organizations and make Rule 98 generally more consistent with federal rules.[26] The Exchange also argues that a person cannot misuse material, non-public information unless the person is ''aware of'' that information.

Proposed Rule 98(c)(3)(C) would also maintain and consolidate the Exchange's current ''wall-crossing'' provisions related to a non-Floor based individual who becomes aware of Floor-based non-public order information.

Proposed Rule 98(c)(3)(D) would provide that a DMM unit may make available to a Floor broker associated or affiliated with an approved person or member organization any information that the DMM would be permitted under Exchange rules to provide to an unaffiliated Floor Broker.

Proposed Rule 98(c)(4) would provide that any interest entered by the DMM unit in DMM securities at the Exchange must be entered through systems that identify such interest as DMM interest. The Exchange asserts it is unnecessary to prescribe or require specific systems that a DMM unit must use, but this rule would require that the DMM unit's interest be identifiable and available for Exchange review through the system that the DMM unit elects to use.

Proposed Rule 98(c)(5) would require that a member organization provide the Exchange with real-time unit position information for any trading in DMM securities by the DMM unit and any independent trading unit.[27] The Exchange represents that this provision should enhance its ability to monitor for Rule 104 compliance.[28] For example, if a DMM unit is part of an independent trading unit that engages in trading on other markets in DMM securities, the member organization's real-time position update would need to incorporate any away-market transactions in DMM securities by that independent trading unit.

Proposed Rule 98(c)(6) would specify that a DMM unit may not operate as a specialist or market maker on the Exchange or the NYSE Amex Options LLC (''NYSE Amex Options'') equities or options trading floors in related products, unless specifically permitted

[23] The Exchange represents that FINRA currently has surveillances designed to monitor for manipulative activity and the Exchange asserts that, because DMM market-making activity is not materially different from market-making on other exchanges, these existing programs are reasonably designed to address any concerns that may be raised by a DMM unit being integrated with existing market-making operations.

[24] Proposed Rule 98(c)(2) is based on NYSE Arca Equities Rule 6.3 (Prevention of the Misuse of Material Nonpublic Information) and BATS Rule 5.5 (Prevention of the Misuse of Material, Non-Public Information).

[25] The concept of a person having ''access to'' information is incorporated into several subsections of current Rule 98. *See, e.g.,* current Rule 98(c)(2)(E)(i), (d)(2)(B), and (f)(1)(A)(3).

[26] *See* 17 CFR 240.10b5–1(b) (specifying that a purchase or sale of securities constitutes trading on the basis of material nonpublic information when the person making the purchase or sale was aware of the material nonpublic information when the person made the purchase or sale).

[27] The Exchange proposes to delete Rule 98(d)(4) from the rule both because the Exchange does not believe it needs to separately identify DMM audit trail requirements and because Rule 132B—Equities no longer exists.

[28] Rule 104 obligations relate to whether a DMM is long or short and are applicable to the DMM unit's position in DMM securities together with any position of a Regulation SHO independent trading unit of which the DMM unit may be included.

in Exchange rules.[29] The Exchange notes that a member organization that operates a DMM unit may be a specialist or market maker on NYSE Amex Options, provided that it maintains appropriate information barriers. Currently, Rule 98 permits an integrated proprietary aggregation unit to engage in options market making (electronic only), provided that the DMM unit is walled off from the options market making trading desk.

Proposed Rule 98(c)(7) would maintain the existing requirement that the member organization maintain information barriers between the DMM unit and any investment banking or research departments. Proposed Rule 98(c)(7) would also continue to provide that no DMM or DMM unit may be directly supervised or controlled by an individual associated with an approved person or the member organization who is assigned to any investment banking or research departments.

Proposed Rule 98(d) would specify that DMM rules would only apply to the DMM unit's quoting or trading in their DMM securities for their own accounts at the Exchange. The Exchange represents that this provision is intended to clarify that DMM rule restrictions are not applicable to any customer orders routed to the Exchange by that member organization as agent.

The Exchange proposes to delete in its entirety Rule 98(e), which concerns the sharing of non-trading related services. The Exchange states that the focus of proposed Rule 98 on protecting against the misuse of material non-public information obviates the need to specify how a member organization or an approved person provides back-office support operations, such as clearing, stock loan, and compliance, for the DMM unit. Rather, the Exchange asserts that how a member organization or approved person provides back-office operations to the DMM unit should not differ from how such services are provided to other trading units within that member organization or approved person. The Exchange also notes that, if a person in the member organization or an approved person is providing non-trading related services to the DMM unit and, as a result of such relationship, becomes aware of Floor-based non-public order information, such person would be subject to the wall-crossing provisions of proposed Rule 98(c)(3)(C), which is applicable to any person who is aware of such information. In addition, the Exchange notes that the protections for Floor-based non-public order information are retained in the proposed revisions to Rule 98 and are applicable to approved persons pursuant to proposed amended Rule 98(a)(1). The Exchange proposes conforming amendments to Rule 36.30—Equities.

As part of the proposed restructuring of Rule 98, current Rule 98(g) would be renumbered as proposed Rule 98(e), existing Rule 98(h) would be renumbered as proposed Rule 98(f), and existing Rule 98(j) would be renumbered as proposed Rule 98(g). The Exchange proposes conforming changes to these sections, such as updating cross-references and changing the rule's reference to ''the Division of Market Surveillance'' and ''NYSE Regulation'' to a reference to ''the Exchange.''[30]

The Exchange proposes to delete Rule 98 Former, as well as any references thereto, because it is obsolete: All DMM firms operate pursuant to the current Rule 98.[31] In addition, the Exchange proposes to amend Rule 105—Equities to delete Rule 105(b)–(d) and the Guidelines for DMM's Registered Security Option and Single Stock Futures Transactions Pursuant to Rule 105 (''Rule 105 Guidelines'') and to make conforming amendments to Rule 36.30—Equities.[32] Rule 105 currently sets forth hedging guidelines to permit a DMM to trade from the trading floor listed options or single-stock futures that overlie DMM securities. Under Rule 98(f)(1), a DMM unit can obtain an exemption from the Rule 105 Guidelines to trade options or futures, provided that such trading is conducted by a walled-off, off-Floor trading desk.

Under the proposed revisions to Rule 98, a DMM unit would no longer need to apply for an exemption from Rule 105 trading restrictions because, as discussed above, while on the trading floor, Floor-based employees may trade only DMM securities (*i.e.,* they may not trade in related products) and may trade only on or through the systems and facilities of the Exchange. Because there would not be any Floor-based trading in listed options or single-stock futures, the Rule 105 Guidelines specifying how such Floor-based trading may occur would be moot. Accordingly, the Exchange proposes to delete these rules.

In addition, because DMM units no longer have their own customers, the Exchange proposes to delete in its entirety the DMM Booth Wire Policy, which is set forth in Rule 123B—Equities and which is now obsolete.

III. Commission Findings

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[33] The Commission believes that the proposal is consistent with Section 6(b)(5)[34] 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, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Generally, the Exchange proposes to amend Rule 98 in order to provide DMM units with greater flexibility in structuring their operations, moving further toward a principles-based approach and away from prescribing particular structures. Under the proposed rule change, certain information barriers would continue to be required,[35] but amended Rule 98 would generally contain fewer prescriptions than current Rule 98 and would instead require that a member organization operating a DMM unit maintain and enforce written policies and procedures reasonably designed, taking into consideration the nature of the member organization's business, (i) to prevent the misuse of material, non-public information by the member organization or persons associated with it and (ii) to ensure compliance with applicable federal laws and regulations and with Exchange rules.[36] The Exchange represents that the instant proposed rule change prescribes specific protections that reflect the unique role of DMMs and the trading floor at the Exchange, while treating the off-floor market-making activity of member organizations with DMM units similarly to the rules that govern equity market

[29] Currently, the Exchange represents, the only time that a DMM unit may engage in market making in a related products is pursuant to Rule 504(b)(5)—Equities.

[30] Pursuant to Rule 0, the reference to the Exchange in this rule may also mean FINRA.

[31] *See e.g.,* Rules 98A Former—Equities, 99 Former—Equities, and 104T(a)(Former)—Equities and supplementary material .13 (Former), Rule 900—Equities, Rule 98(a) and 105—Equities.

[32] The Exchange proposes to amend Rule 105(a)—Equities to clarify that the restriction on pool dealing applies to the DMM unit for securities registered to that unit and revise the title of that rule accordingly.

[33] In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[34] 15 U.S.C. 78f(b)(5).

[35] *See* proposed Rules 98(c)(3) and 98(c)(7).

[36] *See* proposed Rule 98(c)(2).

makers on NYSE Arca, Nasdaq, and BATS.[37]

In particular, proposed Rule 98(a) provides that a member organization will be permitted to operate a DMM unit provided that the member organization has obtained prior written approval from the Exchange. The Exchange represents that, although all member organizations currently operating DMM units under Rule 98 have written policies and procedures that have been approved by NYSE Regulation, Inc., the policies and procedures of member organizations that choose to modify their DMM operations consistent with proposed Rule 98 would be subject to Exchange review prior to implementation. In addition, the Exchange represents that FINRA would continue to monitor member organizations for compliance with such policies and procedures consistent with the current exam-based regulatory program associated with Rule 98.

Proposed Rule 98(c)(2) would replace the current, more prescriptive approach of current Rule 98 and would provide member organizations operating a DMM unit with greater organizational and operational flexibility, while still requiring that member organizations comply with their existing regulatory obligations. Specifically, proposed Exchange Rule 98(c)(2) would require a member organization seeking approval to operate a DMM unit to maintain and enforce written policies and procedures reasonably designed, taking into consideration the nature of such member organization's business, (i) to prevent the misuse of material, non-public information by such member organizations or persons associated with such member organization and (ii) to ensure compliance with applicable federal laws and regulations and with Exchange rules. In addition, proposed Rule 98(c)(2) would specify that conduct constituting the misuse of material, non-public information includes, but is not limited to: (A) Trading in any securities issued by a corporation, or in any related product, while in possession of material-non-public information concerning the issuer; or (B) trading in a security or related product, while in possession of material non-public information concerning imminent transactions in the security or related product; or (C) disclosing to another person or entity any material, non-public information involving a corporation whose shares are publicly traded or an imminent transaction in an underlying security or related product for the purpose of facilitating the possible misuse of such material, non-public information. Although the Exchange proposes to move to a more principles-based approach, and although certain information barriers may no longer be required, the Commission notes, and the Exchange acknowledges, that a member organization's business model or business activities may dictate that an information barrier or functional separation be part of the appropriate set of policies and procedures that would be reasonably designed to achieve compliance with applicable securities laws and regulations and with applicable Exchange rules.[38] In addition, the Commission notes that all member organizations of the Exchange are subject to the requirements of Section 15(g) of the Act, regardless of how their operations are structured.[39]

The Commission notes that amended Rule 98 would delete the defined term ''DMM confidential information'' and would replace the defined term ''non-public information'' with the term ''Floor-based non-public information.'' In the Commission's view, these definitional modifications should not reduce investor protections or market integrity. Instead, consistent with proposed Rule 98(c)(2) and Section 15(g) of the Act,[40] member organizations will continue to have obligations to implement reasonably designed policies and procedures to prevent the misuse of material, non-public information, and they will continue to be subject to Exchange rules regarding front-running, limit-order display, and trading ahead, as well as FINRA surveillances to detect violations of these rules.

The Commission notes that proposed Rule 98(c)(2) is substantially similar to and expressly based on NYSE Arca Rule 6.3 and BATS Rule 5.5. The Exchange's market structure, however differs from that of NYSE Arca and BATS, in that the Exchange continues to have a physical trading floor. Accordingly, the Commission believes that it is appropriate that proposed Rule 98 continues to include certain prescriptions that address the role of the DMM and the trading floor in its market. Specifically, as described above, proposed Rule 98(c)(3) relates to restrictions on trading for member organizations operating a DMM unit; proposed Rule 98(c)(4) would provide that any interest entered by the DMM unit in DMM securities at the Exchange must be entered through systems that identify such interest as DMM interest; proposed Rule 98(c)(5) would require that a member organization provide the Exchange with real-time unit position information for any trading in DMM securities by the DMM unit and any independent trading unit; proposed Rule 98(c)(6) would specify that a DMM unit may not operate as a specialist or market maker on the Exchange or the NYSE MKT equities or options trading floors in related products, unless specifically permitted in Exchange rules; and proposed Rule 98(c)(7) would maintain the existing requirement that the member organization maintain information barriers between the DMM unit and any investment banking or research departments.

Under this proposed rule change, member organizations could integrate DMM units with other trading operations within the member organization, including, if applicable, a customer-facing operation. The Commission notes that a DMM unit that is integrated with other market-making operations would be subject to existing rules that prohibit member organizations from disadvantaging their customers or other market participants by improperly capitalizing on a member organization's access to the receipt of material, non-public information. For instance, Rule 5320 generally prohibits a member organization from trading for its own account ahead of customer orders, which means that a member organization operating both a DMM unit, which engages in trading for its own account, and customer-facing operations would need to comply with the Manning Rule[41] or meet one of the specified exceptions.[42] Moreover, the

[37] *See* Securities Exchange Act Release No. 60604 (Sept. 2, 2009), 76 FR 46272 (Sept. 8, 2009) (SR–NYSEArca–2009–78) (Order approving elimination of NYSE Arca rule that required market makers to establish and maintain specifically prescribed information barriers, including discussion of NYSE Arca and Nasdaq rules) (''NYSE Arca Order''). *See also* Securities Exchange Act Release No. 61574 (Feb. 23, 2010), 75 FR 9455 (Mar. 2, 2010) (SR–BATS–2010–003) (Order approving amendments to BATS Exchange, Inc. (''BATS'') Rule 5.5 to move to a principles-based approach to protecting against the misuse of material, non-public information, and noting that the proposed change is consistent with the approaches of NYSE Arca and Nasdaq) (''BATS Order'').

[38] This aspect of Exchange's proposal and of the Commission's findings is consistent with similar rules at other exchanges. *See* NYSE Arca Order at 46275 and BATS Order at 9459.

[39] 15 U.S.C. 78o(g). Section 15(g) of the Act requires brokers and dealers to ''establish, maintain, and enforce written policies and procedures reasonably designed, taking into consideration the nature of such broker's or dealer's business, to prevent the misuse . . . of material, nonpublic information by such broker or dealer or any person associated with such broker or dealer.''

[40] 15 U.S.C. 78o(g).

[41] *See* Manning Rule, *supra* note 13.

[42] Exchange Rule 5320 further provides that, if a member organization trades at a price for its own account ahead of the customer order, it must execute the customer order up to the size and at a

Commission notes that (1) the Exchange has represented that FINRA currently has surveillances designed to monitor for manipulative activity, that DMM market-making activity off the trading floor is not materially different from market-making on other exchanges, and that, therefore, the existing regulatory framework is reasonably designed to address any concerns that may be raised by a DMM unit being integrated with market-making operations and (2) the Exchange has represented that FINRA currently conducts a program that approves and examines Rule 98 policies and procedures.

The Commission believes that the proposed rule change is consistent with the Act. The principles-based regulatory approach in the proposal is substantially similar to the existing regulatory approach of NYSE Arca and BATS, while also accounting for the market structure differences (*i.e.,* the role of DMM units and the trading floor on the Exchange) that raise additional regulatory and policy considerations. While proposed Rule 98 permits member organizations greater flexibility in structuring their business and compliance operations, the rule continues to require the maintenance of certain appropriate information barriers, and it clearly requires that all member organizations have policies and procedures that are reasonably designed to prevent the misuse of material, non-public information.[43]

The Commission notes that the policies and procedures required proposed Rule 98 will be subject to oversight by the Exchange and review by FINRA, and the Commission emphasizes that a member organization operating a DMM unit should be proactive in assuring that its policies and procedures reflect the current state of its business and continue to be reasonably designed to achieve compliance with applicable federal securities law and regulations and with applicable Exchange and FINRA rules. Finally, the Commission notes that existing Exchange rules also prohibit particular misuses of material, non-public information—for example, front-running customer orders—and that FINRA surveillances seek to detect violations of those rules.

price that is the same as, or better than, the price at which the organization traded for its own account.

[43] The Commission notes that such policies and procedures may include the programming and operation of a member organization's trading algorithms to protect against the misuse of material non-public information.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–NYSEMKT–2014–22), is hereby approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[44]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2014–16048 Filed 7–8–14; 8:45 am]

BILLING CODE 8011–01–P

[44] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72525; File No. SR–NYSEArca-2014–74]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Arca Options Fee Schedule Relating to Manual Executions by Firms and Broker Dealers

July 2, 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 July 1, 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 Manual Executions by Firms and Broker Dealers. The Exchange proposes to implement the fee change effective July 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.

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to modify the Exchange's fees on Firm and Broker Dealer Manual Executions to provide a lower rate in certain select symbols.

Currently, a Firm or Broker Dealer order executed Manually on the Floor of the Exchange that is not facilitating a Customer is charged $0.25 per contract.[4]

The Exchange is proposing a rate of $0.12 per contract for Firm and Broker Dealer orders for select symbols that are active issues with narrow spreads and a competitive distribution of market share among the exchanges.[5] Initially, the Exchange proposes to include only options transactions in VXX (iPath S&P 500 VIX Short Term Futures Exchange Traded Note) in the select symbols, although the Exchange may add or remove symbols from the eligible symbol list with subsequent filings with the Securities and Exchange Commission (''Commission'').[6]

[4] Firm and Broker Dealer orders that facilitate a Customer are charged $0.00.

[5] The Exchange notes that the practice of providing additional incentives to increase order flow in high volume symbols is, and has been, commonly practiced in the options markets. *See, e.g.,* International Securities Exchange, LLC (''ISE''), Schedule of Fees, *available here, http://www.ise.com/assets/documents/OptionsExchange/legal/fee/ISE_fee_schedule.pdf,* p. 6 (providing reduced fee rates for order flow in Select Symbols); NASDAQ OMX PHLX, Pricing Schedule, *available here, http://www.nasdaqtrader.com/Micro.aspx?id=phlxpricing,* Section I (providing a rebate for adding liquidity in SPY); NYSE Arca, Inc. Fees Schedule, *available here, https://www.theice.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf* (section titled ''Customer Monthly Posting Credit Tiers and Qualifications for Executions in Penny Pilot Issues'').

[6] VXX is a Penny Pilot Issue in the top 10 by Customer volume from January 2, 2014 through May 31, 2014, with market share spread fairly evenly amongst five of the 12 exchanges, and with 15% of transactions by contract volume involving

Continued

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 special rate for Firm and Broker Dealer orders in select symbols is reasonable as it is within the general range of transaction fees for manual transactions. The proposed special rate for select symbols is reasonably designed to increase the competitiveness of the Exchange with other options exchanges that also offer increased incentives for higher volume symbols.

It is also not unfairly discriminatory to provide for a reduced fee for Firm and Broker Dealer orders in select symbols to attract business in certain issues to the Floor. Firms and Broker Dealers are generally represented on the Floor by Floor Brokers and providing a reduced fee in certain symbols incents them to have their orders executed on the Trading Floor where other participants are already present. Further, the proposal is not unfairly discriminatory in its treatment of Firms and Broker Dealers vis-à-vis Market Makers because Firms and Broker Dealers have their orders brought to the Floor for execution whereas Market Makers are providing liquidity for the orders. Market Makers are present and obligated to respond to a call for markets, and in return, Market Makers are charged a lower fee in all Manual executions, with the exception being select symbols. In addition, the Exchange believes that by providing a lower fee to Firm and Broker Dealer orders brought to the Floor in a highly competitive issue, Market Makers are provided a greater opportunity to interact with order flow, which in turn benefits market participants.

The proposed fee change is also not unfairly discriminatory because the reduced fee is available to any Firm or Broker Dealer.

Additionally, the proposed fee is an equitable allocation of fees because the intent is to create an incentive for non-Market Maker order flow to the Exchange, which will provide additional opportunities for Market Makers and other participants alike.

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,[9] 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 incents Firm and Broker Dealers to have their orders brought to the Floor by offering a competitive rate in active issues.

The Exchange also believes that the proposed fee change will increase competition among exchanges where market share is very fairly spread out amongst five of the twelve exchanges, but where, in this active issue, one exchange has a disproportionate amount (30%) of market share. The Exchange believes that the proposed fee change may provide a competitive incentive to market participants. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues, and providing a reduced fee in certain select symbols for Firm and Broker Dealer orders that participate in Manual Executions allows OTP firms to attract additional business which benefits all participants. 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)[10] of the Act and subparagraph (f)(2) of Rule 19b–4[11] 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)[12] 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–2014–74 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-2014–74. 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

a Firm. At least one other option exchange (ISE) lists VXX among its select symbols. *See supra* n. 5.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4) and (5).

[9] 15 U.S.C. 78f(b)(8).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(2).

[12] 15 U.S.C. 78s(b)(2)(B).

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–2014–74, and should be submitted on or before July 30, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2014–15963 Filed 7–8–14; 8:45 am]

BILLING CODE 8011–01–P

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72522; File No. SR–FINRA–2014–029]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Implementation of FINRA Rule 4240 (Margin Requirements for Credit Default Swaps)

July 2, 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 June 23, 2014, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to extend to July 17, 2015 the implementation of FINRA Rule 4240 (Margin Requirements for Credit Default Swaps). FINRA Rule 4240 implements an interim pilot program with respect to margin requirements for certain transactions in credit default swaps that are security-based swaps.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On May 22, 2009, the Commission approved FINRA Rule 4240,[4] which implements an interim pilot program (the ''Interim Pilot Program'') with respect to margin requirements for certain transactions in credit default swaps (''CDS'').[5] On July 11, 2013, FINRA filed a proposed rule change for immediate effectiveness extending the implementation of FINRA Rule 4240 to July 17, 2014.[6]

As explained in the Approval Order, FINRA Rule 4240, coterminous with certain Commission actions, was intended to address concerns arising from systemic risk posed by CDS, including, among other things, risks to the financial system arising from the lack of a central clearing counterparty to clear and settle CDS.[7] On July 21, 2010, President Obama signed into law the Dodd-Frank Wall Street Reform and Consumer Protection Act (the ''Dodd-Frank Act''),[8] Title VII of which established a comprehensive new regulatory framework for swaps and security-based swaps,[9] including certain CDS. The new legislation was intended, among other things, to enhance the authority of regulators to implement new rules designed to reduce risk, increase transparency, and promote market integrity with respect to such products.

Pursuant to Title VII of the Dodd-Frank Act, the CFTC and the Commission are engaged in ongoing rulemaking with respect to swaps and security-based swaps.[10] The Commission has, among other things, proposed rules with respect to capital, margin and segregation requirements for security-based swap dealers and major security-based swap participants and capital requirements for broker-dealers.[11] FINRA believes it is appropriate to extend the Interim Pilot Program for a limited period, to July 17, 2015, in light of the continuing development of the CDS business within the framework of the Dodd-Frank Act and pending the final implementation of new CFTC and SEC

[4] *See* Securities Exchange Act Release No. 59955 (May 22, 2009), 74 FR 25586 (May 28, 2009) (Order Approving File No. SR–FINRA–2009–012) (''Approval Order'').

[5] In March 2012, the SEC approved amendments to FINRA Rule 4240 that, among other things, limit at this time the rule's application to credit default swaps that are security-based swaps. *See* Securities Exchange Act Release No. 66527 (March 7, 2012), 77 FR 14850 (March 13, 2012) (Order Approving File No. SR–FINRA–2012–015).

[6] *See* Securities Exchange Act Release No. 69993 (July 16, 2013), 78 FR 43945 (July 22, 2013) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2013–030).

[7] *See* Approval Order, 74 FR at 25588–89.

[8] Public Law 111–203, 124 Stat. 1376 (2010).

[9] The terms ''swap'' and ''security-based swap'' are defined in Sections 721 and 761 of the Dodd-Frank Act. The Commodity Futures Trading Commission (''CFTC'') and the Commission jointly have approved rules to further define these terms. *See* Securities Exchange Act Release No. 67453 (July 18, 2012), 77 FR 48208 (August 13, 2012) (Joint Final Rule; Interpretations; Request for Comment on an Interpretation: Further Definition of ''Swap,'' ''Security-Based Swap,'' and ''Security-Based Swap Agreement''; Mixed Swaps; Security-Based Swap Agreement Recordkeeping). *See also* Securities Exchange Act Release No. 66868 (April 27, 2012), 77 FR 30596 (May 23, 2012) (Joint Final Rule; Joint Interim Final Rule; Interpretations: Further Definition of ''Swap Dealer,'' ''Security-Based Swap Dealer,'' ''Major Swap Participant,'' ''Major Security-Based Swap Participant'' and ''Eligible Contract Participant'').

[10] *See, e.g.,* Securities Exchange Act Release No. 67177 (June 11, 2012), 77 FR 35625 (June 14, 2012) (Statement of General Policy on the Sequencing of the Compliance Dates for Final Rules Applicable to Security-Based Swaps).

[11] *See* Securities Exchange Act Release No. 68071 (October 18, 2012), 77 FR 70214 (November 23, 2012) (Proposed Rule: Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers). *See also* Securities Exchange Act Release No. 71958 (April 17, 2014), 79 FR 25194 (May 2, 2014) (Proposed Rule: Recordkeeping and Reporting Requirements for Security-Based Swap Dealers, Major Security-Based Swap Participants, and Broker-Dealers; Capital Rule for Certain Security-Based Swap Dealers).

rules pursuant to Title VII of that legislation. FINRA is considering proposing additional amendments to the Interim Pilot Program.

FINRA has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, such that FINRA can implement the proposed rule change immediately. The proposed rule change will expire on July 17, 2015.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[12] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change is consistent with the Act because, in light of the continuing development of the CDS business within the framework of the Dodd-Frank Act and pending the final implementation of new CFTC and SEC rules pursuant to Title VII of that legislation, extending the implementation of the margin requirements as set forth by FINRA Rule 4240 will help to stabilize the financial markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. FINRA believes that extending the implementation of FINRA Rule 4240 for a limited period, to July 17, 2015, in light of the continuing development of the CDS business within the framework of the Dodd-Frank Act and pending the final implementation of new CFTC and SEC rules pursuant to Title VII of that legislation, helps to promote stability in the financial markets and regulatory certainty for members.

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.

[12] 15 U.S.C. 78*o*–3(b)(6).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [13] and Rule 19b–4(f)(6) thereunder.[14]

FINRA has requested that the Commission waive the five-day pre-filing notice requirement specified in Rule 19b–4(f)(6)(iii) under the Act.[15]

FINRA also has requested that the Commission waive the 30-day operative delay, so that the proposed rule change may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.[16] This will allow the Interim Pilot Program to continue without interruption and extend the benefits of a pilot program that the Commission approved and previously extended. For these reasons, the Commission designates the proposed rule change to be operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 240.19b–4(f)(6)(iii). Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time a designated by the Commission. The Commission has waived the five-day pre-filing period in this case.

[16] For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2014–029 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–FINRA–2014–029. 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 a.m. and 3 p.m.

Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2014–029 and should be submitted on or before July 30, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2014–15961 Filed 7–8–14; 8:45 am]

BILLING CODE 8011–01–P

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72530; File No. SR–CME–2014–24]

Self-Regulatory Organizations; Chicago Mercantile Exchange Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Settlement Procedures Regarding Five CME Cleared OTC FX Spot, Forward and Swap Contracts

July 3, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 23, 2014, Chicago Mercantile Exchange Inc. (''CME'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II and III below, which Items have been primarily prepared by CME. CME filed the proposal pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(4)(ii)[4] thereunder, so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CME is filing proposed rule changes that are limited to its business as a derivatives clearing organization (''DCO''). More specifically, the proposed rule changes contain amendments to certain aspects of CME's settlement procedures for five of CME's Cleared Over-the-Counter Foreign Exchange Spot, Forward and Swap Contracts.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CME included statements concerning the purpose 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. CME 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).

[4] 17 CFR 240.19b–4(f)(4)(ii).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

CME is registered as a DCO with the Commodity Futures Trading Commission (''CFTC'') and offers clearing services for many different futures and swaps products. The proposed rule changes that are the subject of this filing are limited to CME's business as a DCO offering clearing services for CFTC-regulated swaps products. CME currently offers clearing services for cleared-only OTC FX contracts on a number of different currency pairs. These CME Cleared OTC FX Spot, Forward and Swap Contracts are non-deliverable foreign currency forward contracts and, as such, are considered to be ''swaps'' under applicable regulatory definitions.[5] CME proposes to make amendments to five of these contracts. There is currently no open interest in these contracts.

The amendments would impact the following CME rules:

- CME Rule 277H.02.A.—Day of Cash Settlement and 277H.02.B.—[Reserved] and the addition of an Interpretation of Chapter 277H of Cleared OTC U.S. Dollar/Peruvian Nuevo Sol (USD/PEN) Spot, Forwards and Swaps Contracts (Rulebook Chapter: 277H; Code: USDPEN);
- CME Rule 273H.02.A.—Day of Cash Settlement and 273H.02.B.—[Reserved] and the addition of an Interpretation of Chapter 273H of Cleared OTC U.S. Dollar/Columbian Peso (USD/COP) Spot, Forwards and Swaps Contracts (Rulebook Chapter: 273H; Code: USDCOP);
- CME Rule 274H.02.B.—Procedures if No Cash Settlement Price is Available of Cleared OTC U.S. Dollar/Chilean Peso (USD/CLP) Spot, Forwards and Swaps Contracts (Rulebook Chapter: 274H; Code: USDCLP);
- CME Rule 257H.02.A.—Day of Cash Settlement of Cleared OTC U.S. Dollar/Brazilian Real (USD/BRL) Spot, Forwards and Swaps Contracts (Rulebook Chapter: 257H; Code: USDBRL); and
- CME Rule 283H.02.A.—Day of Cash Settlement of Cleared OTC U.S. Dollar/Philippines Peso (USD/PHP) Spot, Forwards and Swaps Contracts (Rulebook Chapter: 283H; Code: USDPHP).

[5] *See* Commodity Futures Trading Commission and Securities and Exchange Commission Joint Final Rule Defining ''Swap,'' ''Security-Based Swap,'' and ''Security-Based Swap Agreement;'' Mixed Swaps; Security-Based Swap Agreement Recordkeeping; Final Rule, 77 FR 48207, 48255 (August 13, 2012).

In summary, the amendments would modify the rules above to align them with procedures currently used in the over-the-counter (OTC) non-deliverable forward (NDF) market in order to reduce basis risk for market participants.

The rules governing the cleared only USD/PEN and USD/COP contracts are being conformed to internationally accepted practices. The amendments would include new procedures to settle these contracts to the EMTA COP/EMTA PEN Indicative Survey Rate, as applicable, when the ''Tasa Representativa del Mercado or TRM'' Colombian peso per U.S. dollar rate or the ''PEN INTERBANK AVE (PEN05)'' Peruvian Nuevo Sol per U.S. dollar rate, as applicable, are unavailable. The new procedures are designed to follow current cash market practices by instituting certain back-up survey processes that would be available in the event the primary survey rates are unavailable. The back-up process is administered by EMTA, a prominent trade group for the emerging markets trading and investment community, and involves the consolidation of survey results gathered through polling of a set of participating banks.

The amendments to the USD/BRL and USD/PPH contracts are also designed to conform the rules to internationally accepted practices. For example, the amendments specify that, for each applicable cleared contract for the valid value date for cash settlement in one or two business days, as applicable, for the appropriate currency. Each contract would be liquidated under the rules by cash settlement at a price equal to the daily final settlement price.[6]

CME is amending the CME Rulebook regarding the USD/CLP contract to specify that in the event that the ''CLP DOLAR OBS (CLP10)'' Chilean pesos per U.S. dollar rate is not published on a valid date for cash settlement, and the EMTA CLP Indicative Survey does not provide a rate, then Force Majeure shall be in effect.

[6] Based on Staff's conversation with CME personnel on June 30, 2014, CME provided the following clarification for this paragraph:

The amendments to the USD/BRL and USD/PHP contracts are also designed to conform the rules to internationally accepted practices. For example, Rule 257H.02.A is being amended to read as follows: ''Each Cleared OTC Contract, for a valid value date for cash settlement in two Business Days, shall be liquidated by cash settlement at a price equal to the daily Final Settlement Price for that day.'' The previous formulation of Rule 257H.02.A specified one business day. In contrast, the language of Rule 283H.02.A is being amended to specify: ''Each Cleared OTC Contract, for the valid value date for cash settlement in one Business Day, shall be liquidated by cash settlement at a price equal to the daily Final Settlement Price (FSP) for that day.'' The previous formulation of Rule 283H.02.A specified two business days.

The changes that are described in this filing are limited to CME's business as a DCO clearing products under the exclusive jurisdiction of the CFTC and do not materially impact CME's security-based swap clearing business in any way. The changes will be effective on filing. CME notes that it has also certified the proposed rule changes that are the subject of this filing to its primary regulator, the CFTC, in a separate filing, CME Submission No. 14–175. The text of the CME proposed rule amendments is attached as Exhibit 5 to CME's filing with the Commission, with additions underlined and deletions in brackets.

CME believes the proposed rule changes are consistent with the requirements of the Exchange Act including Section 17A of the Exchange Act.[7] CME is proposing the amendments to align its current rules related to five OTC FX swap contracts more closely with procedures currently used in the OTC NDF market for the purpose of reducing basis risk for market participants. These amendments which are designed to reduce basis risk will benefit market participants clearing OTC FX swaps contracts with CME and, as such, should be seen to be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivatives agreements, contracts, and transactions, to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, and, in general, to protect investors and the public interest consistent with Section 17A(b)(3)(F) of the Exchange Act.[8]

Furthermore, the proposed changes are limited in their effect to products offered under CME's authority to act as a DCO. The products that are the subject of this filing are under the exclusive jurisdiction of the CFTC. As such, the proposed CME changes are limited to CME's activities as a DCO clearing swaps that are not security-based swaps, futures that are not security futures and forwards that are not security forwards. CME notes that the policies of the CFTC with respect to administering the Commodity Exchange Act are comparable to a number of the policies underlying the Exchange Act, such as promoting market transparency for over-the-counter derivatives markets, promoting the prompt and accurate clearance of transactions and protecting investors and the public interest.

[7] 15 U.S.C. 78q–1.

[8] 15 U.S.C. 78q–1(b)(3)(F).

Because the proposed changes are limited in their effect to OTC FX products offered under CME's authority to act as a DCO, the proposed changes are properly classified as effecting a change in an existing service of CME that:

(a) primarily affects the clearing operations of CME with respect to products that are not securities, including futures that are not security futures, swaps that are not security-based swaps or mixed swaps; and forwards that are not security forwards; and

(b) does not significantly affect any securities clearing operations of CME or any rights or obligations of CME with respect to securities clearing or persons using such securities-clearing service.

As such, the changes are therefore consistent with the requirements of Section 17A of the Exchange Act[9] and are properly filed under Section 19(b)(3)(A)[10] and Rule 19b–4(f)(4)(ii)[11] thereunder.

B. Self-Regulatory Organization's Statement on Burden on Competition

CME does not believe that the proposed rule change will have any impact, or impose any burden, on competition. The proposed amendments are designed to align CME's current rules related to five OTC FX swap contracts more closely with procedures currently used in the OTC NDF market for the purpose of reducing basis risk for market participants and are operational processing changes. These operational processing changes will help reduce market participants' basis risk and should not be seen to impact competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

CME has not solicited, and does not intend to solicit, comments regarding this proposed rule change. CME has not received any unsolicited written comments from interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)[12] of the Act and Rule 19b–4(f)(4)(ii)[13] 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.

[9] 15 U.S.C. 78q–1.

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(4)(ii).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(4)(ii).

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–CME–2014–24 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–CME–2014–24. 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 CME and on CME's Web site at *http://www.cmegroup.com/market-regulation/rule-filings.html.*

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–CME–2014–24 and should be submitted on or before July 30, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2014–16045 Filed 7–8–14; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72526; File No. SR–NYSEArca–2014–67]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1, Relating to the Listing and Trading of WBI SMID Tactical Growth Shares; WBI SMID Tactical Value Shares; WBI SMID Tactical Yield Shares; WBI SMID Tactical Select Shares; WBI Large Cap Tactical Growth Shares; WBI Large Cap Tactical Value Shares; WBI Large Cap Tactical Yield Shares; WBI Large Cap Tactical Select Shares; WBI Tactical Income Shares; and WBI Tactical High Income Shares under NYSE Arca Equities Rule 8.600

July 2, 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 June 20, 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 and II below, which Items have been prepared by the self-regulatory organization. On July 1, 2014, the Exchange filed Amendment No. 1 to the proposed rule change.[4] The Commission is publishing this notice, as modified by Amendment No. 1, 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''): WBI SMID Tactical Growth Shares; WBI SMID Tactical Value Shares; WBI SMID Tactical Yield Shares; WBI SMID Tactical Select Shares; WBI Large Cap Tactical Growth Shares; WBI Large Cap Tactical Value Shares; WBI Large Cap Tactical Yield Shares; WBI Large Cap Tactical Select Shares; WBI Tactical Income Shares; and WBI Tactical High Income Shares. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade shares (''Shares'') of the following under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares[5] on the Exchange: WBI SMID Tactical Growth Shares; WBI SMID Tactical Value Shares; WBI SMID Tactical Yield Shares; WBI SMID Tactical Select Shares; WBI Large Cap Tactical Growth Shares; WBI Large Cap Tactical Value Shares; WBI Large Cap Tactical Yield Shares; WBI Large Cap Tactical Select Shares; WBI Tactical Income Shares; and WBI Tactical High Income Shares (each, a ''Fund'' and, collectively, the ''Funds''). The Shares will be offered by Absolute Shares Trust (the ''Trust''),[6] a statutory trust organized under the laws of the State of Delaware and registered with the Commission as an open-end management investment company.[7] Millington Securities, Inc. will be the investment adviser for each Fund (the ''Adviser'') and WBI Investments, Inc. will be the sub-adviser to each Fund (the ''Sub-Adviser'').[8] U.S. Bank,

[14] 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] In Amendment No. 1, the Exchange makes the following clarifications: That (1) the WBI SMID Tactical Growth Shares ETF may invest in *debt-based* exchange-traded notes; (2) ''Options Strategies'' include the use of options that overlie: exchange-listed equity indices; and futures on debt, interest rates, and currencies; and (3) ''Financial Instruments'' include forward contracts on currencies.

[5] 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), as amended (''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.

[6] The Trust is registered under the 1940 Act. On February 28, 2014, the Trust filed with the Commission an amended registration statement on Form N–1A relating to the Funds (File Nos. 333–192733 and 811–22917) (the ''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 Adviser and the actively managed exchange-traded trusts it advises, including the Trust, under the 1940 Act. *See* Investment Company Act Release No. 30543 (May 29, 2013) (File No. 812–13886) (the ''Exemptive Order'').

[7] The Commission has previously approved the listing and trading on the Exchange of other of actively managed funds under Rule 8.600. *See, e.g.,* Securities Exchange Act Release Nos. 60717 (September 24, 2009), 74 FR 50853 (October 1, 2009) (SR–NYSEArca–2009–74) (order approving listing of Four Grail Advisors RP Exchange-Traded Funds) and 67320 (June 29, 2012), 77 FR 39763 (July 5, 2012) (SR–NYSEArca–2012–44) (order approving listing of the iShares Strategic Beta U.S. Large Cap Fund and iShares Strategic Beta U.S. Small Cap Fund).

[8] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). The Adviser is wholly owned by WBI Trading Company, Inc., and the Sub-Adviser is an affiliate of WBI Trading Company. The Adviser and the Sub-Adviser are each registered as an investment adviser under the Advisers Act. As a result, the Adviser, the Sub-Adviser and their 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, the Adviser, the Sub-Adviser, and their related personnel are subject to the provisions of Rule 206(4)–7 under the Advisers Act, which 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

Continued

National Association (''Administrator'') will be the administrator, custodian, transfer agent and securities lending agent for each Fund. Foreside Fund Services, LLC (''Distributor'') will be the distributor for each Fund.

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. 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 a registered broker-dealer and is affiliated with a broker-dealer. The Sub-Adviser is also affiliated with a broker-dealer. In such capacity, the Adviser and Sub-Adviser will implement a firewall with respect to its relevant personnel and its broker-dealer affiliates 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. In the future, should (a) the Adviser and/or Sub-Adviser become newly affiliated with another broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement a firewall with respect to such relevant personnel and/or its broker-dealer affiliate 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.

(who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

Common Fund Strategy and Characteristics

Each Fund will be an actively-managed exchange-traded fund (''ETF'') and will not seek to replicate the performance of a specified index.

According to the Registration Statement, the Sub-Adviser will manage each Fund's portfolio based on a proprietary selection process as described below (the ''Selection Process''). The Selection Process will attempt to provide consistent, attractive returns net of expenses with potentially less volatility and risk to capital than traditional approaches, whatever market conditions may be. Each Fund will define an absolute return approach to investment management in this way. The Selection Process will include a buy discipline and a sell discipline as described below.

The Sub-Adviser will use quantitative computer screening of fundamental stock information to evaluate domestic and foreign small-capitalization and mid-capitalization equity securities in an attempt to find companies with attractive characteristics worldwide. Dividend payments may be considered as part of the evaluation process.

Once securities are identified, the Sub-Adviser will utilize an overlay of technical analysis to confirm timeliness of security purchases. The Sub-Adviser will then add qualifying securities using available cash within the parameters of a Fund's target allocations. In addition, the Sub-Adviser will use a proprietary bond model to assess the appropriate duration of any exposure to debt securities. Duration is a measure of a fixed income security's expected price sensitivity to changes in interest rates. Securities with longer durations are expected to experience greater price movements than securities with shorter durations for the same change in prevailing interest rates. A portion of a Fund's bond exposure may also be invested to pursue perceived opportunities in varying segments of the debt market. This systematic process of identifying, evaluating, and purchasing securities will constitute the Sub-Adviser's buy discipline for each Fund.

According to the Registration Statement, once securities are purchased, the Sub-Adviser will maintain a strict sell discipline that attempts to control the effects of the volatility of each invested position on a Fund's value. If the security's price stays within this range of acceptable prices, the security will remain in a Fund. If the security's price falls below the bottom of this acceptable price range, the security will be sold. This will result in a responsive process that actively adjusts a Fund's allocation by causing it to become more fully invested or by raising cash to protect capital. During periods of high market volatility a significant amount of Fund holdings may be sold, resulting in a large allocation to cash in a Fund. The Selection Process will be run daily and cash will remain in the portfolio until a cash equivalent or a new security is purchased.

According to the Registration Statement, each Fund will be, under normal market conditions,[9] investing at least 80% of its net assets in securities according to its individual principal investment strategies as described below with respect to each Fund.

However, each Fund may temporarily depart from its principal investment strategy by making short-term investments in cash, cash equivalents, high-quality short-term debt securities, and money market instruments for temporary defensive purposes in response to adverse market, economic or political conditions. According to the Registration Statement, each Fund may acquire the following short-term investments: (1) Certificates of deposit issued by commercial banks as well as savings banks or savings and loan associations; (2) bankers' acceptances; (3) time deposits; and (4) commercial paper and short term notes rated at the time of purchase ''A–2'' or higher by Standard & Poor's®, ''Prime-1'' by Moody's® Investors Service, Inc., or similarly rated by another nationally recognized statistical rating organization or, if unrated, will be determined by the Sub-Adviser to be of comparable quality, as well as U.S. Government obligations.

According to the Registration Statement, certain Funds may use American depositary receipts (''ADR''), European depositary receipts (''EDR'') and Global depositary receipts (''GDR'') (collectively, ''Depositary Receipts'') when, in the discretion of the Sub-Adviser, the use of such securities is warranted for liquidity, pricing, timing or other reasons. No Fund will invest more than 10% of its net assets in unsponsored Depositary Receipts.

[9] The term ''under normal market conditions'' or ''under normal circumstances'' includes, but is not limited to, the absence of adverse market, economic, political or other conditions, including extreme volatility or trading halts in the fixed income 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.

According to the Registration Statement, each Fund that invests primarily in equities as described further below may also invest up to 20% of its principal investment assets in high-yield bonds (also known as ''junk bonds'').

Individual Fund Investments

WBI SMID Tactical Growth Shares

According to the Registration Statement, the WBI SMID Tactical Growth Shares will seek long-term capital appreciation and the potential for current income, while also seeking to protect principal during unfavorable market conditions.

Principal Investments

According to the Registration Statement, under normal market conditions, the Fund will invest at least 80% of its net assets in the exchange-listed equity securities of small-capitalization and mid-capitalization [10] domestic and foreign [11] companies selected on the basis of the Selection Process.

The types of equity securities in which the Fund will invest are common stocks, preferred stocks, rights, warrants, convertibles, master limited partnerships (exchange-traded businesses organized as partnerships (''MLPs'')), and exchange-traded real estate investment trusts (''REITs''). The Fund may invest up to 50% of the Fund's principal investments in the securities of issuers in emerging markets, which could consist of Depositary Receipts, dollar denominated foreign securities and foreign equity securities. The Fund's principal investments may also consist of ETFs [12] that invest predominantly in small-capitalization and mid-capitalization equity securities and will be considered small-capitalization and mid-capitalization equity securities for purposes of the Fund's equity allocation target.

Non-Principal Investments

While the Fund, under normal circumstances, will invest at least 80% of its net assets in its investments as described above, the Fund may directly invest in certain other investments, as described below. According to the Registration Statement, the Fund may invest up to 20% of the Fund's net assets in large-capitalization equities,[13] domestic and foreign debt securities (including junk bonds), ETFs (other than ETFs noted in the Principal Investment section for the Fund, above, that invest predominantly in small-capitalization and mid-capitalization equity securities), and/or in ''Option [sic] Strategies'' (as defined below) to enhance the Fund's returns or to mitigate risk and volatility.

The Fund may invest in the following types of debt securities: Fixed, floating and variable corporate debt securities, U.S. Government securities, debt securities of foreign issuers, sovereign debt securities, U.S. government agency securities, and high-yield bonds. The Fund may also invest in agency and non-agency residential mortgage-backed securities (''RMBS'') and asset-backed securities.[14] The Fund may also invest in debt-based exchange-traded notes (''ETNs'').[15] The Fund expects to invest in debt securities of all maturities, from less than one year up to thirty years, depending on the portfolio manager's assessment of the risks and opportunities along the yield curve. According to the Registration Statement, the yield curve refers to the differences in yield among debt assets of varying maturities.

In addition, the Fund may utilize equity options for individual securities including writing (selling) covered calls, buying puts, using combinations of calls and puts, using combinations of calls and combinations of puts, and entering into cap and floor agreements.[16] The Fund may also use options overlying: Exchange listed equity indices; and futures on debt, interest rates, and currencies.[17] Options may be both exchange-traded and over-the-counter (''OTC'') options (collectively, the ''Options Strategies'').

The Fund may also enter into the following types of financial instruments: futures overlying equity indexes, interest rates, debt instruments, and currencies; government debt repurchase agreements; depository receipt conversion swaps [18] into and out of the underlying stock; and forward contracts on currencies (collectively, the ''Financial Instruments'').[19] Cash balances arising from the use of Financial Instruments typically will be held in money market instruments.

[10] According to the Registration Statement, the Sub-Adviser considers small-capitalization and mid-capitalization companies those that are not in the top ten percent of the securities in their primary market when ranked in order of market capital. For publicly traded U.S. companies in the current environment, this would include companies with market capitalizations of less than approximately $17 billion. Companies below the ten percent threshold for small and mid-sized companies in non-U.S. markets may have capitalizations that differ from this U.S. Dollar equivalent amount because of the wide range of market capitalizations of companies available for investment in those markets.

[11] The Adviser has represented that each Fund will generally invest in equity 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. For each Fund, not more than 10% of the net assets invested in exchange-traded equity securities shall consist of equity securities whose principal market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement. Furthermore, for each Fund not more than 10% of the net assets invested in futures contracts or options contracts shall consist of futures contracts or options contracts whose principal market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

[12] For purposes of this filing, ETFs include 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). The ETFs all will be listed and traded in the U.S. on registered exchanges. The ETFs in which a Fund may invest will primarily be index-based exchange-traded funds that hold substantially all of their assets in securities representing a specific index. While each Fund may invest in inverse ETFs, a Fund will not invest in leveraged (*e.g.,* 2X, −2X, 3X or −3X) ETFs.

[13] According to the Registration Statement, large capitalization companies are those that are in the top ten percent of the securities in their primary market when ranked in order of market capital.

[14] ''Non-agency'' securities are financial instruments that have been issued by an entity that is not a government-sponsored agency, such as the Federal National Mortgage Association (''Fannie Mae''), Federal Home Loan Mortgage Corporation (''Freddie Mac''), Federal Home Loan Banks, or the Government National Mortgage Association (''Ginnie Mae'').

[15] *See* Amendment No. 1, *supra* note 4. ETNs are debt obligations of investment banks which are traded on exchanges and the returns of which are linked to the performance of market indexes and include securities listed and traded on the Exchange under NYSE Arca Equities Rule 5.2(j)(6) (''Index-Linked Securities''). In addition to trading ETNs on exchanges, investors may redeem ETNs directly with the issuer on a weekly basis, typically in a minimum amount of 50,000 units, or hold the ETNs until maturity.

[16] Caps and floors are put and call options on futures associated with interest rates used to help manage interest rate risk by establishing an upper (''cap'') and a lower (''floor'') hedge. A cap, also called a ceiling, is a call option on an interest rate. An interest rate cap is a series of component options, or ''caplets'', for each period the cap exists. A caplet is designed to provide a hedge against a rise in the benchmark interest rate, such as the London Interbank Offered Rate (LIBOR), for a stated period. A floor is the mirror image of the cap. The interest rate floor, like the cap, consists of a series of component options, except that they are put options and the series components are referred to as ''floorlets.''

[17] *See* Amendment No. 1, *supra* note 4.

[18] A depository receipt conversion swap is used to move Fund holdings between foreign ordinaries and listed depository receipts using a receipt agent. The swap is achieved by purchasing ADRs, EDRs or GDRs or by purchasing the underlying domestic shares of the company on the primary exchange and then swapping them for the relevant depositary receipt. The conversion occurs when the depository receipt agent takes the depositary receipt and submits the receipt for conversion to the trust bank for a fee, and takes delivery of the foreign ordinaries.

[19] *See* Amendment No. 1, *supra* note 4.

WBI SMID Tactical Value Shares

According to the Registration Statement, the WBI SMID Tactical Value Shares will seek long-term capital appreciation and the potential for current income, while also seeking to protect principal during unfavorable market conditions.

Principal Investments

According to the Registration Statement, under normal market conditions, the Fund will invest at least 80% of its net assets in the exchange-listed equity securities of small-capitalization and mid-capitalization domestic and foreign companies selected by the Sub-Adviser utilizing the Selection Process.

The types of equity securities in which the Fund will invest are common stocks, preferred stocks, rights, warrants, convertibles, MLPs, and REITs. The Fund may invest up to 50% of the Fund's principal investments in the securities of issuers in emerging markets, which could consist of Depositary Receipts, dollar denominated foreign securities and foreign equity securities. The Fund's principal investments may also consist of ETFs that invest predominantly in small-capitalization and mid-capitalization equity securities and will be considered small-capitalization and mid-capitalization equity securities for purposes of the Fund's equity allocation target.

Non-Principal Investments

While the Fund, under normal circumstances, will invest at least 80% of its net assets in its investments as described above, the Fund may directly invest in certain other investments, as described below. According to the Registration Statement, the Fund may invest up to 20% of its net assets in large-capitalization equities, domestic and foreign debt securities (including junk bonds), ETFs (other than ETFs noted in the Principal Investments section for the Fund, above, that invest predominantly in small-capitalization and mid-capitalization equity securities), and/or in Option [sic] Strategies to enhance the Fund's returns or to mitigate risk and volatility. The Fund may also use Financial Instruments. Cash balances arising from the use of Financial Instruments typically will be held in money market instruments.

The types of debt securities in which the Fund will invest are fixed, floating and variable corporate debt securities, U.S. Government securities, debt securities of foreign issuers, sovereign debt securities, U.S. government agency securities, and high-yield bonds. The Fund may also invest in debt-based ETNs. The Fund expects to invest in debt securities of all maturities, from less than one year up to thirty years, depending on the portfolio manager's assessment of the risks and opportunities along the yield curve.

WBI SMID Tactical Yield Shares

According to the Registration Statement, the WBI SMID Tactical Yield Share will seek long-term capital appreciation and the potential for current income, while also seeking to protect principal during unfavorable market conditions.

Principal Investments

Under normal market conditions, the Fund will invest at least 80% of its net assets in the exchange-listed dividend-paying equity securities of small-capitalization and mid-capitalization domestic and foreign companies selected by the Sub-Adviser utilizing the Selection Process.

The types of equity securities in which the Fund will invest are common stocks, preferred stocks, rights, warrants, convertibles, MLPs, and REITs.

The Fund may invest up to 50% of the Fund's principal investments in the securities of issuers in emerging markets, which could consist of Depositary Receipts, dollar denominated foreign securities and foreign equity securities. The Fund's principal investments may also consist of ETFs that invest predominantly in small-capitalization and mid-capitalization equity securities and will be considered small-capitalization and mid-capitalization equity securities for purposes of the Fund's equity allocation target.

Non-Principal Investments

While the Fund, under normal circumstances, will invest at least 80% of its net assets in its investments as described above, the Fund may directly invest in certain other investments, as described below. According to the Registration Statement, the Fund may invest up to 20% of the Fund's net assets in large-capitalization equities, domestic and foreign debt securities, high-yield bonds and/or in Option [sic] Strategies and Financial Instruments. Cash balances arising from the use of Financial Instruments typically will be held in money market instruments.

The types of debt securities in which the Fund will invest are fixed, floating and variable corporate debt securities, U.S. Government securities, debt securities of foreign issuers, sovereign debt securities, U.S. government agency securities, and high-yield bonds. The Fund may also invest in debt-based ETNs and ETFs. The Fund expects to invest in debt securities of all maturities, from less than one year up to thirty years, depending on the portfolio manager's assessment of the risks and opportunities along the yield curve.

WBI SMID Tactical Select Shares

According to the Registration Statement, the WBI SMID Tactical Select Shares will seek long-term capital appreciation and the potential for current income, while also seeking to protect principal during unfavorable market conditions.

Principal Investments

Under normal market conditions, the Fund will invest at least 80% of its net assets in the exchange-listed equity securities of small-capitalization and mid-capitalization domestic and foreign companies selected by the Sub-Adviser utilizing the Selection Process.

The types of equity securities in which the Fund will invest are common stocks, preferred stocks, rights, warrants, convertibles, MLPs, and REITs.

The Fund may invest up to 50% of the Fund's principal investments in the securities of issuers in emerging markets, which could consist of Depositary Receipts, dollar denominated foreign securities and foreign equity securities. The Fund may also invest up to 20% of the Fund's principal investments in junk bonds. The Fund's principal investments may also consist of ETFs that invest predominantly in small-capitalization and mid-capitalization equity securities and will be considered small-capitalization and mid-capitalization equity securities for purposes of the Fund's equity allocation target.

Non-Principal Investments

While the Fund, under normal circumstances, will invest at least 80% of its net assets in its investments as described above, the Fund may directly invest in certain other investments, as described below. According to the Registration Statement, the Fund may invest up to 20% of the Fund's net assets in large-capitalization equities, domestic and foreign debt securities, high-yield bonds and/or in Option [sic] Strategies and Financial Instruments. Cash balances arising from the use of Financial Instruments typically will be held in money market instruments.

The types of debt securities in which the Fund will invest are fixed, floating and variable corporate debt securities, U.S. Government securities, debt securities of foreign issuers, sovereign debt securities, U.S. government agency securities, and high-yield bonds. The Fund may also invest in debt-based ETNs and ETFs. The Fund expects to invest in debt securities of all maturities, from less than one year up to thirty years, depending on the portfolio manager's assessment of the risks and opportunities along the yield curve.

WBI Large Cap Tactical Growth Shares

According to the Registration Statement, the WBI Large Cap Tactical Growth Shares objectives are to seek long-term capital appreciation and the potential for current income, while also seeking to protect principal during unfavorable market conditions.

Principal Investments

Under normal market conditions, the Fund will invest at least 80% of its net assets in the exchange-listed equity securities of large capitalization domestic and foreign companies selected by the Sub-Adviser utilizing the Selection Process.

The types of equity securities in which the Fund will invest are common stocks, preferred stocks, rights, warrants, convertibles, MLPs, and REITs.

The Fund may invest up to 50% of the Fund's principal investments in the securities of issuers in emerging markets, which could consist of Depositary Receipts, dollar denominated foreign securities and foreign equity securities. The Fund's principal investments may also consist of ETFs that invest predominantly in small-capitalization and mid-capitalization equity securities and will be considered small-capitalization and mid-capitalization equity securities for purposes of the Fund's equity allocation target.

Non-Principal Investments

While the Fund, under normal circumstances, will invest at least 80% of its net assets in its investments as described above, the Fund may directly invest in certain other investments, as described below. According to the Registration Statement, up to 20% of the Fund's net assets may be invested in small-capitalization and mid-capitalization equities, domestic and foreign debt securities, and high-yield bonds and/or in Option [sic] Strategies and Financial Instruments. Cash balances arising from the use of Financial Instruments typically will be held in money market instruments.

The types of debt securities in which the Fund will invest are fixed, floating and variable corporate debt securities, U.S. Government securities, debt securities of foreign issuers, sovereign debt securities, U.S. government agency securities, and high-yield bonds. The Fund may also invest in debt-based ETNs and ETFs. The Fund expects to invest in debt securities of all maturities, from less than one year up to thirty years, depending on the portfolio manager's assessment of the risks and opportunities along the yield curve.

WBI Large Cap Tactical Value Shares

According to the Registration Statement, the WBI Large Cap Tactical Value Shares objectives are to seek long-term capital appreciation and the potential for current income, while also seeking to protect principal during unfavorable market conditions.

Principal Investments

Under normal market conditions, the Fund will invest at least 80% of its net assets in the exchange-listed equity securities of large capitalization domestic and foreign companies selected by the Sub-Adviser utilizing the Selection Process.

The types of equity securities in which the Fund will invest are common stocks, preferred stocks, rights, warrants, convertibles, MLPs, and REITs.

The Fund may invest up to 50% of the Fund's principal investments in the securities of issuers in emerging markets, which could consist of Depositary Receipts, dollar denominated foreign securities and foreign equity securities. The Fund may also invest up to 20% of the Fund's principal investments in junk bonds. The Fund's principal investments may also consist of ETFs that invest predominantly in small-capitalization and mid-capitalization equity securities and will be considered small-capitalization and mid-capitalization equity securities for purposes of the Fund's equity allocation target.

Non-Principal Investments

While the Fund, under normal circumstances, will invest at least 80% of its net assets in its investments as described above, the Fund may directly invest in certain other investments, as described below. According to the Registration Statement, up to 20% of the Fund's net assets may be invested in small-capitalization and mid-capitalization equities, domestic and foreign debt securities, and high-yield bonds and/or in Option [sic] Strategies and Financial Instruments. Cash balances arising from the use of Financial Instruments typically will be held in money market instruments.

The types of debt securities in which the Fund will invest are fixed, floating and variable corporate debt securities, U.S. Government securities, debt securities of foreign issuers, sovereign debt securities, U.S. government agency securities, and high-yield bonds. The Fund may also invest in debt-based ETNs and ETFs. The Fund expects to invest in debt securities of all maturities, from less than one year up to thirty years, depending on the portfolio manager's assessment of the risks and opportunities along the yield curve.

WBI Large Cap Tactical Yield Shares

According to the Registration Statement, the WBI Large Cap Tactical Yield Shares will seek long-term capital appreciation and the potential for current income, while also seeking to protect principal during unfavorable market conditions.

Principal Investments

Under normal market conditions, the Fund will invest at least 80% of its net assets in the exchange-listed dividend-paying equity securities of large capitalization domestic and foreign companies selected by the Sub-Adviser utilizing the Selection Process.

The types of equity securities in which the Fund will invest are common stocks, preferred stocks, rights, warrants, convertibles, MLPs, and REITs.

The Fund may invest up to 50% of the Fund's principal investments in the securities of issuers in emerging markets, which could consist of Depositary Receipts, dollar denominated foreign securities and foreign equity securities. The Fund may also invest up to 20% of the Fund's principal investments in high-yield bonds. The Fund's principal investments may also consist of ETFs that invest predominantly in small-capitalization and mid-capitalization equity securities and will be considered small-capitalization and mid-capitalization equity securities for purposes of the Fund's equity allocation target.

Non-Principal Investments

While the Fund, under normal circumstances, will invest at least 80% of its net assets in its investments as described above, the Fund may directly invest in certain other investments, as

described below. According to the Registration Statement, up to 20% of the Fund's net assets may be invested in small-capitalization and mid-capitalization equities, domestic and foreign debt securities, high-yield bonds and/or in Option [sic] Strategies and Financial Instruments. Cash balances arising from the use of Financial Instruments typically will be held in money market instruments.

The types of debt securities in which the Fund will invest are fixed, floating and variable corporate debt securities, U.S. Government securities, debt securities of foreign issuers, sovereign debt securities, U.S. government agency securities, and high-yield bonds. The Fund may also invest in debt-based ETNs and ETFs. The Fund expects to invest in debt securities of all maturities, from less than one year up to thirty years, depending on the portfolio manager's assessment of the risks and opportunities along the yield curve.

WBI Large Cap Tactical Select Shares

According to the Registration Statement, the WBI Large Cap Tactical Select Shares objectives are to seek long-term capital appreciation and the potential for current income, while also seeking to protect principal during unfavorable market conditions.

Principal Investments

Under normal market conditions, the Fund will invest at least 80% of its net assets in the exchange-listed equity securities of large capitalization domestic and foreign companies selected by the Sub-Adviser utilizing the Selection Process.

The types of equity securities in which the Fund will invest are common stocks, preferred stocks, rights, warrants, convertibles, MLPs, and REITs.

The Fund may invest up to 50% of the Fund's principal investments in the securities of issuers in emerging markets, which could consist of Depositary Receipts, dollar denominated foreign securities and foreign equity securities. The Fund may also invest up to 20% of the Fund's principal investments in junk bonds. The Fund's principal investments may also consist of ETFs that invest predominantly in small-capitalization and mid-capitalization equity securities and will be considered small-capitalization and mid-capitalization equity securities for purposes of the Fund's equity allocation target.

Non-Principal Investments

While the Fund, under normal circumstances, will invest at least 80% of its net assets in its investments as described above, the Fund may directly invest in certain other investments, as described below. According to the Registration Statement, up to 20% of the Fund's net assets may be invested in small-capitalization and mid-capitalization equities, domestic and foreign debt securities, and high-yield bonds and/or in Option [sic] Strategies described above and Financial Instruments. Cash balances arising from the use of Financial Instruments typically will be held in money market instruments.

The types of debt securities in which the Fund will invest are fixed, floating and variable corporate debt securities, U.S. Government securities, debt securities of foreign issuers, sovereign debt securities, U.S. government agency securities, and high-yield bonds. The Fund may also invest in debt-based ETNs and ETFs. The Fund expects to invest in debt securities of all maturities, from less than one year up to thirty years, depending on the portfolio manager's assessment of the risks and opportunities along the yield curve.

WBI Tactical Income Shares

According to the Registration Statement, the WBI Tactical Income Shares objectives are to seek current income with the potential for long-term capital appreciation, while also seeking to protect principal during unfavorable market conditions.

Principal Investments

Under normal market conditions, the Fund will invest at least 80% of its net assets in income producing debt and exchange listed equity securities of foreign and domestic issuers, including the securities of foreign and domestic corporate and governmental entities selected by the Sub-Adviser utilizing the Selection Process.

The types of debt securities in which the Fund will invest are corporate debt securities, U.S. Government securities, debt securities of foreign issuers, sovereign debt securities, U.S. government agency securities, high-yield bonds, variable and floating rate securities, and debt-based ETNs and ETFs. The Fund expects to invest in debt securities of all maturities, from less than one year up to thirty years, depending on the portfolio manager's assessment of the risks and opportunities along the yield curve.

The types of equity securities in which the Fund will invest are common stocks, preferred stocks, rights, warrants, convertibles [sic] MLPs, and REITs. The Fund may invest in companies of any size market capitalization.

The Fund may invest up to 50% of the Fund's principal investments in the securities of issuers in emerging markets, which could consist of Depositary Receipts, dollar denominated foreign securities and foreign equity securities. The Fund may also invest up to 40% of the Fund's principal investments in junk bonds. The Fund's principal investments may also consist of ETFs that invest predominantly in debt securities and will be considered debt securities for the purposes of the Fund's debt target allocation and investments in other investment companies that invest predominantly in dividend-paying equity securities are considered dividend-paying equity securities for the purposes of the fund's income producing securities target allocation.

Non-Principal Investments

While the Fund, under normal circumstances, will invest at least 80% of its net assets in its investments as described above, the Fund may directly invest in certain other investments, as described below. According to the Registration Statement, up to 20% of the Fund's net assets may be invested in exchange listed foreign and domestic equities (other than the foreign and domestic equities noted in the Principal Investment section for the Fund, above), ETFs, ETNs (other than the debt-based ETFs and ETNs noted in the Principal Investment section for the Fund, above), and/or in Option [sic] Strategies and Financial Instruments. Cash balances arising from the use of Financial Instruments typically will be held in money market instruments.

WBI Tactical High Income Shares

According to the Registration Statement, the WBI Tactical High Income Shares investment objectives are to seek high current income with the potential for long-term capital appreciation, while also seeking to protect principal during unfavorable market conditions.

Principal Investments

Under normal market conditions, the Fund will invest at least 80% of its net assets in income producing debt and exchange listed equity securities of foreign and domestic issuers, including the securities of foreign and domestic corporate and governmental entities selected by the Sub-Adviser utilizing the Selection Process.

The types of debt securities in which the Fund will invest are corporate debt securities, U.S. Government securities, debt securities of foreign issuers, sovereign debt securities, U.S. government agency securities, high-yield bonds, variable and floating rate securities, and debt-based ETNs and ETFs. The Fund expects to invest in debt securities of all maturities, from less than one year up to thirty years, depending on the portfolio manager's assessment of the risks and opportunities along the yield curve.

The types of equity securities in which the Fund will invest are common stocks, preferred stocks, rights, warrants, convertibles [sic] MLPs, and REITs. The Fund may invest in companies of any size market capitalization.

The Fund may invest up to 50% of the Fund's principal investments in the securities of issuers in emerging markets, which could consist of Depositary Receipts, dollar denominated foreign securities and foreign equity securities. The Fund may also invest up to 80% of the Fund's principal investments in junk bonds. The Fund's principal investments may also consist of ETFs that invest predominantly in debt securities and will be considered debt securities for the purposes of the Fund's debt target allocation and investments in other investment companies that invest predominantly in dividend-paying equity securities are considered dividend-paying equity securities for the purposes of the fund's income producing securities target allocation.

Non-Principal Investments

While the Fund, under normal circumstances, will invest at least 80% of its net assets in its investments as described above, the Fund may directly invest in certain other investments, as described below. According to the Registration Statement, up to 20% of the Fund's net assets may be invested in exchange listed foreign and domestic equities (other than the foreign and domestic equities noted in the Principal Investment section for the Fund, above), ETFs, ETNs (other than the debt-based ETFs and ETNs noted in the Principal Investment section for the Fund, above), and/or in Option [sic] Strategies and Financial Instruments. Cash balances arising from the use of Financial Instruments typically will be held in money market instruments.

Investment Restrictions

Each Fund will seek to qualify for treatment as a regulated investment company (''RIC'') under Subchapter M of the Internal Revenue Code of 1986, as amended.[20]

As part of its non-principal strategy, a 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.[21] Each Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in the 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 a Fund's net assets are held in illiquid securities and other illiquid assets.

According to the Registration Statement, a Fund will not invest more than 25% of its total assets, directly or indirectly, through underlying ETFs, in an individual industry, as defined by the Standard Industrial Classification Codes utilized by the Division of Corporate Finance of the Commission.[22] This limitation does not apply to investments in securities issued or guaranteed by the U.S. Government, its agencies or instrumentalities, or shares of investment companies.

According to the Registration Statement, a Fund may not purchase or sell physical commodities or physical commodity contracts unless acquired as a result of ownership of securities or other instruments issued by persons that purchase or sell commodities or commodities contracts, but this shall not prevent a Fund from purchasing, selling and entering into financial futures contracts (including futures contracts on indices of securities, interest rates and currencies), options on financial futures contracts (including futures contracts on indices of securities, interest rates and currencies), warrants, swaps, forward contracts, or other derivative instruments that are not related to physical commodities.

Net Asset Value

According to the Registration Statement, each Fund will calculate net asset value (''NAV'') of the Shares of the respective Fund using the NAV of the respective Fund. NAV per share for each Fund will be computed by dividing the value of the net assets of a Fund (*i.e.,* the Fund's total assets less total liabilities) by the total number of shares outstanding, rounded to the nearest cent; however, for purposes of determining the price of Creation Units, the NAV will be calculated to five decimal places.

For purposes of calculating NAV, portfolio securities and other assets for which market quotes are readily available will be valued at market value. Market value will generally be determined on the basis of last reported sales prices, or if no sales are reported, based on quotes obtained from a quotation reporting system, established market makers, or pricing services.

In calculating NAV, each Fund's exchange traded equity investments, including domestic and foreign common stocks, preferred stocks, rights, warrants, convertibles, Depositary Receipts, ETFs, ETNs, MLPs and REITS, will be valued at market value, which will generally be determined using the last reported official closing or last trading price on the exchange or market on which the security is primarily traded at the time of valuation or, if no sale has occurred, at the last quoted bid price on the primary market or exchange on which they are traded.

Unsponsored Depositary Receipts will be valued on the basis of the market closing price on the exchange where the stock of the foreign issuer that underlies the Depositary Receipt is listed. Debt securities, including fixed, floating and variable corporate debt securities, U.S. Government securities, debt securities of foreign issuers, sovereign debt securities, U.S. government agency securities and high-yield bonds will be valued using market quotations when available or other equivalent indications of value provided by a third-party pricing service. Mortgage-backed securities, asset-backed securities, money market instruments and Financial Instruments (with the exception of reverse repurchase agreements, discussed below) will be

[20] 26 U.S.C. 151 [sic].

[21] 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. 8901 (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 ETF. *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 Securities Act of 1933).

[22] *See* Form N–1A, Item 5. 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).

valued by relying on third-party pricing services.

Any such third-party pricing service may use a variety of methodologies to value some or all of a Fund's debt securities to determine the market price. For example, the prices of securities with characteristics similar to those held by each Fund may be used to assist with the pricing process. In addition, the pricing service may use proprietary pricing models. In certain cases, some of a Fund's debt securities may be valued at the mean between the last available bid and ask prices for such securities or, if such prices are not available, at prices for securities of comparable maturity, quality, and type.

Short-term debt instruments having a remaining maturity of 60 days or less will generally be valued at amortized cost, which approximates market value.

Exchange traded equity options are generally valued on a basis of quotes obtained from a quotation reporting system, established market makers, or 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 pricing services using data reflecting the 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.

OTC options may be valued intraday through option valuation models (*e.g.,* Black-Scholes) or using exchange traded options as a proxy, or another proxy as determined to be appropriate by the third party market data provider. Futures and options on futures will be valued at the settlement price determined by the applicable exchange.

Caps and floors will be valued using the exchange closing prices on the interest rate options.

Reverse repurchase agreements and Rule 144A securities will generally be valued at bid prices received from independent pricing services as of the announced closing time for trading in such instruments.

Investments that may be valued using fair value pricing include, but are not limited to: (1) Securities that are not actively traded, including ''restricted'' securities and securities received in private placements for which there is no public market; (2) securities of an issuer that becomes bankrupt or enters into a restructuring; (3) securities whose trading has been halted or suspended; and (4) foreign securities traded on exchanges that close before a Fund's NAV is calculated. The NAV will be calculated by the Administrator and determined each Business Day as of the close of regular trading on the Exchange (ordinarily 4:00 p.m., Eastern time (''E.T.''). The Shares of each Fund will not be priced on days on which the Exchange is closed for trading.

Indicative Intra-Day Value

According to the Registration Statement, an independent third party calculator, initially the Exchange, will calculate the Indicative Intra-Day Value (''IIV'') for each Fund during hours of trading on the Exchange by dividing the ''Estimated Fund Value'' as of the time of the calculation by the total number of outstanding Shares of that Fund. ''Estimated Fund Value'' is the sum of the estimated amount of cash held in a Fund's portfolio, the estimated amount of accrued interest owed to a Fund and the estimated value of the securities held in a Fund's portfolio, minus the estimated amount of a Fund's liabilities. The IIV will be calculated based on the same portfolio holdings disclosed on the Trust's Web site. The IIV will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session.

According to the Registration Statement, each Fund will provide the independent third party calculator with information to calculate the IIV, but a Fund will not be involved in the actual calculation of the IIV and are not responsible for the calculation or dissemination of the IIV. Each Fund makes no warranty as to the accuracy of the IIV. The IIV should not be viewed as a ''real-time'' update of NAV because the IIV may not be calculated in the same manner as NAV, which will be computed once per day.

In addition, the Portfolio Indicative Value, as defined in NYSE Arca Equities Rule 8.600 (c)(3), will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session.[23] The IIV dissemination 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.

The IIV is the same as the Portfolio Indicative Value as defined in NYSE Arca Equities Rule 8.600 (c)(3).

[23] Currently, the Exchange understands that several major market data vendors display and/or make widely available IIV taken from CTA or other data feeds.

Creations and Redemptions of Shares

According to the Registration Statement, each Fund will offer and issue Shares only in aggregations of a specified number of Shares (each, a ''Creation Unit''). Creation Unit sizes will be 50,000 Shares per Creation Unit. The Creation Unit size for a Fund may change. Each Fund will issue and redeem Shares only in Creation Units at the NAV next determined after receipt of an order on a continuous basis on a ''Business Day''. A Business Day with respect to a Fund will be, generally, any day on which the Exchange is open for business. The NAV of a Fund will be determined once each Business Day, normally as of the close of trading on the NYSE (normally, 4:00 p.m. E.T.). An order to purchase or redeem Creation Units will be deemed to be received on the Business Day on which the order is placed provided that the order is placed in proper form prior to the applicable cut-off time (typically required by 4:00 p.m. E.T. or 3:00 p.m. E.T. in the case of custom orders).

The consideration for purchase of a Creation Unit of a Fund will generally consist of the ''in-kind'' deposit of a designated portfolio of securities (the ''Deposit Securities'') per each Creation Unit and a specified cash payment (the ''Cash Component''). However, consideration may consist of the cash value of the Deposit Securities (''Deposit Cash'') and the Cash Component.

Together, the Deposit Securities or Deposit Cash, as applicable, and the Cash Component will constitute the ''Fund Deposit,'' which represents the minimum initial and subsequent investment amount for a Creation Unit of any Fund. The ''Cash Component'' is an amount equal to the difference between the NAV of the Shares (per Creation Unit) and the market value of the Deposit Securities or Deposit Cash, as applicable. The Cash Component will serve the function of compensating for any differences between the NAV per Creation Unit and the market value of the Deposit Securities or Deposit Cash, as applicable.

The Custodian, through the National Securities Clearing Corporation (''NSCC''), will make available on each Business Day, immediately prior to the opening of business on the Exchange (currently 9:30 a.m. E.T.), the list of the names and the required number of shares of each Deposit Security or the required amount of Deposit Cash, as applicable, to be included in the current Fund Deposit (based on information at the end of the previous Business Day) for a Fund. According to the Registration Statement, the Trust

reserves the right to permit or require the substitution of an amount of cash (*i.e.,* a ''cash in lieu'' amount) to be added to the Cash Component to replace any Deposit Security. The Adviser represents that, to the extent the Trust permits or requires a ''cash in lieu'' amount, such transactions will be effected in the same or equitable manner for all authorized participants.

Shares may be redeemed only in Creation Units at their NAV next determined after receipt of a redemption request in proper form by a Fund through the Transfer Agent and only on a Business Day.

With respect to each Fund, the Custodian, through the NSCC, will make available immediately prior to the opening of business on the Exchange (currently 9:30 a.m. E.T.) on each Business Day, the list of the names and share quantities of each Fund's portfolio securities that will be applicable (subject to possible amendment or correction) to redemption requests received in proper form on that day (''Fund Securities'').

Redemption proceeds for a Creation Unit typically will be paid in-kind; however, such proceeds may be paid in cash or a combination of in-kind and cash, as determined by the Trust. With respect to in-kind redemptions of a Fund, redemption proceeds for a Creation Unit will consist of Fund Securities as announced by the Custodian on the Business Day of the request for redemption received in proper form plus or minus 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 a Fund's Securities (the ''Cash Redemption Amount''), less a fixed redemption transaction fee and any applicable additional variable charge. The Adviser represents that all persons redeeming Shares during a Business Day will be treated in the same manner with respect to payment of proceeds in-kind, in cash, or in a combination thereof.

The Trust may, in its discretion, exercise its option to redeem Shares in cash, and the redeeming Shareholders will be required to receive its redemption proceeds in cash, as described in the Registration Statement. The investor will receive a cash payment equal to the NAV of its Shares based on the NAV of Shares of the relevant Fund next determined after the redemption request is received in proper form. The Adviser represents that, to the extent the Trust effects a redemption of Shares in cash, such transactions will be effected in the same manner for all Authorized Participants.

Availability of Information

Each Fund's Web site, *www.wbishares.com,* which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for each Fund that may be downloaded. The Web site will include additional quantitative information updated on a daily basis, including (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''),[24] 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 (9:30 a.m. E.T. to 4:00 p.m. E.T.) on the Exchange, each Fund will disclose on the Fund's Web site the Disclosed Portfolio as defined in NYSE Arca Equities Rule 8.600(c)(2) that will form the basis for a Fund's calculation of NAV at the end of the business day.[25] The Web site information will be publicly available at no charge.

On a daily basis, each Fund will disclose on the Fund's Web site the following information regarding each portfolio holding, as applicable to the type of holding: Ticker symbol, the individual identifier (CUSIP) or other identifier, if any; a description of the holding (including the type of holding, such as the type of swap); the identity of the security, commodity, index or other asset or instrument underlying the holding, if any; for options, the option strike price; quantity held (as measured by, for example, par value, notional value or number of shares, contracts or units); maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and the percentage weighting of the holding in the Fund's portfolio. The Web site information will be publicly available at no charge.

In addition, a basket composition file, which includes the security names and share quantities required to be delivered in exchange for Fund Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of the NYSE via the NSCC. The basket represents one Creation Unit of each Fund.

Investors can also obtain the Trust's Statement of Additional Information (''SAI''), Shareholder Reports and Form N–CSR. The Trust's SAI and Shareholder Reports are available free upon request from the Trust, and those documents and the Form N–CSR 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 domestic exchange listed equities securities, including common stocks, preferred stocks, rights, warrants, convertibles, Depositary Receipts, ETFs, ETNs, MLPs and REITS, will be available via the Consolidated Tape Association (''CTA'') high-speed line and from the national securities exchange on which they are listed. Quotation and last-sale information for domestic exchange-listed options contracts will be available via the Options Price Reporting Authority.

Price information regarding equity securities and options traded on non-U.S. securities exchanges will be available from the exchanges trading such securities, automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters.

Quotation information for unsponsored Depositary Receipts will be available from major market data vendors. Quotation information for non-exchange-traded derivatives, including OTC options, forwards, and swaps may be obtained from brokers and dealers who make markets in such securities or major market data vendors. Price information on futures and options on futures will be available from major market data vendors and from securities and futures exchanges, as applicable.

Quotation information for debt securities, including fixed, floating and variable corporate debt securities, U.S. Government securities, debt securities of foreign issuers, sovereign debt securities, U.S. government agency securities and high-yield bonds, will be

[24] 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 each Fund's NAV. The records relating to Bid/Ask Prices will be retained by each Fund and their service providers.

[25] Under accounting procedures followed by each Funds, trades made on the prior business day (''T'') will be booked and reflected in NAV on the current business day (''T+1''). Accordingly, each Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

available from major market data vendors. In addition, quotation information from brokers and dealers or major market data vendors will be available for mortgage-backed; asset-backed securities; money market instruments; short-term debt securities; and Financial Instruments.

Additional information regarding the Trust and the Shares, including investment strategies, risks, creation and redemption procedures, fees (including money manager and other advisory or management fees), portfolio holdings disclosure policies, distributions and taxes is included in the Registration Statement. All terms relating to each Fund that are referred to, but not defined in, this proposed rule change are defined in the Registration Statement.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of each Fund.[26]

Trading in Shares of a Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities and/or the Financial Instruments comprising the Disclosed Portfolio of a Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of 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 a.m. to 8 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.

The Shares of each Fund will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600. Consistent with NYSE Arca Equities Rule 8.600(d)(2)(B)(ii), each Fund's Reporting Authority will implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the actual components of each Fund's portfolio. The Exchange represents that, for initial and/or continued listing, each Fund will be in compliance with Rule 10A–3 [27] under the Act, as provided by NYSE Arca Equities Rule 5.3. A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio as defined in NYSE Arca Equities Rule 8.600(c)(2) will be made available to all market participants at the same time.

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 that are designed to detect violations of Exchange rules and applicable federal securities laws.[28] The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to detect and help deter violations of Exchange rules and applicable federal securities laws.

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, underlying exchange-traded equity securities (including, without limitation, domestic and foreign common stocks, preferred stocks, rights, warrants, convertibles, Depositary Receipts, ETFs, ETNs, MLPs and REITS), exchange-traded options, futures, options on futures contracts and options on securities indices with markets and entities that are members of ISG, and FINRA may obtain, on behalf of the Exchange, trading information regarding trading in the Shares, underlying exchange-traded equity securities, exchange-traded options, futures, options on futures contracts and options on securities indices from such markets or entities. In addition, the Exchange may obtain information regarding trading in the Shares, underlying exchange-traded equity securities (including, without limitation, domestic and foreign common stocks, preferred stocks, rights, warrants, convertibles, Depositary Receipts, ETFs, ETNs, MLPs and REITS), exchange-traded options, futures, options on futures contracts and options on securities indices from markets and entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.[29] FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities reported to FINRA's Trade Reporting and Compliance Engine (''TRACE'').

As noted above, not more than 10% of the net assets of a Fund in the aggregate shall consist of unsponsored Depositary Receipts. Not more than 10% of the net assets of each Fund in the aggregate invested in exchange traded equity securities shall consist of equity securities whose principal market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement. Furthermore, not more than 10% of the net assets of a Fund in the aggregate shall consist of futures contracts or options contracts whose principal market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit (''ETP'') Holders in an Information Bulletin (''Bulletin'') of the special characteristics and risks associated with trading the Shares.

[26] *See* NYSE Arca Equities Rule 7.12, Commentary .04.

[27] 17 CFR 240.10A–3.

[28] 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.

[29] 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 a Fund may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

Specifically, the Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated IIV will not be calculated or publicly disseminated; (4) how information regarding the IIV is disseminated; (5) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Bulletin will reference that a Fund is subject to various fees and expenses described in the Registration Statement. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the 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) [30] 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 Funds will continue to comply with all initial and continued listing requirements under NYSE Arca Equities Rule 8.600.

FINRA, on behalf of the Exchange, has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares, underlying exchange-traded equity securities (including, without limitation, domestic and foreign common stocks, preferred stocks, rights, warrants, convertibles, Depositary Receipts, ETFs, ETNs, MLPs and REITS), exchange-traded options, futures, options on futures contracts and options on securities indices with markets and entities that are members of ISG, and FINRA may obtain, on behalf of the Exchange, trading information regarding trading in the Shares, underlying exchange-traded equity securities, exchange-traded options, futures, options on futures contracts and options on securities indices from such markets or entities. In addition, the Exchange may obtain information regarding trading in the Shares, underlying exchange-traded equity securities (including, without limitation, domestic and foreign common stocks, preferred stocks, rights, warrants, convertibles, Depositary Receipts, ETFs, ETNs, MLPs and REITS), exchange-traded options, futures, options on futures contracts and options on securities indices from markets and entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities reported to FINRA's TRACE.

As noted above, not more than 10% of the net assets of a Fund in the aggregate shall consist of unsponsored Depositary Receipts. Not more than 10% of the net assets of each Fund in the aggregate invested in exchange traded equity securities shall consist of equity securities whose principal market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement. Furthermore, not more than 10% of the net assets of a Fund in the aggregate shall consist of futures contracts or options contracts whose principal market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

Each Fund's investments will, under normal circumstances, be consistent with its investment objective. Each Fund will not hold more than 15% of its net assets in illiquid securities, including Rule 144A securities. Each Fund will not invest in leveraged or inverse leveraged (*e.g.,* 2X, −2X, 3X, or −3X) ETFs.

The Adviser is a registered broker-dealer and is affiliated with a broker-dealer. The Sub-Adviser is also affiliated with a broker-dealer. The Adviser and Sub-Adviser will accordingly implement a firewall with respect to its relevant personnel and its broker-dealer affiliate 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. In the future, should (a) the Adviser and/or Sub-Adviser become newly affiliated with another broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement a firewall with respect to such relevant personnel and/or its broker-dealer affiliate to accomplish the same purposes discussed immediately above.

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 Adviser will establish a firewall as discussed immediately above. The Exchange will also obtain a representation from the issuer of the Shares that the NAVs per Share will be calculated daily and that the NAVs 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 each Fund and the Shares, thereby promoting market transparency.

Each Fund's portfolio holdings will be disclosed on its Web site daily after the close of trading on the Exchange and prior to the opening of trading on the Exchange the following day. Moreover, the IIV will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session. 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, and quotation and last-sale information will be available via the CTA high-speed line. The Web site will include a form of the prospectus for each Fund and additional data relating to a Fund's NAVs and other applicable quantitative information. On a daily basis, the Fund will disclose for each portfolio holding of the Fund the following information: ticker symbol, the individual identifier (CUSIP) or other identifier, if any; a description of the holding (including the type of holding, such as the type of swap); the identity of the security, commodity, index or other asset or instrument underlying the holding, if any; for options, the option strike price; quantity held (as measured by, for example, par value, notional value or number of shares, contracts or units); maturity date, if any; coupon rate, if

[30] 15 U.S.C. 78f(b)(5).

any; effective date, if any; market value of the holding; and the percentage weighting of the holding in the Fund's portfolio. Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares.

Trading in Shares of each Fund 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 each Fund may be halted. In addition, as noted above, investors will have ready access to information regarding each Fund's holdings, the IIV, 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, FINRA, on behalf of the Exchange, has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. In addition, as noted above, investors will have ready access to information regarding each Fund's holdings, the IIV, 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 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–2014–67 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–2014–67. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2014–67 and should be submitted on or before July 30, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[31]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2014–15964 Filed 7–8–14; 8:45 am]

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[31] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72514; File No. SR–NFA–2014–05]

Self-Regulatory Organizations; National Futures Association; Notice of Filing of Proposed Rule Change Relating to the NFA Interpretive Notice Entitled ''NFA Compliance Rule 2–9: Enhanced Supervisory Requirements''

July 2, 2014.

Pursuant to Section 19(b)(7) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] and Rule 19b–7 thereunder,[2] notice is hereby given that on June 18, 2014, National Futures Association (''NFA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by NFA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.[3]

On June 18, 2014, NFA also filed the proposed rule change with the Commodity Futures Trading Commission (''CFTC'') and requested that the CFTC make a determination

[1] 15 U.S.C. 78s(b)(7).

[2] 17 CFR 240.19b–7.

[3] NFA previously filed amendments to the Notice regarding Rule 2–9(b) with the Commission. *See* Exchange Act Release No. 47533 (Mar. 19, 2003), 68 FR 14733 (Mar. 26, 2003) (SR–NFA–2003–01); Exchange Act Release No. 52808 (Nov. 18, 2005), 70 FR 71347 (Nov. 28, 2005) (SR–NFA–2005–01); Exchange Act Release No. 53568 (Mar. 29, 2006), 71 FR 16850 (Apr. 4, 2006) (SR–NFA–2006–01); Exchange Act Release No. 55710 (May 4, 2007), 72 FR 26858 (May 11, 2007) (SR–NFA–2007–03); Exchange Act Release No. 57142 (Jan. 14, 2008), 73 FR 3502 (Jan. 18, 2008) (SR–NFA–2007–07); Exchange Act Release No. 57640 (Apr. 9, 2008), 73 FR 20341 (Apr. 15, 2008) (SR–NFA–2008–01); and Exchange Act Release No. 63602 (Dec. 22, 2010), 76 FR 202 (Jan. 3, 2011) (SR–NFA–2010–04).

that review of the proposed rule change of NFA is not necessary. The CFTC has not yet made such determination.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NFA Compliance Rule 2–9(b) (''Rule 2–9(b)'') and its related Interpretive Notice entitled ''NFA Compliance Rule 2–9: Enhanced Supervisory Requirements'' (''Notice'') require NFA member firms (''Members'') that meet certain criteria identified by NFA's Board of Directors (''Board'') to comply with specific enhanced supervisory requirements that are designed to prevent abusive sales practices. One way a Member firm triggers the enhanced supervisory requirements is to employ a certain specified number or percentage of associated persons (APs) that have previously been associated with another firm that was a ''Disciplined Firm'' (as defined in the Notice). The Notice, however, permits a Member firm to exclude certain of those APs and principals who meet very specific criteria identified by the Board from its determination of whether it triggers the enhanced supervisory requirements. The amendment to the Notice revises this criterion to provide limited additional relief to a few individual principals who would currently not be excluded from a Member firm's determination of whether it triggers the enhanced supervisory requirements.

The text of the proposed rule change is available at the principal office of NFA, on NFA's Web site at *http://www.nfa.futures.org,* 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, NFA 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. NFA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Section 15A(k) of the Exchange Act [4] makes NFA a national securities association for the limited purpose of regulating the activities of Members who are registered as brokers or dealers in security futures products under Section 15(b)(11) of the Exchange Act.[5] The Notice entitled: ''NFA Compliance Rule 2–9: Enhanced Supervisory Requirements'' applies to all Members who meet the criteria in the Notice and could apply to Members registered as security futures brokers or dealers under Section 15(b)(11) of the Exchange Act.

Rule 2–9(b) authorizes NFA's Board to require Members that meet certain criteria established by the Board to comply with specific enhanced supervisory requirements designed to prevent abusive sales practices. The related Notice specifies the criteria that subject a Member firm to the enhanced supervisory requirements and the enhanced supervisory requirements that must be followed.[6] Rule 2–9(b) and the Notice [7] also provide that a Member may seek a waiver from the requirements from NFA's Telemarketing Procedures Waiver Committee (''Waiver Committee''), a Board-appointed panel consisting of three members of NFA's Business Conduct Committee or Hearing Committee.

As stated above, under Rule 2–9(b) and the Notice, a Member firm with a certain number or percentage of APs who were previously employed or associated with a Disciplined Firm is required to comply with the enhanced supervisory requirements. The Notice also provides that any Member with a principal who is or was a principal at another Member that was required to comply with the enhanced supervisory requirements must itself adopt the enhanced supervisory requirements or seek a waiver. The Notice further provides, however, that if the principal satisfies certain criteria in the Notice, the principal will not cause the Member to comply with the enhanced supervisory requirements.

NFA's Waiver Committee suggested that NFA make a minor modification to the Notice to provide limited additional relief to a few individual principals who the Waiver Committee believes are similarly situated to the current exempt group of principals but who do not benefit from the relief contemplated in creating the exemption because the principal does not satisfy the criteria that he/she was a principal at only one firm that was subject to the enhanced supervisory requirements. The Waiver Committee is concerned with respect to situations where a Member firm becomes subject to the enhanced supervisory requirements by virtue of having a significant percentage of APs who had formerly worked at Disciplined Firms. If a principal of that firm is also a principal of another Member firm, then the second Member firm automatically is subject to the enhanced supervisory requirements simultaneously with the original firm because the second Member firm now has a principal who is a principal of another Member (i.e., the first Member) that is subject to the enhanced supervisory requirements. There have been several instances where both Members have successfully petitioned the Waiver Committee for full waivers; however, the principals of those Members do not qualify for the current exemption because they have been principals of more than one such Member subject to the enhanced supervisory requirements.

The Waiver Committee requested that NFA modify the exemption to eliminate the requirement that the principal could only have been a principal of one firm that has been subject to the enhanced supervisory requirements and replace it with the requirement that the most recent firm in the principal's history that was subject to the enhanced supervisory requirements either had received a full waiver from those requirements or had abided by the requirements for two years and is no longer subject to the requirements. The proposed amendments do not eliminate any of the other requirements including that the individual principal must never have been personally subject to CFTC or NFA disciplinary action or a principal or an AP of a current Disciplined Firm; and that no firm in the principal's history that was subject to the enhanced supervisory requirements has become subject to a sales practice or promotional material based disciplinary action by NFA or the CFTC since becoming subject to the enhanced supervisory requirements.

2. Statutory Basis

NFA believes that the proposed rule change is authorized by, and consistent with, Section 15A(k)(2)(B) of the Exchange Act. That section sets out requirements for rules of a futures

[4] 15 U.S.C. 78o–3(k).

[5] 15 U.S.C. 78o(b)(11).

[6] *See* Notice at II (Obligations of Members Subject to Enhanced Supervisory Requirements).

[7] *See* Notice at IV (Waiver Procedure).

association, registered under Section 17 of the Commodity Exchange Act, that is a registered national securities association for the limited purpose of regulating the activities of members who are registered as brokers or dealers in security futures products under Section 15(b)(11) of the Exchange Act. Under Section 15A(k)(2)(B), the rules of such a limited purpose national securities association must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest in connection with security futures products in a manner reasonably comparable to the rules of a registered national securities association applicable to securities futures products. NFA believes Rule 2–9(b) and the Notice meet these requirements by imposing enhanced supervisory requirements on Members that meet criteria that NFA's Board has determined indicates a greater potential for sales practice fraud to occur. The proposed rule change does not diminish the effectiveness of Rule 2–9(b) and the Notice but merely extends relief to certain principals whose background the Board has determined do not raise the supervisory concerns that Rule 2–9(b) and the Notice were intended to address.

B. Self-Regulatory Organization's Statement on Burden on Competition

NFA does not believe that the proposed rule change would impose any burden on competition. The amendments merely extend existing relief to certain individual principals whose backgrounds the Board has determined do not raise the supervisory concerns that Rule 2–9(b) and the Notice were intended to address.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

NFA did not publish the rule changes to its membership for comment. NFA did not receive comment letters concerning the rule changes.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change is not effective because the CFTC has not yet determined that review of the proposed rule change is not necessary.

At any time within 60 days of the date of effectiveness of the proposed rule change, the Commission, after consultation with the CFTC, may summarily abrogate the proposed rule change and require that the proposed rule change be refiled in accordance with the provisions of Section 19(b)(1) of the Exchange Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the 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–NFA–2014–05 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–NFA–2014–05. 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 NFA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NFA–2014–05 and should be submitted on or before July 30, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2014–15960 Filed 7–8–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72531; File No. SR–NYSEArca–2014–57]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Amendment No. 1 and Designation of a Longer Period for Commission Action on Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To List and Trade Shares of the PIMCO Foreign Bond Exchange-Traded Fund (U.S. Dollar-Hedged), PIMCO Foreign Bond Exchange-Traded Fund (Unhedged), PIMCO Global Advantage Bond Exchange-Traded Fund, and PIMCO International Advantage Bond Exchange-Traded Fund

July 3, 2014.

On May 1, 2014, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Exchange Act'')[2] and Rule 19b–4 thereunder,[3] a proposed rule change to list and trade shares of the PIMCO Foreign Bond Exchange-Traded Fund (U.S. Dollar-Hedged), PIMCO Foreign Bond Exchange-Traded Fund (Unhedged), PIMCO Global Advantage Bond Exchange-Traded Fund, and PIMCO International Advantage Bond Exchange-Traded Fund. The proposed rule change was published for comment in the **Federal Register** on May 22, 2014.[4] On June 12, 2014, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced the proposed rule change in its entirety.[5] The Commission received no comments on the proposal. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change, as modified by Amendment No. 1 thereto, and to designate a longer period for Commission action on the proposed rule

[8] 17 CFR 200.30–3(a)(73).

[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. 72180 (May 16, 2014), 79 FR 29461.

[5] Amendment No. 1 is available at: *http://www.sec.gov/comments/sr-nysearca-2014-57/nysearca201457-1.pdf.*

change, as modified by Amendment No. 1 thereto. Items I and II below have been prepared by the Exchange.

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''): PIMCO Foreign Bond Exchange-Traded Fund (U.S. Dollar-Hedged), PIMCO Foreign Bond Exchange-Traded Fund (Unhedged), PIMCO Global Advantage Bond Exchange-Traded Fund, and PIMCO International Advantage Bond Exchange-Traded Fund. 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 the 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 proposes to list and trade shares (''Shares'') of the following under NYSE Arca Equities Rule 8.600,[6] which governs the listing and trading of Managed Fund Shares:[7] PIMCO Foreign Bond Exchange-Traded Fund (U.S. Dollar-Hedged) (''Hedged Foreign Bond Fund''), PIMCO Foreign Bond Exchange-Traded Fund (Unhedged) (''Unhedged Foreign Bond Fund''), PIMCO Global Advantage Bond Exchange-Traded Fund (''Global Advantage Bond Fund''), and PIMCO International Advantage Bond Exchange-Traded Fund (''International Advantage Bond Fund''), each also referred to as a ''Fund,'' and collectively referred to as the ''Funds.'' The Shares will be offered by PIMCO ETF Trust (the ''Trust''), a statutory trust organized under the laws of the State of Delaware and registered with the Commission as an open-end management investment company.[8]

The investment manager to the Funds will be Pacific Investment Management Company LLC (''PIMCO'' or the ''Adviser''). PIMCO Investments LLC will serve as the distributor for the Funds (''Distributor''). State Street Bank & Trust Co. will serve as the custodian and transfer agent for the Funds (''Custodian'' or ''Transfer Agent'').

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.[9] 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. The Adviser is not registered as a broker-dealer, but is affiliated with a broker-dealer, and will implement a ''fire wall'' with respect to such broker-dealer regarding access to information concerning the composition and/or changes to a Fund's portfolio. If PIMCO elects to hire a sub-adviser for the Funds that is also affiliated with a broker-dealer, such sub-adviser will implement a fire wall with respect to such broker-dealer affiliate regarding access to information concerning the composition and/or changes to the applicable portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

In the event (a) the Adviser becomes registered as a broker-dealer or newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement a fire wall with respect to its relevant personnel or its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the applicable portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

Characteristics of the Funds[10]

According to the Registration Statement, in selecting investments for each Fund, PIMCO will develop an outlook for interest rates, currency exchange rates and the economy,

[6] The Commission has previously approved the listing and trading on the Exchange of other actively managed funds under Rule 8.600. See, *e.g.,* Securities Exchange Act Release Nos. 60981 (November 10, 2009), 74 FR 59594 (November 18, 2009) (SR–NYSEArca–2009–79) (order approving Exchange listing and trading of five fixed income funds of the PIMCO ETF Trust); 66321 (February 3, 2012), 77 FR 6850 (February 9, 2012) (SR–NYSEArca–2011–95) (order approving listing and trading of PIMCO Total Return Exchange Traded Fund); 66670 (March 28, 2012), 77 FR 20087 (April 3, 2012) (SR–NYSEArca–2012–09) (order approving listing and trading of PIMCO Global Advantage Inflation-Linked Bond Strategy Fund).

[7] 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.

[8] The Trust is registered under the 1940 Act. On January 27, 2014, the Trust filed an amendment to its registration statement on Form N–1A under the Securities Act of 1933 (15 U.S.C. 77a) (''1933 Act'') and the 1940 Act relating to the Funds (File Nos. 333–155395 and 811–22250) (the ''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 the 1940 Act. *See* Investment Company Act Release No. 28993 (November 10, 2009) (File No. 812–13571) (''Exemptive Order'').

[9] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the ''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 violations, 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.

[10] Many of the investment strategies of the Funds are discretionary, which means that PIMCO can decide from time to time whether to use them or not.

analyze credit and call risks and use other investment selection techniques. The proportion of each Fund's assets committed to investment in securities with particular characteristics (such as quality, sector, interest rate or maturity) will vary based on PIMCO's outlook for the U.S. economy and the economies of other countries in the world, the financial markets and other factors.

With respect to each Fund, in seeking to identify undervalued currencies, PIMCO may consider many factors, including but not limited to, longer-term analysis of relative interest rates, inflation rates, real exchange rates, purchasing power parity, trade account balances and current account balances, as well as other factors that influence exchange rates such as flows, market technical trends and government policies. With respect to fixed income investing, PIMCO will attempt to identify areas of the bond market that are undervalued relative to the rest of the market. PIMCO will identify these areas by grouping fixed income investments into sectors such as money markets, governments, corporates, mortgages, asset-backed and international. Sophisticated proprietary software will then assist in evaluating sectors and pricing specific investments. Once investment opportunities are identified, PIMCO will shift assets among sectors depending upon changes in relative valuations, credit spreads and other factors.

Fixed Income Instruments

Among other investments described in more detail herein, each Fund may invest in Fixed Income Instruments, which include:

- Securities issued or guaranteed by the U.S. Government, its agencies or government-sponsored enterprises (''U.S. Government Securities'');
- corporate debt securities of U.S. and non-U.S. issuers, including convertible securities and corporate commercial paper; [11]
- mortgage-backed and other asset-backed securities; [12]
- inflation-indexed bonds issued both by governments and corporations; [13]
- structured notes, including hybrid or ''indexed'' securities and event-linked bonds; [14]
- bank capital and trust preferred securities; [15]
- loan participations and assignments; [16]
- delayed funding loans and revolving credit facilities;
- bank certificates of deposit, fixed time deposits and bankers' acceptances;
- repurchase agreements on Fixed Income Instruments and reverse repurchase agreements on Fixed Income Instruments;
- debt securities issued by states or local governments and their agencies, authorities and other government-sponsored enterprises (''Municipal Bonds'');
- obligations of non-U.S. governments or their subdivisions, agencies and government-sponsored enterprises; and obligations of international agencies or supranational entities.

Use of Derivatives by the Funds

A Fund's investments in derivative instruments will be made in accordance with the 1940 Act and consistent with the Fund's investment objective and policies. With respect to each Fund, derivative instruments will include forwards; [17] exchange-traded and over-the-counter (''OTC'') options contracts; exchange-traded futures contracts; exchange-traded and OTC swap agreements; exchange-traded and OTC options on futures contracts; and exchange-traded and OTC options on swap agreements. Generally, derivatives are financial contracts whose value depends upon, or is derived from, the value of an underlying asset, reference rate or index, and may relate to stocks, bonds, interest rates, currencies or currency exchange rates, commodities, and related indexes. A Fund may, but is not required to, use derivative instruments for risk management purposes or as part of its investment strategies.[18]

As described further below, each Fund will typically use derivative instruments as a substitute for taking a position in the underlying asset and/or as part of a strategy designed to reduce exposure to other risks, such as interest rate or currency risk. A Fund may also use derivative instruments to enhance returns. To limit the potential risk associated with such transactions, a Fund will segregate or ''earmark'' assets determined to be liquid by PIMCO in accordance with procedures established by the Trust's Board of Trustees (''Board'') and in accordance with the 1940 Act (or, as permitted by applicable regulation, enter into certain offsetting positions) to cover its obligations under derivative instruments. These procedures have been adopted consistent with Section 18 of the 1940 Act and related Commission guidance. In addition, each Fund will include appropriate risk disclosure in its

[11] With respect to each of the Funds, while non-emerging markets corporate debt securities (excluding commercial paper) generally must have $100 million or more par amount outstanding and significant par value traded to be considered as an eligible investment for each of the Funds, at least 80% of issues of such securities held by a Fund must have $100 million or more par amount outstanding at the time of investment. *See also* note 24, *infra,* regarding emerging market corporate debt securities.

[12] Mortgage-related and other asset-backed securities include collateralized mortgage obligations (''CMO''s), commercial mortgage-backed securities, mortgage dollar rolls, CMO residuals, stripped mortgage-backed securities and other securities that directly or indirectly represent a participation in, or are secured by and payable from, mortgage loans on real property. A to-be-announced (''TBA'') transaction is a method of trading mortgage-backed securities. In a TBA transaction, the buyer and seller agree upon general trade parameters such as agency, settlement date, par amount and price. The actual pools delivered generally are determined two days prior to the settlement date.

[13] Inflation-indexed bonds (other than municipal inflation-indexed bonds and certain corporate inflation-indexed bonds) are fixed income securities whose principal value is periodically adjusted according to the rate of inflation (e.g., Treasury Inflation Protected Securities (''TIPS'')). Municipal inflation-indexed securities are municipal bonds that pay coupons based on a fixed rate plus the Consumer Price Index for All Urban Consumers (''CPI''). With regard to municipal inflation-indexed bonds and certain corporate inflation-indexed bonds, the inflation adjustment is reflected in the semi-annual coupon payment.

[14] The Funds may obtain event-linked exposure by investing in ''event-linked bonds'' or ''event-linked swaps'' or by implementing ''event-linked strategies.'' Event-linked exposure results in gains or losses that typically are contingent, or formulaically related to defined trigger events. Examples of trigger events include hurricanes, earthquakes, weather-related phenomena, or statistics relating to such events. Some event-linked bonds are commonly referred to as ''catastrophe bonds.'' If a trigger event occurs, the Fund may lose a portion or its entire principal invested in the bond or notional amount on a swap.

[15] There are two common types of bank capital: Tier I and Tier II. Bank capital is generally, but not always, of investment grade quality. According to the Registration Statement, Tier I securities often take the form of trust preferred securities. Tier II securities are commonly thought of as hybrids of debt and preferred stock, are often perpetual (with no maturity date), callable and, under certain conditions, allow for the issuer bank to withhold payment of interest until a later date. However, such deferred interest payments generally earn interest.

[16] The Funds may invest in fixed- and floating-rate loans, which investments generally will be in the form of loan participations and assignments of portions of such loans.

[17] Forwards are contracts to purchase or sell securities for a fixed price at a future date beyond normal settlement time (forward commitments).

[18] Each Fund will seek, where possible, to use counterparties whose financial status is such that the risk of default is reduced; however, the risk of losses resulting from default is still possible. PIMCO's Counterparty Risk Committee evaluates the creditworthiness of counterparties on an ongoing basis. In addition to information provided by credit agencies, PIMCO credit analysts evaluate each approved counterparty using various methods of analysis, including company visits, earnings updates, the broker-dealer's reputation, PIMCO's past experience with the broker-dealer, market levels for the counterparty's debt and equity, the counterparty's liquidity and its share of market participation.

offering documents, including leveraging risk. Leveraging risk is the risk that certain transactions of the Fund, including the Fund's use of derivatives, may give rise to leverage, causing the Fund to be more volatile than if it had not been leveraged.[19] Because the markets for certain securities, or the securities themselves, may be unavailable or cost prohibitive as compared to derivative instruments, suitable derivative transactions may be an efficient alternative for a Fund to obtain the desired asset exposure.

The Adviser believes that derivatives can be an economically attractive substitute for an underlying physical security that each Fund would otherwise purchase. For example, a Fund could purchase Treasury futures contracts instead of physical Treasuries or could sell credit default protection on a corporate bond instead of buying a physical bond. Economic benefits include potentially lower transaction costs or attractive relative valuation of a derivative versus a physical bond (*e.g.,* differences in yields).

The Adviser further believes that derivatives can be used as a more liquid means of adjusting portfolio duration as well as targeting specific areas of yield curve exposure, with potentially lower transaction costs than the underlying securities (e.g., interest rate swaps may have lower transaction costs than physical bonds). Similarly, money market futures can be used to gain exposure to short-term interest rates in order to express views on anticipated changes in central bank policy rates. In addition, derivatives can be used to protect client assets through selectively hedging downside (or ''tail risks'') in each Fund.[20] Each Fund also can use derivatives to increase or decrease credit exposure. Index credit default swaps (CDX) can be used to gain exposure to a basket of credit risk by ''selling protection'' against default or other credit events, or to hedge broad market credit risk by ''buying protection.'' Single name credit default swaps (CDS) can be used to allow a Fund to increase or decrease exposure to specific issuers, saving investor capital through lower trading costs. A Fund can use total return swap contracts to obtain the total return of a reference asset or index in exchange for paying a financing cost. A total return swap may be much more efficient than buying underlying securities of an index, potentially lowering transaction costs.

The Adviser believes that the use of derivatives will allow each Fund to selectively add diversifying sources of return from selling options. Option purchases and sales can also be used to hedge specific exposures in the portfolio, and can provide access to return streams available to long-term investors such as the persistent difference between implied and realized volatility. Option strategies can generate income or improve execution prices (*i.e.,* covered calls).

Hedged Foreign Bond Fund—Principal Investments

According to the Registration Statement, the Hedged Foreign Bond Fund will seek maximum total return,[21] consistent with preservation of capital and prudent investment management. The Fund will seek to achieve its investment objective by investing, under normal circumstances,[22] at least 80% of its assets in Fixed Income Instruments and derivatives based on Fixed Income Instruments that are economically tied to foreign (non-U.S.) countries,[23] representing at least three foreign countries (the ''Hedged Foreign Bond Fund 80% policy''). The average portfolio duration[24] of the Fund will normally vary within three years (plus or minus) of the portfolio duration of the securities comprising the Fund's broad-based securities market index, as calculated by PIMCO, which as of December 31, 2013 was 7.7 years.

The Hedged Foreign Bond Fund will invest primarily in investment grade debt securities, but may invest up to 10% of its total assets in high yield securities (''junk bonds'') rated B or higher by Moody's Investors Service, Inc. (''Moody's''), or equivalently rated by Standard & Poor's Ratings Services (''S&P'') or Fitch, Inc. (''Fitch''), or, if unrated, determined by PIMCO to be of comparable quality,[25] except that, within such limitation, the Fund may invest in mortgage-backed securities rated below B.

The Fund's portfolio will include a minimum of 13 non-affiliated issuers.

The Hedged Foreign Bond Fund may invest in securities and instruments that are economically tied to emerging market countries subject to applicable limitations set forth herein.[26]

[19] To mitigate leveraging risk, the Adviser will segregate or ''earmark'' liquid assets or otherwise cover the transactions that may give rise to such risk.

[20] Each Fund will seek, where possible, to use counterparties whose financial status is such that the risk of default is reduced; however, the risk of losses resulting from default is still possible. PIMCO's Counterparty Risk Committee evaluates the creditworthiness of counterparties on an ongoing basis. In addition to information provided by credit agencies, PIMCO credit analysts evaluate each approved counterparty using various methods of analysis, including company visits, earnings updates, the broker-dealer's reputation, PIMCO's past experience with the broker-dealer, market levels for the counterparty's debt and equity, the counterparty's liquidity and its share of market participation. According to the Registration Statement, the Funds have adopted procedures that are consistent with Section 18 of the 1940 Act and related Commission guidance, which require that a fund's derivative instruments be fully collateralized by liquid assets of the fund.

[21] With respect to each Fund, the term ''total return'' sought by the Fund will consist of both income and capital appreciation, if any, which generally arises from decreases in interest rates, foreign currency appreciation, or improving credit fundamentals for a particular sector or security.

[22] With respect to each Fund, the term ''under normal circumstances'' includes, but is not limited to, the absence of extreme volatility or trading halts in the fixed income markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as a systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

[23] PIMCO generally considers an instrument to be economically tied to a non-U.S. country if the issuer is a foreign government (or any political subdivision, agency, authority or instrumentality of such government), or if the issuer is organized under the laws of a non-U.S. country. In the case of certain money market instruments, such instruments will be considered economically tied to a non-U.S. country if either the issuer or the guarantor of such money market instruments is organized under the laws of a non-U.S. country. With respect to derivative instruments, PIMCO will generally consider such instruments to be economically tied to non-U.S. countries if the underlying assets are foreign currencies (or baskets or indices of such currencies), or instruments or securities that are issued by foreign governments or issuers organized under the laws of a non-U.S. country (or if the underlying assets are certain money market instruments, if either the issuer or the guarantor of such money market instruments is organized under the laws of a non-U.S. country).

[24] Duration is a measure used to determine the sensitivity of a security's price to changes in interest rates. The longer a security's duration, the more sensitive it will be to changes in interest rates.

[25] In determining whether a security is of comparable quality the Adviser will consider, for example, whether the issuer of the security has issued other rated securities; whether the obligations under the security are guaranteed by another entity and the rating of such guarantor (if any); whether and (if applicable) how the security is collateralized; other forms of credit enhancement (if any); the security's maturity date; liquidity features (if any); relevant cash flow(s); valuation features; other structural analysis; macroeconomic analysis; and sector or industry analysis.

[26] PIMCO will generally consider an instrument to be economically tied to an emerging market country if the security's ''country of exposure'' is an emerging market country, as determined by the criteria set forth in the Registration Statement. Alternatively, such as when a ''country of exposure'' is not available or when PIMCO believes the following tests more accurately reflect which country the security is economically tied to, PIMCO may consider an instrument to be economically tied to an emerging market country if the issuer or guarantor is a government of an emerging market country (or any political subdivision, agency, authority or instrumentality of such government), if the issuer or guarantor is organized under the laws of an emerging market country, or if the currency of settlement of the security is a currency of an emerging market country. With respect to derivative instruments, PIMCO will generally consider such

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In furtherance of the Hedged Foreign Bond Fund 80% policy, or with respect to the Fund's other investments, the Hedged Foreign Bond Fund may invest, without limitation, in derivative instruments, subject to applicable law and any other restrictions described herein.[27]

The Hedged Foreign Bond Fund may invest up to 20% of its assets in mortgage-related and other asset-backed securities, although this 20% limitation does not apply to securities issued or guaranteed by Federal agencies and/or U.S. government sponsored instrumentalities.[28]

According to the Registration Statement, the Hedged Foreign Bond Fund will normally limit its foreign currency exposure (from non-U.S. dollar-denominated securities or currencies) to 20% of its total assets. The Fund may engage in foreign currency transactions on a spot (cash) basis and forward basis [29] and invest in foreign currency futures and exchange-traded or OTC options contracts. The Fund may enter into these contracts to hedge against foreign exchange risk, to increase exposure to a foreign currency or to shift exposure to foreign currency fluctuations from one currency to another. Suitable hedging transactions may not be available in all circumstances and there can be no assurance that the Fund will engage in such transactions at any given time or from time to time.

The Hedged Foreign Bond Fund may, without limitation, seek to obtain market exposure to the securities in which it primarily invests by entering into a series of purchase and sale contracts or by using other investment techniques (such as buy backs or dollar rolls).[30] The Hedged Foreign Bond Fund may purchase or sell securities on a when-issued, delayed delivery or forward commitment basis and may engage in short sales.[31]

Hedged Foreign Bond Fund—Other (Non-Principal) Investments

The Hedged Foreign Bond Fund may invest up to 10% of its total assets in preferred stock, convertible securities and other equity-related securities.[32] The Fund may invest in variable and floating rate securities that are not Fixed Income Instruments, which are securities that pay interest at rates that adjust whenever a specified interest rate changes and/or that reset on predetermined dates (such as the last day of a month or calendar quarter). The Fund may invest in floating rate debt instruments (''floaters''), inverse floating rate debt instruments (''inverse floaters'') that are not Fixed Income Instruments and may engage in credit spread trades.

As disclosed in the Registration Statement, the Hedged Foreign Bond Fund may also invest in trade claims,[33] privately placed and unregistered securities, and exchange-traded and OTC-traded structured products, including credit-linked securities, commodity-linked notes, and structured notes. The Fund may invest in Brady Bonds, which are securities created through the exchange of existing commercial bank loans to sovereign entities for new obligations in connection with a debt restructuring.

The Hedged Foreign Bond Fund may enter into repurchase agreements on instruments other than Fixed Income Instruments, in addition to repurchase agreements on Fixed Income Instruments mentioned above, in which the Fund purchases a security from a bank or broker-dealer, which agrees to repurchase the security at the Fund's cost plus interest within a specified time. Repurchase agreements maturing in more than seven days and which may not be terminated within seven days at approximately the amount at which the Fund has valued the agreements will be considered illiquid securities. The Fund may enter into reverse repurchase agreements on instruments other than Fixed Income Instruments, in addition to reverse repurchase agreements on Fixed Income Instruments mentioned above, subject to the Fund's limitations

instruments to be economically tied to emerging market countries if the underlying assets are currencies of emerging market countries (or baskets or indices of such currencies), or instruments or securities that are issued or guaranteed by governments of emerging market countries or by entities organized under the laws of emerging market countries. While emerging markets corporate debt securities (excluding commercial paper) generally must have $200 million or more par amount outstanding and significant par value traded to be considered as an eligible investment for each of the Funds, at least 80% of issues of such securities held by a Fund must have $200 million or more par amount outstanding at the time of investment.

[27] With respect to each Fund, derivatives are generally financial contracts whose value depends upon, or is derived from, the value of an underlying asset, reference rate or index, and may relate to stocks, bonds, interest rates, spreads between different interest rates, currencies or currency exchange rates, commodities, and related indices. Examples of derivative instruments include forwards, options contracts, futures contracts, options on futures contracts and swap agreements.

[28] With respect to each Fund, mortgage-related and asset-backed securities include mortgage pass-through securities, collateralized mortgage obligations (''CMO''s), commercial mortgage-backed securities, mortgage dollar rolls, CMO residuals, stripped mortgage-backed securities and other securities that directly or indirectly represent a participation in, or are secured by and payable from, mortgage loans on real property. A to-be-announced (''TBA'') transaction is a method of trading mortgage-backed securities. In a TBA transaction, the buyer and seller agree upon general trade parameters such as agency, settlement date, par amount and price. The actual pools delivered generally are determined two days prior to the settlement date.

[29] A forward foreign currency exchange contract, which involves an obligation to purchase or sell a specific currency at a future date at a price set at the time of the contract, would reduce a Fund's exposure to changes in the value of the currency it will deliver and increases its exposure to changes in the value of the currency it will receive for the duration of the contract. Certain foreign currency transactions may also be settled in cash rather than the actual delivery of the relevant currency. The effect on the value of a Fund would be similar to selling securities denominated in one currency and purchasing securities denominated in another currency. A contract to sell a foreign currency would limit any potential gain which might be realized if the value of the hedged currency increases. Each Fund will limit its investments in currencies to those currencies with a minimum average daily foreign exchange turnover of USD $1 billion as determined by the Bank for International Settlements (''BIS'') Triennial Central Bank Survey. As of the most recent BIS Triennial Central Bank Survey, at least 52 separate currencies had minimum average daily foreign exchange turnover of USD $1 billion. For a list of eligible BIS currencies, *see www.bis.org.*

[30] A dollar roll is similar except that the counterparty is not obligated to return the same securities as those originally sold by the Fund but only securities that are ''substantially identical.''

[31] Each of the Funds may make short sales of securities to: (i) Offset potential declines in long positions in similar securities, (ii) to increase the flexibility of the Fund; (iii) for investment return; and (iv) as part of a risk arbitrage strategy.

[32] Convertible securities are generally preferred stocks and other securities, including fixed income securities and warrants, that are convertible into or exercisable for common stock at a stated price or rate. Equity-related investments may include investments in small-capitalization (''small-cap''), mid-capitalization (''mid-cap'') and large-capitalization (''large-cap'') companies. With respect to each Fund, a small-cap company will be defined as a company with a market capitalization of up to $1.5 billion, a mid-cap company will be defined as a company with a market capitalization of between $1.5 billion and $10 billion and a large-cap company will be defined as a company with a market capitalization above $10 billion. Not more than 10% of the net assets of a Fund in the aggregate invested in exchange-traded equity securities shall consist of equity securities, including stocks into which a convertible security is converted, whose principal market is not a member of the Intermarket Surveillance Group (''ISG'') or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement. Furthermore, not more than 10% of the net assets of a Fund in the aggregate invested in futures contracts or exchange-traded options contracts shall consist of futures contracts or exchange-traded options contracts whose principal market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

[33] Trade claims are non-securitized rights of payment arising from obligations that typically arise when vendors and suppliers extend credit to a company by offering payment terms for products and services. If the company files for bankruptcy, payments on these trade claims stop and the claims are subject to compromise along with the other debts of the company. Trade claims may be purchased directly from the creditor or through brokers.

on borrowings.[34] The Fund will segregate or ''earmark'' assets determined to be liquid by PIMCO in accordance with procedures established by the Fund's Board to cover its obligations under reverse repurchase agreements.

Unhedged Foreign Bond Fund—Principal Investments

According to the Registration Statement, the Unhedged Foreign Bond Fund will seek maximum total return, consistent with preservation of capital and prudent investment management. The Fund will seek to achieve its investment objective by investing, under normal circumstances, at least 80% of its assets in Fixed Income Instruments and derivatives based on Fixed Income Instruments that are economically tied to foreign (non-U.S.) countries [35] representing at least three foreign countries (the ''Unhedged Foreign Bond Fund 80% policy''). The average portfolio duration of the Fund will vary within approximately three years (plus or minus) of the portfolio duration of the securities comprising the Fund's broad-based securities market index, as calculated by PIMCO, which as of December 31, 2013 was 7.7 years.

The Unhedged Foreign Bond Fund will invest primarily in investment grade debt securities, but may invest up to 10% of its total assets in high yield securities (junk bonds) rated B or higher by Moody's, or equivalently rated by S&P or Fitch, or, if unrated, determined by PIMCO to be of comparable quality,[36] except that, within such limitation, the Fund may invest in mortgage-backed securities rated below B.

The Fund's portfolio will include a minimum of 13 non-affiliated issuers.

The Unhedged Foreign Bond Fund may invest in fixed income and equity securities and instruments that are economically tied to emerging market countries, subject to applicable limitations set forth herein.[37]

In furtherance of the Unhedged Foreign Bond Fund 80% policy, or with respect to the Fund's other investments, the Unhedged Foreign Bond Fund may invest, without limitation, in derivative instruments, subject to applicable law and any other restrictions described in the Registration Statement.[38]

The Unhedged Foreign Bond Fund may invest up to 20% of its assets in mortgage-related and other asset-backed securities, although this 20% limitation does not apply to securities issued or guaranteed by Federal agencies and/or U.S. government sponsored instrumentalities.[39]

According to the Registration Statement, the Unhedged Foreign Bond Fund may invest in fixed income and equity securities denominated in foreign (non-U.S.) currencies, engage in foreign currency transactions on a spot (cash) basis and forward basis [40] and invest in foreign currency futures and exchange-traded or OTC options contracts. The Fund may enter into these contracts to hedge against foreign exchange risk, to increase exposure to a foreign currency or to shift exposure to foreign currency fluctuations from one currency to another. Suitable hedging transactions may not be available in all circumstances and there can be no assurance that the Fund will engage in such transactions at any given time or from time to time.

The Unhedged Foreign Bond Fund may, without limitation, seek to obtain market exposure to the securities in which it primarily invests by entering into a series of purchase and sale contracts or by using other investment techniques (such as buy backs or dollar rolls). The Unhedged Foreign Bond Fund may purchase or sell securities on a when-issued, delayed delivery or forward commitment basis and may engage in short sales.[41]

Unhedged Foreign Bond Fund—Other (Non-Principal) Investments

The Unhedged Foreign Bond Fund may invest up to 10% of its total assets in preferred stock, convertible securities and other equity-related securities.[42] The Fund may invest in variable and floating rate securities that are not Fixed Income Instruments. The Fund may invest in floaters and inverse floaters that are not Fixed Income Instruments and may engage in credit spread trades.

The Unhedged Foreign Bond Fund may invest in trade claims, privately placed and unregistered securities, and exchange-traded and OTC-traded structured products, including credit-linked securities, commodity-linked notes, and structured notes. The Fund may invest in Brady Bonds.

The Unhedged Foreign Bond Fund may enter into repurchase agreements on instruments other than Fixed Income Instruments, in addition to repurchase agreements on Fixed Income Instruments mentioned above, in which the Fund purchases a security from a bank or broker-dealer, which agrees to purchase the security at the Fund's cost plus interest within a specified time. Repurchase agreements maturing in more than seven days and which may not be terminated within seven days at approximately the amount at which the Fund has valued the agreements will be considered illiquid securities. The Fund may enter into reverse repurchase agreements on instruments other than Fixed Income Instruments, in addition to reverse repurchase agreements on Fixed Income Instruments mentioned above, subject to the Fund's limitations on borrowings.

Global Advantage Bond Fund—Principal Investments

According to the Registration Statement, the Global Advantage Bond Fund will seek total return exceeding that of its benchmarks, consistent with prudent investment management. The Fund will seek to achieve its investment objective by investing, under normal circumstances, at least 80% of its assets in Fixed Income Instruments and derivatives based on Fixed Income Instruments that are economically tied to at least three countries, which may include foreign (non-U.S.) countries and may also include the U.S. (the ''Global Advantage Bond Fund 80% policy''). The average portfolio duration of the Fund will vary based on PIMCO's forecast for interest rates and, under normal circumstances, will not be expected to exceed eight years.[43]

The Global Advantage Bond Fund may invest in both investment-grade debt securities and high-yield securities (junk bonds) subject to a maximum of 15% of its total assets in securities rated below B by Moody's, S&P or Fitch, or, if unrated, determined by PIMCO to be of comparable quality.

The Fund's portfolio will include a minimum of 13 non-affiliated issuers.

[34] With respect to each Fund, a reverse repurchase agreement involves the sale of a security by a Fund and its agreement to repurchase the instrument at a specified time and price. A dollar roll is similar except that the counterparty is not obligated to return the same securities as those originally sold by a Fund but only securities that are ''substantially identical.''

[35] *See supra,* note 23.

[36] *See supra,* note 25.

[37] *See supra,* note 26.

[38] *See supra,* note 27.

[39] *See supra,* note 28.

[40] *See supra,* note 29.

[41] *See supra,* note 31.

[42] *See supra,* note 32.

[43] The Global Advantage Bond Fund will utilize the PIMCO Global Advantage® Index (''PIMCO Index'') as a secondary benchmark. PIMCO owns the intellectual property rights to the PIMCO Index, and has filed a patent application with respect to certain features of the PIMCO Index. PIMCO has retained an unaffiliated leading financial information services company and global index provider to independently administer and calculate the PIMCO Index (the ''Calculation Agent''). The Calculation Agent, using a publicly available rules-based methodology, will calculate, maintain and disseminate the PIMCO Index.

The Fund may invest, without limitation, in securities and instruments that are economically tied to emerging market countries.[44]

In furtherance of the Global Advantage Bond Fund 80% policy, or with respect to the Fund's other investments, the Global Advantage Bond Fund may invest, without limitation, in derivative instruments, subject to applicable law and any other restrictions described herein.[45]

The Global Advantage Bond Fund may invest up to 20% of its assets in mortgage-related and other asset-backed securities, although this 20% limitation does not apply to securities issued or guaranteed by Federal agencies and/or U.S. government sponsored instrumentalities.[46]

The Global Advantage Bond Fund may invest, without limitation, in securities denominated in foreign currencies and in U.S. dollar-denominated securities of foreign issuers. The Fund may engage in foreign currency transactions on a spot (cash) basis and forward basis and invest in foreign currency futures and exchange-traded or OTC options contracts.[47] The Fund may enter into these contracts to hedge against foreign exchange risk, to increase exposure to a foreign currency or to shift exposure to foreign currency fluctuations from one currency to another.

The Global Advantage Bond Fund may, without limitation, seek to obtain market exposure to the securities in which it primarily invests by entering into a series of purchase and sale contracts or by using other investment techniques (such as buy backs or dollar rolls). The Global Advantage Bond Fund may purchase or sell securities on a when-issued, delayed delivery or forward commitment basis and may engage in short sales.[48]

Global Advantage Bond Fund—Other (Non-Principal) Investments

The Global Advantage Bond Fund may invest up to 10% of its total assets in preferred stock, convertible securities and other equity-related securities.[49] The Fund may invest in variable and floating rate securities that are not Fixed Income Instruments. The Fund may invest in floaters and inverse floaters that are not Fixed Income Instruments and may engage in credit spread trades.

The Global Advantage Bond Fund may invest in trade claims, privately placed and unregistered securities, and exchange-traded and OTC-traded structured products, including credit-linked securities, commodity-linked notes, and structured notes. The Fund may invest in Brady Bonds.

The Global Advantage Bond Fund may enter into repurchase agreements on instruments other than Fixed Income Instruments, in addition to repurchase agreements on Fixed Income Instruments mentioned above, in which the Fund purchases a security from a bank or broker-dealer, which agrees to purchase the security at the Fund's cost plus interest within a specified time. Repurchase agreements maturing in more than seven days and which may not be terminated within seven days at approximately the amount at which the Fund has valued the agreements will be considered illiquid securities. The Fund may enter into reverse repurchase agreements on instruments other than Fixed Income Instruments, in addition to reverse repurchase agreements on Fixed Income Instruments mentioned above, subject to the Fund's limitations on borrowings.

International Advantage Bond Fund—Principal Investments

According to the Registration Statement, the International Advantage Bond Fund will seek total return exceeding that of its benchmarks, consistent with prudent investment management. The Fund will seek to achieve its investment objective by investing, under normal circumstances, at least 80% of its assets in Fixed Income Instruments and derivatives based on Fixed Income Instruments that are economically tied to foreign (non-U.S.) countries,[50] representing at least three foreign countries (the ''International Advantage Bond Fund 80% policy''). The average portfolio duration of the Fund will vary based on PIMCO's forecast for interest rates and, under normal circumstances, will not be expected to exceed eight years.

The International Advantage Bond Fund may invest in both investment-grade debt securities and high-yield securities (junk bonds) subject to a maximum of 15% of its total assets in securities rated below B by Moody's, S&P or Fitch, or, if unrated, determined by PIMCO to be of comparable quality.

The Fund's portfolio will include a minimum of 13 non-affiliated issuers.

The Fund may invest, without limitation, in securities and instruments that are economically tied to emerging market countries.[51]

In furtherance of the International Advantage Bond Fund 80% policy, or with respect to the Fund's other investments, the International Advantage Bond Fund may invest, without limitation, in derivative instruments, subject to applicable law and any other restrictions described in its prospectus or Statement of Additional Information (''SAI'').[52]

The International Advantage Bond Fund may invest up to 20% of its assets in mortgage-related and other asset-backed securities, although this 20% limitation does not apply to securities issued or guaranteed by Federal agencies and/or U.S. government sponsored instrumentalities.[53]

The International Advantage Bond Fund may invest, without limitation, in securities denominated in foreign currencies and in U.S. dollar-denominated securities of foreign issuers. The Fund may engage in foreign currency transactions on a spot (cash) basis and forward basis and invest in foreign currency futures and exchange-traded or OTC options contracts.[54] The Fund may enter into these contracts to hedge against foreign exchange risk, to increase exposure to a foreign currency or to shift exposure to foreign currency fluctuations from one currency to another.

The International Advantage Bond Fund may, without limitation, seek to obtain market exposure to the securities in which it primarily invests by entering into a series of purchase and sale contracts or by using other investment techniques (such as buy backs or dollar rolls). The International Advantage Bond Fund may purchase or sell securities on a when-issued, delayed delivery or forward commitment basis and may engage in short sales.[55]

International Advantage Bond Fund—Other (Non-Principal) Investments

The International Advantage Bond Fund may invest up to 10% of its total assets in preferred stock, convertible securities and other equity-related securities.[56]

The International Advantage Bond Fund may invest in variable and floating rate securities that are not Fixed Income Instruments. The Fund may invest in floaters and inverse floaters that are not Fixed Income Instruments and may engage in credit spread trades.

The International Advantage Bond Fund may invest in trade claims,

[44] *See supra,* note 26.
[45] *See supra,* note 27.
[46] *See supra,* note 28.
[47] *See supra,* note 29.
[48] *See supra,* note 31.
[49] *See supra,* note 32.
[50] *See supra,* note 23.
[51] *See supra,* note 24.
[52] *See supra,* note 27.
[53] *See supra,* note 28.
[54] *See supra,* note 29.
[55] *See supra,* note 31.
[56] *See supra,* note 32.

privately placed and unregistered securities, and exchange-traded and OTC-traded structured products, including credit-linked securities, commodity-linked notes and structured notes. The Fund may invest in Brady Bonds.

The International Advantage Bond Fund may enter into repurchase agreements on instruments other than Fixed Income Instruments, in addition to repurchase agreements on Fixed Income Instruments mentioned above, in which the Fund purchases a security from a bank or broker-dealer, which agrees to purchase the security at the Fund's cost plus interest within a specified time. Repurchase agreements maturing in more than seven days and which may not be terminated within seven days at approximately the amount at which the Fund has valued the agreements will be considered illiquid securities. The Fund may enter into reverse repurchase agreements on instruments other than Fixed Income Instruments, in addition to reverse repurchase agreements on Fixed Income Instruments mentioned above, subject to the Fund's limitations on borrowings.

All Funds—Other Restrictions

Each Fund may invest in, to the extent permitted by Section 12(d)(1)(A) of the 1940 Act, other affiliated and unaffiliated funds, such as open-end or closed-end management investment companies, including other exchange-traded funds, provided that each Fund's investment in units or shares of investment companies and other open-end collective investment vehicles will not exceed 10% of that Fund's total assets. Each Fund may invest in securities lending collateral in one or more money market funds to the extent permitted by Rule 12d1–1 under the 1940 Act, including series of PIMCO Funds.

Each Fund's investments, including investments in derivative instruments, will be subject to all of the restrictions under the 1940 Act, including restrictions with respect to illiquid assets; that is, the limitation that a 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.[57] 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 such Fund's net assets are held in illiquid assets. Illiquid assets include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.[58]

The Funds will be non-diversified, which means that each Fund may invest its assets in a smaller number of issuers than a diversified fund.[59]

The Funds intend to qualify annually and elect to be treated as a regulated investment company under Subchapter M of the Internal Revenue Code.[60] None of the Funds will concentrate its investments in a particular industry, as that term is used in the 1940 Act, and as interpreted, modified, or otherwise permitted by regulatory authority having jurisdiction from time to time.[61]

Each Fund may invest without limit, for temporary or defensive purposes, in U.S. debt securities, including taxable securities and short-term money market securities, if PIMCO deems it appropriate to do so. If PIMCO believes that economic or market conditions are unfavorable to investors, PIMCO may temporarily invest up to 100% of each Fund's assets in certain defensive strategies, including holding a substantial portion of the Fund's assets in cash, cash equivalents or other highly rated short-term securities, including securities issued or guaranteed by the U.S. government, its agencies or instrumentalities.

Each Fund's investments, including derivatives, will be consistent with that Fund's investment objective and each Fund's use of derivatives may be used to enhance leverage. However, each Fund's investments will not be used to seek performance that is the multiple or inverse multiple (*i.e.,* 2Xs and 3Xs) of the Fund's broad-based securities market index (as defined in Form N–1A).[62]

Net Asset Value and Derivatives Valuation Methodology for Purposes of Determining Net Asset Value

The NAV of each Fund's Shares will be determined by dividing the total value of a Fund's portfolio investments and other assets, less any liabilities, by the total number of Shares outstanding.

Each Fund's Shares will be valued as of the close of regular trading of the New York Stock Exchange (''NYSE'') (normally 4:00 p.m. Eastern time (''E.T.'') (the ''NYSE Close'') on each day NYSE Arca is open (''Business Day''). Information that becomes known to each of the Funds or its agents after the NAV has been calculated on a particular day will not generally be used to retroactively adjust the price of a portfolio asset or the NAV determined earlier that day.

For purposes of calculating NAV, portfolio securities and other assets for which market quotes are readily available will be valued at market value. Market value will generally be determined on the basis of last reported sales prices, or if no sales are reported, based on quotes obtained from a quotation reporting system, established market makers, or pricing services.

Fixed Income Instruments, including those to be purchased under firm commitment agreements/delayed delivery basis, will generally be valued on the basis of quotes obtained from brokers and dealers or independent pricing services. Foreign fixed income securities will generally be valued on the basis of quotes obtained from brokers and dealers or pricing services using data reflecting the earlier closing of the principal markets for those assets. Short-term debt instruments having a remaining maturity of 60 days or less will generally be valued at amortized cost, which approximates market value.

[57] In reaching liquidity decisions, the Adviser may consider the following factors: The frequency of trades and quotes for the security; the number of dealers willing to purchase or sell the security and the number of other potential purchasers; dealer undertakings to make a market in the security; and the nature of the security and the nature of the marketplace trades (*e.g.,* the time needed to dispose of the security, the method of soliciting offers, and the mechanics of transfer).

[58] 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).

[59] The diversification standard is set forth in Section 5(b)(1) of the 1940 Act (15 U.S.C. 80e).

[60] 26 U.S.C. 851.

[61] *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).

[62] 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.

As discussed in more detail below, derivatives will generally be valued on the basis of quotes obtained from brokers and dealers or pricing services using data reflecting the earlier closing of the principal markets for those assets. Local closing prices will be used for all instrument valuation purposes. Foreign currency-denominated derivatives will generally be valued as of the respective local region's market close.

With respect to specific derivatives:

- Currency spot and forward rates from major market data vendors [63] will generally be determined as of the NYSE Close.
- Exchange traded futures will generally be valued at the settlement price of the exchange.
- A total return swap on an index will be valued at the publicly available index price. The index price, in turn, is determined by the applicable index calculation agent, which generally values the securities underlying the index at the last reported sale price.
- Equity total return swaps will generally be valued using the actual underlying equity at local market closing, while bank loan total return swaps will generally be valued using the evaluated underlying bank loan price minus the strike price of the loan.
- Exchange traded non-equity options, (for example, options on bonds, Eurodollar options and U.S. Treasury options), index options, and options on futures will generally be valued at the official settlement price determined by the relevant exchange, if available.
- OTC and exchange traded equity options will generally be valued on a basis of quotes obtained from a quotation reporting system, established market makers, or pricing services or at the settlement price of the applicable exchange.
- OTC FX options will generally be valued by pricing vendors.
- All other swaps such as interest rate swaps, inflation swaps, swaptions, credit default swaps, CDX/CDS will generally be valued by pricing services.

Exchange-traded equity securities will be valued at the official closing price or the last trading price on the exchange or market on which the security is primarily traded at the time of valuation. If no sales or closing prices are reported during the day, exchange-traded equity securities will generally be valued at the mean of the last available bid and ask quotation on the exchange or market on which the security is primarily traded, or using other market information obtained from quotation reporting systems, established market makers, or pricing services. Investment company securities that are not exchange-traded will be valued at NAV. Trade claims, privately placed and unregistered securities, and structured products will generally be valued on the basis of quotes obtained from brokers and dealers or independent pricing services.

If a foreign security's value has materially changed after the close of the security's primary exchange or principal market but before the NYSE Close, the security will be valued at fair value based on procedures established and approved by the Board. Foreign securities that do not trade when the NYSE is open are also valued at fair value.

Securities and other assets for which market quotes are not readily available are valued at fair value as determined in good faith by the Board or persons acting at their direction. The Board has adopted methods for valuing securities and other assets in circumstances where market quotes are not readily available, and has delegated to PIMCO the responsibility for applying the valuation methods. In the event that market quotes are not readily available, and the security or asset cannot be valued pursuant to one of the valuation methods, the value of the security or asset will be determined in good faith by the Valuation Committee of the Board generally based upon recommendations provided by PIMCO.

Market quotes are considered not readily available in circumstances where there is an absence of current or reliable market-based data (*e.g.,* trade information, bid/ask information, broker quotes), including where events occur after the close of the relevant market, but prior to the NYSE Close, that materially affect the values of a Fund's securities or assets. In addition, market quotes are considered not readily available when, due to extraordinary circumstances, the exchanges or markets on which the securities trade do not open for trading for the entire day and no other market prices are available. The Board has delegated to PIMCO the responsibility for monitoring significant events that may materially affect the values of the Fund's securities or assets and for determining whether the value of the applicable securities or assets should be re-evaluated in light of such significant events.

When a Fund uses fair value pricing to determine its NAV, securities will not be priced on the basis of quotes from the primary market in which they are traded, but rather may be priced by another method that the Board or persons acting at their direction believe reflects fair value. Fair value pricing may require subjective determinations about the value of a security. While the Trust's policy is intended to result in a calculation of the Fund's NAV that fairly reflects security values as of the time of pricing, the Trust cannot ensure that fair values determined by the Board or persons acting at their direction would accurately reflect the price that a Fund could obtain for a security if it were to dispose of that security as of the time of pricing (for instance, in a forced or distressed sale). The prices used by a Fund may differ from the value that would be realized if the securities were sold.

For a Fund's 4:00 p.m. E.T. futures holdings, estimated prices from Reuters will be used if any cumulative futures margin impact is greater than $0.005 to the NAV due to futures movement after the fixed income futures market closes (3:00 p.m. E.T.) and up to the NYSE Close (generally 4:00 p.m. E.T.). Swaps traded on exchanges such as the Chicago Mercantile Exchange (''CME'') or the Intercontinental Exchange (''ICE–US'') will use the applicable exchange closing price where available.

Investments initially valued in currencies other than the U.S. dollar are converted to the U.S. dollar using exchange rates obtained from pricing services. As a result, the NAV of a Fund's Shares may be affected by changes in the value of currencies in relation to the U.S. dollar. The value of securities traded in markets outside the United States or denominated in currencies other than the U.S. dollar may be affected significantly on a day that the NYSE is closed. As a result, to the extent that a Fund holds foreign (non-U.S.) securities, the NAV of a Fund's Shares may change when an investor cannot purchase, redeem or exchange shares.

Derivatives Valuation Methodology for Purposes of Determining Portfolio Indicative Value

On each Business Day, before commencement of trading in Fund Shares on NYSE Arca, each Fund will disclose on its Web site the identities and quantities of the portfolio instruments and other assets held by a Fund that will form the basis for a Fund's calculation of NAV at the end of the Business Day.

In order to provide additional information regarding the intra-day value of Shares of a Fund, the NYSE Arca or a market data vendor will disseminate every 15 seconds through

[63] Major market data vendors may include, but are not limited to: Thomson Reuters, JPMorgan Chase PricingDirect Inc., Markit Group Limited, Bloomberg, Interactive Data Corporation or other major data vendors.

the facilities of the Consolidated Tape Association (''CTA'') or other widely disseminated means an updated Portfolio Indicative Value (''PIV'') for each Fund as calculated by an information provider or market data vendor.

A third party market data provider will calculate the PIV for each Fund. For the purposes of determining the PIV, the third party market data provider's valuation of derivatives is expected to be similar to their valuation of all securities. The third party market data provider may use market quotes if available or may fair value securities against proxies (such as swap or yield curves).

With respect to specific derivatives:

- Foreign currency derivatives may be valued intraday using market quotes, or another proxy as determined to be appropriate by the third party market data provider.
- Futures may be valued intraday using the relevant futures exchange data, or another proxy as determined to be appropriate by the third party market data provider.
- Interest rate swaps may be mapped to a swap curve and valued intraday based on the swap curve, or another proxy as determined to be appropriate by the third party market data provider.
- CDX/CDS may be valued using intraday data from market vendors, or based on underlying asset price, or another proxy as determined to be appropriate by the third party market data provider.
- Total return swaps may be valued intraday using the underlying asset price, or another proxy as determined to be appropriate by the third party market data provider.
- Exchange listed options may be valued intraday using the relevant exchange data, or another proxy as determined to be appropriate by the third party market data provider.
- OTC options may be valued intraday through option valuation models (*e.g.,* Black-Scholes) or using exchange traded options as a proxy, or another proxy as determined to be appropriate by the third party market data provider.

A third party market data provider's valuation of forwards will be similar to their valuation of the underlying securities, or another proxy as determined to be appropriate by the third party market data provider. The third party market data provider will generally use market quotes if available. Where market quotes are not available, they may fair value securities against proxies (such as swap or yield curves). Each Fund's disclosure of forward positions will include information that market participants can use to value these positions intraday.

Disclosed Portfolio

Each Fund's disclosure of derivative positions in the applicable Disclosed Portfolio will include information that market participants can use to value these positions intraday. On a daily basis, the Funds will disclose on the Funds' Web site the following information regarding each portfolio holding, as applicable to the type of holding: Ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including the type of holding, such as the type of swap); the identity of the security, commodity, index or other asset or instrument underlying the holding, if any; for options, the option strike price; quantity held (as measured by, for example, par value, notional value or number of shares, contracts or units); maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and the percentage weighting of the holding in a Fund's portfolio.

Impact on Arbitrage Mechanism

For each Fund, the Adviser believes there will be minimal, if any, impact to the arbitrage mechanism as a result of the use of derivatives. Market makers and participants should be able to value derivatives as long as the positions are disclosed with relevant information. The Adviser believes that the price at which Shares trade will continue to be disciplined by arbitrage opportunities created by the ability to purchase or redeem creation Shares at their NAV, which should ensure that Shares will not trade at a material discount or premium in relation to their NAV.

The Adviser does not believe there will be any significant impacts to the settlement or operational aspects of a Fund's arbitrage mechanism due to the use of derivatives. Because derivatives generally are not eligible for in-kind transfer, they will be substituted with a ''cash in lieu'' amount (as described below) when each Fund processes purchases or redemptions of ''Creation Units'' (as described below) in-kind.

Creations and Redemptions of Shares

According to the Registration Statement, Shares of each of the Funds that trade in the secondary market will be ''created'' at NAV [64] by Authorized Participants [65] only in block-size creation units (''Creation Units'') of 100,000 Shares or multiples thereof. Each Fund will offer and issue Shares at their NAV per Share generally in exchange for a basket of debt securities held by that Fund (the ''Deposit Securities'') together with a deposit of a specified cash payment (the ''Cash Component''), or in lieu of Deposit Securities, a Fund may permit a ''cash-in-lieu'' amount for any reason at the Fund's sole discretion. Alternatively, each Fund may issue Creation Units in exchange for a specified all-cash payment (''Cash Deposit'') (together with Deposit Securities and Cash Component, the ''Fund Deposit''). Similarly, Shares can be redeemed only in Creation Units, generally in-kind for a portfolio of debt securities held by each Fund and/or for a specified amount of cash (collectively, ''Redemption Instruments'').

On any given Business Day, purchases and redemptions of Creation Units will be made in whole or in part on a cash basis if an Authorized Participant deposits or receives (as applicable) cash in lieu of some or all of the Fund Deposit or Redemption Instruments, respectively, solely because such instruments are, in the case of the Fund Deposit, not available in sufficient quantity.[66] In determining whether a Fund will be selling or redeeming Creation Units on a cash or in-kind basis, the key consideration will be the benefit which would accrue to Fund investors. In many cases, investors may benefit by the use of all cash purchase orders because the Adviser would execute trades rather than market makers, and the Adviser may be able to obtain better execution in bond transactions due to its size, experience and potentially stronger relationships in the fixed income markets.

Except when aggregated in Creation Units, Shares will not be redeemable by the Funds. The prices at which

[64] The NAV of each of the Fund's Shares generally will be calculated once daily Monday through Friday as of the close of trading on the Exchange, generally 4:00 p.m. E.T. (the ''NAV Calculation Time'') on any Business Day. NAV per Share will be calculated by dividing a Fund's net assets by the number of that Fund's Shares outstanding. For more information regarding the valuation of each Fund's investments in calculating a Fund's NAV, see the Registration Statement.

[65] An ''Authorized Participant'' refers to a Participating Party (a broker-dealer or other participant in the clearing process through the Continuous Net Settlement System of the National Securities Clearing Corporation (''NSCC''); or a Depository Trust Company (''DTC'') Participant who has executed a Participant Agreement (an agreement with the Distributor and Transfer Agent with respect to creations and redemptions of Creation Unit aggregations).

[66] Such purchase or redemption transactions are ''custom orders.'' On any given Business Day, if the Fund accepts a custom order, the Adviser represents that the Fund will accept custom orders from all other Authorized Participants on the same basis.

creations and redemptions occur will be based on the next calculation of NAV after an order is received. Requirements as to the timing and form of orders are described in the Authorized Participant agreement. PIMCO will make available on each business day via the NSCC, prior to the opening of business (subject to amendments) on the Exchange (currently 9:30 a.m., E.T.), the identity and the required amount of each Deposit Security and the amount of the Cash Component (or Cash Deposit) to be included in the current Fund Deposit[67] (based on information at the end of the previous Business Day). Creations and redemptions must be made by an Authorized Participant.

Additional information regarding the Trust, the Funds 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.

Availability of Information

The Trust's Web site (*www.pimcoetfs.com*), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for each of the Funds that may be downloaded. The Trust's Web site will include additional quantitative information updated on a daily basis, including, for each of the Funds, (1) daily trading volume, the prior business day's reported closing price, NAV and mid-point of the bid/ask[68] spread at the time of calculation of such NAV (the ''Bid/Ask Price''), 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 (9:30 a.m. E.T. to 4:00 p.m. E.T.) on the Exchange, each of the Funds will disclose on the Trust's Web site the Disclosed Portfolio as defined in NYSE Arca Equities Rule 8.600(c)(2) that will form the basis for the each of the Fund's calculation of NAV at the end of the Business Day.[69]

Each Fund's disclosure of derivative positions in the applicable Disclosed Portfolio will include information that market participants can use to value these positions intraday. On a daily basis, the Funds will disclose on the Funds' Web site the following information regarding each portfolio holding, as applicable to the type of holding: Ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including the type of holding, such as the type of swap); the identity of the security, commodity, index or other asset or instrument underlying the holding, if any; for options, the option strike price; quantity held (as measured by, for example, par value, notional value or number of shares, contracts or units); maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and the percentage weighting of the holding in a Fund's 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 Funds' Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of the Exchange via the NSCC. The basket represents one Creation Unit of each of the Funds. The NAV of each of the Funds will normally be determined as of the close of the regular trading session on the Exchange (ordinarily 4:00 p.m. E.T.) on each Business Day. Authorized participants may refer to the basket composition file for information regarding Fixed Income Instruments, and any other instrument that may comprise a Fund's basket on a given day.

Investors can also obtain the Trust's SAI, the Funds' Shareholder Reports, and the Funds' Forms N–CSR and Forms 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, Form N–PX and Form N–SAR may be viewed on-screen or downloaded from the Commission's Web site at *www.sec.gov*. Intra-day and closing price information regarding equity securities traded on a national securities exchange, including common stocks, preferred stocks, securities convertible into stocks, closed-end funds, exchange traded funds and other equity-related securities, will be available from the exchange on which such securities are traded. Intra-day and closing price information regarding exchange-traded options (including options on futures) and futures will be available from the exchange on which such instruments are traded. Intra-day and closing price information regarding Fixed Income Instruments also will be available from major market data vendors. Price information relating to forwards will be available from major market data vendors. 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 will be available via the CTA high-speed line. Price information relating to U.S. exchange-listed options is available from the Options Price Reporting Authority. In addition, the PIV, as defined in NYSE Arca Equities Rule 8.600 (c)(3), will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session.[70] The dissemination of the PIV, together with the Disclosed Portfolio, may allow investors to determine an approximate value of the underlying portfolio of each of the Funds on a daily basis and to provide an estimate of that value throughout the trading day.

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 any of the Funds.[71] Trading in Shares of any 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

[67] The Deposit Securities and Cash Component or, alternatively, the Cash Deposit, will constitute the ''Fund Deposit,'' which will represent the investment amount for a Creation Unit of each of the Funds.

[68] The Bid/Ask Price of each of the Funds 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 that Fund's NAV. The records relating to Bid/Ask Prices will be retained by each of the Funds and their service providers.

[69] 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.

[70] Currently, the Exchange understands that several major market data vendors display and/or make widely available PIVs taken from the CTA or other data feeds.

[71] *See* NYSE Arca Equities Rule 7.12.

the financial instruments comprising the Disclosed Portfolio of any 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 any of the Funds may be halted.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4 a.m. to 8 p.m. 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.

Each Fund's Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600. Consistent with NYSE Arca Equities Rule 8.600(d)(2)(B)(ii), the Funds' Reporting Authority will implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the actual components of each Fund's portfolio. The Exchange represents that, for initial and/or continued listing, each Fund will be in compliance with Rule 10A–3 [72] 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 will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.

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.[73] 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. 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, exchange-traded options, exchange-traded equities, futures and options on futures with other markets or other entities that are members of the ISG, and FINRA may obtain trading information regarding trading in the Shares, exchange-trade options, exchange-traded equities, futures and options on futures from such markets or entities. In addition, the Exchange may obtain information regarding trading in the Shares, exchange-traded options, exchange-traded equities, futures and options on futures from markets or other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.[74] FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by the Funds reported to FINRA's Trade Reporting and Compliance Engine (''TRACE'').

Not more than 10% of the net assets of a Fund in the aggregate invested in exchange-traded equity securities shall consist of equity securities, including stocks into which a convertible security is converted, whose principal market is not a member of the ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement. Furthermore, not more than 10% of the net assets of a Fund in the aggregate invested in futures contracts or exchange-traded options contracts shall consist of futures contracts or exchange-traded options contracts whose principal market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit (''ETP'') Holders in an Information Bulletin (''Bulletin'') of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated PIV will not be calculated or publicly disseminated; (4) how information regarding the PIV is disseminated; (5) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Bulletin will reference that each of the Funds is subject to various fees and expenses described in the Registration Statement. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the 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) [75] 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

[72] 17 CFR 240.10A–3.

[73] 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.

[74] 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 a Fund may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

[75] 15 U.S.C. 78f(b)(5).

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, exchange-traded options, exchange-traded equities, futures and options on futures with other markets or other entities that are members of the ISG, and FINRA may obtain trading information regarding trading in the Shares, exchange-trade options, exchange-traded equities, futures and options on futures from such markets or entities. In addition, the Exchange may obtain information regarding trading in the Shares, exchange-traded options, exchange-traded equities, futures and options on futures from markets or other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by the Funds reported to FINRA's TRACE. Not more than 10% of the net assets of a Fund in the aggregate invested in exchange-traded equity securities shall consist of equity securities, including stocks into which a convertible security is converted, whose principal market is not a member of the ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement. Furthermore, not more than 10% of the net assets of a Fund in the aggregate invested in futures contracts or exchange-traded options contracts shall consist of futures contracts or exchange-traded options contracts whose principal market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement. The Hedged Foreign Bond Fund will normally limit its foreign currency exposure (from non-U.S. dollar-denominated securities or currencies) to 20% of the Fund's total assets. Each of the Funds will limit its investments in currencies to those currencies with a minimum average daily foreign exchange turnover of USD $1 billion as determined by the BIS Triennial Central Bank Survey. Each Fund's investments, including derivatives, will be consistent with that Fund's investment objective and each Fund's use of derivatives may be used to enhance leverage. However, each Fund's investments will not be used to seek performance that is the multiple or inverse multiple (i.e., 2Xs and 3Xs) of the Fund's broad-based securities market index (as defined in Form N–1A). Each of the Fund's investment in illiquid assets will not exceed 15% of that Fund's net assets. The Hedged and Unhedged Foreign Bond Funds will invest primarily in investment grade debt securities and will not invest more than 10% of its total assets in high yield securities rated B or higher by Moody's, S&P or Fitch, or if unrated, determined by PIMCO to be of comparable quality. The Global and International Advantage Bond Funds will each primarily invest in investment-grade debt securities and will not invest more than 15% of its total assets in high yield securities rated below B (as described above). Each Fund's portfolio will include a minimum of 13 non-affiliated issuers. With respect to each of the Funds, while non-emerging markets corporate debt securities (excluding commercial paper) generally must have $100 million or more par amount outstanding and significant par value traded to be considered as an eligible investment for each of the Funds, at least 80% of issues of such securities held by a Fund must have $100 million or more par amount outstanding at the time of investment. The PIMCO's Counterparty Risk Committee will evaluate the creditworthiness of swaps counterparties on an ongoing basis.

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 each of the Funds and the Shares, thereby promoting market transparency. Moreover, the PIV 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, each of the Funds will disclose on the Trust's Web site the Disclosed Portfolio that will form the basis for each Fund's 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, and quotation and last sale information will be available via the CTA high-speed line. Price information relating to U.S. exchange-listed options is available from the Options Price Reporting Authority. The Trust's Web site will include a form of the prospectus for each of 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 ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Trading in Shares of the any 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 any of the Funds may be halted. In addition, as noted above, investors will have ready access to information regarding each of the Funds' holdings, the PIV, 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 has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. The Adviser is not a broker-dealer but is affiliated with a broker-dealer and has implemented a ''fire wall'' with respect to such broker-dealer regarding access to information concerning the composition and/or changes to each Fund's portfolio. In addition, the Funds' Reporting Authority will implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the actual components of each Fund's portfolio.

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 will enhance competition with respect to such products 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. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as modified by Amendment No. 1 thereto, 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–2014–57 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, Station Place, 100 F Street NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–NYSEArca–2014–57. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site *http://www.sec.gov/rules/sro.shtml.* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2014–57 and should be submitted on or before July 30, 2014.

IV. Designation of a Longer Period for Commission Action

Section 19(b)(2) of the Act [76] provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The Commission is extending this 45-day time period.

Amendment No. 1 amended and replaced the proposed rule change in its entirety. The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change, as modified by Amendment No. 1 thereto, so that it has sufficient time to consider the proposed rule change as modified by Amendment No. 1.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[77] designates August 17, 2014, as the date by which the Commission should either approve or disapprove or institute proceedings to determine whether to disapprove the proposed rule change (File Number SR–NYSEArca–2014–57), as modified by Amendment No. 1 thereto.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[78]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2014–16046 Filed 7–8–14; 8:45 am]

BILLING CODE 8011–01–P

[76] 15 U.S.C. 78s(b)(2).

[77] *Id.*

[78] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Outagamie and Shawano Counties, Wisconsin

AGENCY: Wisconsin Department of Transportation (WisDOT), Federal Highway Administration (FHWA).

ACTION: Rescind notice of intent.

SUMMARY: The FHWA is issuing this revised notice to advise the public that FHWA and WisDOT will not prepare a Tier 1 Environmental Impact Statement (EIS) for long-range transportation improvements in the WIS 47 corridor in Outagamie and Shawano Counties, Wisconsin. A Notice of Intent to prepare an EIS was published in the **Federal Register** on November 18, 2010.

FOR FURTHER INFORMATION CONTACT: Tracey Blankenship, Major Projects Program Manager, Federal Highway Administration, 525 Junction Road, Suite 8000, Madison, WI 53717; Telephone: (608) 829–7500. You may also contact Matthew Haefs, Wisconsin Department of Transportation, 944 Vanderperren Way, Green Bay, WI 54304; Telephone: (920) 492–5702.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with WisDOT, will not prepare an EIS as previously intended on long-range improvements to address transportation demand, traffic operations, safety concerns, and corridor preservation needs on an approximate 33-mile portion of WIS 47 between US 41 in Outagamie County and WIS 29 in Shawano County. The EIS for this corridor is no longer needed because sufficient funds are not available at this time to program design or construction projects that would result from this study.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

AUTHORITY: 23 U.S.C. 315; 49 CFR 1.48.

Dated: Issued on: July 2, 2014.

Tracey Blankenship,

Major Projects Program Manager, Federal Highway Administration, Madison, Wisconsin.

[FR Doc. 2014–16077 Filed 7–8–14; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35839]

R.J. Corman Railroad Company/Texas Lines, LLC—Acquisition and Operation Exemption—Texas South-Eastern Railroad Company

R.J. Corman Railroad Company/Texas Lines, LLC (RJCD), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire from Texas South-Eastern Railroad Company and operate approximately 12 miles of track known as the Texas Southeastern Railroad (the Line) in Angelina County, Tex. The Line consists of: (1) Approximately two miles of mainline operating track in Diboll, Tex.; (2) some excepted connecting industrial spurs to shipper facilities; and (3) approximately 10 miles of adjoining excepted track, which is now used for rail car storage only and not for transportation purposes.

This transaction is related to a concurrently filed verified notice of exemption in *R.J. Corman Railroad Group, LLC—Continuance in Control Exemption—R.J. Corman Railroad Company/Texas Lines, LLC,* Docket No. FD 35840, in which R.J. Corman Railroad Group, LLC and R. J. Corman Railroad Company, LLC seek Board approval under 49 CFR 1180.2(d)(2) to continue in control of RJCD upon RJCD's becoming a Class III carrier.

RJCD certifies that its projected revenues upon consummation of the proposed transaction will not result in the creation of a Class I or Class II rail carrier and states that its projected annual revenues will not exceed $5 million.

RJCD states that it intends to consummate the proposed transaction on or before July 31, 2014. The earliest the transaction can be consummated is July 23, 2014, the effective date of the exemption (30 days after the verified notice was filed).

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions to stay must be filed no later than July 16, 2014 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35839, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on David R. Irvin, Moynahan, Irvin & Mooney, PSC, 110 North Main Street, Nicholasville, KY 40356.

Board decisions and notices are available on our Web site at *WWW.STB.DOT.GOV.*

Decided: July 3, 2014.

By the Board,

Rachel D. Campbell,

Director, Office of Proceedings.

Derrick A. Gardner,

Clearance Clerk.

[FR Doc. 2014–16024 Filed 7–8–14; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35840]

R.J. Corman Railroad Group, LLC and R.J. Corman Railroad Company, LLC—Continuance in Control Exemption—R.J. Corman Railroad Company/Texas Lines, LLC

R.J. Corman Railroad Group, LLC (Group) and R.J. Corman Railroad Company, LLC (RJCRC) have filed a verified notice of exemption pursuant to 49 CFR 1180.2(d)(2) to continue in control of R.J. Corman Railroad Company/Texas Lines, LLC (RJCD), a noncarrier, upon RJCD's becoming a Class III carrier.

This transaction is related to a concurrently filed verified notice of exemption in *R.J. Corman Railroad Company/Texas Lines, LLC—Acquisition and Operation Exemption—Texas South-Eastern Railroad Company,* Docket No. FD 35839, in which RJCD seeks Board approval under 49 CFR 1150.31 to acquire and operate approximately 12 miles of track known as the Texas Southeastern Railroad (the Line) in Angelina County, Tex.

RJCD expects to consummate the transaction proposed in Docket No. FD 35839 and become a rail carrier on or before July 31, 2014. The earliest that Group and RCJRC can exercise their continued control of RJCD as a rail carrier is July 23, 2014, the effective date of this exemption (30 days after the verified notice was filed).

Group and RJCRC represent that: (1) RJCD will not connect with any other railroad directly or indirectly controlled by Group or RJCRC; (2) the proposed continuance in control transaction is not part of a series of anticipated transactions that would connect RJCD with any railroad directly or indirectly owned and controlled by Group or RJCRC; and (3) the proposed continuance in control transaction does not involve a Class I rail carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here because all of the carriers involved are Class III carriers.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions to stay must be filed no later than July 16, 2014 (at least seven days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35840, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on David R. Irvin, Moynahan, Irvin & Mooney, PSC, 110 North Main Street, Nicholasville, KY 40356.

Board decisions and notices are available on our Web site at *WWW.STB.DOT.GOV.*

Decided: July 3, 2014.

By the Board,

Rachel D. Campbell,

Director, Office of Proceedings.

Derrick A. Gardner,

Clearance Clerk.

[FR Doc. 2014–16023 Filed 7–8–14; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. MCF 21058 [1]]

Texas Bus and Limo Acquisition Corp.—Control—GBJ, Inc.; Echo Tours and Charters L.P.; Roadrunner Charters, Inc.; Star Shuttle, Inc.; Tri-City Charters of Bossier, Inc.

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice Tentatively Authorizing Finance Transaction.

SUMMARY: Texas Bus and Limo Acquisition Corp. (TBL), GBJ, Inc. (GBJ), Echo Tours and Charters L.P. (Echo), Roadrunner Charters, Inc. (Roadrunner), and Star Shuttle, Inc. (Star) (collectively, Applicants) have filed an application under 49 U.S.C. 14303 for Echo to acquire control of Tri-City Charters of Bossier, Inc. (Tri-City), and for TBL thereafter to acquire control of GBJ, Echo, Roadrunner, and Star. The Board is tentatively approving and authorizing the transaction, and, if no opposing comments are timely filed, this notice will be the final Board action. Persons wishing to oppose the application must follow the rules at 49 CFR 1182.5 and 1182.8.

DATES: Comments must be filed by August 25, 2014. Applicants may file a reply by September 8, 2014. If no comments are filed by August 25, 2014, this notice shall be effective on August 26, 2014.

ADDRESSES: Send an original and 10 copies of any comments referring to Docket No. MCF 21058 to: Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, send one copy of comments to Applicant's representative: Richard P. Schweitzer, Richard P. Schweitzer, PLLC, Suite 800, 1776 K Street NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Scott Zimmerman, (202) 245–0386. Federal Information Relay Service (FIRS) for the hearing impaired: 1–800–877–8339.

SUPPLEMENTARY INFORMATION: TBL is a noncarrier holding company organized as a C Corp in Texas. Under the proposed transaction, TBL would acquire ownership and control of the stock of four Federally regulated motor carriers of passengers: Echo (MC–755212), GBJ (MC–369531), Roadrunner (MC–467373), and Star (MC–309567). Before TBL's acquisition of those four carriers, Echo would acquire 100 percent control of Tri-City (MC–370884), another Federally regulated motor carrier of passengers. (Echo, GBJ, Roadrunner, Star, and Tri-City are collectively called ''Applicant carriers.'') Applicants state that, additionally, $75 million in debt among Echo, GBJ, Roadrunner, and Star is being consolidated and restructured. If the transaction is approved, upon completion: (1) Echo would own 100 percent of the Tri-City stock (as well as its equipment and operating authority); (2) TBL would own 100 percent of the stock of Echo, GBJ, Roadrunner, and Star; and (3) Echo, GBJ, Roadrunner, and Star would own 100 percent of the TBL stock in equal shares. Applicants state that by consolidating their operations under TBL, they would be able to gain efficiencies and to consolidate and restructure debt of each carrier.

Applicants state that TBL, GBJ, Roadrunner, and Star are not affiliated with any other motor carriers. GBJ provides interstate charter transportation, local city shuttle service, and sedan service in the Houston metropolitan area. Roadrunner provides charter services in the Dallas/Fort Worth metropolitan area. Star provides charter, convention, and tour operations, as well as paratransit and transit services, in the San Antonio and Austin markets. Tri-City, which has no parent, subsidiaries, or affiliates, provides charter service in Louisiana, Texas, and other parts of the southeast United States. Echo, which is owned and controlled by a limited general partnership organized under an unincorporated entity called ET&C GP, provides charter, tour, and local city shuttle transportation in the Dallas, Fort Worth, Abilene, Tyler, and Waco markets. Echo owns 100 percent of the stock of its subsidiary, Echo Transportation Solutions, LLC, which provides premium sedan and limousine service but does not operate commercial vehicles and holds no federal or state operating authority; Echo also owns and controls 50 percent of the stock of Gotta Go Tours by Patti, LLC, a company that provides tour marketing services and also holds no Federal or state operating authority.

Under 49 U.S.C. 14303(b), the Board must approve and authorize a transaction that it finds consistent with the public interest, taking into consideration at least: (1) The effect of the proposed transaction on the adequacy of transportation to the public; (2) the total fixed charges that result; and (3) the interest of affected carrier employees. Applicants have submitted information, as required by 49 CFR 1182.2, including the information to demonstrate that the proposed transaction is consistent with the public interest under 49 U.S.C. 14303(b), and a statement that Applicants' aggregate gross operating revenues for the preceding 12 months exceeded $2 million, see 49 U.S.C. 14303(g).

Applicants submit that the proposed transaction would have no significant impact on the adequacy of transportation because Applicants do not intend to change the operations of the Applicant carriers. Rather, Applicants anticipate that consolidating their operations would enhance service to the public by allowing carriers to engage in vehicle sharing arrangements, centralizing certain management functions, and allowing carriers to take advantage of better financial terms. According to Applicants, the debt restructuring would allow the carriers to increase investment in their companies and would allow them to replace aging vehicles with newer, more energy efficient vehicles on more favorable financial terms. With respect to fixed charges, Applicants state that the debt restructuring would lower interest payments on existing debt and allow them to secure better financial terms for additional financing of equipment. Thus, Applicants expect their overall fixed charge for financing of equipment acquisitions would decrease while their combined financial structure would be strengthened. Applicants state that the transaction would not have an overall negative impact on employees. The proposed transaction would consolidate some administrative and headquarters personnel, but Applicants assert that any contraction of personnel would be offset by additions in higher paying sales and field operations personnel in multiple cities in Texas.

Applicants further assert that the acquisition would not have a material adverse effect on competition, because the markets in which Applicant carriers compete are subject to robust competition. Applicants state that the Dallas/Fort Worth area, in which Echo and Roadrunner provide charter service, has over 15 interstate providers of charter and tour services generating over $150 million in annual revenues and operating approximately 670 vehicles. According to Applicants, the combined revenues of Echo and Roadrunner would be less than one-third of the market's annual revenues and would account for about 100 vehicles in the Dallas/Fort Worth market. Applicants estimate that the combined share of the Applicant carriers in the East Texas

[1] A request for interim approval under 49 U.S.C. 14303(i) was included in Applicants' filing. In a decision served on July 9, 2014 in related Docket No. MCF 21058 TA, interim approval is granted, effective on the service date of that decision.

market would be less than 7.5 percent, and that it would not exceed 14 percent in the Dallas/Fort Worth market. Applicants note that areas served by the Applicant carriers are largely separate and distinct, with a small amount of overlap in the larger markets. Applicants further reiterate the Board's findings in other cases regarding low barriers to entry into the interstate bus industry.

On the basis of the application, the Board finds that the proposed acquisition is consistent with the public interest and should be tentatively approved and authorized. If any opposing comments are timely filed, these findings will be deemed vacated, and, unless a final decision can be made on the record as developed, a procedural schedule will be adopted to reconsider the application. See 49 CFR 1182.6(c). If no opposing comments are filed by the expiration of the comment period, this notice will take effect automatically and will be the final Board action.

Board decisions and notices are available on our Web site at *WWW.STB.DOT.GOV*.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The proposed transaction is approved and authorized, subject to the filing of opposing comments.

2. If opposing comments are timely filed, the findings made in this notice will be deemed vacated.

3. This notice will be effective August 26, 2014, unless opposing comments are filed by August 25, 2014.

4. A copy of this notice will be served on: (1) The U.S. Department of Transportation, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590; (2) the U.S. Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue NW., Washington, DC 20530; and (3) the U.S. Department of Transportation, Office of the General Counsel, 1200 New Jersey Avenue SE., Washington, DC 20590.

Decided: July 3, 2014.

By the Board, Chairman Elliott, Vice Chairman Miller, and Commissioner Begeman.

Derrick A. Gardner,

Clearance Clerk.

[FR Doc. 2014–16056 Filed 7–8–14; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund; Proposed Data Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The U.S. Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Community Development Financial Institutions Fund (CDFI Fund), Department of the Treasury, is soliciting comments concerning the Annual Certification and Data Collection Report Form. This reporting form will enable the CDFI Fund to recertify Community Development Financial Institutions (CDFIs) on an annual basis and reduce the burden of the re-certification process that currently occurs every three years. In addition to recertifying CDFIs, this report also seeks to collect financial and impact data on an annual basis to provide the CDFI Fund and the industry with more insight into the state and accomplishments of CDFIs. The process for data collection and reporting is expected to take place via electronic submission to the CDFI Fund pending the implementation of an electronic submission process. The Annual Certification and Data Collection Report Form may be obtained from the CDFI Certification page of the CDFI Fund's Web site at *http://www.cdfifund.gov/cdficert*. The term CDFI is defined in regulations that govern the CDFI Program (at 12 CFR 1805).

DATES: Written comments should be received on or before September 8, 2014 to be assured of consideration. These comments will be considered before the CDFI Fund submits a request for Office of Management and Budget (OMB) review of the data reporting form described in this notice.

ADDRESSES: Direct all comments to Brette Fishman, Management Analyst at the Community Development Financial Institutions Fund, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20020, by email to *annualreport@cdfi.treas.gov,* or by facsimile to (202) 508–0083. Please note this is not a toll free number.

FOR FURTHER INFORMATION CONTACT: The Annual Certification and Data Collection Report Form may be obtained from the CDFI Certification page of the CDFI Fund's Web site at *http://www.cdfifund.gov/cdficert*. Requests for additional information should be directed to Brette Fishman, Management Analyst, at the Community Development Financial Institutions Fund, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20020, by email to *annualreport@cdfi.treas.gov*.

SUPPLEMENTARY INFORMATION:

Title: CDFI Annual Certification and Data Collection Report Form.

OMB Number: 1559–0044.

Abstract: A certified CDFI is a specialized financial institution that works in markets that are underserved by traditional financial institutions. CDFIs provide a unique range of financial products and services in economically distressed target markets, such as mortgage financing for low-income and first-time homebuyers and not-for-profit developers, flexible underwriting and risk capital for needed community facilities, and technical assistance, commercial loans and investments to small start-up or expanding businesses in low-income areas. CDFIs include regulated institutions such as community development banks and credit unions, and non-regulated institutions such as loan and venture capital funds. CDFI certification is a designation conferred by the CDFI Fund and is a requirement for: accessing financial assistance from the CDFI Fund through the CDFI Program, the Native American CDFI Assistance Program, and the Capital Magnet Fund; receiving certain benefits under the Bank Enterprise Award Program; and participation as an Eligible CDFI under the CDFI Bond Guarantee Program. Currently, CDFIs are currently recertified every three years. The CDFI Annual Certification and Data Collection Report Form would replace the extensive process conducted every three years with an annual report. This report will also collect financial and impact data from all CDFIs regardless of whether or not they have received monetary awards in their last fiscal year. This report is a preliminary method to collect standardized data on the full universe of certified CDFIs.

Current Actions: New collection.

Type of Review: Regular review.

Affected Public: Certified CDFIs.

Estimated Number Certified CDFI Respondents: 800.

Estimated Annual Time Per Certified CDFI Respondent: 3 hours.

Estimated Total Annual Burden Hours: 2,400 hours.

Requests for Comments: Comments submitted in response to this notice will

be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record and may be published on the CDFI Fund Web site at *http://www.cdfifund.gov*. Comments are invited on: (a) Whether the collection of information is consistent with the stated background and proposed use necessary for the proper performance of the functions of the CDFI Fund; (b) the accuracy of the CDFI Fund's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of technology; and (e) estimates of operational or maintenance costs to provide information.

Authority: Pub. L. 104–13; 12 CFR 1805; 12 CFR 1806; 12 CFR 1807; 12 CFR 1808.

Dated: July 1, 2014.

Bob Ibanez,

Acting Deputy Director, Community Development Financial Institutions Fund.

[FR Doc. 2014–15983 Filed 7–8–14; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Designation of an Entity Pursuant to Executive Order 13413

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing the name of one entity whose property and interests in property have been blocked pursuant to Executive Order 13413 of October 27, 2006, ''Blocking Property of Certain Persons Contributing to the Conflict in the Democratic Republic of the Congo.''

DATES: The designation by the Director of OFAC of the one entity identified in this notice, pursuant to Executive Order 13413 of October 27, 2006, is effective on July 1, 2014.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Sanctions Compliance and Evaluation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*www.treas.gov/ofac*) and via facsimile through a 24-hour fax-on-demand service, tel.: (202) 622–0077.

Background

On October 27, 2006, the President signed Executive Order 13413, ''Blocking Property of Certain Persons Contributing to the Conflict in the Democratic Republic of the Congo'' (the ''Order'' or ''E.O. 13413''), pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), and section 5 of the United Nations Participation Act, as amended (22 U.S.C. 287c).

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, that come within the United States or that are or come within the possession or control of United States persons, of the persons identified by the President in the Annex to the Order, as well as those persons determined by the Secretary of the Treasury, after consultation with the Secretary of State, to meet any of the criteria set forth in subparagraphs (a)(ii)(A)–(a)(ii)(G) of Section 1 of the Order.

On July 1, 2014, the Director of OFAC, in consultation with the Secretary of State, designated pursuant to one or more of the criteria set forth in Section 1 of the Order, the one entity listed below, whose name has been added to the list of Specially Designated Nationals and Blocked Persons and whose property and interests in property, therefore, are blocked.

The listing of the blocked entity appears as follows:

1. ALLIED DEMOCRATIC FORCES (a.k.a. ADF; a.k.a. ADF/NALU; a.k.a. FORCES DEMOCRATIQUES ALLIEES-ARMEE NATIONALE DE LIBERATION DE L'OUGANDA; a.k.a. ISLAMIC ALLIANCE OF DEMOCRATIC FORCES), North Kivu Province, Congo, Democratic Republic of the [DRCONGO].

Dated: July 1, 2014.

Barbara C. Hammerle,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2014–16009 Filed 7–8–14; 8:45 am]

BILLING CODE 4810–AL–P

FEDERAL REGISTER

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Part II

Securities and Exchange Commission

17 CFR Parts 240, 241, and 250

Application of ''Security-Based Swap Dealer'' and ''Major Security-Based Swap Participant'' Definitions to Cross-Border Security-Based Swap Activities; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 240, 241, and 250

[Release No. 34–72472; File No. S7–02–13]

RIN 3235–AL25

Application of ''Security-Based Swap Dealer'' and ''Major Security-Based Swap Participant'' Definitions to Cross-Border Security-Based Swap Activities

AGENCY: Securities and Exchange Commission.

ACTION: Final rules; interpretation.

SUMMARY: The Securities and Exchange Commission (''SEC'' or ''Commission'') is adopting rules and providing guidance to address the application of certain provisions of the Securities Exchange Act of 1934 (''Exchange Act'') that were added by Subtitle B of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act''), to cross-border security-based swap activities. These rules and guidance in large part focus on the application of the Title VII definitions of ''security-based swap dealer'' and ''major security-based swap participant'' in the cross-border context. The Commission also is adopting a procedural rule related to the submission of applications for substituted compliance. In addition, the Commission is adopting a rule addressing the scope of our authority, with respect to enforcement proceedings, under section 929P of the Dodd-Frank Act.

DATES: Effective September 8, 2014.

FOR FURTHER INFORMATION CONTACT: Richard Gabbert, Senior Special Counsel, Joshua Kans, Senior Special Counsel, or Margaret Rubin, Special Counsel, Office of Derivatives Policy, at 202–551–5870, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–7010.

SUPPLEMENTARY INFORMATION: The Commission is adopting the following rules under the Exchange Act, accompanied by related guidance, regarding the application of Subtitle B of Title VII of the Dodd-Frank Act to cross-border activities: Rule 0–13 (filing procedures regarding substituted compliance requests); Rule 3a67–10 (regarding the cross-border implementation of the ''major security-based swap participant'' definition); Rule 3a71–3 (regarding the cross-border implementation of the *de minimis* exception to the ''security-based swap dealer'' definition); Rule 3a71–4 (regarding the cross-border implementation of the aggregation provisions of the dealer *de minimis* exception); and Rule 3a71–5 (regarding an exception, from the dealer *de minimis* analysis, for certain cleared anonymous transactions). The Commission is not addressing, as part of this release, certain other rules that we proposed regarding the application of Subtitle B of Title VII in the cross-border context. The Commission also is adopting Rule 250.1 to clarify the scope of its antifraud civil law-enforcement authority, with respect to enforcement proceedings, in the cross-border context.

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I. Background

A. Scope of This Rulemaking

The Commission is adopting the first of a series of rules and providing guidance regarding the application of Title VII of the Dodd-Frank Act [1] (''Title VII'') to cross-border security-based swap activities and persons engaged in those activities.[2] This rulemaking primarily focuses on the application of the *de minimis* exception to the definition of ''security-based swap dealer'' in the cross-border context, and on the application of thresholds related to the definition of ''major security-based swap participant'' in the cross-border context. We also are adopting a procedural rule regarding the submission of ''substituted compliance'' requests to allow market participants to satisfy certain Title VII obligations by complying with comparable foreign regulatory requirements.[3]

The rules and guidance we are adopting are based on our May 23, 2013 proposal, which addressed the application of Title VII in the cross-border context.[4] Aside from addressing the definitions and procedural rule noted above, the Cross-Border Proposing Release also addressed a range of other cross-border issues, including issues regarding the requirements applicable to dealers and major participants, and requirements relating to mandatory clearing, trade execution, regulatory reporting, and public dissemination. The Cross-Border Proposing Release stated that it was possible that we would consider final rules and guidance related to some of those issues in the adopting releases related to the relevant substantive rulemakings, and that we would address others in a separate rulemaking.[5]

This rulemaking's focus on the cross-border application of the dealer and major participant definitions reflects the critical and foundational role that those definitions occupy with regard to the implementation of Title VII.[6] We expect to address other matters raised by the Cross-Border Proposing Release as part of subsequent rulemakings, to allow us to consider the cross-border application of the substantive requirements imposed by Title VII—including the economic consequences of that cross-border application—in conjunction with the final rules that will implement those substantive requirements.[7] Market participants are not required to comply with certain of those Title VII requirements pending the publication of final rules or other Commission action, and temporarily are exempt from having to comply with certain other requirements added by or arising from Title VII.[8]

These final rules and guidance do not address one key issue related to the application of the ''security-based swap dealer'' definition in the cross-border context. In the Cross-Border Proposing Release, we proposed that non-U.S. persons must count, against the relevant thresholds of the *de minimis* exemption, their dealing activity involving ''transactions conducted within the United States.'' [9] Commenters raised a number of significant issues related to this proposed requirement, including issues regarding the Commission's authority to impose this requirement and regarding the costs associated with this requirement. While we continue to preliminarily believe that the cross-border application of the security-based swap dealer definition should account for activities in the United States related to dealing—even when neither party to the transaction is a U.S. person—we also believe that the final resolution of this issue can benefit from further consideration and public comment. Accordingly, we anticipate soliciting additional public comment regarding approaches by which the cross-border

[1] Public Law 111–203, 124 Stat. 1376 (2010). Unless otherwise indicated, references to Title VII in this release are to Subtitle B of Title VII.

[2] Consistent with the scope of the final rules as discussed below, the references in this release to the application of Title VII to ''cross-border activities'' refer to security-based swap transactions involving: (i) A U.S. person and a non-U.S. person, or (ii) two non-U.S. persons conducting a security-based swap transaction that otherwise occurs in relevant part within the United States, including where performance of one or both counterparties under the security-based swap are guaranteed by a U.S. person. For purposes of this release only, ''cross-border activities'' do not indicate activities involving a transaction between two non-U.S. persons where one or both are conducting dealing activity within the United States, because, as discussed below, we anticipate considering this issue in a subsequent release.

[3] The procedural rule addresses only the process for submitting such substituted compliance requests to the Commission. It does not address issues regarding whether substituted compliance would be available in connection with particular regulatory requirements, and, if so, under what conditions. We expect to address those matters as part of later rulemakings.

[4] *See* Cross-Border Security-Based Swap Activities; Re-Proposal of Regulation SBSR and Certain Rules and Forms Relating to the Registration of Security-Based Swap Dealers and Major Security-Based Swap Participants, Exchange Act Release No. 69490 (May 1, 2013), 78 FR 30968 (May 23, 2013) (''Cross-Border Proposing Release'').

[5] *See id.* at 30974.

[6] This rulemaking does not address the requirements under section 5 of the Securities Act applicable to security-based swap transactions. Security-based swaps, as securities, are subject to the provisions of the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) (''Securities Act'') and the rules and regulations thereunder applicable to securities. The Securities Act requires that any offer and sale of a security must either be registered under the Securities Act (*see* section 5 of the Securities Act, 15 U.S.C. 77e) or made pursuant to an exemption from registration (*see, e.g.,* sections 3 and 4 of the Securities Act, 15 U.S.C. 77c and 77d, respectively). In addition, the Securities Act requires that any offer to sell, offer to buy or purchase, or purchase or sale of, a security-based swap to any person who is not an eligible contract participant must be registered under the Securities Act (*see* section 5(e) of the Securities Act, 15 U.S.C. 77e(e)). Because of the statutory language of section 5(e) of the Securities Act, exemptions from this requirement in sections 3 and 4 of the Securities Act are not available.

[7] Those subsequent rulemakings may make use of definitions of ''U.S. person'' and certain other terms that we are adopting today.

[8] *See* Temporary Exemptions and Other Temporary Relief, Together With Information on Compliance Dates for New Provisions of the Securities Exchange Act of 1934 Applicable to Security-Based Swaps, Exchange Act Release No. 64678 (Jun. 15, 2011), 76 FR 36287 (Jun. 22, 2011) (clarifying the compliance date for certain requirements added by Title VII, and in some cases providing temporary exemptive relief in connection with those requirements); Order Extending Temporary Exemptions under the Securities Exchange Act of 1934 in Connection with the Revision of the Definition of ''Security'' to Encompass Security-Based Swaps, and Request for Comment, Exchange Act Release No. 71485 (Feb. 5, 2014), 79 FR 7731 (Feb. 10, 2014) (extending exemptive relief from certain Exchange Act provisions in connection with Title VII's revision of the Exchange Act definition of ''security'' to encompass security-based swaps).

[9] *See* proposed Exchange Act rule 3a71–3(b). The proposal further would have defined a ''transaction conducted within the United States'' to encompass transactions that are solicited, executed, or booked within the United States by or on behalf of either counterparty, regardless of either counterparty's location, domicile or residence status, subject to an exception for transactions conducted through the foreign branches of U.S. banks. *See* proposed Exchange Act rule 3a71–3(a)(5).

application of the dealer definition appropriately can reflect activity between two non-U.S. persons where one or both are conducting dealing activity within the United States.

B. The Dodd-Frank Act

As discussed in the Cross-Border Proposing Release, the 2008 financial crisis highlighted significant issues in the over-the-counter (''OTC'') derivatives markets, which had experienced dramatic growth in the years leading up to the crisis and are capable of affecting significant sectors of the U.S. economy.[10] The Dodd-Frank Act was enacted, among other reasons, to promote the financial stability of the United States by improving accountability and transparency in the financial system, including in connection with swaps and security-based swaps.[11]

Title VII provides for a comprehensive new regulatory framework for swaps and security-based swaps. Under this framework, the Commodity Futures Trading Commission (''CFTC'') regulates ''swaps'' while the Commission regulates ''security-based swaps,'' and the Commission and CFTC jointly regulate ''mixed swaps.'' The new framework encompasses the registration and comprehensive regulation of dealers and major participants, as well as requirements related to clearing, trade execution, regulatory reporting, and public dissemination.[12] Security-based swap transactions are largely cross-border in practice,[13] and the various market participants and infrastructures operate in a global market. To ensure that our regulatory framework appropriately reflects and addresses the nature and extent of the potential impact that the global market can have on U.S. persons and the U.S. financial system, it is critically important that we provide market participants with clear rules and guidance regarding how the regulatory framework mandated by Title VII will apply in the cross-border context.

In developing these final rules and guidance, we have consulted and coordinated with the CFTC, the prudential regulators,[14] and foreign regulatory authorities in accordance with the consultation provisions of the Dodd-Frank Act,[15] and more generally as part of our domestic and international coordination efforts.[16] Commission staff has participated in numerous bilateral and multilateral discussions with foreign regulatory authorities addressing the regulation of OTC derivatives.[17] Through these discussions and the Commission staff's participation in various international task forces and working groups,[18] we have gathered information about foreign regulatory reform efforts and the possibility of conflicts and gaps, as well as inconsistencies and overlaps, between U.S. and foreign regulatory regimes. We have taken this information into consideration in developing the final rules and guidance.

C. The Cross-Border Proposing Release and the CFTC Cross-Border Guidance

In expressing our preliminary views regarding the application of Title VII to security-based swap activity carried out in the cross-border context (including to persons engaged in such activities), the Cross-Border Proposing Release recognized that the security-based swap market is global in nature and that it developed prior to the enactment of the Dodd-Frank Act.[19] The proposal further recognized that the rules we adopt and guidance we provide regarding the cross-border application of Title VII could significantly affect the global security-based swap market.[20]

Reflecting the range of regulatory requirements that Title VII imposes upon the security-based swap market, the Cross-Border Proposing Release addressed the cross-border application of: (a) The *de minimis* exception to the ''security-based swap dealer'' definition; (b) the entity-level and transaction-level requirements applicable to security-based swap dealers (*e.g.,* margin, capital, and business conduct requirements); (c) the ''substantial

[10] *See generally* Cross-Border Proposing Release, 78 FR 30972–73.

[11] *See* Pub. L. 111–203, Preamble (stating that the Dodd-Frank Act was enacted ''[t]o promote the financial stability of the United States by improving accountability and transparency in the financial system, to end 'too big to fail', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes'').

[12] The Commission has proposed a series of rules regarding these matters. *See* Cross-Border Proposing Release, 78 FR 30972 nn.11–18. Most recently, the Commission proposed rules governing recordkeeping, reporting, and notification requirements for dealers and major participants. *See* Exchange Act Release No. 71958 (Apr. 17, 2014), 79 FR 25194 (May 2, 2014).

The Dodd-Frank Act further provides that the SEC and CFTC jointly should further define certain terms, including ''security-based swap dealer'' and ''major security-based swap participant.'' *See* Dodd-Frank Act section 712(d). Pursuant to that requirement, the SEC and CFTC jointly adopted rules to further define those terms. *See* Further Definition of ''Swap Dealer,'' ''Security-Based Swap Dealer,'' ''Major Swap Participant,'' ''Major Security-Based Swap Participant'' and ''Eligible Contract Participant,'' Exchange Act Release No. 66868 (Apr. 27, 2012), 77 FR 30596 (May 23, 2012) (''Intermediary Definitions Adopting Release''); *see also* Cross-Border Proposing Release, 78 FR 30972 n.9 (discussing joint rulemaking to further define various Title VII terms).

[13] *See* section 0, *infra,* regarding the preponderance of cross-border activity in the security-based swap market.

[14] The term ''prudential regulator'' is defined in section 1a(39) of the CEA, 7 U.S.C. 1a(39), and that definition is incorporated by reference in section 3(a)(74) of the Exchange Act, 15 U.S.C. 78c(a)(74). Pursuant to the definition, the Board of Governors of the Federal Reserve System (''Federal Reserve Board''), the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Farm Credit Administration, or the Federal Housing Finance Agency (collectively, the ''prudential regulators'') is the ''prudential regulator'' of a security-based swap dealer or major security-based swap participant if the entity is directly supervised by that regulator.

[15] Section 712(a)(2) of the Dodd-Frank Act provides in part that the Commission shall ''consult and coordinate to the extent possible with the Commodity Futures Trading Commission and the prudential regulators for the purposes of assuring regulatory consistency and comparability, to the extent possible.''

In addition, section 752(a) of the Dodd-Frank Act provides in part that ''[i]n order to promote effective and consistent global regulation of swaps and security-based swaps, the Commodity Futures Trading Commission, the Securities and Exchange Commission, and the prudential regulators . . . as appropriate, shall consult and coordinate with foreign regulatory authorities on the establishment of consistent international standards with respect to the regulation (including fees) of swaps.''

[16] In 2009, leaders of the Group of 20 (''G20'')—whose membership includes the United States, 18 other countries, and the European Union (''EU'')—called for global improvements in the functioning, transparency, and regulatory oversight of OTC derivatives markets. *See* G20 Leaders' Statement, Pittsburgh, United States, September 24–25, 2009, available at: *http://www.treasury.gov/resource-center/international/g7-g20/Documents/pittsburgh_summit_leaders_statement_250909.pdf. (''G20 Leaders' Pittsburgh Statement'').*

In subsequent summits, the G20 leaders have reiterated their commitment to OTC derivatives regulatory reform. For example, in September 2013, the leaders of the G20 reaffirmed their commitments with respect to the regulation of the OTC derivatives markets, welcoming Financial Stability Board (''FSB'') members' confirmed actions and committed timetables to put the agreed OTC derivatives reforms into practice. *See* the G20 Leaders Declaration (September 2013), para. 71, available at: *https://www.g20.org/sites/default/files/g20_resources/library/Saint_Petersburg_Declaration_ENGpdf* (''G20 Leaders' St. Petersburg Declaration'').

[17] Senior representatives of authorities with responsibility for regulation of OTC derivatives have met on a number of occasions to discuss international coordination of OTC derivatives regulations. *See, e.g.,* Report of the OTC Derivatives Regulators Group (''ODRG'') on Cross-Border Implementation Issues March 2014 (Mar. 31, 2014), available at: *http://www.cftc.gov/ucm/groups/public/@internationalaffairs/documents/file/odrgreport033114.pdf.*

[18] Commission representatives participate in the FSB's Working Group on OTC Derivatives Regulation (''ODWG''), both on its own behalf and as the representative of the International Organization of Securities Commissions (''IOSCO''), which is co-chair of the ODWG. A Commission representative also serves as one of the co-chairs of the IOSCO Task Force on OTC Derivatives Regulation.

[19] *See* Cross-Border Proposing Release, 78 FR 30975–76.

[20] *See id.* at 30975.

position'' and ''substantial counterparty exposure'' thresholds for the ''major security-based swap participant'' definition and the requirements applicable to major participants; (d) the registration of security-based swap clearing agencies and mandatory clearing requirements; (e) the registration of security-based swap execution facilities and mandatory trade execution requirements; and (f) the registration of security-based swap data repositories and regulatory reporting and public dissemination requirements. The proposal also addressed the potential for market participants to satisfy certain of those Title VII requirements by complying with comparable foreign rules as a substitute. This rulemaking establishes a process for submission of such requests.

Following the Commission's proposal, the CFTC issued guidance regarding Title VII's application to cross-border swap activity.[21] The CFTC Cross-Border Guidance differed from the Commission's proposed rules in certain ways, including, as discussed below, with regard to the meaning of ''U.S. person,'' the cross-border application of the *de minimis* exception to the dealer definition, the cross-border application of the major participant definition, and the process for submitting substituted compliance requests.[22]

Certain foreign regulators also have addressed or are in the process of addressing issues related to the cross-border implementation of requirements applicable to OTC derivatives.[23]

D. Comments on the Proposal

The Commission received 36 comments in connection with the proposal.[24] Several of the commenters addressed differences between the SEC's proposed rules and the CFTC Cross-Border Guidance, and urged the Commission to harmonize its rules with the approaches taken by the CFTC and by foreign regulators.[25]

Many of those commenters particularly focused on differences between the two regulators' meanings of the term ''U.S. person,'' with several suggesting that we change our proposed definition to align with the CFTC's approach.[26] A number of commenters also addressed the definition of ''transaction conducted within the United States,'' with several opposing any use of the concept as part of the Commission's rules.[27]

Commenters further raised a number of more general concerns in connection with the proposal, including concerns regarding cost-benefit issues,[28] the clarity of the proposal as a whole,[29] the link between the rules and the location of the associated risk,[30] and perceived concessions to the financial industry.[31]

In addition, commenters addressed issues specific to the cross-border application of the entity-level and transaction-level requirements for dealers,[32] as well as requirements

[21] *See* ''Interpretive Guidance and Policy Statement Regarding Compliance With Certain Swap Regulations'' (Jul. 17, 2013), 78 FR 45292 (Jul. 26, 2013) (''CFTC Cross-Border Guidance'').

[22] The CFTC Cross-Border Guidance currently is subject to legal challenge. *See* Complaint, *Securities Indus. & Fin. Mkts. Ass'n.* v. *CFTC,* No. 1:13-cv-1916 (D.D.C. filed Dec. 4, 2013).

[23] *See* section 0, *infra.*

[24] The comment letters are located at: *http://www.sec.gov/comments/s7-02-13/s70213.shtml.* The majority of those commenters addressed, at least in part, the definitional issues that are the subject of this release. A number of commenters also addressed aspects of the proposal that are outside the scope of this release, and a few of those commenters only addressed issues that were outside the scope of this release (for example, addressing only proposed Regulation SBSR). We will consider those comments in connection with the relevant rulemakings.

[25] *See, e.g.,* Managed Funds Assoc. and Alternative Investment Management Assoc. (''MFA/AIMA'') Letter at 3 (''We recognize that there are differences between the Commission's proposed approach and the CFTC Cross-Border Guidance, and we expect that other international regulators will similarly issue proposals related to the cross-border application of their regulations. Thus, in light of the global nature of the derivatives market, we urge continued harmonization with the CFTC and other regulatory authorities with respect to the extraterritorial scope of all these regimes. In particular, we encourage international coordination of substituted compliance regimes to ensure appropriate recognition of comparable regulations, create practical and administrable frameworks, and alleviate duplicative regulation.'' (footnotes omitted)). *See also* letter from six members of the United States Senate at 2 (stating that there should be no gaps or loopholes between the Commission's and the CFTC's rules); Futures and Options Association (''FOA'') Letter at 8 (urging the Commission and the CFTC ''to coordinate, to the extent possible, on their approaches in order to minimise distortions or other unintended consequences for market participants''); letter from Senator Jeffrey A. Merkley, et al., Congress of the United States (Aug. 6, 2013).

Some commenters generally suggested that we harmonize with aspects of the CFTC Cross-Border Guidance, but also expressed preferences for particular elements of our proposed approach. *See, e.g.,* Institute of International Bankers (''IIB'') Letter at 3–4 (generally emphasizing the need for consistency with the CFTC and European Securities and Markets Authority (''ESMA'') approaches, unless the SEC requirement is more flexible than those other requirements). One commenter took the view that the Commission's rules should be at least as strong as the CFTC Cross-Border Guidance, but should go further than the CFTC wherever necessary. *See* Better Markets (''BM'') Letter. *See also* Chris Barnard Letter at 2 (recommending that the Commission and the CFTC propose one set of rules applicable to cross-border activities to avoid duplicative and conflicting rules).

[26] *See* notes 192–224, *infra,* and accompanying text.

[27] As noted above, these final rules and guidance do not address the application of the ''transaction conducted within the United States'' concept to the dealer definition. We instead anticipate soliciting additional public comment regarding the issue.

[28] For example, a few commenters took the view that cost-benefit principles weighed in favor of consistency with the CFTC Cross-Border Guidance. *See* Securities Industry and Financial Markets Association/Futures Industry Association/Financial Services Roundtable (''SIFMA/FIA/FSR'') Letter at 3; PensionsEurope Letter (incorporating by reference SIFMA/FIA/FSR Letter; all references to SIFMA/FIA/FSR Letter incorporate reference to PensionsEurope Letter); IIB Letter at 2, 3. One commenter further took the view that cost-benefit principles merited rejection of the use of the ''transaction conducted within the United States'' concept. *See* SIFMA/FIA/FSR Letter at 3. *See also* Chris Barnard Letter at 2 (suggesting that there is insufficient administrative, legal, or economic rationale for having ''very different rules'' of cross-border application between the SEC and the CFTC); Coalition for Derivatives End-Users (''CDEU'') Letter at 2 (stating that conflicting regulatory regimes will result in increased compliance and regulatory costs and an inefficient financial system); Association of Financial Guaranty Insurers (''AFGI'') Letter, dated August 20, 2013 (''AFGI Letter I'') at 2 (stating that the security-based swap dealer and major security-based swap participant regime would be disruptive and have financial consequences for guaranty insurers and their counterparties who have legacy transactions with a projected run-off date in the near future); AFGI letter, dated July 22, 2013 (''AFGI Letter II'') at 4 (incorporated by reference in AFGI Letter I); AFGI letter, dated February 15, 2013 (''AFGI Letter III'') at 4 (incorporated by reference in AFGI Letter I).

One commenter conversely argued that, in lieu of cost-benefit principles, the Commission instead should be guided by public interest and investor protection principles, as well as the Dodd-Frank Act's intent to increase financial system soundness and prevent another financial crisis. *See* BM Letter at 4, 37–45 (stating, *inter alia,* that ''Congress passed the Dodd-Frank Act knowing full well that it would impose significant costs on industry, yet it determined those costs were not only justified but necessary to stabilize our financial system and avoid another financial crisis'').

One commenter challenged the adequacy—indeed, the existence—of the cost-benefit analysis in the proposing release. *See* CDEU Letter at 6 (''To better understand the negative effects of imposing conflicting rules on the market, the SEC should conduct a direct cost-benefit analysis of the conflicting rule regimes (*e.g.,* with the European Market Infrastructure Regulation and the CFTC's cross-border guidance). Instead, the SEC asks the public to conduct such an analysis for the SEC: 'what would be the economic impact, including the costs and benefits, of these differences on market participants . . . ?' '').

[29] *See* BM Letter at 2–3, 7–8; CDEU Letter at 5.

[30] *See* Americans for Financial Reform (''AFR'') Letter, dated August 22, 2013 (''AFR Letter I'') at 3–4 (criticizing the proposal as having failed to apply the rules based on the geographic location of the entity ultimately responsible for the resulting liabilities, and stating that the rules should apply to transactions engaged in by ''guaranteed foreign subsidiaries of U.S. entities'').

[31] *See* BM Letter at 7–8 (stating that the proposal was the result of unwarranted and inappropriate concessions, such as with regard to the application of the *de minimis* threshold to U.S.-guaranteed entities). *See also* Karim Shariff letter at 1 (stating that the proposal will allow banks to take risks that will lead to an economic collapse).

[32] *See, e.g.,* BM Letter at 3, 20–21, 28 (stating that transactions conducted through foreign branches of U.S. dealers with non-U.S. persons should be subject to external business conduct requirements,

Continued

specific to clearing, trade execution, regulatory reporting and public disclosure.[33] We expect to address those comments regarding the relevant substantive requirements in subsequent rulemakings and guidance regarding the relevant substantive requirements.

Commenters also addressed the proposed availability of substituted compliance.[34] Although today we are adopting a procedural rule regarding requests for substituted compliance, we generally expect to address the potential availability of substituted compliance for specific Title VII requirements in connection with subsequent rulemakings regarding each substantive requirement.

We have carefully considered the comments received in adopting the final rules and providing guidance. Our final rules and guidance further reflect consultation with the CFTC, prudential regulators, and foreign regulatory authorities with regard to the development of consistent and comparable standards. Accordingly, certain aspects of the final rules and guidance—such as, for example, the treatment of guaranteed affiliates of U.S. persons for purposes of the dealer *de minimis* exception—have been modified from the proposal.[35]

II. The Economic, Legal, and Policy Principles Guiding the Commission's Approach to the Application of Title VII to Cross-Border Activities

In this section, we describe the most significant economic considerations regarding the security-based swap market that we have taken into account in implementing the cross-border application of the security-based swap dealer and major security-based swap participant definitions of Title VII. We are sensitive to the economic consequences and effects, including costs and benefits, of our rules, including with respect to the scope of our application of the security-based swap dealer and major security-based swap participant definitions in the cross-border context. We have taken into consideration the costs and benefits associated with persons being brought within one of these definitions through our cross-border application, as well as the costs market participants may incur in determining whether they are within the scope of these definitions and thus subject to Title VII, while recognizing that the ultimate economic impact of these definitions will be determined in part by the final rules regarding the substantive requirements applicable to security-based swap dealers and major security-based swap participants. Some of these economic consequences and effects stem from statutory mandates, while others result from the discretion we exercise in implementing the mandates.

A. Economic Considerations in the Cross-Border Regulation of Security-Based Swaps

1. Economic Features of the Security-Based Swap Market

As noted above, the cross-border implementation of the rules defining security-based swap dealer and major security-based swap participant is the first in a series of final rules that consider the cross-border implications of security-based swaps and Title VII. In determining how Title VII security-based swap dealer and major security-based swap participant definitions should apply to persons and transactions in the cross-border context, the Commission has been informed by our analysis of current market activity, including the extent of cross-border trading activity in the security-based swap market. Several key features of the market inform our analysis.

First, the security-based swap market is a global market. Security-based swap business currently takes place across national borders, with agreements negotiated and executed between counterparties often in different jurisdictions (and at times booked, managed, and hedged in still other jurisdictions). The global nature of the security-based swap market is evidenced by the data available to the Commission.[36] Based on market data in the Depository Trust and Clearing Corporation's Trade Information Warehouse (''DTCC–TIW''),[37] viewed from the perspective of the domiciles of the counterparties booking credit default swap (''CDS'') transactions, approximately 48 percent of price forming North American corporate single-name CDS transactions[38] from

and that margin should be treated as a transaction-level requirement); SIFMA/FIA/FSR Letter at A–22 to A–26 (addressing application of margin, segregation, external business conduct and certain other requirements).

[33] *See, e.g.,* BM Letter at 3, 21–22 (criticizing exceptions from mandatory clearing and trade execution requirements); SIFMA/FIA/FSR Letter at A–38 to A–52 (in part urging that application of regulatory reporting, public dissemination, trade execution and clearing requirements should follow the same rules as external business conduct requirements).

[34] *See, e.g.,* AFR Letter I at 8, 12 (opposing rationale for substituted compliance, and noting need for the Commission to retain discretion to find a lack of comparability based on substantive enforcement issues); AFR letter to CFTC, dated August 27, 2012 (''AFR Letter II'') (stating that CFTC should narrow the scope of substituted compliance) (incorporated by reference in AFR Letter I); Michael Greenberger letter to CFTC, dated February 6, 2013 at 13 (''Greenberger Letter I'') (stating that substituted compliance should be a last resort and that the CFTC regime be enforced vigorously) (incorporated by reference in AFR Letter I); Michael Greenberger letter to CFTC, dated August 27, 2012 at 8, 19–23 (''Greenberger Letter II'') (explaining that international comity does not require that the CFTC exempt foreign subsidiaries from compliance with U.S. financial regulation) (incorporated by reference in AFR Letter I); BM Letter at 3, 26–27 (questioning authority for substituted compliance and suggesting potential for loopholes; also stating that substituted compliance should not be allowed for transactions with U.S. persons or for transactions in the United States and urging limited use of exemptive authority; further stating that the proposal gave only passing reference to foreign supervision and enforcement); SIFMA/FIA/FSR Letter at A–30 to A–38 (in part supporting the approach to focus on similar regulatory objectives rather than requiring foreign rules to be identical, stating that foreign branches should be able to make use of substituted compliance for certain purposes, stating that variations in foreign supervisory practices should not be assumed to be defects, and requesting further clarity regarding substituted compliance assessment factors); ESMA Letter at 1, 3–4 (suggesting particular expansions of the proposed scope of substituted compliance); European Commission (''EC'') Letter (supporting ''holistic'' approach toward substituted compliance based on comparison of regulatory outcomes).

[35] In this regard, the final rules in a number of areas take approaches that are similar to the approaches taken by the CFTC in its own cross-border guidance, although independent considerations have driven our approaches. Moreover, throughout the Cross-Border Proposing Release we recognized and solicited comment on the differences between our proposal and the CFTC's proposed guidance on the cross-border application of swap regulation. As noted above, many commenters urged harmonization with various aspects of the CFTC's guidance. We have taken these comments into account, and in developing final rules we have carefully considered the CFTC's guidance and the underlying policy rationales. Further, where we have determined such policy rationales and approaches are applicable in the context of the market for security-based swaps, we have adopted similar approaches to the CFTC (*see, e.g.,* application of the *de minimis* exception to non-U.S. persons' dealing transactions with foreign branches of U.S. banks).

[36] *See* section 0, *infra* (discussing in detail the global nature of the security-based swap market).

[37] The information was made available to the Commission under an agreement with the DTCC–TIW and in accordance with guidance provided to DTCC–TIW by the OTC Derivatives Regulatory Forum (''ODRF'').

[38] This figure is based on all price-forming DTCC–TIW North American corporate single-name CDS transactions. Price-forming transactions include all new transactions, assignments, modifications to increase the notional amounts of previously executed transactions, and terminations of previously executed transactions. Transactions terminated, transactions entered into in connection with a compression exercise, and expiration of contracts at maturity are not considered price-forming and are therefore excluded, as are replacement trades and all bookkeeping-related trades.

''North American corporate single-name CDS transactions'' are classified as such because they use The International Swaps and Derivatives Association, Inc. (''ISDA'') North American documentation. These may include certain transactions involving non-U.S. reference entities. We do not have sufficiently reliable data on reference entity domicile (as opposed to

January 2008 to December 2012 were cross-border transactions between a U.S.-domiciled [39] counterparty and a foreign-domiciled counterparty [40] and an additional 39 percent of such CDS transactions were between two foreign-domiciled counterparties.[41] Thus, approximately 13 percent of the North American corporate single-name CDS transactions in 2008–2012 were between two U.S.-domiciled counterparties.[42] These statistics indicate that, rather than being an exception, cross-border North American corporate single-name CDS transactions are as common as intra-jurisdictional transactions in the security-based swap market.[43]

Second, dealers and other market participants are highly interconnected within this global market. While most market participants have only a few counterparties, dealers can have hundreds of counterparties, consisting of both non-dealing market participants (*e.g.*, non-dealers, including commercial and financial market participants and investment funds) and other dealers.[44] Furthermore, as described in more detail below, the great majority of trades are dealer-to-dealer, rather than dealer-to-non-dealer or non-dealer-to-non-dealer, and a large fraction of single-name CDS volume is between counterparties domiciled in different jurisdictions. This interconnectedness facilitates the use of security-based swaps as a tool for sharing financial and commercial risks. In an environment in which market participants can have diverse and offsetting risk exposures, security-based swap transactions can allow participants to transfer risks so that they are borne by those who can do so efficiently. The global scale of the security-based swap market allows counterparties to access liquidity across jurisdictional boundaries, providing U.S. market participants with opportunities to share these risks with counterparties around the world. As discussed further in section VIII, a broad set of counterparties across which risks can be shared may result in more efficient risk sharing.

However, these opportunities for international risk sharing also represent channels for risk transmission. In other words, the interconnectedness of security-based swap market participants provides paths for liquidity and risk to flow throughout the system, so that it can be difficult to isolate risks to a particular entity or geographic segment. Because dealers facilitate the great majority of security-based swap transactions, with bilateral relationships that extend to potentially hundreds of counterparties, liquidity problems or other forms of financial distress that begin in one entity or one corner of the globe can potentially spread throughout the network, with dealers as a central conduit.

Third, as highlighted in the Intermediary Definitions Adopting Release, dealing activity within the market for security-based swaps is highly concentrated.[45] This concentration in large part appears to reflect the fact that larger entities possess competitive advantages in engaging in OTC security-based swap dealing activities, particularly with regard to having sufficient financial resources to provide potential counterparties with adequate assurances of financial performance.

The security-based swap market developed as an OTC market, without centralized trading venues or dissemination of pre- or post-trade pricing and volume information. In markets without transparent pricing, access to information confers a competitive advantage. In the current security-based swap market, large dealers and other large market participants with a large share of order flow have an informational advantage over smaller dealers and non-dealers who, in the absence of pre-trade transparency, observe a smaller subset of the market. Greater private information about order flow enables better assessment of current market values by dealers, permitting them to extract economic rents from counterparties who are less informed.[46] Non-dealers are aware of this information asymmetry, and certain non-dealers—particularly larger entities who transact with many dealers—may be able to obtain access to competitive pricing or otherwise demand a price discount that reflects the information asymmetry. Typically, however, the value of private information (*i.e.,* the economic rent or informational premium) will be earned by those who have the most information. In the case of security-based swap markets, it is predominantly dealers who observe the greatest order flow and benefit from market opacity.

Taken together, the need for financial resources and the private information conveyed by order flow suggest that new entrants who intend to engage in security-based swap dealing activity in fact face high barriers to entry. One consequence of the current concentrated market structure is the potential for risk

counterparty domicile, which we have sought to identify in the manner described in note 39, *infra*) to limit our analysis to only U.S. single-name CDS. Although the inclusion of transactions involving such non-U.S. reference entities introduces some noise into the data, we do not believe that this noise is sufficiently significant to alter the conclusions we draw from the data.

[39] The domicile classifications in DTCC–TIW are based on the market participants' own reporting and have not been verified by Commission staff. Prior to enactment of the Dodd-Frank Act, funds and accounts did not formally report their domicile to DTCC–TIW because there was no systematic requirement to do so. After enactment of the Dodd-Frank Act, the DTCC–TIW has collected the registered office location of the account or fund. This information is self-reported on a voluntary basis. It is possible that some market participants may misclassify their domicile status because the databases in DTCC–TIW do not assign a unique legal entity identifier to each separate entity. It is also possible that the domicile classifications may not correspond precisely to treatment as a U.S. person under the rules adopted today. Notwithstanding these limitations, we believe that the cross-border and foreign activity presented in the analysis by the Commission's Division of Economic and Risk Analysis demonstrates the nature of the single-name CDS market. *See* section 0, *infra.*

[40] DTCC–TIW classifies a foreign branch or foreign subsidiary of a U.S.-domiciled entity as foreign-domiciled. Therefore, CDS transactions classified as involving a foreign-domiciled counterparty in the DTCC–TIW data may include CDS transactions with a foreign branch or foreign subsidiary of a U.S.-domiciled entity as counterparty.

[41] Put another way, between 2008 and 2012, a vast majority (approximately 87 percent) of North American corporate single-name CDS transactions directly involved at least one foreign-domiciled counterparty. This observation is based on the data compiled by the Commission's Division of Economic and Risk Analysis on North American corporate single-name CDS transactions from DTCC–TIW between January 1, 2008, and December 31, 2012. *See* section 0, *infra.*

[42] *See id.*

[43] We note, however, that, in addition to classifying transactions between a U.S. counterparty and a foreign branch of a U.S. bank as cross-border transactions, *see* note 40, *supra*, these statistics characterize as cross-border transactions some transactions in which all or substantially all of the activity takes place in the United States and all or much of the risk of the transactions ultimately is borne by U.S. persons. That is, a transaction is classified as cross-border if the legal domicile of at least one of the counterparties to the transaction is outside the United States, but if the transaction is classified as cross-border solely on the basis of legal domicile, the risk associated with these transactions may still ultimately be borne by U.S. persons. In this sense, our estimates of the cross-border allocation of security-based swap activity may not precisely reflect the proportion of transactions that are cross-border in nature.

[44] Based on an analysis of 2012 transaction data by staff in the Division of Economic and Risk Analysis, accounts associated with market participants recognized by ISDA as dealers had on average 403 counterparties. All other accounts (*i.e.,* those more likely to belong to non-dealers) averaged four counterparties.

[45] *See* Intermediary Definitions Adopting Release, 77 FR 30639–42.

[46] In this situation, economic rents are the profits that dealers earn by trading with counterparties who are less informed. In a market with competitive access to information, there is no informational premium; dealers only earn a liquidity premium. The difference between the competitive liquidity premium and the actual profits that dealers earn is the economic rent.

spillovers and contagion, which can occur when the financial sector as a whole (or certain key segments) becomes undercapitalized.[47] Unlike most other securities transactions, a security-based swap gives rise to ongoing obligations between transaction counterparties during the life of the transaction. This means that each counterparty to the transaction undertakes the obligation to perform the security-based swap in accordance with its terms and bears counterparty credit risk and market risk until the transaction expires or is terminated.[48] Within this interconnected market, participants may have ongoing bilateral obligations with multiple counterparties, allowing for efficient risk-sharing and access to liquidity throughout the global network. However, a primary risk of the integrated market is the potential for sequential counterparty failure and contagion when one or more large market participants become financially distressed, causing the market participant to default on its obligations to its counterparties.[49] A default by one or more security-based swap dealers or major security-based swap participants, or even the perceived lack of creditworthiness of these large entities, could produce contagion, either through direct defaults and risk spillovers, reduced willingness to extend credit, reduced liquidity, or reduced valuations for financial instruments. As financial distress spreads, the aggregate financial system may become undercapitalized, hindering its ability to provide financial intermediation services, including security-based swap intermediation services.

In other words, the failure of a single large firm active in the security-based swap market can have consequences beyond the firm itself. One firm's default may reduce the willingness of dealers to trade with, or extend credit to, both non-dealers and other dealers. By reducing the availability of sufficient credit to provide intermediation services, and by reducing transaction volume that reveals information about underlying asset values, the effects of a dealer default may, through asset price and liquidity channels, spill over into other jurisdictions and even other markets in which security-based swap dealers participate.

Given that firms may be expected to consider the implications of security-based swap activity only on their own operations, without considering aggregate financial sector risk,[50] the financial system may end up bearing more risk than the aggregate capital of the intermediaries in the system can support and may cease to function normally during times of market distress. For example, during times of financial distress a dealer's leverage constraints may begin to bind, either because lenders require more collateral or because market declines erode a dealer's capital position, forcing the dealer to de-lever, either by selling assets or raising additional capital. Without adequate capital, the dealer may be unable to intermediate trades, potentially reducing liquidity in the markets it serves. Security-based swap positions replicate leveraged positions in the underlying asset, with a small amount of capital supporting large notional exposures.[51] Given the leveraged nature of swap transactions, and the concentrated structure of the dealer market, in which a large amount of highly leveraged risk exposures may be concentrated in a relatively small number of entities that are responsible for the vast majority of global dealing activity,[52] the potential consequences arising from financial instability in the security-based swap market may be acute.

In sum, the security-based swap market is characterized by a high level of interconnectedness, facilitating risk sharing by counterparties. Further, it is a global market, in which the potential for significant inter-jurisdictional activity and access to liquidity may enhance risk sharing among counterparties. At the same time, channels for risk sharing also represent channels for risk transmission. The global nature of this market, combined with the interconnectedness of market participants, means that liquidity shortfalls or risks that begin pooling in one corner of the market can potentially spread beyond that corner to the entire security-based swap market, with dealers as a key conduit. Because dealers and major participants are a large subset of all participants in the global security-based swap market and facilitate the majority of transactions (and thus reach many counterparties), concerns surrounding these types of spillovers are part of the framework in which we analyze the economic effects of our final rules implementing the security-based swap dealer and major participant definitions in the cross-border context.[53]

2. Context for Regulatory Determinations

In determining how Title VII requirements should apply to persons and transactions in a market characterized by the types of risks we have described, we are aware of the potentially significant tradeoffs inherent in our policy decisions. Our primary economic considerations for promulgating rules and guidance regarding the application of the security-based swap dealer and major participant definitions to cross-border activities include the effect of our choices on efficiency, competition, and capital formation,[54] the potential risks of security-based swaps to U.S. market participants that could affect financial

[47] *See* Viral V. Acharya, Lasse H. Pedersen, Thomas Philippon, and Matthew Richardson, ''Measuring Systemic Risk'' (May 2010), available at: *http://vlab.stern.nyu.edu/public/static/SR-v3.pdf.* The authors use a theoretical model of the banking sector to show that, unless the external costs of their trades are considered, financial institutions will have an incentive to take risks that are borne by the aggregate financial sector. Under this theory, in the context of Title VII, the relevant external cost is the potential for risk spillovers and sequential counterparty failure, leading to an aggregate capital shortfall and breakdown of financial intermediation in the financial sector.

[48] *See* Intermediary Definitions Adopting Release, 77 FR 30616–17 (noting that ''the completion of a purchase or sale transaction'' in the secondary equity or debt markets ''can be expected to terminate the mutual obligations of the parties,'' unlike security-based swap transactions, which often give rise to ''an ongoing obligation to exchange cash flows over the life of the agreement'').

[49] *See* Brunnermeier, Markus K., Andrew Crockett, Charles A. Goodhart, Avinash Persaud, and Hyun Song Shin. ''The Fundamental Principles of Financial Regulation.'' (2009) at 15, available at: *www.princeton.edu/~markus/research/papers/Geneva11.pdf.*

[50] *See* Daron Acemoglu, Asuman Ozdaglar & Alireza Tahbaz-Salehi, Systemic Risk and Stability in Financial Networks (NBER Working Paper No. 18727, Jan. 2013), available at: *http://www.nber.org/papers/w18727.*

[51] *See* Giulio Girardi, Craig Lewis, and Mila Getmansky, ''Interconnectedness in the CDS Market,'' Division of Economic and Risk Analysis White Paper, April 2014, available at *http://www.sec.gov/servlet/sec/dera/staff-papers/white-papers/credit-defaul-swaps-interconnectivity-04-2014.pdf* (describing institutional features of credit default swaps).

[52] The Commission estimates that, of approximately 1,000 transacting agents that participated in single-name CDS transactions in 2012, nearly 80 percent of transactions, by notional volume, can be attributed to the 13 largest entities. *See also* section 0, *infra.*

[53] We have previously noted that, depending on the size of the security-based swap dealer, default by a security-based swap dealer ''could have adverse spillover or contagion effects that could create instability for the financial markets more generally.'' *See* Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers, Exchange Act Release No. 68071 (Oct. 18, 2012), 77 FR 70214, 70304 (Nov. 23, 2012) (''Capital and Margin Proposing Release'').

[54] *See* Exchange Act section 3(f).

stability,[55] the level of transparency and counterparty protection in the security-based swap market, and the costs to market participants.[56]

As noted above, participants may use security-based swaps to manage financial and commercial risks and benefit from a liquid market with broad participation that facilitates risk sharing. We also recognize the possibility that the same channels that enable risk sharing also facilitate the transmission of risks and liquidity problems that begin pooling in one geographic segment of the market to the global security-based swap market. As described more fully in section III.A.1, U.S. entities may take on risk exposures in the security-based swap market by transacting with non-U.S. counterparties through non-U.S. affiliates. This suggests that an approach that applied these Title VII definitions to transactions only where all activity occurs inside the United States would have little effect in addressing the risks associated with security-based swaps, including risks and associated economic consequences flowing from contagion that may originate abroad and reach U.S. market participants through security-based swap activities and the multiple bilateral relationships that may form as a result of those activities. The global reach of security-based swap dealers, including U.S. dealers, participating in the vast majority of trades [57] and extending to upwards of hundreds of counterparties,[58] provides paths for these risks to flow back into the United States.[59]

At the same time, the Commission recognizes that the regulatory requirements we adopt for security-based swap dealers and major participants under Title VII may not reach all market participants that act as dealers or that have positions that pose considerable risk concerns in the global security-based swap markets. These limits to the application of Title VII raise several issues. First, market participants may shift their behavior. Final Title VII requirements may impose significant direct costs on participants falling within the security-based swap dealer and major security-based swap participant definitions that are not borne by other market participants, including costs related to capital and margin requirements, regulatory reporting requirements, and business conduct requirements. The costs of these requirements may provide economic incentive for some market participants falling within the dealer and major participant definitions to restructure their security-based swap business to seek to operate wholly outside of the Title VII regulatory framework by exiting the security-based swap market in the United States and not transacting with U.S. persons, potentially fragmenting liquidity across geographic boundaries.[60] Conversely, such incentives potentially may be mitigated by the fact that capital and margin requirements, counterparty protections, and business conduct standards required by Title VII [61] may promote financial stability and lead to non-dealer market participants exhibiting a preference for transacting with registered dealers and major participants.

Second, to the extent that other jurisdictions may adopt requirements with different scopes or on different timelines, the requirements we adopt may also result in competitive distortions. That is, differences in regulatory requirements across jurisdictions, or the ability of certain non-U.S. market participants to avoid security-based swap dealer regulation under Title VII, may generate competitive burdens and provide incentives for non-U.S. persons to avoid transacting with U.S. persons.

Third, key elements of the rules adopted today—the definition of ''U.S. person,'' as well as rules covering treatment of guaranteed transactions, transactions with foreign branches, transactions conducted through conduit affiliates, and cleared anonymous transactions, and rules covering aggregation standards—all have implications for how U.S. and non-U.S. entities perform their *de minimis* and major participant threshold calculations and may affect the number of participants who ultimately register as security-based swap dealers or major security-based swap participants. The number of persons required to register will affect the costs and benefits of the substantive Title VII requirements that will ultimately be adopted; depending on the final rules, more or fewer entities, and therefore more or fewer security-based swaps, will be subject to Title VII requirements applicable to security-based swap dealers and major security-based swap participants.[62] Title VII requires the Commission to create a new regulatory regime that includes capital, margin, registration and reporting requirements aimed at increasing transparency and customer protections as well as mitigating the risk of financial contagion. Each of these requirements will impose new costs and regulatory burdens on persons that engage in security-based swap dealing activity at levels above the *de minimis* thresholds and on persons whose security-based swap positions are large enough to cause them to be major security-based swap participants.

We expect that these requirements' application to security-based swap dealers and major security-based swap participants subject to Title VII will be

[55] Title VII imposes financial responsibility and risk mitigation requirements on registered security-based swap dealers and major security-based swap participants. As we noted in proposing rules regarding capital and margin requirements applicable to security-based swap dealers, ''the capital and margin requirements in particular are broadly intended to work in tandem to strengthen the financial system by reducing the potential for default to an acceptable level and limiting the amount of leverage that can be employed by [security-based swap dealers] and other market participants.'' *See* Capital and Margin Proposing Release, 77 FR 70304. We also noted that ''[r]equiring particular firms to hold more capital or exchange more margin may reduce the risk of default by one or more market participants and reduce the amount of leverage employed in the system generally, which in turn may have a number of important benefits.'' *Id.*

[56] As we noted in the Cross-Border Proposing Release, the Commission generally understands the ''U.S. financial system'' to include the U.S. banking system and the U.S. financial markets, including the U.S. security-based swap market, the traditional securities markets (*e.g.,* the debt and equity markets), and the markets for other financial activities (*e.g.,* lending). *See* Cross-Border Proposing Release, 78 FR 30980 n.97.

[57] *See* note 139, *infra,* and accompanying text.

[58] *See* note 44, *supra.*

[59] As discussed above, the global security-based swaps network, characterized by multiple bilateral relationships between counterparties, has the potential for risk spillovers and sequential counterparty failure. These exposures are not unique to the U.S. financial system. Indeed, the global scope of the security-based swap market suggests that, given our territorial approach to Title VII, there will be the fewest potential gaps in coverage if other jurisdictions also adopt similar comprehensive and comparable derivative regulations. *See* Section 0 for a discussion of global regulatory efforts in this space.

[60] To the extent that registered dealers are ultimately subject to more extensive reporting and public dissemination requirements than other market participants under Title VII, these requirements may also alter the incentives of market participants to transact with registered dealers if, for example, public dissemination requirements reveal information that participants wish to treat as confidential about trading strategies or future hedging needs. Incentives for these participants to avoid registered dealers could potentially isolate liquidity to less transparent corners of the market.

[61] *See, e.g.,* Exchange Act sections 15F(e), (f), (h) (providing that security-based swap dealers and major security-based swap participants be subject to requirements relating to capital and margin, reporting and recordkeeping, and business conduct).

[62] Any forward-looking analysis of the costs and benefits that flow from these Title VII requirements necessarily encompasses uncertain elements, since the final requirements have not been adopted. For example, whether foreign security-based swap dealers will be subject to the full range of Title VII requirements in all of their transactions will be determined in subsequent rulemaking.

associated with a number of benefits to the security-based swap market and security-based swap market participants, including transparency, accountability, and increased counterparty protections.[63] Nevertheless, as we discuss later in this release, the *de minimis* rules for non-U.S. persons could allow certain non-U.S. entities to avoid the costs of dealer registration, which could reduce the number of entities that register as security-based swap dealers, relative to the Commission's estimates in the Intermediary Definitions Adopting Release. Although the number of entities that are not required to register will depend on the availability of the *de minimis* exclusions, we believe that, to the extent that the final rules change the number of eventual registrants, the ultimate programmatic costs and benefits expected from Title VII may differ from those that were described in the Intermediary Definitions Adopting Release.[64]

Finally, the final rules determining how non-U.S. persons must perform their *de minimis* and major participant threshold calculations may face limits as to how precisely they address the risk mitigation goals of Title VII that are reflected in our rules implementing the *de minimis* exception and the ''major security-based swap participant'' definition. On the one hand, the scope of dealer and major participant regulation under Title VII may be subject to limitations on the ability to control risk because the global nature of counterparty interconnections means that it is difficult to prevent risk that pools in one geographic segment of the market from flowing throughout the entire security-based swap network. On the other hand, there is a possibility that the rules defining the scope of dealer and major participant regulation, including the territorial application of the definitions, may capture certain activity that does not represent risk to the U.S. financial system. Because these rules and guidance implementing Title VII regulatory definitions will not capture all transactions and all entities that engage in security-based swap activity, these rules and guidance therefore may create incentives for those entities at the boundaries of the definitions to restructure their business in a way that allows them to operate outside the scope of Title VII. However, as we described in the Intermediary Definitions Adopting Release, we have sought to implement the statutory dealer and major participant definitions in such a way as to impose the substantive rules of Title VII on those entities most likely to contribute to those risks that Title VII is intended to address without imposing unnecessary burdens on those who do not pose comparable risks to the U.S. financial system.[65]

B. Scope of Title VII's Application to Cross-Border Security-Based Swap Activity

Congress has given the Commission authority in Title VII to implement a security-based swap regulatory framework to address the potential effects of security-based swap activity on U.S. market participants, the financial stability of the United States, on the transparency of the U.S. financial system, and on the protection of counterparties.[66] The global nature of the security-based swap market and the high proportion of cross-border transactions in that market[67] mean that much of this activity occurs at least in part outside the United States and frequently involves persons that are incorporated, organized, or established in a location outside the United States.[68] In light of these market realities, we noted in the proposal that applying Title VII only to persons incorporated, organized, or established within the United States or only to security-based swap activity occurring entirely within the United States would inappropriately exclude from regulation a majority of security-based swap activity that involves U.S. persons or otherwise involves conduct within the United States, even though such activity raises the types of concerns that we believe Congress intended to address through Title VII.[69]

Because some commenters had, prior to the proposal, argued that section 30(c) of the Exchange Act limited our ability to reach certain types of activity occurring at least in part outside the United States,[70] we discussed in some detail in the proposal our preliminary views on the appropriate approach to determining whether certain security-based swap activity that involves some conduct outside the United States also occurs within the United States for purposes of Title VII.[71] In this subsection, we discuss comments received on this question following publication of our proposal and explain our final views—which remain largely unchanged from the proposal—on the proper approach to determining whether cross-border security-based swap activity occurs, in relevant part, within the United States.[72] We then briefly describe how this framework applies to specific types of transactions

[63] Title VII imposes a number of business conduct requirements designed to protect counterparties to security-based swaps, including disclosures about material risks and conflicts of interest, disclosures concerning the daily mark, or value of the position, and segregation of customer assets and collateral from the dealer's assets.

[64] See section 0 for a discussion of how we expect the cross-border application of the *de minimis* exception to alter the number of entities required to register with the Commission, and how that may affect the programmatic costs and benefits of Title VII.

[65] In adopting the definition of ''security-based swap dealer,'' we intended to determine the set of entities in the security-based swap market for whom regulation ''is warranted due to the nature of their interactions with counterparties, or is warranted to promote market stability and transparency.'' *See* Intermediary Definitions Adopting Release, 77 FR 30726. Similarly, in adopting rules governing the ''major security-based swap participant'' definition, we sought to impose regulations applicable to major security-based swap participants in a way that reflects ''when it would be 'prudent' that particular entities be subject to monitoring, management and oversight of entities that may be systemically important or may significantly impact the U.S. financial system.'' *See id.* at 30666.

Future rulemakings that depend on these definitions are intended to address the transparency, risk, and customer protection goals of Title VII. For example, to further risk mitigation in the security-based swap market, we explained that ''section 15F(e) of the Exchange Act and related rules impose capital and margin requirements on dealers and major participants, which will reduce the financial risks of these institutions and contribute to the stability of the security-based swap market in particular and the U.S. financial system more generally.'' *See id.* at 30723.

[66] *See* note 11, *supra. See also* Pub. L. 111–203 sections 701–774 (providing for, among other things, a comprehensive new regulatory framework for security-based swaps, including by: (i) Providing for the registration and comprehensive regulation of security-based swap dealers and major security-based swap participants; (ii) imposing clearing and trade execution requirements on security-based swaps, subject to certain exceptions; and (iii) creating real-time reporting and public dissemination regimes for security-based swaps).

[67] *See* section 0, *supra* (noting that cross-border activity accounts for the majority of security-based swaps involving U.S. firms).

[68] For example, a single financial firm engaged in dealing activity may utilize two or more entities domiciled in different countries to effectuate a single transaction with a counterparty that may similarly use multiple entities domiciled in different countries.

[69] *See* Cross-Border Proposing Release, 78 FR 30984.

[70] *See id.* at 30983. Exchange Act section 30(c) was added to the Act by Title VII and provides, among other things, that ''[n]o provision of [Title VII] . . . shall apply to any person insofar as such person transacts a business in security-based swaps without the jurisdiction of the United States,'' unless that business is transacted in contravention of rules prescribed to prevent evasion of Title VII. *See* section 30(c) of the Exchange Act, 15 U.S.C. 78dd(c), added by section 772(b) of the Dodd-Frank Act.

[71] *See* Cross-Border Proposing Release, 78 FR 30984–87.

[72] We also interpret what it means for a person to ''transact a business in security-based swaps without the jurisdiction of the United States'' as set forth in Exchange Act section 30(c). 15 U.S.C. 78dd(c).

relevant to the rules we are adopting here.[73]

1. Commenters' Views

Prior to our proposal, several commenters raised concerns about the application of Title VII to security-based swap activity in the cross-border context and specifically about the possibility that we would impose Title VII requirements on ''extraterritorial'' conduct. We received only a few comments on this issue in response to our preliminary views set forth in the proposal, and these generally focused on the application of section 30(c) of the Exchange Act to specific types of activity that we proposed to subject to Title VII rather than the proposed territorial framework more broadly.

One commenter expressed general agreement with our proposed guidance.[74] Three commenters suggested that textual differences between section 30(c) of the Exchange Act and section 2(i) of the Commodity Exchange Act (''CEA'') do not require the Commission to take a different approach to application of Title VII to cross-border security-based swap activity from that taken by the CFTC.[75] Two commenters expressed the view that section 30(c) of the Exchange Act, considered in light of what they described as the risk-based focus of Title VII, prohibited the Commission from imposing Title VII requirements on transactions carried out within the United States but booked in locations outside the United States.[76] One commenter stated that section 30(c) of the Exchange Act prevents us from imposing Title VII requirements on transactions of guaranteed foreign affiliates of U.S. persons.[77] One commenter argued that section 30(c) prevents application of Title VII to certain joint ventures.[78]

2. Scope of Application of Title VII in the Cross-Border Context

We continue to believe that a territorial approach to the application of Title VII is appropriate. This approach, properly understood, is grounded in the text of the relevant statutory provisions and is designed to help ensure that our application of the relevant provisions is consistent with the goals that the statute was intended to achieve.

(a) Overview and General Approach

As in our proposal, our analysis begins with an examination of the text of the statutory provision that imposes the relevant requirement. The statutory language generally identifies the types of conduct that trigger the relevant requirement and, by extension, the focus of the statute.[79] Once we have identified the activity regulated by the statutory provision, we can determine whether a person is engaged in conduct that the statutory provision regulates and whether this conduct occurs within the United States. When the statutory text does not describe the relevant activity with specificity or provides for further Commission interpretation of statutory terms or requirements, this analysis may require us to identify through interpretation of the statutory text the specific activity that is relevant under the statute or to incorporate prior interpretations of the relevant statutory text.[80]

As noted above, the Dodd-Frank Act was enacted, in part, with the intent to address the risks to the financial stability of the United States posed by entities engaged in security-based swap activity, to promote transparency in the U.S. financial system, and to protect counterparties to such transactions.[81] These purposes, considered together with the specific statutory requirement, lead us to conclude that it is appropriate to impose the statutory requirements, and rules or regulations thereunder, on security-based swap activity occurring within the United States even if certain conduct in connection with the security-based swap also occurs in part outside the United States.

Contrary to the views expressed by some commenters,[82] we do not agree that the location of risk alone should necessarily determine the scope of an appropriate territorial application of every Title VII requirement, given that the definition and the relevant regulatory regime address not only risk

[73] The following discussion does not reflect a comprehensive analysis of the full range of transactions that may fall within our territorial approach to application of Title VII or of the full range of substantive requirements to which such transactions may be subject under Title VII.

It is important to note that our approach to the application of Title VII security-based swap dealer and major security-based swap participant registration requirements does not limit, alter, or address the cross-border reach or extraterritorial application of any other provisions of the federal securities laws, including Commission rules, regulations, interpretations, or guidance.

[74] *See* BM Letter at 6.

[75] *See* IIB Letter at 4 (noting, *inter alia,* that section 712 of the Dodd-Frank Act requires consultation and coordination between the SEC, CFTC, and prudential regulators, and arguing that differences between Exchange Act section 30(c) and CEA section 2(i) do not require the Commission to take an approach to regulation of cross-border security-based swap activity that is ''fundamentally different'' from that taken by the CFTC); SIFMA/FIA/FSR Letter at A–4 to A–5 (stating that Exchange Act section 30(c) must be read to harmonize with CFTC approach in light of congressional intent that rules be harmonized); FOA Letter at 7 (referring to this element of the SIFMA/FIA/FSR Letter). Section 2(i) of the CEA provides, *inter alia,* that Title VII requirements will not apply to activities outside the United States unless they ''have a direct and significant connection with activities in, or effect on, commerce of the United States.'' 7 U.S.C. 2(i). The CFTC Cross-Border Guidance was adopted as an interpretation of this provision. *See* CFTC Cross-Border Guidance, 78 FR 45295.

[76] *See* SIFMA/FIA/FSR Letter at 4, A–4 to A–6 (acknowledging that proposed application of Title VII to transactions conducted within the United States between two non-U.S. persons is consistent with Commission practice in traditional securities markets but arguing that similar language in sections 30(b) and 30(c) of the Exchange Act should be read differently, given the different nature of security-based swap transactions and focus of Title VII on risk); FOA Letter at 7 (referring to this element of the SIFMA/FIA/FSR Letter). These commenters argue that we should focus on risks to the U.S. financial system and the protection of U.S. counterparties, and that neither concern is raised by transactions between two non-U.S. persons that happen to occur within the United States. *See* SIFMA/FIA/FSR Letter at A–5 to A–6. We continue to believe that this argument does not account for the full range of concerns addressed by Title VII, but, as discussed further below, we are not addressing issues surrounding the proposed ''transaction conducted within the United States'' definition in this release.

Because, as discussed above, we are not adopting ''transaction conducted within the United States'' as part of the final rule, we anticipate considering these comments in connection with soliciting additional public comment.

[77] *See id.* at A–11 (stating that a guarantee may not necessarily import risk into the United States and thus creates ''no nexus for purposes of [s]ection 30(c) of the Exchange Act'').

[78] *See* Mitsubishi UFJ Financial Group (''MUFJ'') Letter at 4–5 (urging the Commission not to require both participants in a foreign joint venture to aggregate the dealing transactions of the joint venture for purposes of the dealer *de minimis* calculation).

[79] *See Morrison* v. *National Australia Bank, Ltd.,* 130 S. Ct. 2869, 2884 (2010) (identifying focus of statutory language to determine what conduct was relevant in determining whether the statute was being applied to domestic conduct).

Section 772(b) of the Dodd-Frank Act amends section 30 of the Exchange Act to provide that ''[n]o provision of [Title VII] . . . shall apply to any person insofar as such person transacts a business in security-based swaps without the jurisdiction of the United States,'' unless that business is transacted in contravention of rules prescribed to prevent evasion of Title VII. *See* section 30(c) of the Exchange Act. As noted above, some commenters suggest that statutory language requiring us to coordinate and consult with the CFTC also requires us to interpret section 30(c) of the Exchange Act in a manner similar to the CFTC's interpretation of CEA section 2(i). See note 75, *supra.* However, in light of the differences between Exchange Act section 30(c) and CEA section 2(i), we do not find this argument persuasive. As noted above, however, in developing final rules we have carefully considered the CFTC's guidance and the underlying policy rationales, consistent with the statutory requirement that we consult and coordinate with the CFTC.

[80] The Dodd-Frank Act provides that the CFTC and SEC ''*shall* further define'' several terms, including ''security-based swap dealer'' and ''major security-based swap participant.'' Dodd-Frank Act section 712(d) (emphasis added). The Commissions fulfilled this mandate in the Intermediary Definitions Adopting Release. *See* Intermediary Definitions Adopting Release, 77 FR 30973.

[81] *See e.g.,* note 11, *supra. See also* Exchange Act section 15F(h) (establishing business conduct standards for security-based swap dealers and major security-based swap participants).

[82] *See* notes 76–77, *supra.*

but other concerns as well, as just described. For example, neither the statutory definition of ''security-based swap dealer,'' our subsequent further definition of the term pursuant to section 712(d) of the Dodd-Frank Act, nor the regulatory requirements applicable to security-based swap dealers focus solely on risk to the U.S. financial system.[83]

We believe that this approach to territorial application of Title VII provides a reasonable means of helping to ensure that our regulatory framework focuses on security-based swap activity that is most likely to raise the concerns that Congress intended to address in Title VII, including the potential effects of security-based swap activity on U.S. market participants, on the financial stability of the United States, on the transparency of the U.S. financial markets, and on the protection of counterparties.[84] Persons that engage in relevant conduct, as identified through this analysis, within the United States are not, in our view, ''transact[ing] a business in security-based swaps without the jurisdiction of the United States,'' [85] and thus are properly subject to regulation under Title VII.

(b) Territorial Approach to Application of Title VII Security-Based Swap Dealer Registration Requirements

In determining whether specific transactions should be included in a person's dealer *de minimis* calculation, we begin by looking to the statutory text to identify the type of dealing activity that the statute describes as relevant to a person's status as a security-based swap dealer.[86] Section 3(a)(71) of the Exchange Act [87] defines security-based swap dealer as a person that engages in any of the following types of activity:

(i) holding oneself out as a dealer in security-based swaps,

(ii) making a market in security-based swaps,

(iii) regularly entering into security-based swaps with counterparties as an ordinary course of business for one's own account, or

(iv) engaging in any activity causing oneself to be commonly known in the trade as a dealer in security-based swaps.[88]

In accordance with the authority provided by section 712(d)(1) of the Dodd-Frank Act, which provides that the CFTC and the Commission shall by rule further define, among other things, ''security-based swap dealer,'' [89] we further interpreted the statutory definition by identifying the types of activities that are relevant in determining whether a person is a security-based swap dealer.[90] Pursuant to this further definition, indicia of security-based swap dealing activity include any of the following activities:

- Providing liquidity to market professionals or other persons in connection with security-based swaps;
- seeking to profit by providing liquidity in connection with security-based swaps,
- providing advice in connection with security-based swaps or structuring security-based swaps;
- having a regular clientele and actively soliciting clients;
- using inter-dealer brokers; and
- acting as a market maker on an organized security-based swap exchange or trading system.[91]

As the foregoing lists illustrate, both the statutory text and our interpretation further defining the statutory term include within the security-based swap dealer definition a range of activities. In the Intermediary Definitions Adopting Release, we stated that transactions arising from dealing activity, as identified by the indicia described above, would generally be subject to relevant Title VII requirements applicable to dealers, including that such transactions be included in a person's calculations for purposes of the dealer *de minimis* calculations. Our territorial approach applying Title VII to dealing activity similarly looks to whether any of the activities described above occur within the United States, and not simply to the location of the risk, as some commenters suggested is required under section 30(c) of the Exchange Act.[92] To the extent that such activity does occur within the United States, the person engaged in such activity, in our view, is transacting a business in security-based swaps within the United States,[93] and therefore applying Title VII to the activity by, among other things, requiring the person to include transactions arising from such activity in its *de minimis* calculation is consistent with a territorial approach, even if some of this activity (or other activity bearing the indicia of dealing activity) relating to the transaction also occurs outside the United States.

This approach is consistent with the purposes of the dealer definition and the *de minimis* exception as they relate to dealer regulation under Title VII. The *de minimis* exception excludes from the dealer registration requirement those entities that may engage in dealing activity but that do so in amounts that may not raise, to a degree that warrants application of security-based swap dealer requirements, the risk, counterparty protection, or other concerns that the dealer registration and regulatory framework were intended to address.[94] On the other hand, dealing activity, as identified by the types of activities described above, carried out within the United States at levels exceeding the *de minimis* threshold is likely to raise these concerns, which would be addressed by requiring persons engaged in that volume of dealing activity to register as security-based swap dealers under Title VII and to comply with relevant requirements applicable to security-based swap dealers. Accordingly, to the extent that a person engages in dealing activity within the United States that results in transactions in a notional amount exceeding the applicable *de minimis* threshold, it is appropriate to require the person to register as a security-based swap dealer.

i. Dealing Activity of U.S. Persons

Under the foregoing analysis and consistent with our proposal, when a U.S. person as defined under this final rule [95] engages in dealing activity, it necessarily engages in such activity within the United States, even when it enters into such transactions through a foreign branch or office. As discussed in further detail below, the definition of ''U.S. person'' in the final rule is intended, in part, to identify those

[83] *See* note 88, *infra,* and accompanying text (describing elements of statutory definition of ''security-based swap dealer''); note 90, *infra,* and accompanying text (describing elements of the further definition of ''security-based swap dealer'' adopted by the Commission and the CFTC pursuant to section 712(d) of the Dodd-Frank Act); Exchange Act section 15F(h) (establishing business conduct standards for security-based swap dealers).

[84] *See* note 11, *supra.*

[85] Exchange Act section 30(c).

[86] *See* Intermediary Definitions Adopting Release, 77 FR 30616–30619 (further defining ''security-based swap dealer'' by identifying the types of activities that characterize dealing and that would therefore lead a transaction to be required to be included in a person's *de minimis* calculation under Exchange Act rule 3a71–2).

[87] 15 U.S.C. 78c(a)(71).

[88] Exchange Act section 3(a)(71)(A), 15 U.S.C. 78c(a)(71)(A).

[89] *See* Dodd-Frank Act section 712(d)(1).

[90] *See* Intermediary Definitions Adopting Release, 77 FR 30617–18.

[91] *Id.*

[92] *See* notes 76–77, *supra.*

[93] *Cf.* Exchange Act section 30(c) (limiting the application of, among other provisions, Title VII to ''any person insofar as such person transacts a business in security-based swaps without the jurisdiction of the United States'').

[94] *See, e.g.,* Intermediary Definitions Adopting Release, 77 FR 30629–30 (noting that the *de minimis* threshold is intended to capture firms that engage in a level of dealing activity that is likely to raise the types of concerns that the dealer regulatory framework is intended to address).

[95] *See* Exchange Act rule 3a71–3(a)(4).

persons for whom it is reasonable to infer that a significant portion of their financial and legal relationships are likely to exist within the United States and that it is therefore reasonable to conclude that risk arising from their security-based swap activities could manifest itself within the United States, regardless of the location of their counterparties, given the ongoing nature of the obligations that result from security-based swap transactions.[96]

Wherever a U.S. person enters into a transaction in a dealing capacity, it is the U.S. person as a whole that is holding itself out as a dealer in security-based swaps, given that the financial resources of the entire person stand behind any dealing activity of the U.S. person, both at the time it enters into the transaction and for the life of the contract, even when the U.S. person enters into the transaction through a foreign branch or office. Moreover, the U.S. person as a whole seeks to profit by providing liquidity and engaging in market-making in security-based swaps, and the financial resources of the entire person enable it to provide liquidity and engage in market-making in connection with security-based swaps. Its dealing counterparties will look to the entire U.S. person, even when the U.S. person enters into the transaction through a foreign branch or office, for performance on the transaction. The entire U.S. person assumes, and stands behind, the obligations arising from the resulting agreement and is directly exposed to liability arising from non-performance of the non-U.S. person.[97]

For these reasons, in our view a person does not hold itself out as a security-based swap dealer as anything other than a single person even when it enters into transactions through its foreign branch or office.[98] Because the foreign branch generally could not operate as a dealer absent the financial and other resources of the entire U.S. person, its dealing activity with all of its counterparties, including dealing activity conducted through its foreign branch or office, is best characterized as occurring, at least in part, within the United States and should therefore be included in the person's *de minimis* threshold calculation.[99]

ii. Dealing Transactions of Non-U.S. Persons That are Subject To Recourse Guarantees by Their U.S. Affiliates

In the proposing release, we explained that we preliminarily believed that a territorial approach consistent with the text and purposes of the Dodd-Frank Act encompasses transactions involving a non-U.S. person counterparty whose dealing activity is guaranteed by a U.S. person.[100] However, because we proposed to treat non-U.S. persons receiving a guarantee on their security-based swap transactions from a U.S. person like any other non-U.S. person for purposes of the *de minimis* exception (*i.e.,* requiring them to include in their calculations only dealing activity involving U.S.-person counterparties or transactions conducted within the United States), we did not elaborate specifically on how the presence of a guarantee related to a territorial application of the dealer definition, including the *de minimis* exception. Because our final rule requires transactions of non-U.S. persons whose obligations under the security-based swap are subject to recourse guarantees enforceable against their U.S. affiliates to be included in the dealer *de minimis* calculation of the non-U.S. person, we address it here.

In our view, a non-U.S. person engaged in dealing activity, to the extent that one or more transactions arising from such activity are guaranteed by a U.S. person, is engaged in relevant activity for purposes of the security-based swap dealer definition within the United States, with respect to those transactions. By virtue of the guarantee, the non-U.S. person effectively acts together with the U.S. person to engage in the dealing activity that results in the transactions, and the non-U.S. person's dealing activity with respect to such transactions cannot reasonably be isolated from the U.S. person's activity in providing the guarantee. The U.S.-person guarantor together with the non-U.S. person whose dealing activity it guarantees, and not just the non-U.S. person, may seek to profit by providing liquidity and engaging in market-making in security-based swaps, and the non-U.S. person provides liquidity and engages in market-making in connection with security-based swaps by drawing on the U.S. person's financial resources.[101] The non-U.S. person's counterparty, pursuant to the recourse guarantee, looks to both the non-U.S. person and its U.S. guarantor, which is responsible for performance on the transaction that is part of the non-U.S. person's dealing activity. In sum, the non-U.S. person is engaged in the United States in relevant dealing activity identified in the statutory definition and in our jointly adopted further definition of ''security-based swap dealer.''

Moreover, the economic reality of the non-U.S. person's dealing activity, where the resulting transactions are guaranteed by a U.S. person, is identical, in relevant respects, to a transaction entered into directly by the U.S. guarantor. By virtue of the guarantee, transactions arising from the

[96] *See* section 0, *infra.* In our view, dealing activity involving such persons is particularly likely to raise the types of concerns Title VII was intended to address, including those related to risk to the U.S. financial system, transparency of the U.S. financial markets, and customer protection.

[97] *Cf.* SIFMA/FIA/FSR Letter at 4, A–5 (stating that main purpose of Title VII is to address risk arising from security-based swap activity).

[98] This is consistent with the view expressed in our proposing release. *See* Cross-Border Proposing Release, 78 FR 30985.

[99] As discussed in further detail below, this interpretation is consistent with the goals of dealer regulation under Title VII. Security-based swap activity that results in a transaction involving a U.S.-person counterparty creates ongoing obligations that are borne by a U.S. person and, as such, is properly viewed as occurring within the United States. See note 186, *infra.*

[100] In our proposal, we noted that in a security-based swap transaction between two non-U.S. persons where the performance of at least one side of the transaction is guaranteed by a U.S. person, the guarantee gives the guaranteed person's counterparty recourse to the U.S. person for performance of obligations owed by the guaranteed person under the security-based swap, and the U.S. guarantor exposes itself to the risk of the security-based swap as if it were a counterparty to the security-based swap through the security-based swap activity engaged in by the guaranteed person. *See* Cross-Border Proposing Release, 78 FR 30986–87. This interpretation of guarantee was consistent with our discussion of the application of the major participant tests to guaranteed positions in the Intermediary Definitions Adopting Release, where we, together with the CFTC, noted that a person's security-based swap positions are attributed to a parent, other affiliate, or guarantor for purposes of the major participant analysis to the extent that the counterparties to those positions have recourse to that parent, other affiliate, or guarantor in connection with the position; as we noted in that release, positions are not attributed in the absence of recourse. *See* Intermediary Definitions Adopting Release, 77 FR 30689. In this release, we continue to use the term ''guarantee'' to refer to an arrangement pursuant to which one party to a security-based swap transaction has recourse to its counterparty's parent, other affiliate, or guarantor with respect to the counterparty's obligations owed under the transaction. *See* section IV.E.1(b), *infra.*

[101] Even if the U.S. guarantor generally does not hold itself out as a dealer or make a market in security-based swaps, the U.S. guarantor enables the non-U.S. person whose dealing activity it guarantees to engage in dealing activity by providing financial backing. We note that references to ''guarantee,'' ''recourse guarantee,'' or ''rights of recourse,'' as those terms are used in this release, may describe economic relationships that are different from ''guarantee'' under section 2(a)(1) of the Securities Act. We note, however, that, depending on the nature of the ''guarantee,'' ''recourse guarantee,'' or ''rights of recourse'' provided by the guarantor, the transaction at issue may involve not only a security-based swap between two non-U.S. persons but also the offer and sale of a security by a U.S. person, given that a ''guarantee'' of a security-based swap is itself a separate security issued by the U.S. guarantor. *See, e.g.,* Securities Act section 2(a)(1), 15 U.S.C. 77b(a)(1) (including in the statutory definition of ''security'' a guarantee of a security).

non-U.S. person's dealing activity result in risk from the transaction being borne by a U.S. person (the guarantor, which is responsible for the transactions it guarantees in a manner similar to a direct counterparty to the transactions) and potentially the U.S. financial system in a manner similar to a dealing transaction entered into directly by a U.S. person. As with transactions entered into directly by a U.S. person, transactions for which a counterparty has a right of recourse against a U.S. person create risk to a U.S. person and potentially the U.S. financial system regardless of the location of the counterparty.

Our interpretation of the statutory text of the definition, as well as our further definition of the term, as it applies to these entities is consistent with the purposes of Title VII, as discussed above. The exposure of the U.S. guarantor creates risk to U.S. persons and potentially to the U.S. financial system via the guarantor to a comparable degree as if the transaction were entered into directly by a U.S. person. We understand that in some circumstances a counterparty may choose not to enter into a security-based swap transaction (or may not do so on the same terms) with a non-U.S. subsidiary of a U.S. person when that non-U.S. subsidiary is acting in a dealing capacity to the extent that its dealing activity is not subject to a recourse guarantee by a U.S. affiliate, absent other circumstances (*e.g.,* adequate capitalization of the hitherto-guaranteed affiliate).

One commenter noted that U.S. guarantors may provide guarantees for a variety of reasons, including to satisfy regulatory requirements, to ''manage capital treatment across an entity,'' and to ''avoid negative credit rating consequences,'' and argued that a guarantee may therefore not create risk within the United States.[102] Absent the creation of such risk, this commenter further argued that a guarantee creates ''no nexus for purposes of section 30(c) of the Exchange Act.'' [103] However, regardless of the motivation for providing the guarantee, the non-U.S. person's dealing activity still occurs within the United States and creates risk within the United States in the manner described above. The commenter provided no evidence that the motivation for providing a guarantee affects this analysis: It neither alters the risk created within the United States by such a guarantee when it is provided by a U.S. person nor affects the economic reality of the transaction. Moreover, even if a person provides guarantees not in response to counterparty demands but to satisfy regulatory requirements or to avoid negative credit rating consequences, the very reasons for issuing the guarantee suggest that the non-U.S. person would not be able to engage in dealing activity, or to do so on the same terms, without the guarantee.[104]

In sum, the guarantee provided by a U.S. person poses risk to U.S. persons and potentially to the U.S. financial system, and both the non-U.S. person whose dealing activity is guaranteed and its counterparty rely on the creditworthiness of the U.S. guarantor when entering into a security-based swap transaction and for the duration of the security-based swap. The economic reality of this transaction, even though entered into by a non-U.S. person, is substantially identical, in relevant respects, to a transaction entered into directly by a U.S. person. Accordingly, in our view, it is consistent with both the statutory text and with the purposes of the statute to identify such transactions as occurring within the United States for purposes of Title VII.

iii. Dealing Activity of Other Non-U.S. Persons

In our proposal, we stated that non-U.S. persons engaging in dealing activity would be required to count toward their *de minimis* thresholds only transactions arising from their dealing activity with U.S. persons or dealing activity otherwise conducted within the United States. Under the approach described above, and consistent with our proposal, we believe that a non-U.S. person engaged in dealing activity with U.S. persons engages in relevant activity for purposes of the security-based swap dealer definition within the United States.[105]

Dealing activity of non-U.S. persons that involves counterparties who are U.S. persons, as that term is defined in the final rule, necessarily involves the performance by the non-U.S. person of relevant activity under the ''security-based swap dealer'' definition at least in part within the United States. For example, in our view, a non-U.S. person engaging in dealing activity with a U.S. person is holding itself out as a dealer in security-based swaps within the United States.[106] Similarly, by entering into a transaction with a U.S. person in a dealing capacity, it is seeking to profit by providing liquidity within the United States and possibly engaging in market-making in security-based swaps within the United States, given that its decision to engage in dealing activity with U.S. persons, as defined by the rule, affects the liquidity of the security-based swap market within the United States. Particularly at volumes in excess of the *de minimis* threshold, entering into security-based swap transactions in a dealing capacity with U.S. persons likely is the type of activity that would cause a non-U.S. person ''to be commonly known in the trade as a dealer in security-based swaps'' [107] within the United States, that constitutes ''regularly entering into security-based swaps with counterparties as an ordinary course of business for one's own account'' [108] within the United States, and that permits a reasonable inference that it has a regular clientele and actively solicits clients within the United States.[109]

Our application of the statute to non-U.S. persons is consistent with the purposes of Title VII, as discussed above. U.S. persons incur risks arising from this dealing activity, which in turn

[102] SIFMA/FIA/FSR Letter at A–11.

[103] *Id.*

[104] In addition, this commenter suggested that any risk created by guarantees provided to prudentially regulated foreign entities is adequately addressed by the foreign prudential regulation. *See id.* Although we recognize that foreign prudential regulation may reduce the risk that a guaranteed foreign affiliate's counterparties will seek to enforce the terms of the guarantee against the U.S. guarantor (depending on the quality of prudential regulation in the foreign jurisdiction), it does not eliminate this risk, and the counterparty continues to retain a right of recourse under the guarantee against the guarantor.

Given the role of a foreign person whose activity is guaranteed in creating risk within the United States through its dealing activity, we believe that it is important to ensure that such a foreign person be required to register as a security-based swap dealer to the extent that its guaranteed dealing transactions (together with any dealing transactions with U.S. persons) are included in its *de minimis* threshold calculations. As noted above, our proposal set forth a framework under which substituted compliance potentially would be available for certain Title VII requirements, including for dealer-specific requirements such as capital and margin, which should mitigate concerns about overlapping regulation of such entities.

[105] We continue to believe that security-based swap activity carried out within the United States may also be relevant activity under our territorial approach, even if the resulting transaction involves two non-U.S. counterparties. As discussed below, however, we anticipate soliciting additional public comment regarding the issue.

[106] Given the global nature of the security-based swap market, U.S. persons seeking to access this market may readily do so through both U.S.-person dealers and foreign dealers. That a foreign dealer holding itself out as a dealer to U.S. persons is based in, and operating out of, a foreign jurisdiction does not alter the economic reality of its activity: It is holding itself out as a dealer within the United States in a manner largely indistinguishable from a U.S.-person dealer that ''hangs out its shingle'' in Manhattan.

[107] Exchange Act section 3(a)(71)(A)(iv).

[108] Exchange Act section 3(a)(71)(A)(iii).

[109] *See* Intermediary Definitions Adopting Release, 77 FR 30618.

potentially creates risk to other market participants and the U.S. financial system more generally, and transactions with U.S. persons raise counterparty protection and market transparency concerns that Title VII is intended to address. Accordingly, we believe that the dealing activity of a non-U.S. person that involves a U.S.-person counterparty is appropriately characterized as occurring, at least in part, within the United States.[110]

(c) Territorial Approach to Application of Title VII Major Security-Based Swap Participant Registration Requirements

As in our territorial approach to the security-based swap dealer definition (including the *de minimis* exception) described above, our territorial approach to the application of the major security-based swap participant definition looks first to the statutory text to identify the types of activity that are relevant for purposes of the definition. Section 3(a)(67) of the Exchange Act provides that a major security-based swap participant is any person who is not a dealer and who satisfies one or more of the following requirements:

(i) Maintains a substantial position in security-based swaps for any of the major security-based swap categories,[111] excluding certain positions;

(ii) has outstanding security-based swaps that create substantial counterparty exposure that could have serious adverse effects on the financial stability of the U.S. banking system or financial markets; or

(iii) is a highly leveraged financial entity that maintains substantial position in outstanding security-based swaps in any major security-based swap category.[112]

The statute directs us to further define, jointly with the CFTC, ''major security-based swap participant'' [113] and separately provides us with authority to ''define . . . the term 'substantial position' at the threshold that the Commission determines to be prudent for the effective monitoring, management, and oversight of entities that are systemically important or can significantly impact the financial system of the United States.'' [114]

Pursuant to these provisions, we further interpreted this definition by, among other things, defining what constitutes a ''substantial position'' and ''substantial counterparty exposure'' for purposes of the major security-based swap participant definition.[115] In doing so, we set forth calculation methodologies and thresholds for each and adopted rules requiring persons that exceeded these thresholds to register as major security-based swap participants.[116] These thresholds were designed to identify persons that were likely to pose counterparty credit risks, as such risks are ''more closely linked to the statutory criteria that the definition focuses on entities that are 'systemically important' or can 'significantly impact' the U.S. financial system.'' [117] We also noted that our definition of ''substantial position'' was intended to address the risk that would be posed by the default of multiple entities close in time and the aggregate risks presented by a person's security-based swap activity, as these considerations reflect the market risk concerns expressly identified in the statute.[118]

The statutory focus of the major security-based swap participant definition differs from that of security-based swap dealer, in that the security-based swap dealer definition focuses on *activity* that may raise the concerns that dealer regulation is intended to address, while the major security-based swap participant definition focuses on *positions* that may raise systemic risk concerns within the United States. Accordingly, a territorial approach to application of the definition of major security-based swap participant involves identifying security-based swap positions that exist within the United States.[119] In our view, and consistent with the approach taken in our proposal, a security-based swap position exists within the United States when it is held by or with a U.S. person, or when it is subject to a recourse guarantee against a U.S. person,[120] as the risks associated with such positions are borne within the United States, and given the involvement of U.S. persons may, at the thresholds established for the major security-based swap participant definition, give rise to the types of systemic risk within the United States that major security-based swap regulation is intended to address. To the extent that a position exists within the United States in this sense, we believe that it is appropriate under a territorial approach to require a market participant, whether a U.S. person or otherwise, that is a counterparty or guarantor with respect to that position, to include that position in its major security-based swap participant threshold calculations, wherever the security-based swap was entered into.

(d) Regulations Necessary or Appropriate To Prevent Evasion of Title VII

Consistent with our proposal, we interpret section 30(c) of the Exchange Act as not requiring us to find that actual evasion has occurred or is occurring to invoke our authority to reach activity ''without the jurisdiction of the United States'' or to limit application of Title VII to security-based swap activity ''without the jurisdiction of the United States'' only to business that is transacted in a way that is purposefully intended to evade Title VII. Section 30(c) of the Exchange Act authorizes the Commission to apply Title VII to persons transacting a business ''without the jurisdiction of the United States'' if they contravene rules that the Commission has prescribed as ''necessary or appropriate to prevent the evasion of any provision'' of Title VII. The focus of this provision is not whether such rules impose Title VII requirements only on entities engaged in evasive activity but whether the rules are generally ''necessary or appropriate'' to prevent potential evasion of Title VII. In other words, section 30(c) of the Exchange Act permits us to impose prophylactic rules intended to prevent possible purposeful evasion, even though such rules may affect or prohibit some non-evasive conduct. Moreover, exercising the section 30(c) authority does not require us to draw a distinction

[110] Although at least one commenter suggested that we lack the authority under section 30(c) of the Exchange Act to require non-U.S. person joint-ventures to aggregate relevant dealing transactions with the relevant dealing transactions of multiple investors in the joint-venture, *see* note 78, *supra,* we believe that our limitation on application of the aggregation requirement only to the transactions of such non-U.S. persons that occur within the United States (because they involve U.S.-person counterparties or are subject to a recourse guarantee against a U.S. person) is consistent with our territorial approach.

[111] The statute further provides the Commission with the authority to determine the scope of these categories. *See* Exchange Act section 3(a)(67)(A)(ii)(I).

[112] Exchange Act section 3(a)(67)(A).

[113] Dodd-Frank Act section 712(d)(1).

[114] Exchange Act section 3(a)(67)(B).

[115] *See* Intermediary Definitions Adopting Release, 77 FR 30663–84.

[116] *See id.*

[117] *Id.* at 30666.

[118] *See id.* We defined ''substantial counterparty exposure'' in a similar manner, noting the focus of the statutory test on ''serious adverse effects on financial stability or financial markets.'' *Id.* at 30683. *Cf.* Section 3(a)(67)(A)(ii)(II) of the Exchange Act (encompassing in major security-based swap participant definition persons whose ''outstanding security-based swaps create substantial counterparty exposure that could have serious adverse effects on the financial stability of the United States banking system or financial markets'').

[119] *Cf. Morrison,* 130 S. Ct. at 2884 (performing a textual analysis to identify the focus of the statute).

[120] The economic reality of a position subject to such a guarantee, even though entered into by a non-U.S. person, is substantially identical in relevant respects to a position entered into directly by the U.S. guarantor. *See* section 0, *supra.*

between conduct ''without the jurisdiction of the United States'' that is purposely evasive as opposed to identical conduct that was motivated by some non-evasive purpose. Indeed, to interpret section 30(c) authority otherwise could create a bifurcated regulatory regime where the same conduct is treated differently based on parties' underlying purpose for engaging in it, which could create extraordinary oversight challenges involving difficult subjective considerations concerning parties' true intentions in entering any given transaction or establishing particular business structures, and could create significant competitive advantages for incumbent firms.[121] Thus, we read the statute to permit us to prescribe such rules to conduct without the jurisdiction of the United States, even if those rules would also apply to a market participant that has been transacting business through a pre-existing market structure, such as a foreign branch or foreign affiliate whose positions are guaranteed by the market participant, established for valid business purposes, provided the proposed rule or guidance is designed to prevent possibly evasive conduct.[122]

C. Principles Guiding Final Approach To Applying ''Security-Based Swap Dealer'' and ''Major Security-Based Swap Participant'' Definitions in the Cross-Border Context

As in our proposal, our final rules and guidance reflect our careful consideration of the global nature of the security-based swap market and the types of risks created by security-based swap activity to the U.S. financial system and market participants and other concerns that the dealer and major security-based swap participant definitions were intended to address, as well as the needs of a well-functioning security-based swap market.[123] We also have been guided by the purpose of Title VII[124] and the applicable requirements of the Exchange Act, including the following:

- *Economic Impacts*—The Exchange Act requires the Commission to consider the impact of our rulemakings on efficiency, competition, and capital formation.[125]
- *Counterparty Protection*—The Dodd-Frank Act adds provisions to the Exchange Act relating to counterparty protection, particularly with respect to ''special entities.''[126]
- *Transparency*—The Dodd-Frank Act was intended to promote transparency in the U.S. financial system.[127]
- *Risk to the U.S. Financial System*—The Dodd-Frank Act was intended to promote, among other things, the financial stability of the United States by limiting/mitigating risks to the financial system.[128]
- *Anti-Evasion*—The Dodd-Frank Act amends the Exchange Act to provide the Commission with authority to prescribe rules and regulations as necessary or appropriate to prevent the evasion of any provision of the Exchange Act that was added by the Dodd-Frank Act.[129]
- *Consultation and Coordination with Other U.S. Regulators*—In connection with implementation of Title VII, the Dodd Frank Act requires the Commission to consult and coordinate with the CFTC and prudential regulators for the purpose of ensuring ''regulatory consistency and comparability, to the extent possible.''[130]
- *Consistent International Standards*—To promote effective and consistent global regulation of swaps and security-based swaps, the Dodd-Frank Act requires the Commission and the CFTC to consult and coordinate with foreign regulatory authorities on the ''establishment of consistent international standards'' with respect to the regulation of swaps and security-based swaps.[131] In this regard, the Commission recognizes that regulators in other jurisdictions are currently engaged in implementing their own regulatory reforms of the OTC derivatives markets and that our application of Title VII to cross-border activities may affect the policy decisions of these other regulators as they seek to address potential conflicts or overlaps in the regulatory requirements that apply to market participants under their authority.[132]

At times, these principles reinforce one another; at other times, they may be in tension. For instance, regulating risk posed to the United States may, depending on the final rules, make it more costly for U.S.-based firms to conduct security-based swap business, particularly in foreign markets, compared to foreign firms; it could make foreign firms less willing to deal with U.S. persons; and it could discourage foreign firms from carrying out security-based swap dealing activity through branches or offices located in the United States. On the other hand, providing U.S. persons greater access to foreign security-based swap markets may, depending on the final rules, fail to appropriately address the risks posed to the United States from transactions conducted in part outside the United States or create opportunities for market participants to evade the application of Title VII, particularly until such time as other jurisdictions adopt similar comprehensive and comparable derivative regulations.

Balancing these sometimes competing principles has been complicated by the fact that Title VII imposes a new regulatory regime in a global marketplace. Title VII establishes reforms that will have implications for entities that compete internationally in the global security-based swap market. We have generally sought, in accordance with the statutory factors described above, to avoid creating opportunities for market participants to evade Title VII requirements, whether by restructuring their business or other means, or the potential for overlapping or conflicting regulations. We also have considered the needs for a well-functioning security-based swap market and for avoiding disruption that may reduce liquidity, competition, efficiency, transparency, or stability in the security-based swap market.

[121] Such an interpretation of our anti-evasion authority, for example, could privilege incumbent firms by allowing them to leverage existing business models that may not be available to new entrants under rules promulgated pursuant to that authority.

[122] As a general matter, the final rules adopted in this release are not being applied to persons who are ''transacting a business in security-based swaps without the jurisdiction of the United States'' within the meaning of section 30(c) of the Exchange Act. *See* sections 0–(c), *supra.* However, as noted below, the Commission also believes that these rules are necessary or appropriate as a prophylactic measure to help prevent the evasion of the provisions of the Exchange Act that were added by the Dodd-Frank Act and thus help ensure that the particular purposes of the Dodd-Frank Act addressed by the rule are not undermined. *See, e.g.,* section 0 and note 186, *infra.*

[123] *See* section 0, *supra.*

[124] *See* note 11, *supra.*

[125] Specifically, section 3(f) of the Exchange Act provides: ''Whenever pursuant to this title the Commission is engaged in rulemaking, . . . , and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission shall also consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.'' Section 23(a)(2) of the Exchange Act also provides: ''The Commission . . . , in making rules and regulations pursuant to any provisions of this title, shall consider among other matters the impact any such rule or regulation would have on competition. The Commission . . . shall not adopt any such rule or regulation which would impose a burden on competition not necessary or appropriate in furtherance of the purposes of [the Exchange Act].''

[126] *See* Exchange Act section 15F(h), as added by section 764(a) of the Dodd-Frank Act, in particular.

[127] *See* note 11, *supra.*

[128] *Id.*

[129] *See* Exchange Act section 30(c), 15 U.S.C. 78dd(c), as discussed in section 0, *supra.*

[130] *See* section 712(a)(2) of the Dodd-Frank Act.

[131] *See* section 752(a) of the Dodd-Frank Act.

[132] For example, subjecting non-U.S. persons to Title VII may prompt a foreign jurisdiction to respond by subjecting U.S. persons to the foreign jurisdiction's regulatory regime.

III. Baseline

To assess the economic impact of the final rules described in this release, we are using as our baseline the security-based swap market as it exists at the time of this release, including applicable rules we have already adopted but excluding rules that we have proposed but not yet finalized.[133] The analysis includes the statutory and regulatory provisions that currently govern the security-based swap market pursuant to the Dodd-Frank Act.[134] We acknowledge limitations in the degree to which we can quantitatively characterize the current state of the security-based swap market. As we describe in more detail below, because the available data on security-based swap transactions do not cover the entire market, we have developed an understanding of market activity using a sample that includes only certain portions of the market.

A. Current Security-Based Swap Market

Our analysis of the state of the current security-based swap market is based on data obtained from DTCC–TIW, especially data regarding the activity of market participants in the single-name CDS market during the period from 2008 to 2012. While other repositories may collect data on transactions in total return swaps on equity and debt, we do not currently have access to such data for these products (or other products that are security-based swaps). We have previously noted that the definition of security-based swaps is not limited to single-name CDS but we believe that the single-name CDS data are sufficiently representative of the market and therefore can directly inform the analysis of the state of the current security-based swap market.[135] Additionally, the data for index CDS encompass both broad-based security indices and narrow-based security indices, and ''security-based swap'' in relevant part encompasses swaps based on single securities or reference entities or on narrow-based security indices. Accordingly, with the exception of the analysis regarding the degree of overlap between participation in the single-name CDS market and the index CDS market (cross-market activity), our analysis below does not include data regarding index CDS.

We believe that the data underlying our analysis here provide reasonably comprehensive information regarding the single-name CDS transactions and composition of the single-name CDS market participants. We note that the data available to us from DTCC–TIW do not encompass those CDS transactions that both: (i) Do not involve U.S. counterparties;[136] and (ii) are based on non-U.S. reference entities. Notwithstanding this limitation, we believe that the DTCC–TIW data provide sufficient information to identify the types of market participants active in the security-based swap market and the general pattern of dealing within that market.[137]

1. Security-Based Swap Market Participants

A key characteristic of security-based swap activity is that it is concentrated among a relatively small number of entities that engage in dealing activities. In addition to these entities, thousands of other participants appear as counterparties to security-based swap contracts in our sample, and include, but are not limited to, investment companies, pension funds, private (hedge) funds, sovereign entities, and industrial companies. We observe that most non-dealer users of security-based swaps do not engage directly in the trading of swaps, but use dealers, banks, or investment advisers as intermediaries or agents to establish their positions. Based on an analysis of the counterparties to trades reported to the DTCC–TIW, there are 1,695 entities that engaged directly in trading between November 2006 and December 2012.

Table 1, below, highlights that more than three-quarters of these entities (DTCC-defined ''firms'' shown in DTCC–TIW, which we refer to here as ''transacting agents'') were identified as investment advisers, of which approximately 40 percent (about 30 percent of all transacting agents) were registered investment advisers under the Investment Advisers Act of 1940 (''Investment Advisers Act'').[138] Although investment advisers comprise the vast majority of transacting agents, the transactions they executed account for only 10.8 percent of all single-name CDS trading activity reported to the DTCC–TIW, measured by number of transaction-sides (each transaction has two transaction sides, *i.e.,* two transaction counterparties). The vast majority of transactions (81.9 percent) measured by number of transaction-sides were executed by ISDA-recognized dealers.[139]

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[133] We also consider, where appropriate, the impact of rules and technical standards promulgated by other regulators, such as the CFTC and the European Securities and Markets Authority, on practices in the security-based swap market.

[134] As noted above, we have not yet adopted other substantive requirements of Title VII that may affect how firms structure their security-based swap business and market practices more generally.

[135] According to data published by the Bank for International Settlements (''BIS''), the global notional amount outstanding in equity forwards and swaps as of June 2013 was $2.32 trillion. The notional amount outstanding in single-name CDS was approximately $13.14 trillion, in multi-name index CDS was approximately $10.17 trillion, and in multi-name, non-index CDS was approximately $1.04 trillion. *See* Semi-annual OTC derivatives statistics at end-June 2013 (Nov. 2013), Table 19, available at: *http://www.bis.org/statistics/dt1920a.pdf.* As we stated in the Cross-Border Proposing Release, for the purposes of this analysis, we assume that multi-name index CDS are not narrow-based index CDS and therefore, do not fall within the security-based swap definition. *See* Cross-Border Proposing Release, 78 FR 31120 n.1301; *see also* Exchange Act section 3(a)(68)(A); Further Definition of ''Swap,'' ''Security-Based-Swap,'' and ''Security-Based Swap Agreement''; Mixed Swaps; Security-Based Swap Agreement Recordkeeping, Exchange Act Release No. 67453 (July 18, 2012), 77 FR 48208 (Aug. 13, 2012) (''Product Definitions Adopting Release''), 77 FR 48208. We also assume that all instruments reported as equity forwards and swaps are security-based swaps, potentially resulting in underestimation of the proportion of the security-based swap market represented by single-name CDS. Based on those assumptions, single-name CDS appear to constitute roughly 80 percent of the security-based swap market. No commenters disputed these assumptions, and we therefore continue to believe that, although the BIS data reflect the global OTC derivatives market, and not just the U.S. market, these ratios are an adequate representation of the U.S. market.

[136] We note that DTCC–TIW's entity domicile determinations may not reflect our definition of ''U.S. person'' in all cases.

[137] The challenges we face in estimating measures of current market activity stems, in part, from the absence of comprehensive reporting requirements for security-based swap market participants. The Commission has proposed rules regarding trade reporting, data elements, and real-time public reporting for security-based swaps that would provide us with appropriate measures of market activity. *See* Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information, Exchange Act Release No. 34–63346 (Nov. 19, 2010), 75 FR 75208 (Dec. 2, 2010).

[138] *See* 15 U.S.C. 80b1–80b21. Transacting agents participate directly in the security-based swap market, without relying on an intermediary, on behalf of principals. For example, a university endowment may hold a position in a security-based swap that is built up by an investment adviser that transacts on the endowment's behalf. In this case, the university endowment is a principal that uses the investment adviser as its transacting agent.

[139] The 1,695 entities included all DTCC-defined ''firms'' shown in DTCC–TIW as transaction counterparties that report at least one transaction to DTCC–TIW as of December 2012. The staff in the Division of Economic and Risk Analysis classified these firms, which are shown as transaction counterparties, by machine matching names to known third-party databases and by manual classification. This is consistent with the methodology used in the proposal. *See* Cross-Border Proposing Release, 78 FR 31120 n.1304. Manual classification was based in part on searches of the EDGAR and Bloomberg databases, the SEC's Investment Adviser Public Disclosure database, and a firm's public Web site or the public Web site of the account represented by a firm. The staff also referred to ISDA protocol adherence letters available on the ISDA Web site.

TABLE 1—THE NUMBER OF TRANSACTING AGENTS BY COUNTERPARTY TYPE AND THE FRACTION OF TOTAL TRADING ACTIVITY, FROM NOVEMBER 2006 THROUGH DECEMBER 2012, REPRESENTED BY EACH COUNTERPARTY TYPE

Transacting agents	Number	Percent	Transaction share (percent)
Investment Advisers	1,261	74.4	10.9
—SEC registered	*510*	*30.1*	*6.6*
Banks	256	15.1	5.9
Pension Funds	27	1.6	0.1
Insurance Companies	32	1.9	0.3
ISDA-Recognized Dealers [140]	17	1.0	82.1
Other	102	6.0	0.8
Total	1,695	100.0	100.0

Principal holders of CDS risk exposure are represented by ''accounts'' in the DTCC–TIW.[141] The staff's analysis of these accounts in DTCC–TIW shows that the 1,695 transacting agents classified in Table 1 represent over 9,238 principal risk holders. Table 2, below, classifies these principal risk holders by their counterparty type and whether they are represented by a registered or unregistered investment adviser.[142] For instance, 256 banks in Table 1 allocated transactions across 364 accounts, of which 25 were represented by investment advisers. In the remaining 339 instances, banks traded for their own accounts. Meanwhile, 17 ISDA-recognized dealers in Table 1 allocated transactions across 65 accounts.

Among the accounts, there are 1,000 Dodd-Frank Act-defined special entities and 570 investment companies registered under the Investment Company Act of 1940.[143] Private funds comprise the largest type of account holders that we were able to classify, and although not verified through a recognized database, most of the funds we were not able to classify appear to be private funds.[144]

TABLE 2—THE NUMBER AND PERCENTAGE OF ACCOUNT HOLDERS—BY TYPE—WHO PARTICIPATE IN THE SECURITY-BASED SWAP MARKET THROUGH A REGISTERED INVESTMENT ADVISER, AN UNREGISTERED INVESTMENT ADVISER, OR DIRECTLY AS A TRANSACTING AGENT, FROM NOVEMBER 2006 THROUGH DECEMBER 2012

Account holders by type	Number	Represented by a registered investment adviser (percent)	Represented by an unregistered investment adviser (percent)	Participant is transacting agent [145] (percent)
Private Funds	2,696	1,275—47	1,400—52	21—1.
DFA Special Entities	1,000	973—97	7—1	20—2.
Registered Investment Companies	570	560—98	8—1	2—0.
Banks (non-ISDA-recognized dealers)	364	21—6	4—1	339—93.
Insurance Companies	205	132—64	20—10	53—26.
ISDA-Recognized Dealers	65	0—0	0—0	65—100.
Foreign Sovereigns	57	40—70	2—4	15—26.
Non-Financial Corporations	55	37—67	3—5	15—27.
Finance Companies	8	4—50	0—0	4—50.
Other/Unclassified	4,218	2,885—68	1,146—27	187—4.
All	9,238	5,927—64	2,590—28	721—8.

(a) Dealing Structures

Security-based swap dealers use a variety of business models and legal structures to engage in dealing business with counterparties in jurisdictions all around the world. As we noted in the proposal, both U.S.-based and foreign-based entities use certain dealing structures for a variety of legal, tax, strategic, and business reasons.[146] Dealers may use a variety of structures in part to reduce risk and enhance credit

[140] For the purpose of this analysis, the ISDA-recognized dealers are those identified by ISDA as belonging to the G14 or G16 dealer group during the period: JP Morgan Chase NA (and Bear Stearns), Morgan Stanley, Bank of America NA (and Merrill Lynch), Goldman Sachs, Deutsche Bank AG, Barclays Capital, Citigroup, UBS, Credit Suisse AG, RBS Group, BNP Paribas, HSBC Bank, Lehman Brothers, Société Générale, Credit Agricole, Wells Fargo and Nomura. *See, e.g., http://www.isda.org/c_and_a/pdf/ISDA-Operations-Survey-2010.pdf.*

[141] ''Accounts'' as defined in the DTCC–TIW context are not equivalent to ''accounts'' in the definition of ''U.S. person'' provided by Exchange Act rule 3a71–3(a)(4)(i)(C). They also do not necessarily represent separate legal persons. One entity or legal person may have multiple accounts. For example, a bank may have one DTCC account for its U.S. headquarters and one DTCC account for one of its foreign branches.

[142] Unregistered investment advisers include all investment advisers not registered under the Investment Advisers Act and may include investment advisers registered with a state or a foreign authority.

[143] *See* 15 U.S.C. 80a1 through 80a64. There remain over 4,000 DTCC ''accounts'' unclassified by type. Although unclassified, each was manually reviewed to verify that it was not likely to be a special entity within the meaning of the Dodd-Frank Act and instead was likely to be an entity such as a corporation, an insurance company, or a bank.

[144] Private funds for this purposes encompasses various unregistered pooled investment vehicles, including hedge funds, private equity funds, and venture capital funds.

[145] This column reflects the number of participants who are also trading for their own accounts.

[146] *See* Cross-Border Proposing Release, 78 FR 30976–78.

protection based on the particular characteristics of each entity's business.

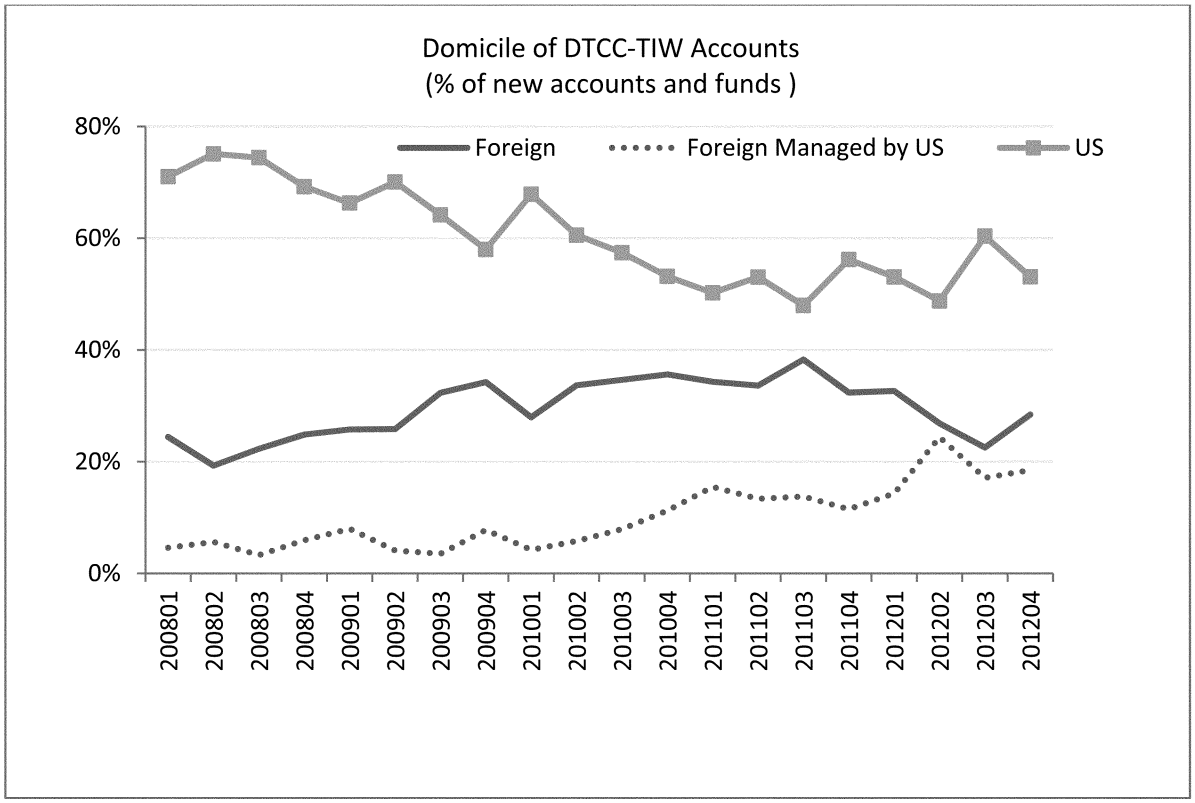
Bank and non-bank holding companies may use subsidiaries to deal with counterparties. Further, dealers may rely on multiple sales forces to originate security-based swap transactions. For example, a U.S. bank dealer may use a sales force in its U.S. home office to originate security-based swap transactions in the United States and use separate sales forces spread across foreign branches to originate security-based swap transactions with counterparties in foreign markets.

In some situations, an entity's performance under security-based swaps may be supported by a guarantee provided by an affiliate. More generally, guarantees may take the form of a blanket guarantee of an affiliate's performance on all security-based swap contracts, or a guarantee may apply only to a specified transaction or counterparty. Guarantees may give counterparties to the dealer direct recourse to the holding company or another affiliate for its dealer-affiliate's obligations under security-based swaps for which that dealer-affiliate acts as counterparty.

(b) Participant Domiciles

The security-based swap market is global in scope, with counterparties located across multiple jurisdictions. As depicted in Figure 1, the domicile of new accounts participating in the market has shifted over time.

Figure 1: The percentage of (1) new accounts with a domicile in the United States (referred to as "US"), (2) new accounts with domicile outside the United States (referred to below as "Foreign"), and (3) new accounts outside the United States but managed by a U.S. entity, account of a foreign branch of a U.S. bank, and account of a foreign subsidiary of a U.S. entity (collectively referred to below as "Foreign Managed by US").[147] Unique, new accounts are aggregated each quarter and shares are computed on a quarterly basis, from January 2008 through December 2012.



Overtime a greater share of accounts entering the market either have a foreign domicile, or have a foreign domicile while being managed by a U.S. person. The increase in foreign accounts may reflect an increase in participation by foreign accountholders while the increase in foreign accounts managed by U.S. persons may reflect the flexibility with which market participants can restructure their market participation in response to regulatory intervention, competitive pressures, and other stimuli. There are, however, alternative explanations for the shifts in new account domicile we observe in Figure 1. Changes in the domicile of new accounts through time may reflect improvements in reporting by market participants to DTCC–TIW.[148]

[147] In these instances, the fund or account lists a non-U.S. registered office location while the investment adviser, U.S. bank, or U.S. parent lists the United States as its settlement country.

[148] Consistent with the guidance on CDS data access, *see* text accompanying note 37, *supra,* DTCC–TIW surveyed market participants, asking for the physical address associated with each of their accounts (*i.e.,* where the account is incorporated as a legal entity). This is designated the registered office location. For purposes of this discussion, we have assumed that the registered office location reflects the place of domicile for the fund or

Continued

Additionally, because the data only include accounts that are domiciled in the United States, transact with U.S.-domiciled counterparties, or transact in single-name CDS with U.S. reference entities, changes in the domicile of new accounts may reflect increased transaction activity between U.S. and non-U.S. counterparties.

A U.S.-based holding company may conduct dealing activity through a foreign subsidiary that faces both U.S. and foreign counterparties. Similarly, foreign dealers may choose to deal with U.S. and foreign counterparties through U.S. subsidiaries. Non-dealer users of security-based swaps may participate in the market using an agent in their home country or abroad. An investment adviser located in one jurisdiction may transact in security-based swaps on behalf of beneficial owners that reside in another.

The various layers separating origination from booking by dealers, and management from ownership by non-dealer users, highlights the potential distinctions between the location where a transaction is arranged, negotiated, or executed, the location where economic decisions are made by managers on behalf of beneficial owners, and the jurisdiction ultimately bearing the financial risks associated with the security-based swap transaction that results. As a corollary, a participant in the security-based swap market may be exposed to counterparty risk from a jurisdiction that is different from the market center in which it participates.

(c) Current Estimates of Dealers and Major Participants.

In the Intermediary Definitions Adopting Release, we estimated, based on an analysis of DTCC–TIW data, that out of more than 1,000 entities engaged in single-name CDS activity worldwide in 2011, 166 entities engaged in single-name CDS activity at a sufficiently high level that they would be expected to incur assessment costs to determine whether they meet the ''security-based swap dealer'' definition.[149] Analysis of those data further indicated that potentially 50 entities may engage in dealing activity that would exceed the *de minimis* threshold and thus ultimately have to register as security-based swap dealers.[150]

Analysis of more recent data regarding the single-name CDS market using the same methodology suggests comparable results that are consistent with the reduction in transaction volume noted below. In particular, single-name CDS data from 2012 indicate that out of more than 1,000 entities engaged in single-name CDS activity, approximately 145 engaged in single-name CDS activity at a level high enough such that they may be expected to perform the dealer-trader analysis prescribed under the security-based swap dealer definition.[151] These data suggest that, consistent with the Intermediary Definitions Adopting Release analysis, up to approximately 50 entities would engage in dealing activity that would exceed the *de minimis* threshold.[152]

Additionally, in the Intermediary Definitions Adopting Release, we estimated, based on position data from DTCC–TIW for 2011, that as many as 12 entities would be likely to perform

account. When the fund does not report a registered office location, we assume that the settlement country reported by the investment adviser or parent entity to the fund or account is the place of domicile.

[149] Based on the *de minimis* threshold of $3 billion for single-name CDS, we estimated that there were 123 entities engaged in single-name CDS transactions in 2011 that had more than $3 billion in single-name CDS transactions over the previous 12 months. We also estimated that 43 entities with between $2 and $3 billion in transactions over the trailing 12 months may opt to engage in the dealer analysis out of an abundance of caution or to meet internal compliance guidelines, thus leading to the 166 total. *See* Intermediary Definitions Adopting Release, 77 FR 30731–32; *see also* Cross-Border Proposing Release, 78 FR 31139–40. We adopted a phase-in period during which the *de minimis* threshold will be $8 billion and during which Commission staff will study the security-based swap market as it evolves under the new regulatory framework, resulting in a report that will consider the operation of the security-based swap dealer and major security-based swap participant definitions. At the end of the phase-in period, the Commission will take into account the report, as well as public comment on the report, in determining whether to terminate the phase-in period or propose any changes to the rule implementing the *de minimis* exception, including any increases or decreases to the $3 billion threshold. *See* Intermediary Definitions Adopting Release, 77 FR 30640.

[150] In particular, we estimated that 28 entities and corporate groups had three or more counterparties that are not ISDA dealers (which we viewed as a useful proxy for application of the dealer-trader distinction) and that 25 of those entities had trailing notional transactions exceeding $3 billion. *See id.* at 30725 n.1457; SEC Staff Report, ''Information regarding activities and positions of participants in the single-name credit default swap market (''CDS Data Analysis'') (Mar. 15, 2012), available at: *http://www.sec.gov/comments/s7-39-10/s73910-154.pdf* at 14. Our additional estimate of up to 50 potential dealers reflected our recognition of the potential for growth in the security-based swap market, for new entrants into the dealing space, and the possibility that some corporate groups may register more than one entity. *See* Intermediary Definitions Adopting Release, 77 FR 30725 n.1457.

In the Cross-Border Proposing Release, we revised those estimates to reflect a more granular analysis of the data. Under this refined approach—which identified the number of entities within a corporate group that may have to register—we estimated that 46 individual firms had three or more non-ISDA dealer counterparties, and that, of those, 31 firms engaged in at least $3 billion of security-based swap activity in 2011. We further estimated that, under the cross-border provisions of proposed Exchange Act rule 3a71–3(b), 27 of those entities engaged in at least $3 billion notional activity that they would have to count against the *de minimis* threshold, and that accounting for the aggregation requirement may result in an additional two firms being required to register, for a total of 29. We also concluded that our original estimate of there being up to 50 dealers was still valid, noting that the revised estimate included individual entities within corporate groups (thus accounting for the possibility that some corporate groups may register more than one dealer), and also accounted for the likely results of the proposed aggregation requirement. *See* Cross-Border Proposing Release, 78 FR 31137–38 n.1407.

[151] Consistent with the earlier analysis, this figure is derived from the fact that 110 transacting agents had total single-name security-based swap activity above the $3 billion *de minimis* threshold, while another 35 transacting agents had activity between $2 and $3 billion and hence out of caution may be expected to engage in the dealer-trader analysis.

In calculating this estimate, Commission staff used methods identical to those used referenced in the Intermediary Definitions Adopting Release, 77 FR 30732 n.1509, aggregating the activity of DTCC accounts to the level of transacting agents and estimating the number of transacting agents with gross transaction notional amounts exceeding $2 billion in 2012. While the analysis contained in the Intermediary Definitions Adopting Release used a sample that ended in December 2011, the sample has been updated through the end of December 2012.

In connection with the economic analysis of the final cross-border dealer *de minimis* rules, we also have estimated the number of entities that may perform the dealer-trader analysis using a more granular methodology that considers data both at the account level and at the transacting agent level. *See* notes 456 through 458, *infra,* and accompanying text.

[152] As discussed below, and consistent with the methodology used in the Cross-Border Proposing Release, 78 FR 31137 n.1407, data from 2012 indicates that 40 entities engaged in the single-name security-based swap market had three or more counterparties that were not identified by ISDA as dealers, and that 27 of those entities had $3 billion or more in notional single-name CDS activity over a 12 month period. Applying the principles reflected in these final rules regarding the counting of transactions against the *de minimis* thresholds suggests that 25 of those entities would have $3 billion or more in notional transactions counted against the thresholds, and that applying the aggregation rules increases that number to 26 entities. Based on this data, we believe that it is reasonable to conclude that up to 50 entities ultimately may register as security-based swap dealers, although the number may be smaller. *See* note 444, *infra.*

In this regard it is important to note that, due to limitations in the availability of the underlying data, this analysis does not include information about transactions involving single-name CDS with a non-U.S. reference entity when neither party is domiciled in the United States or guaranteed by a person domiciled in the United States. This is because for single-name CDS with a non-U.S. reference entity, the data supplied to the Commission by the DTCC–TIW encompasses only information regarding transactions involving at least one counterparty domiciled in the United States or guaranteed by a person domiciled in the United States, based on physical addresses reported by market participants. That data exclusion introduces the possibility that these numbers may underestimate the number of persons that would engage in the dealer-trader analysis (and hence incur assessment costs) or that exceed $3 billion in dealing transactions on an annual basis (and hence would potentially be linked to programmatic costs and benefits).

substantial position and substantial counterparty exposure tests, and thus incur assessment costs, prescribed under the major security-based swap participant definition. Of these 12 firms, we estimated that the number of persons with positions sufficiently large to bring them within the scope of the definition of major security-based swap participant likely would be fewer than five. Although we did not specify how the major security-based swap participant definition would apply to foreign persons in the Intermediary Definitions Adopting Release, our approach in estimating the assessment costs caused by our final definition used available single-name CDS data as a proxy for the market as a whole, and assumed that all potential major security-based swap participants would be required to include in their threshold calculations all positions with all counterparties.

Analysis of more recent data regarding the single-name CDS market suggests comparable results. In particular, single-name CDS data from 2012 indicate that out of over 1,100 DTCC–TIW firms holding positions in single-name CDS activity and not expected to register as security-based swap dealers, nine had worldwide single-name CDS positions at a level high enough such that they may be expected to perform the major security-based swap participant threshold analysis prescribed under the security-based swap dealer definition. Analysis based on these more recent data is consistent with the prior conclusion that five or fewer entities would be likely to register as major security-based swap participants.[153]

2. Levels of Security-Based Swap Trading Activity

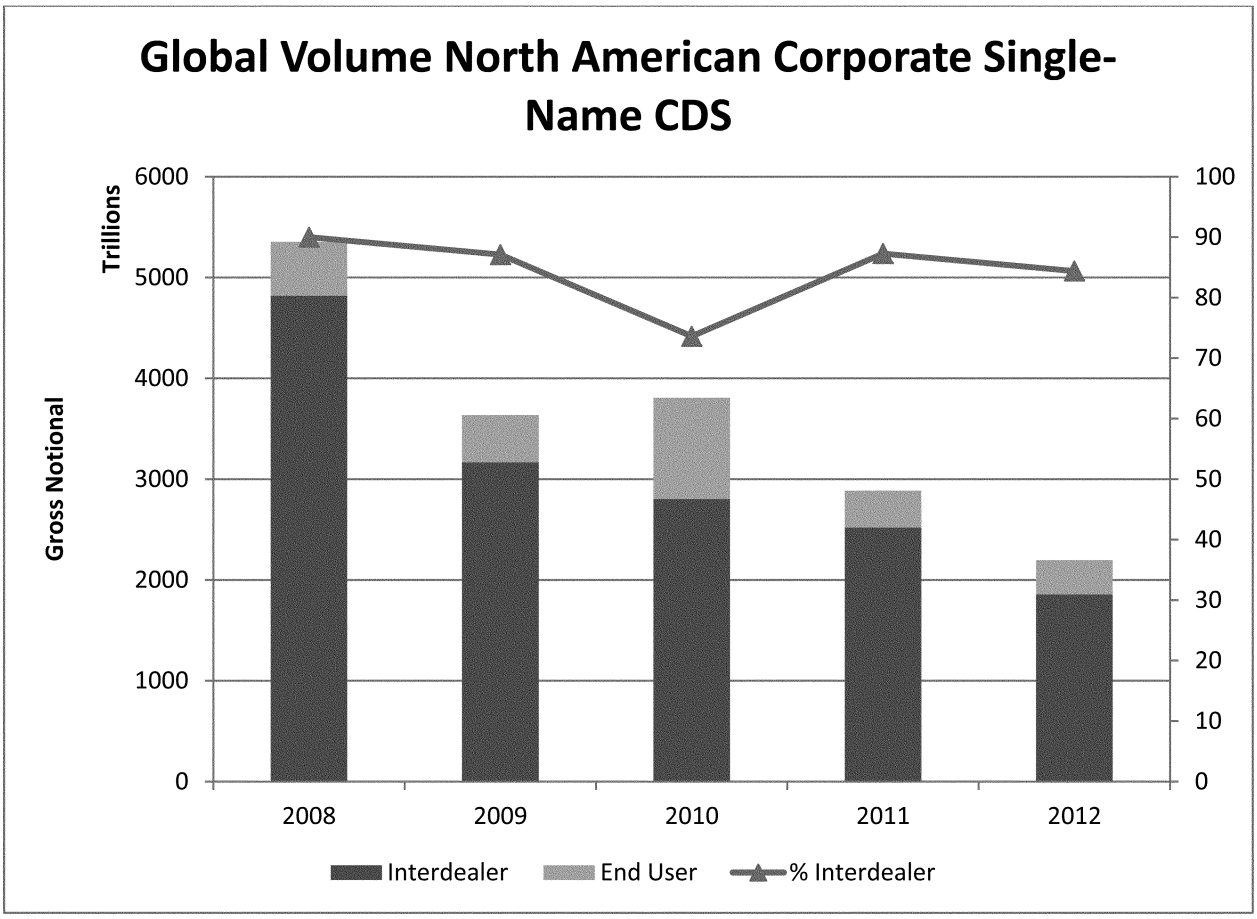
Single-name CDS contracts make up the vast majority of security-based swap products and most are written on corporate issuers, corporate securities, sovereign countries, or sovereign debt (reference entities and reference securities). Figure 2 below describes the percentage of global, notional transaction volume in North American corporate single-name CDS reported to the DTCC–TIW between January 2008 and December 2012, separated by whether transactions are between two ISDA-recognized dealers (interdealer transactions) or whether a transaction has at least one non-dealer counterparty.

The level of trading activity with respect to North American corporate single-name CDS in terms of notional volume has declined from more than $5 trillion in 2008 to approximately $2 trillion in 2012.[154] While notional volume has declined over the past five years, the share of interdealer transactions has remained fairly constant and interdealer transactions continue to represent the bulk of trading activity, whether measured in terms of notional value or number of transactions (see Figure 2).

[153] In calculating this estimate, Commission staff used methods identical to those used referenced in the Intermediary Definitions Adopting Release, 77 FR 30734, note 1529, estimating the number of participants with notional positions exceeding $100 billion in 2012. The analysis contained in the Intermediary Adopting Release used a sample that ended in December 2011, aggregated the activity of DTCC accounts to the level of transacting agents, and did not attribute positions to parent companies. For the purposes of analysis of the final rules, the sample has been updated through the end of December 2012 and positions falling short of the $100 billion threshold have been attributed to parent companies.

[154] The start of this decline predates the enactment of the Dodd-Frank Act and the proposal of rules thereunder, which is important to note for the purpose of understanding the economic baseline for this rulemaking. The timing of this decline seems to indicate that CDS market demand shrank prior to the enactment of the Dodd-Frank Act, and therefore the causes of this reduction in trading volume may be related to market dynamics and not directly related to the enactment of statutes and the development of security-based swap market regulation. If the security-based swap market experiences further declines in trading activity, it would be difficult to identify the effects of the newly developed security-based swap market regulation apart from changes in trading activity that may be due to natural market forces, or the anticipation of (or reaction to) proposed (or adopted) Title VII requirements or requirements being considered or implemented in other jurisdictions.

Figure 2: Global, notional trading volume in North American corporate single-name CDS by calendar year and the fraction of volume that is interdealer.



Against this backdrop of declining North American corporate single-name CDS activity, about half of the trading activity in North American corporate single-name CDS reflected in the set of data we analyzed was between counterparties domiciled in the United States and counterparties domiciled abroad. Basing counterparty domicile on the self-reported registered office location of the DTCC–TIW accounts, the Commission estimates that only 13 percent of the global transaction volume by notional volume between 2008 and 2012 was between two U.S.-domiciled counterparties, compared to 48 percent entered into between one U.S.-domiciled counterparty and a foreign-domiciled counterparty and 39 percent entered into between two foreign-domiciled counterparties (see Figure 3).[155]

When the domicile of DTCC–TIW accounts are instead defined according to the domicile of their ultimate parents, headquarters, or home offices (*e.g.,* classifying a foreign bank branch or foreign subsidiary of a U.S. entity as domiciled in the United States), the fraction of transactions entered into between two U.S.-domiciled counterparties increases to 29 percent, and to 53 percent for transactions entered into between a U.S.-domiciled counterparty and a foreign-domiciled counterparty.

Differences in classifications across different definitions of domicile illustrate the effect of participant structures that operate across jurisdictions. Notably, the proportion of activity between two foreign-domiciled counterparties drops from 39 percent to 18 percent when domicile is defined as the ultimate parent's domicile. As noted earlier, foreign subsidiaries of U.S. parent companies and foreign branches of U.S. banks, and U.S. subsidiaries of foreign parent companies and U.S. branches of foreign banks may transact with U.S. and foreign counterparties. However, this decrease in share suggests that the activity of foreign subsidiaries of U.S. firms and foreign branches of U.S. banks is generally higher than the activity of U.S. subsidiaries of foreign firms and U.S. branches of foreign banks.

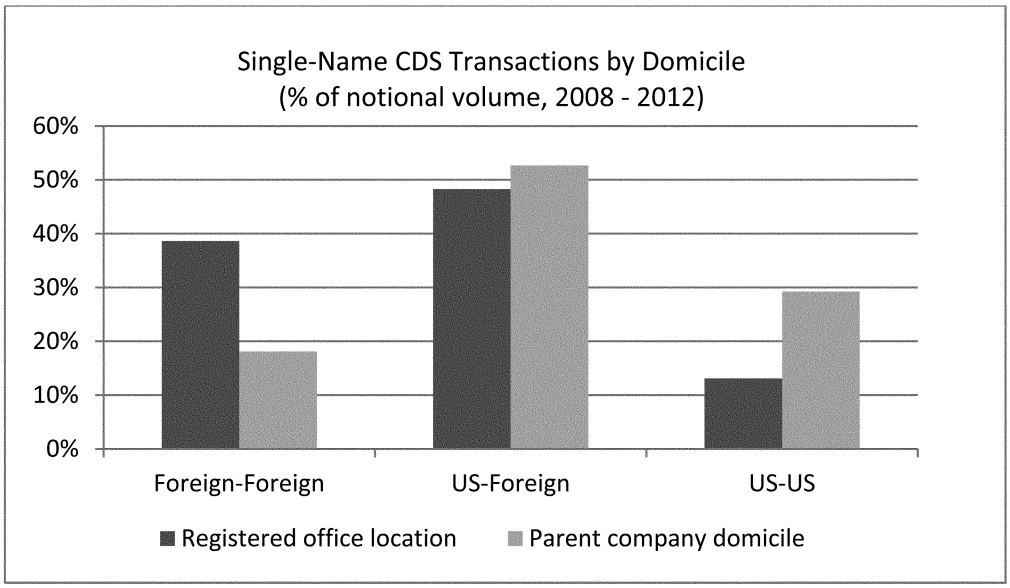
By either of those definitions of domicile, the data indicate that a large fraction of North American corporate single-name CDS transaction volume is entered into between counterparties domiciled in two different jurisdictions or between counterparties domiciled outside the United States. For the purpose of establishing an economic baseline, this observation indicates that a large fraction of security-based swap

[155] Following publication of the Warehouse Trust Guidance on CDS data access, the DTCC–TIW surveyed market participants, asking for the physical address associated with each of their accounts (*i.e.,* where the account is organized as a legal entity). This is designated the registered office location by the DTCC–TIW. When an account does not report a registered office location, we assume that the settlement country reported by the investment adviser or parent entity to the fund or account is the place of domicile. For purposes of this discussion, we have assumed that the registered office location reflects the place of domicile for the fund or account.

Changes to these estimates relative to figures presented in the proposing release represent additional data regarding new accounts in the time series as well as the use of a longer sample period.

activity would be affected by the scope of any cross-border approach we take in applying the Title VII requirements. Further, the large fraction of North American corporate single-name CDS transactions between U.S.-domiciled and foreign-domiciled counterparties also highlights the extent to which security-based swap activity transfers risk across geographical boundaries, both facilitating risk sharing among market participants and allowing for risk transmission between jurisdictions.

Figure 3: The fraction of notional volume in North American corporate single-name CDS between (1) two U.S.-domiciled accounts, (2) one U.S.-domiciled account and one non-U.S.-domiciled account, and (3) two non-U.S.-domiciled accounts, computed from January 2008 through December 2012.



B. Global Regulatory Efforts

Efforts to regulate the swaps market are underway not only in the United States but also abroad. In 2009, leaders of the G20—whose membership includes the United States, 18 other countries, and the EU—called for global improvements in the functioning, transparency, and regulatory oversight of OTC derivatives markets agreeing that ''all standardised OTC derivatives contracts should be traded on exchanges or electronic trading platforms, where appropriate, and cleared through central counterparties (''CCPs'') by end-2012 at the latest. OTC derivatives contracts should be reported to trade repositories. Non-centrally cleared contracts should be subject to higher capital requirements.'' [156] In subsequent summits, the G20 leaders have reiterated their commitment to OTC derivatives regulatory reform and encouraged international consultation in developing standards for these markets.[157] The FSB monitors implementation of OTC derivatives reforms and provides progress reports to the G20.[158]

Pursuant to these commitments, jurisdictions with major OTC derivatives markets have taken steps toward substantive regulation of these markets, though the pace of regulation varies. This suggests that many foreign participants will face substantive regulation of their security-based swap activities that is intended to implement the G20 objectives and that may therefore address concerns similar to those addressed by rules the Commission has proposed but not yet adopted.

Foreign legislative and regulatory efforts have focused on five general areas: Requiring post-trade reporting of transactions data for regulatory purposes, moving OTC derivatives onto organized trading platforms, requiring central clearing of OTC derivatives, establishing or enhancing capital requirements, and establishing or enhancing margin requirements for OTC derivatives transactions.

The first two areas of regulation should help improve transparency in OTC derivatives markets, both to regulators and market participants. Regulatory transaction reporting requirements have entered into force in a number of jurisdictions including the EU, Hong Kong SAR, Japan, and Singapore, and other jurisdictions are in

[156] *See* G20 Leaders' Statement cited in note 16, *supra.*

[157] See *e.g.,* G20 Leaders' St. Petersburg Declaration. *See also* G20 Meeting, Los Cabos, Mexico, June 2012, available at: *http://www.treasury.gov/resource-center/international/g7-g20/Documents/Los%20Cabos%20Leaders%27%20Declaration.pdf;* and G20 Meeting, Cannes, France, November 2011, available at: *https://www.g20.org/sites/default/files/g20_resources/library/Declaration_eng_Cannes.pdf* (''G20 Leaders' Cannes Declaration''). In the G20 Leaders' Cannes Declaration, the G20 Leaders agreed to develop standards on margin for non-centrally cleared OTC derivatives.

[158] The FSB has published seven progress reports on OTC derivatives markets reform implementation: FSB Progress Report April 2014 (available at: *http://www.financialstabilityboard.org/publications/r_140408.pdf*); September 2013 (available at: *http://www.financialstabilityboard.org/publications/r_130902b.pdf*), April 2013 (available at: *http://www.financialstabilityboard.org/publications/r_130415.pdf*), October 2012 (available at: *http://www.financialstabilityboard.org/publications/r_121031a.pdf*), June 2012 (available at: *http://www.financialstabilityboard.org/publications/r_120615.pdf*), October 2011 (available at: http://www.financialstabilityboard.org/publications/r_111011b.pdf) and April 2011 (available at: *http://www.financialstabilityboard.org/publications/r_110415b.pdf*) (collectively, ''FSB Progress Reports'') . The ODWG prepares the FSB Progress Reports. The Commission participates in the ODWG, both on its own behalf and as the representative of IOSCO, which is co-chair of the ODWG.

the process of proposing legislation and rules to implement these requirements.[159] The European Parliament has adopted legislation for markets in financial instruments that addresses trading OTC derivatives on regulated trading platforms.[160] This legislation also should promote post-trade public transparency in OTC derivatives markets by requiring the price, volume, and time of OTC derivatives transactions conducted on these regulated trading platforms to be made public in as close to real time as technically possible.

Regulation of derivatives central clearing, capital requirements, and margin requirements aims to improve management of financial risks in these markets. Japan has rules in force mandating central clearing of certain OTC derivatives transactions. The EU has its legislation in place but has not yet made any determinations of specific OTC derivatives transactions subject to mandatory central clearing. Most other jurisdictions are still in the process of formulating their legal frameworks that govern central clearing. While the EU is the only major foreign jurisdiction that has initiated the process of drafting rules to implement margin requirements for OTC derivatives transactions, we understand that several other jurisdictions anticipate taking steps towards implementing such requirements.

C. Cross-Market Participation

Persons registered as security-based swap dealers or major security-based swap participants are likely also to engage in swap activity, which is subject to regulation by the CFTC. In the release proposing registration requirements for security-based swap dealers and major security-based swap participants, we estimated, based on our experience and understanding of the swap and security-based swap markets that of the 55 firms that might register as security-based swap dealers or major security-based swap participants, approximately 35 would also register with the CFTC as swap dealers or major swap participants.[161]

This overlap reflects the relationship between single-name CDS contracts, which are security-based swaps, and index CDS contracts, which may be swaps or security-based swaps. A single-name CDS contract covers default events for a single reference entity or reference security. These entities and securities are often part of broad-based indices on which market participants write index CDS contracts. Index CDS contracts and related products make payouts that are contingent on the default of index components and allow participants in these instruments to gain exposure to the credit risk of the basket of reference entities that comprise the index, which is a function of the credit risk of the index components. As a result of this construction, a default event for a reference entity that is an index component will result in payoffs on both single-name CDS written on the reference entity and index CDS written on indices that contain the reference entity. Because of this relationship between the payoffs of single-name CDS and index CDS products, prices of these products depend upon one another. This dependence is particularly strong between index CDS contracts and single-name CDS contracts written on index components.[162]

Because payoffs associated with these single-name CDS and index CDS are dependent, hedging opportunities exist across these markets. Participants who sell protection on reference entities through a series of single-name CDS transactions can lay off some of the credit risk of their resulting positions by buying protection on an index that includes a subset of those reference entities. Participants that are active in one market are likely to be active in the other. Commission staff analysis of approximately 4,400 DTCC–TIW accounts that participated in the market for single-name CDS in 2012 revealed that approximately 2,700 of those accounts, or 61 percent, also participated in the market for index CDS. Of the accounts that participated in both markets, data regarding transactions in 2012 suggest that, conditional on an account transacting in notional volume of index CDS in the top third of accounts, the probability of the same account landing in the top third of accounts in terms of single-name CDS notional volume is approximately 62 percent; by contrast, the probability of the same account landing in the bottom third of accounts in terms of single-name CDS notional volume is only 14 percent.

In an effort to comply with CFTC rules and applicable statutory provisions in the cross-border context, swap market participants, many of whom, as discussed above, likely also participate in the security-based swap market, may have already changed some market practices.[163] Although a commenter suggested that swap market participants have already conformed their business practices to the CFTC's approach to cross-border regulation, the commenter did not supply particular details as to the scope of that operations restructuring.[164] We believe, however, based on these comments, it is likely that all participants who preliminarily believe they may be subject to the CFTC's registration requirements will have expended resources to build systems and infrastructure that will permit them to determine and then record the U.S.-person status of their counterparties consistent with applicable requirements, as interpreted by the CFTC Cross-Border Guidance.

The CFTC's rules and cross-border guidance have likely influenced the information that market participants collect and maintain about the swap transactions they enter into and the counterparties they face. For example, the CFTC's guidance describes a majority-ownership approach for collective investment vehicles that are offered to U.S. persons, contemplating

[159] Information regarding ongoing regulatory developments described in this section was primarily obtained from the FSB Progress Reports cited in note 158, *supra,* which reflect the input of relevant jurisdictions.

[160] *Id.*

[161] *See* Registration of Security-Based Swap Dealers and Major Security-Based Swap Participants, Exchange Act Release No. 65543 (Oct. 12, 2011), 76 FR 65784, 65808 (Oct. 24, 2011). Based on its analysis of 2012 DTCC–TIW and the list of swap dealers provisionally-registered with the CFTC, and applying the methodology used in the Intermediary Definitions Adopting Release, the Commission estimates that substantially all registered security-based swap dealers would also register as swap dealers with the CFTC. *See also* CFTC list of provisionally registered swap dealers, available at: *http://www.cftc.gov/LawRegulation/DoddFrankAct/registerswapdealer.*

[162] ''Correlation'' typically refers to linear relationships between variables; ''dependence'' captures a broader set of relationships that may be more appropriate for certain swaps and security-based swaps. *See, e.g.,* Casella, George and Roger L. Berger, ''Statistical Inference'' (2002), at 171.

[163] *See, e.g.,* SIFMA/FIA/FSR Letter at 2–3. We understand that new capabilities have been built by swap market participants following issuance of the CFTC's guidance. To the extent that such capabilities can be transferred to these participants' security-based swap activities (*e.g.,* to the extent that a market participant's assessment practices regarding whether a counterparty would generally be considered a U.S. person for purposes of the CFTC guidance also can help determine the corresponding assessment for purposes of these final rules and guidance), such capabilities may tend to mitigate the costs that market participants otherwise would incur in connection with the Commission's final cross-border rules.

[164] *Id.* at 2–4. The commenter notes the ''technological, operational, legal and compliance systems'' necessary for complying with the Commission's proposed rules, and taking account of the CFTC Cross-Border Guidance, outlining the general categories of changes to practice necessary for compliance. The commenter further indicates a potential need to ''build[] separate systems for a small percentage of the combined swaps and SBS market instead of using the systems already built for compliance with the CFTC's cross-border approach,'' suggesting that market participants have already altered market practices to follow the CFTC Cross-Border Guidance.

that managers of these vehicles would assess, on an ongoing basis, the proportion of ownership by U.S. persons. As another example, the CFTC's guidance articulates an approach by which all swap transactions by a non-U.S. person that rely on guarantees from U.S. affiliates would generally count against that non-U.S. person's dealer *de minimis* exception.[165]

Thus, as discussed in more detail in sections IV.I.2 and V.H.2 below, the adoption of rules that would seek similar information from security-based swap market participants as the CFTC seeks from swap market participants, may allow such participants to use infrastructure already in place as a result of CFTC regulation to comply with Commission regulation. Among those entities that participate in both markets, entities that are able to apply to security-based swap activity new capabilities they have built in order to comply with requirements applicable to cross-border swap activity may experience lower costs associated with assessing which cross-border security-based swap activity counts against the dealer *de minimis* exception or towards the major participant threshold, relative to those that are unable to redeploy such capabilities. The Commission remains sensitive to the fact that in cases where its final rules differ from the CFTC approach, additional outlays related to information collection and storage may be required even of market participants that conformed to the CFTC's guidance regarding the applicable cross-border requirements.[166] These costs are discussed in sections IV.I.1 and V.H.1(b).

IV. Cross-Border Application of Dealer *De Minimis* Exception

A. Overview

The Exchange Act excepts from designation as ''security-based swap dealer'' entities that engage in a ''*de minimis*'' quantity of security-based swap dealing activity with or on behalf of customers.[167] Under the final rules adopted in the Intermediary Definitions Adopting Release, a person may take advantage of that exception if, in connection with CDS that constitute security-based swaps, the person's dealing activity over the preceding 12 months does not exceed a gross notional amount of $3 billion, subject to a phase-in level of $8 billion.[168] The phase-in level will remain in place until—following a study regarding the definitions of ''security-based swap dealer'' and ''major security-based swap participant''—the Commission either terminates the phase-in period or establishes an alternative threshold following rulemaking.[169]

To apply the exception to cross-border dealing activity, the Cross-Border Proposing Release would have required that a U.S. person count against the *de minimis* thresholds all of its security-based swap dealing activity, including transactions conducted through a foreign branch of a U.S. bank.[170] Non-U.S. persons, in contrast, would have included only dealing transactions entered into with U.S. persons other than foreign branches of U.S. banks, plus dealing transactions where the transaction is ''conducted within the United States.''[171] To implement, within the cross-border context, the existing rule that requires a person to aggregate the dealing activity of its affiliates against its own *de minimis* thresholds,[172] the proposal would have required a person to count: (i) Dealing transactions by its affiliates that are U.S. persons; and (ii) dealing transactions by non-U.S. affiliates that either are entered into with U.S. persons other than foreign branches, or that are conducted within the United States.[173] The proposal further would have permitted a person to exclude, from the *de minimis* analysis, transactions by affiliates that are registered security-based swap dealers, provided that the person's dealing activity is ''operationally independent'' from the registered dealer's dealing activity.[174] The proposal, moreover, set forth definitions relevant to the application of the *de minimis* exception in the cross-border context, including proposed definitions of the terms ''U.S. person'' and ''transaction conducted within the United States.''[175]

Commenters raised issues related to various aspects of this proposed approach to application of the *de minimis* exception in the cross-border context. As discussed below, these include issues regarding: The scope of the ''U.S. person'' definition, the proposal to require counting of certain ''transactions conducted within the United States'' between two non-U.S. persons, the treatment of the dealing activity of non-U.S. persons that is guaranteed by U.S. persons, and the application of the exception to non-U.S. persons whose counterparties are foreign branches of U.S. banks. Some commenters also urged us to more closely harmonize particular aspects of our proposal with the CFTC Cross-Border Guidance.

After considering commenters' views regarding the cross-border application of the *de minimis* exception, we are adopting final rules that have been modified from the proposal in certain important respects. While these changes are discussed in more detail below, key elements include:

- Modifications to the proposed definition of ''U.S. person'';
- Provisions to distinguish non-U.S. persons' dealing activity involving security-based swaps that are guaranteed by their U.S. affiliates from such non-U.S. persons' other dealing activity for purposes of the *de minimis* exception, by requiring a non-U.S. person to count against the *de minimis* thresholds all dealing activity involving security-based swaps for which its counterparty has rights of recourse against a U.S. guarantor that is affiliated with the non-U.S. person;

[165] *See* section 0, *supra,* for a discussion of costs to market participants that may arise from differences between the CFTC approach to guarantees and the Commission's final rules.

[166] We recognize that the CFTC Cross-Border Guidance is the subject of ongoing litigation. Our economic analysis is not intended to draw any conclusions about the ultimate outcome of that litigation; rather, the economic analysis relies on the current practices and operational abilities of firms that are, we understand, either in accordance with the CFTC Cross-Border Guidance or are in the process of adapting their systems to account for the CFTC's approach to cross-border issues.

[167] *See* Exchange Act section 3(a)(71)(D).

[168] *See* Exchange Act rule 3a71–2(a).

[169] *See* Intermediary Definitions Adopting Release, 77 FR 30640–41; *see also* note 149, *supra* (addressing process for termination of phase-in level). Lower thresholds are set forth in connection with dealing activity involving other types of security-based swaps. *See* Exchange Act rule 3a71–2(a)(1)(ii).

[170] *See* proposed Exchange Act rule 3a71–3(b)(1)(i).

[171] *See* proposed Exchange Act rule 3a71–3(b)(1)(ii).

[172] *See* Exchange Act rule 3a71–2(a)(1) (providing that, for purposes of the *de minimis* exception, a person shall count its own dealing activity plus the dealing activity of ''any other entity controlling, controlled by, or under common control with the person'').

[173] *See* proposed Exchange Act rule 3a71–3(b)(2).

[174] *See* proposed Exchange Act rule 3a71–4.

[175] The proposal also set forth definitions of ''foreign branch'' and ''transaction conducted through a foreign branch'' in connection with the *de minimis* exception. *See* proposed Exchange Act rule 3a71–3(a). The proposed definitions of ''U.S. person,'' ''transaction conducted within the United States,'' ''foreign branch,'' and ''transaction conducted through a foreign branch'' also are relevant to the Commission's proposed rules regarding the cross-border application of certain other Title VII requirements. *See, e.g.,* proposed Exchange Act regulation SBSR (regarding regulatory reporting and public dissemination).

Proposed Exchange Act rule 3a71–3 also contained a provision and associated definitions related to the cross-border application of counterparty protection requirements in connection with security-based swap activities. As discussed above, those matters are not the subject of the present rulemaking, and the Commission intends to address those matters as part of a subsequent rulemaking.

• Provisions to distinguish non-U.S. persons that act as conduit affiliates (by entering into certain security-based swap transactions on behalf of their U.S. affiliates) from other non-U.S. persons for purposes of the *de minimis* exception, in that conduit affiliates are required to count all of their dealing activity against the *de minimis* thresholds regardless of counterparty;

• Modifications to the application of the *de minimis* exception to dealing activity by non-U.S. persons when the counterparty is the foreign branch of a U.S. bank.

• The addition of an exclusion related to cleared, anonymous transactions; and

• Modifications of the proposed aggregation provisions, in part by removing the ''operational independence'' condition to excluding dealing positions of affiliates that are registered dealers.

The final rules we are adopting reflect a territorial approach that is generally consistent with the principles that the Commission traditionally has followed with respect to the registration of brokers and dealers under the Exchange Act. Under this territorial approach, registration and other requirements applicable to brokers and dealers generally are triggered by a broker or dealer physically operating in the United States, even if its activities are directed solely toward non-U.S. persons outside the United States. The territorial approach further generally requires broker-dealer registration by foreign brokers or dealers that, from outside the United States, induce or attempt to induce securities transactions by persons within the United States—but not when such foreign brokers or dealers conduct their activities entirely outside the United States.[176]

In the cross-border context, moreover, the application of the ''security-based swap dealer'' definition and its *de minimis* exception remains subject to general principles that we addressed in the Intermediary Definitions Adopting Release. Accordingly, the term ''person'' as used in the ''security-based swap dealer'' definition and in the Commission's rules implementing the *de minimis* exception should be interpreted to refer to a particular legal person, meaning that a trading desk, department, office, branch or other discrete business unit that is not a separately organized legal person will not be viewed as a security-based swap dealer. As a result, a legal person with a branch, agency, or office that is engaged in dealing activity above the *de minimis* threshold is required to register as a security-based swap dealer, even if the legal person's dealing activity is limited to such branch, agency, or office.[177]

Cross-border security-based swap transactions also are subject to the principle that transactions between majority-owned affiliates need not be considered for purposes of determining whether a person is a dealer.[178]

As discussed below, these final rules and guidance do not address the proposed provisions regarding the cross-border application of the dealer definition to ''transactions conducted within the United States,'' as defined in the Cross-Border Proposing Release. We anticipate soliciting additional public comment on potential approaches for applying the dealer definition to non-U.S. persons in connection with activity between two non-U.S. persons where one or both are conducting dealing activity that occurs within the United States.[179]

B. Application of De Minimis Exception To Dealing Activities of U.S. Persons

1. Proposed Approach and Commenters' Views

Under the proposal, a U.S. person would have counted all of its security-based swap dealing activity against the *de minimis* thresholds, including transactions that it conducted through a foreign branch.[180] Although some persons who submitted comments in connection with the Intermediary Definitions Adopting Release expressed the view that dealing activity by foreign branches should not be counted as part of a U.S. person's *de minimis* calculation,[181] we did not propose such an approach.[182] Moreover, commenters to the Cross-Border Proposing Release did not specifically express opposition to this aspect of the proposal, although several commenters addressed related issues regarding the proposed scope of the ''U.S. person'' definition.[183]

2. Final Rule

Consistent with the proposal, the final rules require U.S. persons to apply all of their dealing transactions against the *de minimis* thresholds, including activity they conduct through their foreign branches.[184] Such dealing transactions must be counted regardless of where they are arranged, negotiated, or executed.

As discussed above, it is our view that any dealing activity undertaken by a U.S. person, as defined in this final rule, occurs at least in part within the United States and therefore warrants the application of Title VII regardless of where particular aspects of dealing activity are conducted.[185] Whenever a U.S. person enters into a security-based swap in a dealing capacity, it is the U.S. person as a whole—and not merely any applicable foreign branch or office of that U.S. person—that holds itself out as a dealer in security-based swaps. It is the U.S. person as a whole that seeks to profit by providing liquidity and making a market in security-based swaps, and it is the financial resources of the U.S. person as a whole that enable it to do so. Even if the U.S. person engages in dealing activity through a foreign branch or office, its dealing counterparties will look to the entire U.S. person—and not merely its foreign branch or office—for performance on the transaction, and the U.S. person as a whole assumes and stands behind the obligations arising from the security-based swap, thereby creating risk to the U.S. person and potentially to the U.S. financial system. A dealer that is organized or has its principal place of business in the United States thus cannot hold itself out as anything other than a single person, and generally cannot operate as a dealer absent the financial and other resources of that single person. Accordingly, we conclude that U.S. persons that engage in security-based swap dealing activity through foreign branches or offices should be subject to the regulatory framework for dealers even if those U.S. persons deal exclusively with non-U.S. persons.[186]

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[176] *See* Cross-Border Proposing Release, 78 FR 30990; *see generally* section 0, *supra.*

[177] *See* Intermediary Definitions Adopting Release, 77 FR 30624; *see also* Cross-Border Proposing Release at 30993.

[178] *See* Exchange Act rule 3a71–1(d).

[179] *See* section I.A, *supra.*

[180] *See* proposed Exchange Act rule 3a71–3(b)(1)(i).

[181] *See, e.g.,* ISDA Letter (Feb. 22, 2011) (''Non-U.S. entities (including non-U.S. affiliates and branches of U.S. banks) should not be required to register as Dealers when they are conducting business with non-U.S. counterparties''). This and other comments in connection with the Intermediary Definitions Adopting Release are located at: *http://www.sec.gov/comments/s7-39-10/s73910.shtml.*

[182] We considered these comments in connection with the Cross-Border Proposing Release. *See* Cross-Border Proposing Release, 78 FR 30990, 30994.

[183] We address these comments in the context of our discussion of our final definition of ''U.S. person.'' *See* notes 192–231, *infra,* and accompanying text.

[184] *See* Exchange Act rule 3a71–3(b)(1)(i). Issues regarding how the *de minimis* exception applies to a non-U.S. person whose counterparty is a foreign branch are addressed in section 0, *infra.*

[185] *See* Cross-Border Proposing Release, 78 FR 30994.

[186] The definition of ''U.S. person'' is addressed below. The definitions of ''foreign branch'' and

C. Definition of ''U.S. Person''

1. Proposed Approach

Consistent with our territorial approach to application of Title VII to cross-border security-based swap activity, our Cross-Border Proposal defined ''U.S. person'' to mean:

- Any natural person resident in the United States;
- Any partnership, corporation, trust, or other legal person organized or incorporated under the laws of the United States [187] or having its principal place of business in the United States; and
- Any account (whether discretionary or non-discretionary) of a U.S. person.[188]

The Commission also proposed that the term ''U.S. person'' would exclude the following international organizations: The International Monetary Fund (''IMF''), the International Bank for Reconstruction and Development, the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the United Nations, and their agencies and pension plans, and any other similar international organizations, their agencies and pension plans.[189]

This proposed definition of ''U.S. person'' generally followed an approach to defining U.S. person that is similar to that used by the Commission in other contexts,[190] though it was tailored to the specific goals of Title VII. As we noted in the proposal, we sought with the proposed definition to identify those types of individuals or entities whose security-based swap activity is likely to impact the U.S. market even if they transact with security-based swap dealers that are not U.S. persons and to identify those types of individuals or entities that are part of the U.S. security-based swap market and should receive the protections of Title VII.[191]

2. Commenters' Views

We received extensive comments on our proposed definition of ''U.S. person.'' In these comments, many commenters also expressed their views on the interpretation of ''U.S. person'' in the CFTC Cross-Border Guidance. As explained in more detail below, several commenters emphasized that we should minimize divergence from the CFTC's approach, including by adding certain elements to our definition of ''U.S. person'' that we had not proposed. Many commenters also identified specific elements of the CFTC interpretation that we should not adopt in our final rule.

(a) Definition of ''U.S. Person'' Generally

Several commenters expressed the view that our proposed definition of ''U.S. person'' was clear, objective, and territorial in scope.[192] At the same time, many commenters, including some who expressed agreement with our proposed approach, urged us to adopt, in whole or in part, a definition of ''U.S. person'' that is consistent with the interpretation of ''U.S. person'' in the CFTC Cross-Border Guidance.[193] In contrast, two

''transaction conducted through a foreign branch'' are addressed in section 0, *infra.*

This interpretation, moreover, is consistent with the goals of security-based swap dealer regulation under Title VII. Security-based swap activity that results in a transaction involving a U.S. counterparty creates ongoing obligations that are borne by a U.S. person, and thus is properly viewed as occurring within the United States. The events associated with AIG FP, described in detail in our proposal, illustrate how certain transactions of U.S. persons can pose risks to the U.S. financial system even when they are conducted through foreign operations. *See* Cross-Border Proposing Release, 78 FR 30980–81. Such risks, and their role in the financial crisis and in the enactment of Title VII, suggest that the statutory framework established by Congress and the objectives of Title VII would be undermined by an analysis that excludes from Title VII's application certain transactions involving U.S. persons solely because they involve conduct carried out through operations outside the United States, particularly when those transactions raise concerns about risk to the U.S. person and to the U.S. financial system that are similar or identical to those raised by such conduct when carried out by the U.S. person entirely inside the United States.

For the above reasons, we conclude that our approach does not apply to persons who are ''transact[ing] a business in security-based swaps without the jurisdiction of the United States,'' within the meaning of section 30(c) of the Exchange Act. *See* section 0, *supra.* A contrary interpretation would, in our view, reflect an understanding of what it means to conduct a security-based swaps business within the jurisdiction of the United States that is divorced both from Title VII's statutory objectives and from the reality of the role of U.S. persons within the global security-based swap market. But in any event we also believe that this final rule is necessary or appropriate as a prophylactic measure to help prevent the evasion of the provisions of the Exchange Act that were added by the Dodd-Frank Act, and thus help ensure that the relevant purposes of the Dodd-Frank Act are not undermined. Otherwise, U.S. persons could simply conduct dealing activities with non-U.S. persons using foreign branches and remain outside of the application of the dealer requirements of Title VII, bringing the same risk into the United States that would be associated with such dealing activity that is conducted out of their U.S. offices.

[187] Proposed Exchange Act rule 3a71–3(a)(9) under the Exchange Act defined ''United States'' as ''the United States of America, its territories and possessions, any States of the United States, and the District of Columbia.''

[188] Proposed Exchange Act rule 3a71–3(a)(7)(i) under the Exchange Act.

[189] *See* proposed Exchange Act rule 3a71–3(a)(7)(ii).

[190] *See, e.g.,* Securities Act Release No. 6863 (''Regulation S Adopting Release'') (April 24, 1990), 55 FR 18306, 18308 (May 2, 1990), 55 FR 18308 (adopting regulation ''based on a territorial approach to [s]ection 5 of the Securities Act''). Although the proposed rule followed the approach to defining ''U.S. person'' in Regulation S in certain respects, we stated that we preliminarily believed that it was necessary to depart from Regulation S in defining ''U.S. person'' in the context of the cross-border application of Title VII. *See* Cross-Border Proposing Release, 78 FR 31007–08 (comparing the proposed definition of ''U.S. person'' with the definition of ''U.S. person'' in Regulation S). For example, Regulation S expressly excludes foreign branches of U.S. banks from the definition of ''U.S. person,'' whereas our proposed definition provided that U.S.-person status would be determined at the entity level, meaning that a foreign branch of a U.S. person would, as part of that U.S. person, share in that U.S.-person status of the entity as a whole. *See* section 0, *supra.* Thus, under our proposed approach, the term ''U.S. person'' would have been interpreted to include any foreign trading desk, office, or branch of an entity that is organized under U.S. law or that has its principal place of business in the United States. *See* Cross-Border Proposing Release, 78 FR 30996.

The proposed definition of ''U.S. person'' was similar in many respects to the definition provided by CFTC staff in its October 12, 2012 no-action letter. *See* Time-Limited No-Action Relief: Swaps Only With Certain Persons to be Included in Calculation of Aggregate Gross Notional Amount for Purposes of Swap Dealer De Minimis Exception and Calculation of Whether a Person is a Major Swap Participant (Oct. 12, 2012), available at: *http://www.cftc.gov/ucm/groups/public/@lrlettergeneral/documents/letter/12-22.pdf; see also* Final CFTC Cross-Border Exemptive Order, 78 FR 862 (indicating that for purposes of its temporary conditional relief the CFTC is taking a similar approach to the ''U.S. person'' definition as that set forth in the October 12, 2012 no-action letter). In July 2013, the CFTC issued its cross-border guidance, which modified its interpretation of U.S. person in certain respects, discussed in greater detail below.

[191] *See* Cross-Border Proposing Release, 78 FR 30996.

[192] *See, e.g.,* SIFMA/FIA/FSR Letter at A–6 (stating that the Commission's proposed ''U.S. person'' definition was ''clear, objective and ascertainable''); American Bar Association (''ABA'') Letter at 1–2, 4 (commending the Commission for a ''clear and objective'' approach to the ''U.S. person'' definition that is consistent with its statutory authority and respects principles of comity); IIB Letter at 5 (stating that the Commission's proposed ''U.S. person'' definition is sensible in its jurisdictional scope and is consistent with territorial principles). *But see* EC Letter at 2 (generally supporting the territorial scope of the ''U.S. person'' definition, with the exception of the ''principal place of business'' requirement, arguing that it is inconsistent with the territorial approach); ESMA Letter at 2 (supporting a definition of ''U.S. person'' that covers only persons located or incorporated in the United States).

[193] *See, e.g.,* SIFMA/FIA/FSR Letter at 2–3, A–7 (suggesting that the Commission coordinate with the CFTC in order to provide a ''consistent set of standards for determining an entity's principal place of business''); IIB Letter at 2 (noting that its recommendations are generally intended to emphasize consistency across regimes). *See also* Chris Barnard Letter at 2 (stating belief that the ''U.S. person'' definition should be aligned with the CFTC's definition, specifically with respect to commodity pools, pension plans, estates, and trusts); Japan Financial Markets Council (''JFMC'') Letter at 4 (noting that, even though JFMC does not support all aspects of the CFTC's definition, it believes the Commission should adopt the same definition as the CFTC); Japan Securities Dealers Association (''JSDA'') Letter at 3 (expressing hope that the Commission and the CFTC do not adopt different definitions of U.S. person); Investment Adviser Association (''IAA'') Letter at 3 (noting that,

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commenters disagreed with our approach as being underinclusive and urged us to define U.S. person more broadly than the CFTC had interpreted it.[194] Two commenters addressed whether our ''U.S. person'' definition should follow the U.S. person analysis in Regulation S.[195]

(b) Treatment of Investment Vehicles

In response to our questions about whether our proposed definition of ''U.S. person'' provided sufficient guidance to investment vehicles and similar legal persons, commenters generally requested guidance but expressed a range of views as to what guidance we should provide. One commenter requested that we ensure that foreign investment vehicles with a ''U.S. nexus'' be considered U.S. persons.[196] This commenter expressed support for what it described as our ''complementary'' proposed approach that would have required legal persons, including investment vehicles, to perform a principal place of business assessment to determine whether they are U.S. persons, and would have subjected all transactions conducted within the United States to Title VII requirements.[197] One commenter conversely argued that a ''principal place of business'' test for investment vehicles would be inappropriate.[198]

Several commenters requested that we provide additional guidance regarding the application of the ''principal place of business'' test to investment vehicles. Some commenters specifically requested that we avoid diverging from the CFTC's interpretation of ''U.S. person'' in our own final definition.[199] One commenter urged us to help ensure that market participants are able to make rational and consistent determinations regarding the U.S.-person status of investment vehicles, and suggested that an appropriate test would look to the location of the person responsible for the fund's operational management, which the commenter identified as the person that establishes the investment vehicle and selects persons to carry out functions on behalf of the vehicle, as opposed to the person responsible for the fund's investment management activities.[200] Another commenter requested guidance regarding the application of the ''principal place of business'' test, while expressing support for using an approach similar to the CFTC Cross-Border Guidance.[201] One commenter requested that the location of an asset manager retained by a person not be the sole factor used to determine the person's principal place of business or U.S.-person status.[202]

A few commenters responded to our question whether the proposed definition should encompass funds that are majority-owned by U.S. persons, as the CFTC's interpretation does, with two commenters advocating against and three advocating in favor of such an approach.[203] One of the commenters that opposed such a test urged, however, that if we were to adopt such a test, the test be identical to the approach taken by the CFTC.[204]

One commenter suggested that we adopt the CFTC's approach by which collective investment vehicles that are offered publicly only to non-U.S. persons, and not offered to U.S. persons, would not generally be considered ''U.S. persons.'' [205] Another commenter urged that the definition exclude ''non-U.S. regulated funds'' that are offered publicly only to non-U.S. persons but are offered privately to U.S. persons in certain specific circumstances.[206]

(c) Treatment of Legal Persons More Generally

Two commenters urged us to include in the definition of ''U.S. person'' guaranteed subsidiaries and affiliates of U.S. persons.[207] Alternatively, these

given the finalization of the CFTC Cross-Border Guidance, the Commission should modify its proposal in several respects to be more consistent with the CFTC's definition of ''U.S. person'').

[194] *See* AFR Letter I at 3, 5 (stating that the proposed definition of ''U.S. person'' is overly narrow because it does not include foreign subsidiaries of the seven largest U.S. bank holding companies); BM Letter at 5, 9, 14–15 (stating that the proposed definition of ''U.S. person'' is too narrow because it excludes guaranteed affiliates and other affiliates in a control relationship with a U.S. person; further suggesting that, should such guaranteed entities, whether they are implicitly or explicitly guaranteed, not be considered U.S. persons, they be separately ''ring-fenced'' from their U.S. affiliate in order to ensure that the U.S. affiliate does not cover any of the guaranteed affiliates obligations; further stating that such entities are within the scope of the Commission's broad authority under Exchange Act section 30(c) to regulate cross-border activity).

[195] *See* Citadel Letter at 3 (supporting our proposal to not rely on Regulation S as it would not capture certain foreign funds that the commenter believed should be considered U.S. persons); ICI Letter at 6 (recommending that our analysis be consistent with Regulation S because fund managers are accustomed to that definition). *Cf.* note 190, *supra* (describing elements of ''U.S. person'' definition contained in Regulation S).

[196] *See* Citadel Letter at 2–3 (noting further that such an approach will ensure that these entities will be subject to clearing, reporting, and other transaction-level requirements).

[197] *See id.*

[198] *See* ICI Letter at 4–5 (arguing that a ''principal place of business'' test is inappropriate for investment vehicles because they generally have no employees or offices of their own).

[199] *See* IAA Letter at 3 (urging the Commission to coordinate with the CFTC to develop a consistent definition of principal place of business); SIFMA/FIA/FSR Letter at A–8 (urging harmonization with the CFTC).

[200] *See* IIB Letter at 6. *But see* ICI Letter at 5 n.13 (requesting that the U.S.-person status of an investment vehicle not turn on the location of the vehicle's activities, employees, or the offices of its sponsor or adviser because such considerations are not relevant to whether risk is transferred to the United States).

[201] *See* Citadel Letter at 2. This commenter suggested looking to those senior personnel responsible for implementing the investment vehicle's investment and trading strategy as well as those responsible for ''investment selections, risk management decisions, portfolio management, or trade execution.'' *See id.*

[202] *See* IAA Letter at 4 (suggesting that the Commission follow the CFTC Cross-Border Guidance by specifically providing that non-U.S. persons are not U.S. persons simply by virtue of using a U.S.-person asset manager); SIFMA/FIA/FSA at A–8 (same).

[203] *Compare* ICI Letter at 7 (arguing that a majority-ownership test is not workable for non-U.S. regulated funds that are offered publicly abroad because it may be impossible or inconsistent with local law to identify or reveal investor information) and IAA Letter at 4 (explaining that a majority-ownership test would capture non-U.S. funds with minimal nexus to the United States and present implementation challenges) *with* AFR Letter I at 8 (recommending that the U.S.-person status of investment vehicles be based on majority ownership and/or actual locations of the person, regardless of the location of incorporation), and Greenberger Letter I at 6–7 (making a similar argument with respect to CFTC's interpretation of U.S. person), and BM Letter at 10 (recommending that the ''U.S. person'' definition include collective investment vehicles that are majority-owned by U.S. persons).

[204] *See* IAA Letter at 5.

[205] *See id.* at 3, 5 (noting that the CFTC Cross-Border Guidance has been finalized and urging the Commission to adopt the CFTC approach to permit market participants to operate ''under the certainty and clarity'' of consistent definitions of U.S. persons).

[206] *See* ICI Letter at 5–6 (noting that such investment vehicles have only minimal nexus to the United States and stating that institutional investors that invest in such funds would not expect U.S. law to apply to the vehicles' transactions).

[207] *See* AFR Letter I at 3, 5–7 (stating that proposed definition is too narrow and would allow U.S. entities to avoid regulation and engage in regulatory arbitrage); BM Letter at 9, 11–15 (requesting that the ''U.S. person'' definition be broadened to include any person that is ''indistinguishable'' from a U.S. person, such as by implicit or explicit guarantees from a U.S. person, including any affiliate controlling, controlled by, or under common control with a person that is headquartered, incorporated, or otherwise residing in the United States). These commenters further argued that the acknowledgement in the Cross-Border Proposing Release that guarantees of foreign entities by a U.S. person may subject the U.S. financial system to risk is inconsistent with a definition that does not include such entities in the ''U.S. person'' definition. *See id.* at 5–6; BM letter at 8, 12. *Cf.* AFR Letter II at 2 (urging CFTC to include guaranteed affiliates in of U.S. persons in the interpretation of U.S. person); Greenberger Letter II at 3, 16 (requesting that the CFTC classify foreign subsidiaries of U.S. financial institutions as U.S. persons); AFR letter to CFTC, dated August 13, 2012 (''AFR Letter III'') (stating that the CFTC's Final Exemptive Order Regarding Compliance with Certain Swap Regulation, 78 FR 858, will pose a risk to U.S. taxpayers due to the delay in applying requirements to foreign affiliates of U.S. banks) (incorporated by reference in AFR Letter I); Michael

commenters suggested that we should require dealing transactions with such persons to be included in the dealing counterparty's security-based swap dealer *de minimis* calculation.[208] However, another commenter supported our proposed approach not to look to whether a person's transactions are guaranteed by a U.S. person for purposes of determining that person's U.S.-person status, stating that our proposal to address such risk through major security-based swap participant registration was sufficient.[209]

One commenter suggested that the Commission follow the CFTC in including in its final ''U.S. person'' definition legal persons that are directly or indirectly majority-owned by one or more U.S. persons who bear unlimited responsibility for the obligations of that legal person, stating that such a provision is necessary to prevent evasion of Title VII.[210]

One commenter expressed support for a principal place of business component to the ''U.S. person'' definition as set forth in our proposal.[211] Several commenters requested that the Commission provide additional guidance regarding relevant factors in identifying a legal person's principal place of business.[212] One commenter suggested that the location of a company's headquarters should be determinative and that a particular legal person should have only one principal place of business.[213]

Several commenters suggested that the Commission harmonize its approach to determining a person's principal place of business to the approach in the CFTC Cross-Border Guidance,[214] while at least one commenter suggested that the Commission work with the CFTC to develop a new, common definition.[215] At least two commenters, on the other hand, objected to the use of a ''principal place of business'' test.[216] One commenter suggested an alternative approach that would establish criteria for this determination, such as quantitative thresholds, and would also consider not requiring a principal place of business analysis if the jurisdiction of incorporation has an acceptable regulatory framework.[217] Another commenter stated that a U.S. branch of a person established in another jurisdiction should not be considered to have its principal place of business in the United States.[218] Another suggested that requiring a principal place of business analysis represented a departure from the Commission's stated territorial approach to U.S. person.[219]

Several commenters recommended that, if the Commission were to adopt a ''principal place'' of business test in its ''U.S. person'' definition, market participants be allowed to rely on a counterparty's representations as to the counterparty's principal place of business.[220] Another suggested that the test look to information found in the public filings of a public company or, with respect to a private company, the location of its business.[221]

(d) Accounts

One commenter supported the Commission's proposal for determining the U.S.-person status of an account, which would look to whether the owner of the account itself is a U.S. person,[222] but suggested that the Commission provide bright-line thresholds to clarify that *de minimis* ownership by U.S. persons would not cause the account to be considered a U.S. person.[223] The commenter further requested that the Commission clarify that the ''account'' prong of the ''U.S. person'' definition would not apply to collective investment vehicles but was intended to capture persons that should be considered U.S. persons even though they are conducting trades, as the direct counterparty, through an account.[224]

(e) International Organizations

A number of commenters expressed support for the Commission's proposal to exclude certain international organizations (*e.g.,* multilateral development banks, or ''MDBs'') from the ''U.S. person'' definition.[225] Three

Greenberger letter to CFTC, dated August 13, 2012 (''Greenberger Letter III'') (incorporated by reference in AFR Letter I).

[208] *See* AFR Letter I at 7; BM Letter at 17 (stating that the exclusion from the *de minimis* calculation for guaranteed transactions is ''indefensible'' and ''must be eliminated''). *See also* Chris Barnard Letter at 2 (stating that Title VII should apply to transactions involving a guarantee by a U.S. person).

[209] *See* SIFMA/FIA/FSR Letter at A–11 to A–12 (stating that to treat the existence of a U.S. parent as relevant to determining whether a person is a U.S. person would disregard the legal independence of affiliates and imply that persons within the same corporate group necessarily coordinate their security-based swap activities).

[210] *See* BM Letter at 10. *Cf.* CFTC Cross-Border Guidance, 78 FR 45312.

[211] *See* Citadel Letter at 2 (stating that Commission was correct to incorporate a principal place of business determination into the ''U.S. person'' definition).

[212] *See* IIB Letter at 5 (noting the difficulty of implementing the ''principal place of business'' test without further guidance and requesting the Commission to provide workable criteria); ABA Letter at 2–3 (requesting clarification of ''principal place of business'' test and recommending that the Commission confirm that an entity may rely on its counterparty's written representations regarding the counterparty's principal place of business).

[213] *See* IIB Letter at 5–6. Another commenter suggested that the location of the personnel directing the security-based swap activity of the legal person be determinative. *See* Citadel Letter at 2.

[214] *See* JFMC Letter at 4 (notwithstanding burdensome aspects of the CFTC's interpretation, and the difficulties of the ''principal place of business'' test in particular, urging the Commission to adopt the same definition as the CFTC); SIFMA/FIA/FSR Letter at A–8 (explaining the difficulty in having to determine a counterparty's principal place of business under two different standards); Citadel Letter at 2 (requesting that the Commission provide further guidance ''to parallel the CFTC's guidance'' on principal place of business).

[215] *See* IAA Letter at 3 (urging that, if the Commission adopts a ''principal place of business'' test, it coordinate with the CFTC to develop a consistent and harmonized definition).

[216] *See* ESMA Letter at 2 (arguing that the ''U.S. person'' definition should be limited to entities that are established within the United States and should not in any case extend to an entity, such as a U.S. branch of a foreign bank, whose presence in the United States is ''complementary'' to its principal activity outside the United States and which is already regulated by a non-U.S. jurisdiction); JSDA Letter at 3 (recommending that the Commission and the CFTC eliminate the principal place of business concept from their respective criteria for identifying U.S. persons). *See also* EC Letter at 2 (supporting the territorial approach of the ''U.S. person'' definition, but suggesting that the ''principal place of business'' test is not territorial and suffers from ambiguity);

[217] *See* EC Letter at 2. *See also* ESMA Letter at 2 (requesting that the Commission provide clarity with respect to its proposed ''U.S. person'' definition, particularly the ''principal place of business'' test).

[218] *See* ESMA Letter at 2 (noting that to include such persons would place potentially duplicative and conflicting requirements on the person in the case of European persons that would also be subject to the European Market Infrastructure Regulation).

[219] *See* EC Letter at 2.

[220] *See* ABA Letter at 2–3 (stating that entities should be able to rely on their counterparty's written representations ''absent evidence to the contrary,'' regarding their principal place of business); JSDA Letter at 3 (recommending that, if the Commissions determine to keep a ''principal place of business'' test, they permit entities to rely on counterparty representations); IIB Letter at 5 n.9 (recommending that a counterparty representation as to U.S.-person status be sufficient to fulfill a person's diligence requirements). One of these commenters specifically requested that the reasonable reliance standard be limited to representations regarding principal place of business. *See* ABA letter at 3 n.2.

[221] *See* IIB Letter at 6.

[222] *See* SIFMA/FIA/FSR Letter at A–8.

[223] *See id.* at A–9. *See also* IAA Letter at 4–5 (requesting that, should the Commission adopt an ownership test, it adopt a test consistent with and no more restrictive than the CFTC test for collective investment vehicles).

[224] *See* SIFMA/FIA/FSR Letter at A–8 to A–9. Another commenter expressed disagreement with the Commission's proposed treatment of accounts in the ''U.S. person'' definition, expressing concern that inclusion of accounts in the definition may affect the U.S.-person status of funds. *See* IAA Letter at 4 (explaining that an ownership test applying to accounts would potentially capture non-U.S. funds that may have U.S. investors but whose ''purposeful activities'' such as ''marketing or offering'' are not aimed at U.S. persons, meaning the fund would have ''little nexus to the U.S.'').

[225] *See* SIFMA/FIA/FSR Letter at A–10 (supporting an exclusion for all Foreign Public Sector Financial Institutions (including MDBs) (''FPSFIs'') and their affiliates from the ''U.S.

Continued

commenters specifically requested that the Commission list all such institutions that would be excluded from the ''U.S. person'' definition, similar to the approach the CFTC took in its guidance,[226] rather than refer to ''other similar international organizations.'' [227] These commenters also argued that certain organizations have absolute immunity under federal law and should be excluded from regulation under Title VII entirely.[228] Three commenters requested that affiliates of MDBs and similar organizations also be excluded from the definition of ''U.S. person.'' [229]

(f) Status Representations

Some commenters requested that a potential dealer expressly be permitted to rely on a counterparty representation to fulfill its diligence requirements in determining whether its counterparty is a U.S. person under the final rule.[230] Several commenters, as discussed above, specifically requested that we permit reliance on representations as to a person's principal place of business.[231] Two commenters requested that market participants be permitted to rely on the representations prepared by counterparties under the CFTC Cross-Border Guidance.[232]

3. Final Rule

Consistent with the proposal, we are adopting a final definition of ''U.S. person'' that continues to reflect a territorial approach to the application of Title VII and is in most respects unchanged from the proposal.[233] In response to comments, the final definition reflects certain changes intended to clarify the scope of the definition. Also in response to comments, we are adopting a general definition of ''principal place of business'' and a specific application of the term to externally managed investment vehicles. We are also adding a prong relating specifically to the U.S.-person status of estates.

The final rule defines ''U.S. person'' to mean:

- Any natural person resident in the United States;
- Any partnership, corporation, trust, investment vehicle, or other legal person organized, incorporated, or established under the laws of the United States or having its principal place of business in the United States;
- Any account (whether discretionary or non-discretionary) of a U.S. person; or
- Any estate of a decedent who was a resident of the United States at the time of death. [234]

The final rule defines ''principal place of business'' to mean ''the location from which the officers, partners, or managers of the legal person primarily direct, control, and coordinate the activities of the legal person.'' [235] It also provides that, with respect to an externally managed investment vehicle, this location ''is the office from which the manager of the vehicle primarily directs, controls, and coordinates the investment activities of the vehicle.'' [236]

Also consistent with the proposal, the final definition excludes the following international organizations from the definition of ''U.S. person'': The IMF, the International Bank for Reconstruction and Development, the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the United Nations, and their agencies and pension plans, and any other similar international organizations, their agencies and pension plans.[237]

To address commenters' requests,[238] the final rule also has been revised from the proposal to provide that a person may rely on a counterparty's representation regarding its status as a U.S. person, unless such person knows, or has reason to know, that the representation is inaccurate.[239]

person'' definition); JFMC Letter at 4 (supporting an exclusion from ''U.S. person'' definition for FPSFIs and their affiliates); JSDA letter at 3 (supporting the Commission's proposed exclusion from the ''U.S. person'' definition for certain ''international organizations'' and expressing support for an exclusion for FPSFIs); International Bank for Reconstruction and Development, International Finance Corporation et al. Letter (''WB/IFC Letter'') at 1, 6 (supporting an exclusion for multilateral development institutions and their affiliates from the ''U.S. person'' definition, and noting that such affiliates are excluded under Regulation S as well); IDB Letter at 1 (requesting that MDBs and their affiliates not be considered U.S. persons).

[226] *See* Sullivan and Cromwell (''SC'') Letter at 18 and n.20; WB/IFC Letter at 4–5 (suggesting that to avoid confusion, the Commission expressly include other MDBs that maintain headquarters in Washington, DC and identify those organizations which include IFC, the International Development Association, the Multilateral Investment Guarantee Agency, and the Inter-American Investment Corporation); IIB Letter at 5 (supporting an exclusion from U.S.-person status for ''international organizations'' similar to those already enumerated in the Cross-Border Proposing Release, and stating that such an exclusion would be consistent with the CFTC Cross-Border Guidance and ''well-established'' principles of international law); Inter-American Development Bank (''IDB'') Letter at 2 (stating that it shares the position of the International Finance Corporation and the International Bank for Reconstruction and Development that the Commission's approach to MDB's should be consistent with the CFTC). *See also* Intermediary Definitions Adopting Release, 77 FR 30692 n.1180 (listing international financial institutions for purposes of CFTC requirements); CFTC Cross-Border Guidance, 78 FR 45353 n.531 (incorporating list provided in Intermediary Definitions Adopting Release by reference).

[227] Proposed Exchange Act rule 3a71–3(a)(7)(ii).

[228] *See* SC Letter at 3–4, 7–9, 12–14; WB/IFC letter at 2. *See also* IDB Letter at 1 (requesting confirmation that MDBs will not be subject to Commission's requirements with respect to security-based swaps and indicating that such an approach would respect its privileges and immunities).

[229] *See* SC Letter at 19–22 (requesting that, in response to footnote 301 of the Cross-Border Proposing Release, ''controlled affiliates'' of MDBs not be treated as U.S. persons); IDB Letter at 1 (requesting that affiliates of international organizations not be treated as U.S. persons); WB/IFC Letter at 1, 6 (supporting an exclusion for multilateral development institutions and their affiliates from the ''U.S. person'' definition, and noting that such affiliates are excluded under Regulation S as well). One commenter suggested that this exclusion be made available for a ''controlled affiliate,'' defined as follows: (1) An entity subject to the MDB's governance structure; (2) all of whose activities must be consistent with and in furtherance of the MDB's purpose and mission; (3) whose governing instruments restrict it to engaging in activities in which the MDB could itself engage and provide that it is not authorized to engage in any other activities; and (4) which is under the ''control'' of the MDB as that term is used in securities laws (Securities Act Rule 405). *See also* note 225, *supra*.

[230] *See* IIB Letter at 5 n.9. This commenter suggested that we should permit reliance on a representation ''absent knowledge of facts that would cause a reasonable person to question the accuracy of the representation.'' *See also* JSDA Letter at 3.

[231] *See* note 220, *supra*.

[232] *See* SIFMA/FIA/FSR Letter at A–8 (noting that performing a separate analysis would be burdensome); IIB Letter at 5, note 9 (noting that the CFTC's interpretation of ''U.S. person'' is broader than, and encompasses the three elements of, the Commission's proposed ''U.S. person'' definition).

[233] *Cf.* note 192, *supra* (citing comment letters expressing general agreement with our territorial approach to defining U.S. person).

[234] Exchange Act rule 3a71–3(a)(4)(i). The second prong has been modified from the proposal to include an express reference to ''investment vehicle'' and to clarify that any legal person ''established'' under United States law is a U.S. person, as discussed further below. *See* Exchange Act rule 3a71–3(a)(4)(i)(B). The fourth prong has been added to include an express reference to ''estate.'' *See* Exchange Act rule 3a71–3(a)(4)(i)(D). In the text of the final rule we have made a technical change to the proposal to clarify that the ''U.S. person'' definition is met if any one of the applicable prongs is satisfied (in part by replacing ''and'' with ''or'' in connection with the enumeration of the prongs). *See* Exchange Act rule 3a71–3(a)(4)(i).

Consistent with the proposal, ''special entities,'' as defined in section 15F(h)(2)(C) of the Exchange Act, are U.S. persons because they are legal persons organized under the laws of the United States. Section 15F(h)(2)(C) of the Exchange Act defines the term ''special entity'' as: A Federal agency; a State, State agency, city, county, municipality, or other political subdivision of a State; any employee benefit plan, as defined in section 3 of the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1002; any governmental plan, as defined in section 3 of the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1002; or any endowment, including an endowment that is an organization described in section 501(c)(3) of the Internal Revenue Code of 1986. 15 U.S.C. 78o–10(h)(2)(C).

[235] Exchange Act rule 3a71–3(a)(4)(ii).

[236] *Id.*

[237] Exchange Act rule 3a71–3(a)(4)(iii).

[238] *See* notes 220, 230, *supra*.

[239] Exchange Act rule 3a71–3(a)(4)(iv).

Although one commenter requested that we use a definition of ''U.S. person'' that is consistent with Regulation S, we are declining to do so for the reasons described in our Cross-Border Proposing Release.[240] We acknowledge that many market participants are accustomed to Regulation S and may find such a definition relatively easy to implement. As we discussed in our proposal, however, Regulation S addresses different concerns from those addressed by Title VII.[241] In light of these differences, the Commission believes that adopting the definition of ''U.S. person'' in Regulation S would not achieve the goals of Title VII and that a definition of U.S. person specifically tailored to the regulatory objectives it is meant to serve, as we are adopting here, is appropriate.

(a) Natural Persons

As in our proposed definition, the final definition of ''U.S. person'' provides that any natural person resident in the United States[242] is a U.S. person. This definition encompasses persons resident within the United States regardless of the individual's citizenship status,[243] but it does not encompass individuals who are resident abroad, even if they possess U.S. citizenship.[244]

As we noted in the proposal, it is consistent with the approach we have taken in prior rulemakings relating to the cross-border application of certain similar regulatory requirements to subject natural persons residing within the United States to our regulatory framework.[245] Moreover, we believe that natural persons residing within the United States who engage in security-based swap transactions are likely to raise the types of concerns intended to be addressed by Title VII, including those related to risk, transparency, and counterparty protection.[246] We believe that it is reasonable to infer that a significant portion of such persons' financial and legal relationships are likely to exist within the United States and that it is therefore reasonable to conclude that risks arising from the security-based swap activities of such persons could manifest themselves within the United States, regardless of the location of their counterparties.

(b) Corporations, Organizations, Trusts, Investment Vehicles, and Other Legal Persons

The final definition of ''U.S. person'' as applied to legal persons has been modified to clarify certain aspects of the rule. Also, in response to comments, we are adopting a definition of ''principal place of business.'' In general, the scope of the definition as applied to legal persons does not differ materially from the scope of our proposal.[247]

i. Entities Incorporated, Organized, or Established Under U.S. Law

As with the proposed rule, the final definition provides that any partnership, corporation, trust, or other legal person organized or incorporated under the laws of the United States or having its principal place of business in the United States would be a U.S. person.[248] The final definition also includes two changes that are intended to make explicit certain concepts that were implicit in the proposed definition. First, the final rule provides that a legal person ''established'' under the laws of the United States is a U.S. person, just as if it had been ''organized'' or ''incorporated'' under the laws of the United States. This change is intended to clarify the Commission's intention that any person formed in any manner under the laws of the United States will be a U.S. person for purposes of Title VII.

Second, the final rule adds an express reference to ''investment vehicle'' in the non-exclusive list of legal persons to clarify that any such person, however formed, will be treated as a U.S. person for purposes of Title VII if it is organized, incorporated, or established under the laws of the United States or has its principal place of business in the United States.[249] Investment vehicles are commonly established as partnerships, trusts, or limited liability entities and, therefore, fall within the scope of the rule as proposed. However, given the significant role that such vehicles have played and likely will continue to play in the security-based swap market, we believe that the final rule should incorporate an express reference to such vehicles to avoid any ambiguity regarding whether the definition of ''U.S. person,'' including the principal place of business component of that definition, applies to them.

As noted in our proposal, we have previously looked to where a legal person is organized, incorporated, or established to determine whether it is a U.S. person.[250] We continue to believe that place of organization, incorporation, or establishment is relevant in the context of Title VII. In our view, the decision of a corporation, trustee, or other person to organize under the laws of the United States indicates a degree of involvement in the U.S. economy or legal system that warrants subjecting it to security-based swap dealer or major security-based swap participant registration requirements under Title VII if its security-based swap dealing activity or its security-based swap positions exceed the relevant thresholds.[251] We believe that it is reasonable to infer that an entity incorporated, organized, or established under the laws of the United States is likely to have a significant portion of its financial and legal relationships in the United States and that it is therefore reasonable to conclude that the risks arising from its security-based swap activities are likely to manifest themselves in the United States, regardless of the location of its counterparties. Accordingly, the final rule retains this element of the definition.

As under the proposal, the final definition determines a legal person's

[240] *See* note 195, *supra.*

[241] *See* 17 CFR 230.901(k); Regulation S Adopting Release, 55 FR 18306. *See also* Cross-Border Proposing Release, 78 FR 31007 (describing differences between policy concerns underlying Regulation S and Title VII). For example, with its exclusions for certain foreign branches and agencies of U.S. persons from the definition of ''U.S. person,'' Regulation S would not address the entity-wide nature of the risks that Title VII seeks to address. *See id.*

[242] Exchange Act rule 3a71–3(a)(5) defines ''United States'' to mean ''the United States of America, its territories and possessions, any State of the United States, and the District of Columbia.''

[243] Exchange Act rule 3a71–3(a)(4)(i)(A).

[244] This approach to treating natural persons as U.S. persons solely based on residence, rather than citizenship, differs from the approach to legal persons, such as partnerships and corporations, discussed below.

Notwithstanding slight differences between the language of our final rule and the CFTC Cross-Border Guidance, we expect that a natural person's U.S.-person status under our final definition would be the same as under the CFTC Cross-Border Guidance. *Cf.* note 193, *supra* (citing commenters urging the Commission to harmonize its definition of ''U.S. person'' with the interpretation set forth by the CFTC).

[245] *See* Rule 15a-6 Adopting Release, 54 FR 30017 (providing that foreign broker-dealers soliciting U.S. investors abroad generally would not be subject to registration requirements with the Commission).

[246] *See* Cross-Border Proposing Release, 78 FR 30996.

[247] Moreover, we expect that a legal person's U.S.-person status under the Commission's final definition of ''U.S. person'' and under the definition ''principal place of business'' would as a general matter be the same as under similar prongs on the CFTC Cross-Border Guidance.

[248] *See* Exchange Act rule 3a71–3(a)(4)(i)(B).

[249] *Cf.* Cross-Border Proposing Release, 78 FR 30997 n.296 (using funds and special-purpose investment vehicles as examples of other legal persons that may be U.S. persons).

[250] *See* Regulation S Adopting Release, 55 FR 18316.

[251] *Cf.* EC Letter at 2 (expressing support for this approach); ESMA letter at 1 (same).

status at the entity level and thus applies to the entire legal person, including any foreign operations that are part of the U.S. legal person. Consistent with this approach, a foreign branch, agency, or office of a U.S. person is treated as part of a U.S. person, as it lacks the legal independence to be considered a non-U.S. person for purposes of Title VII even if its head office is physically located within the United States. We continue to believe that there is no basis to treat security-based swap transactions or positions of a foreign branch, agency, or office of a U.S. person differently from similar transactions or positions of the home office for purposes of the dealer *de minimis* or major security-based swap participant threshold calculations, given that the legal obligations and economic risks associated with such transactions or positions directly affect the entire U.S. person.

Under the final definition, the status of a legal person as a U.S. person has no bearing on whether separately incorporated or organized legal persons in its affiliated corporate group are U.S. persons. Accordingly, a foreign subsidiary of a U.S. person is not a U.S. person merely by virtue of its relationship with its U.S. parent. Similarly, a foreign person with a U.S. subsidiary is not a U.S. person simply by virtue of its relationship with its U.S. subsidiary. Although two commenters urged that most foreign affiliates of U.S. persons be treated as U.S. persons themselves,[252] we continue to believe that it is appropriate for each affiliate to determine its U.S.-person status independently, given the distinct legal status of each of the affiliates, and that such status should turn on each affiliate's place of incorporation, organization, or establishment, or on its principal place of business.[253] We recognize that certain foreign persons, including foreign persons whose security-based swap activity is subject to a recourse guarantee against a U.S. person, may create risk to persons within the United States such as counterparties or guarantors.[254] We continue to believe, however, that, to the extent that such persons are established under the laws of a foreign jurisdiction and have their principal place of business abroad, they should not be included in the definition of ''U.S. person.'' [255] As discussed in further detail below, we believe that our final rules regarding application of the dealer *de minimis* exception and the major security-based swap participant thresholds adequately address concerns about the treatment of these persons under the dealer and major participant definitions without categorizing them as U.S. persons.[256]

ii. Entities Having Their Principal Place of Business in the United States

a. In General

Consistent with our proposal, we are defining ''U.S. person'' to include persons that are organized, incorporated, or established abroad, but have their principal place of business in the United States. For purposes of this final rule, and in response to commenters' request for further guidance,[257] we are defining ''principal place of business'' generally to mean ''the location from which the officers, partners, or managers of the legal person primarily direct, control, and coordinate the activities of the legal person.'' [258] As with the ''U.S. person'' definition more generally, our definition of ''principal place of business'' is intended to

[252] *See* note 194, *supra* (citing AFR and BM Letters). One of these commenters argued that the final definition of ''U.S. person'' should include guaranteed foreign affiliates of U.S. persons, whether the guarantee is explicit or implicit, and that affiliates should be presumed to be receiving guarantees. *See* AFR Letter I at 3, 5–7. The other urged that the final definition of ''U.S. person'' include guaranteed foreign affiliates and ''*de facto* guaranteed'' affiliates of U.S. persons that may not be explicitly guaranteed. *See* BM Letter at 9, 11–15.

[253] *But see* section 0, *infra* (discussing the aggregation of affiliate positions for purposes of the *de minimis* calculation).

[254] *See* note 207 (citing AFR and BM Letters).

[255] As we noted above, our ''U.S. person'' definition is intended to identify those persons whose financial and legal relationships are likely to be located in significant part within the United States. The mere fact of an affiliate relationship with, or a guarantee from, a U.S. person does not appear to us to indicate that such person has such relationships within the United States. Similarly, the mere fact that a person's security-based swap activity poses some degree of risk to the United States does not necessarily indicate that the person has the types of financial and legal relationships within the United States that warrant treating it as a U.S. person. However, we recognize that non-U.S. persons may in fact pose risk to the United States, particularly when their security-based swap transactions are subject to a recourse guarantee against a U.S.-person affiliate, and, even though we do not include them in our ''U.S. person'' definition, we do address such risk through our final rules applying the security-based swap dealer *de minimis* exception and the major security-based swap participant thresholds.

One commenter also urged us to follow the CFTC in including within the final definition any legal person that is directly or indirectly majority-owned by one or more U.S. persons that bear unlimited responsibility for the obligations and liabilities of such legal person. *See* note 210, *supra* (citing BM Letter). *Cf.* CFTC Cross-Border Guidance, 78 FR 45312, 45317. Although we recognize that such persons give rise to risk to the U.S. financial system, as with non-U.S. persons whose security-based swap transactions are subject to explicit financial support arrangements from U.S. persons, we do not believe that it is appropriate in the context of security-based swap markets to treat such persons as U.S. persons given that they are incorporated under foreign law, unless their principal place of business is in the United States. *See* Exchange Act rule 3a71–3(a)(4)(i)(B). Moreover, to the extent that a non-U.S. person's counterparty has recourse to a U.S. person for the performance of the non-U.S. person's obligations under a security-based swap by virtue of the U.S. person's unlimited responsibility for the non-U.S. person, the non-U.S. person would be required to include the security-based swap in its own dealer *de minimis* calculations (if the transaction arises out of the non-U.S. person's dealing activity) and its major participant threshold calculations. *See* sections 0 and 0, *infra.* For example, if a counterparty to a transaction is a general partnership that is not a U.S. person but has a U.S.-person general partner that has unlimited responsibility for the general partnership's liabilities, including for its obligations to security-based swap counterparties, we would view the general partner's obligations with respect to the security-based swaps of the partnership as recourse guarantees for purposes of this final rule, absent countervailing factors.

[256] *See* section 0 (describing application of *de minimis* exception to transactions of non-U.S. persons that are subject to a recourse guarantee against a U.S. person) and section 0 (describing application of major security-based swap participant threshold calculations to positions of non-U.S. persons that are subject to a recourse guarantee against a U.S. person), *infra.* As discussed above, we will address the application of other Title VII requirements to these persons in subsequent releases.

[257] In the proposing release, we did not provide guidance regarding the meaning of ''principal place of business,'' but we requested comment whether such guidance was desirable, including whether it would be appropriate to adopt a definition similar to that adopted in rules under the Investment Advisers Act. *See* Cross-Border Proposing Release, 78 FR 30999 n.306 (noting that the focus of one possible definition would be similar to that of the definition used in rules promulgated under the Investment Advisers Act, which define principal place of business as ''the executive office of the investment adviser from which the officers, partners, or managers of the investment adviser direct, control, and coordinate the activities of the investment adviser'') (citing 17 CFR 275.222–1(b)). As noted above, several commenters requested that we provide guidance regarding the concept, and some provided suggested interpretations of the phrase with respect to operating companies and investment vehicles. *See, e.g.,* note 213, *supra* (citing IIB Letter). *See also* SIFMA/FIA/FSR letter at A–8; Citadel Letter at 2. Several of these commenters urged us to minimize divergence from the approach taken subsequent to our proposal by the CFTC in its July 2013 guidance (or from likely outcomes under that approach). *See* note 214, *supra* (citing letters from JFMC, SIFMA/FIA/FSR, Citadel, and IAA). Another commenter urged us to work closely with the CFTC in developing guidance regarding the meaning of principal place of business. *See* note 215, *supra* (citing IAA Letter).

[258] Exchange Act rule 3a71–3(a)(4)(ii). *Cf.* 17 CFR 275.222–1(b) (defining principal place of business for investment advisers under the Investment Advisers Act to mean ''the executive office of the investment adviser from which the officers, partners, or managers of the investment adviser direct, control, and coordinate the activities of the investment adviser'').

Because the definition of ''principal place of business'' in this final rule is tailored to the unique characteristics of the security-based swap market, it does not limit, alter, or address any guidance regarding the meaning of the phrase ''principal place of business'' that may appear in other provisions of the federal securities laws, including the Investment Advisers Act, Commission rules, regulations, interpretations, or guidance.

identify the location where a significant portion of the person's financial and legal relationships would be likely to exist, and we think it is reasonable to assume, for purposes of this final rule, that this location also generally corresponds to the location from which the activities of the person are primarily directed, controlled, and coordinated. In our view, to the extent that this location is within the United States, it is reasonable to conclude that the risks arising from that entity's security-based swap activity could manifest themselves within the United States, regardless of location of its counterparties.

This definition is intended to help market participants make rational and consistent determinations regarding whether their (or their counterparty's) principal place of business is in the United States.[259] Under the final rule, the principal place of business is in the United States if the location from which the overall business activities of the entity are primarily directed, controlled, and coordinated is within the United States. With the exception of externally managed entities, as discussed further below, we expect that for most entities the location of these officers, partners, or managers generally would correspond to the location of the person's headquarters or main office.[260]

Although we recognize that several commenters objected to including a ''principal place of business'' test in our definition of ''U.S. person,''[261] we believe that a definition that focused solely on whether a legal person is organized, incorporated, or established in the United States could encourage some entities to move their place of incorporation to a non-U.S. jurisdiction to avoid complying with Title VII, while maintaining their principal place of business—and thus, reasonably likely, risks arising from their security-based swap transactions—in the United States.[262] Moreover, we believe that a definition of ''U.S. person'' that did not incorporate a ''principal place of business'' element potentially would result in certain entities falling outside the Title VII regulatory framework, even though the nature of their legal and financial relationships in the United States is, as a general matter, indistinguishable from that of entities incorporated, organized, or established in the United States.[263] Given that such entities raise the types of concerns that Title VII was intended to address, we believe it is both appropriate under our territorial approach and consistent with the purposes of Title VII to treat such entities as U.S. persons for purposes of the final rule.

We also have considered the suggestion by one commenter that ''principal place of business'' be defined to incorporate certain quantitative thresholds and an exception for firms whose jurisdiction of incorporation has an acceptable regulatory framework in place.[264] However, we do not believe such thresholds are necessary. Because the analysis is applied on an entity-wide basis, consistent with our entity-based approach generally, the ''principal place of business'' analysis generally will not encompass companies incorporated, organized, or established outside the United States merely because they have an office or branch within the United States. Similarly, we do not believe that the determination whether a legal person's jurisdiction of incorporation, organization, or establishment has an acceptable regulatory framework is relevant to the question whether a specific person has its principal place of business in the United States any more than it would be relevant for a person incorporated within the United States but subject to regulation abroad. The question whether such a company should be permitted to fulfill relevant Title VII requirements by complying with the law of the jurisdiction in which it is incorporated, organized, or established is a separate issue that may

[259] *Cf.* IIB Letter at 6 (urging an approach that ''enable[s] market participants to reach rational, consistent U.S. person determinations for funds''). We also believe that our definition of ''principal place of business'' should reduce the potential that a particular entity would have a different U.S.-person status by virtue of the ''principal place of business'' prong under our definition and under the CFTC Cross-Border Guidance.

As discussed in further detail below, we also are including in our definition of ''U.S. person'' a provision permitting persons to rely on representations from a counterparty regarding whether the counterparty's principal place of business is in the United States, unless these persons know or have reason to know that the representation is false. *See* section 0, *infra. Cf.* note 220, *supra* (citing letters requesting that the Commission's final rule permit reliance on representations regarding principal place of business). This provision should further facilitate consistent application of the ''U.S. person'' to specific entities across market participants. We are not, however, specifically providing that entities may rely solely on representations prepared by counterparties under the CFTC Cross-Border Guidance, *see* note 232, *supra,* given that the CFTC has articulated a facts-and-circumstances approach to the principal place of business determination that is susceptible to significant further development and interpretation. However, depending on how market participants have applied the CFTC's facts-and-circumstances analysis, they may be able to rely on such representations. Because we are permitting persons to rely on counterparty representations, we do not think it necessary to provide guidance regarding specific factors a person may consider in determining its counterparty's principal place of business, as some commenters requested. *Cf.* note 221, *supra* (citing IIB Letter).

[260] *Cf.* note 213, *supra* (citing IIB letter suggesting that an entity's principal place of business should be the location of its headquarters). Our definition of ''principal place of business'' is in this respect similar to the guidance issued by the CFTC regarding the application of ''principal place of business'' to operating companies. *See* CFTC Cross-Border Guidance, 78 FR 45309. We expect that outcomes of our final definition of ''principal place of business'' for such entities would generally be similar to those produced under the CFTC Cross-Border Guidance.

[261] *See* note 216, *supra.*

[262] For this reason, although we believe that the definition of ''principal place of business'' set forth in the final rule is consistent with our territorial approach to application of Title VII, we also believe that it is necessary or appropriate to prevent the evasion of Title VII. *See* Exchange Act section 30(c). The final definition of ''principal place of business'' will help ensure that entities do not restructure their business by incorporating under foreign law while continuing to direct, control, and coordinate the operations of the entity from within the United States, which would enable them to maintain a significant portion of their financial and legal relationships within the United States while avoiding application of Title VII requirements to such transactions.

[263] In addition, some foreign regulators expressed concerns about our proposed inclusion of a ''principal place of business'' element in the ''U.S. person'' definition, *see* notes 216–217, *supra,* and one foreign regulator encouraged us to focus our final ''U.S. person'' definition on where a legal person is established. *See* note 216, *supra.* We note that under the European Market Infrastructure Regulation, a foreign fund is treated identically to a European financial counterparty if it is managed by a European investment manager. *See* Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, CCPs, and trade repositories, Article 2(8) (defining ''financial counterparty'' to include ''an alternative investment fund managed by [alternative investment fund managers] authorised or registered in accordance with Directive 2011/61/EU''). This appears to reflect a recognition that where legal person is established should not be treated as the sole relevant factor in determining whether legal person should be subject to such jurisdiction's rules.

We also note that limiting our definition of ''U.S. person'' to entities incorporated, established, or organized in the United States as some commenters requested would not eliminate the potential that entities would be simultaneously classified as U.S. persons and as local persons under foreign law. Even under such a definition, some persons could be classified both as U.S. persons for purposes of Title VII and as persons established in foreign jurisdictions under a foreign regulatory regime. *Cf.* EC Letter. Although we are adopting a definition of ''U.S. person'' that should mitigate this likelihood, we recognize that such entities may be subject to overlapping regulation, and we intend to address the availability of substituted compliance with respect to specific substantive requirements in subsequent releases, which should mitigate the concerns expressed by these commenters. *Cf.* note 218, *supra* (citing ESMA Letter noting possibility of duplicative and conflicting regulation of certain persons as a result of the Commission's inclusion of a principal place of business element in the ''U.S. person'' definition).

[264] *See* note 217, *supra* (citing EC Letter); note 216, *supra* (citing ESMA Letter urging the Commission not to include U.S. branches of foreign banks in its ''U.S. person'' definition under a ''principal place of business'' test).

be addressed in a separate substituted compliance determination.[265]

Finally, we recognize that one commenter suggested that a ''principal place of business'' test should look to the location of personnel directing the security-based swap activity of the entity,[266] but we are not convinced that the location of such personnel, without more, would necessarily correspond to the location of a significant portion of the entity's financial and legal relationships, which is the focus of our ''U.S. person'' definition. We also note that a focus on the location of personnel directing the entity's security-based swap activity would provide an incentive for market participants to move such personnel outside the United States while maintaining their executive offices, and the bulk of their operations, within the United States. Such restructuring would allow an entity to avoid application of Title VII to its security-based swap activities while continuing to maintain a significant portion of its financial and legal relationships within the United States, leaving unchanged the likelihood that risks arising from its security-based swap activity could manifest themselves within the United States while avoiding application of Title VII to such activities.[267]

b. Externally Managed Investment Vehicles

Application of the ''principal place of business'' test to externally managed investment vehicles presents certain challenges not present when determining the principal place of business of an operating company or other internally managed legal person. For example, an operating company generally will carry out key functions (including directing, controlling, and coordinating its business activities) on its own behalf and generally will have offices through which these functions are performed. Responsibility for key functions of an externally managed investment vehicle, on the other hand, generally will be allocated to one or more separate persons (such as external managers, or other agents), with few or no functions carried out through an office of the vehicle itself.[268] Further complicating the application of this definition is the organizational and operational diversity of such vehicles.

Notwithstanding these challenges, we also recognize that externally managed investment vehicle are active participants in the security-based swap market[269] and, in our view, should be treated as U.S. persons if their operations are primarily directed, controlled, and coordinated from a location within the United States. For example, we understand that a significant portion of the investment vehicles that participate in the security-based swap market are private funds such as hedge funds. We have observed that such private funds commonly may be organized under non-U.S. law—frequently in the Cayman Islands—but are managed by investment advisers headquartered in the United States.[270] We also understand that those advisers commonly manage or direct the investment activities of these vehicles, including the arrangement of security-based swaps, through locations within the United States. We further understand that a significant portion of the financial and legal relationships of such vehicles, as a general matter, are in the United States, including some combination of equity ownership by managers (or their affiliates) and outside investors, credit relationships with prime brokers and other lenders, and relationships with other market participants and service providers. These vehicles, therefore, raise concerns that are similar to those raised by the security-based swap activities of market participants that are incorporated, established, or organized in the United States. Over the past two decades, failures of investment vehicles of various types organized under foreign law, but directed, controlled, or coordinated from within the United States have had significant negative impact on U.S. financial institutions, potentially threatening the stability of the U.S. financial system more generally.[271] We believe that it is reasonable to expect that the security-based swap activities of such vehicles may pose similar risks.[272]

To address the unique characteristics of externally managed investment vehicles, we are including in our definition of ''principal place of business'' language specifying that an externally managed investment vehicle's principal place of business is ''the office from which the manager[273] of the vehicle primarily directs, controls, and coordinates the investment activities of the vehicle.'' This definition directs market participants to consider where the activities of an externally managed investment vehicle generally are directed, controlled, and coordinated, even if this conduct is performed by one or more legally separate persons.[274] For

[265] *Cf.* Cross-Border Proposing Release, 78 FR 31085–102 (setting forth proposed substituted compliance framework).

[266] *See* note 206, supra (citing Citadel Letter).

[267] As noted above, we believe that the definition of ''principal place of business'' set forth in the final rule is consistent with our territorial approach to application of Title VII. We also note, however, that for the reasons just discussed the final definition's focus on activity of the person as a whole, as opposed to a focus on the security-based swap activity of the person, is in our view necessary or appropriate to prevent the evasion of Title VII. *See* Exchange Act section 30(c).

[268] Such functions may not even be carried out in the jurisdiction in which the externally managed vehicle is incorporated, organized, or established. Indeed, many private investment funds are incorporated, organized, or established under the laws of a jurisdiction with which they have only a nominal connection.

[269] *See* Tables 1 and 2, *supra* (noting involvement of investment advisers and private funds in the security-based swap market).

[270] This observation is consistent with data reported to us by private fund managers. *See* Staff of the Division of Investment Management, U.S. Securities and Exchange Commission, Annual Staff Report Relating to the Use of Data Collected from Private Fund Systemic Risk Reports (July 25, 2013) at Appendix A (providing aggregated, non-proprietary data on percentages of reporting private funds organized under non-U.S. law and on locations of advisers to such funds).

[271] For example, Long Term Capital Management (''LTCM''), a Delaware partnership with its principal place of business in Connecticut, established a master fund, Long-Term Capital Portfolio, L.P. (''LTCP''), in the Cayman Islands. Mine Aysen Doyran, *Financial Crisis Management and the Pursuit of Power: American Pre-Eminience and the Credit Crunch* 83–84 (Ashgate 2011). LTCP attracted investments from both U.S. and foreign investors. *Id.* When it failed in 1998, fourteen domestic and foreign banks and securities firms (''the Consortium'') that were major creditors or counterparties of the fund agreed to recapitalize it. GAO, *Responses to Questions Concerning Long-Term Capital Management and Related Events* 1 n.2, (identifying these fourteen firms); *id.* at 8–9 (stating that ''[t]hese firms contributed about $3.6 billion into [LTCP]'') (available at: *http://www.gao.gov/archive/2000/gg00067r.pdf*). The Federal Reserve Board of New York played a key role in initiating discussion among the banks that ultimately formed the Consortium. *Id.* at 10.

Other, more recent, examples of risks of such entities established under foreign law manifesting themselves within the United States include the failure of two Bear Stearns hedge funds, which had significant repercussions within the United States, and the bailouts of bank-sponsored structured investment vehicles. *See, e.g.,* FCIC Report at 241, 289–90; Henry Tabe, *The Unravelling of Structured Investment Vehicles: How Liquidity Leaked Through SIVs* (2010), at 192–94.

[272] For these reasons, we are declining to follow the suggestion of one commenter that we not include a principal place of business element of the ''U.S. person'' definition for investment vehicles. *See* note 198, *supra.*

[273] Identifying the manager for purposes of this definition will depend on the structure and organizing documents of the investment vehicle under consideration.

[274] Exchange Act rule 3a71–3(a)(4)(ii). At least one commenter also recognized that differences between categories of legal persons may require different tests for determining whether a person has its principal place of business in the United States. *See* IIB Letter at 5–6 (suggesting separate ''principal place of business'' tests for operating companies and investment vehicles). The CFTC Cross-Border Guidance, which provides separate guidance for operating companies, trusts, and investment vehicles, tailored to the characteristics of each,

an investment vehicle, for example, the primary manager is responsible for directing, controlling, and coordinating the overall activity of the vehicle, such that the business of the vehicle, such as its investment and financing activity, is principally carried out at the location of the primary manager. Such an investment vehicle's principal place of business under the final rule would be the location from which the manager carries out those responsibilities.[275]

As noted above, at least one commenter suggested that a ''principal place of business'' test should look to the location of personnel directing the security-based swap activity of the vehicle.[276] Although we believe that the manager responsible for directing, controlling, and coordinating the activities of the externally managed investment vehicle also would generally be responsible for directing, controlling, and coordinating the security-based swap activity of such vehicle, we do not believe that an externally managed vehicle should be excluded from the U.S. person definition merely because the manager that otherwise directs, controls, and coordinates its activity has effectively shifted responsibility for the security-based swap activity of the externally managed vehicle to a non-U.S. person. As noted above, such an approach would provide an incentive to move responsibility for the security-based swap activity of externally managed vehicles outside the United States while retaining control of all other activities relating to management of such vehicles within the United States. As with the ''principal place of business'' definition more generally, and for similar reasons, we believe that the definition of ''principal place of business'' set forth in the final rule with respect to externally managed vehicles is consistent with our territorial approach to application of Title VII. We also note, however, that for the reasons just discussed the final definition's focus on where the activity of the vehicle as a whole is primarily directed, controlled, and coordinated, as opposed to a focus on its security-based swap activity, is in our view necessary or appropriate to prevent the evasion of Title VII.[277]

In our proposal, we stated that we did not think that the U.S.-person status of a commodity pool operator (''CPO'') or fund adviser (as opposed to the fund actually entering into the transaction) was in itself relevant in determining the U.S.-person status of an investment vehicle.[278] Although the definition of ''principal place of business'' we are adopting in this final rule may lead to similar classifications of investment vehicles for purposes of the ''U.S. person'' definition as a test that looked to the U.S.-person status of a CPO or fund adviser, we believe that the definition we are adopting is more appropriately designed to capture externally managed investment vehicles that raise the kinds of concerns that Title VII was intended to address. Moreover, we note that mere retention of an asset manager that is a U.S. person, without more, would not necessarily bring an offshore investment vehicle or other person within the scope of the ''U.S. person'' definition.[279] However, where an asset manager, whether or not a U.S. person, is primarily responsible for directing, controlling, and coordinating the activities of an externally managed vehicle and carries out this responsibility within the United States, we believe that it is reasonable to include the externally managed vehicle in the definition of ''U.S. person'' [280] and to require foreign dealers to include dealing activity with such vehicles in their *de minimis* threshold calculations.

iii. Fund Ownership

Some commenters urged us to include in the definition investment vehicles that are majority-owned by U.S. persons.[281] One of these commenters noted that the CFTC had reasoned that ''passive investment vehicles'' designed to ''achieve the investment objectives of their beneficial owner'' were distinguishable from majority-owned entities that are ''separate, active operating businesses.'' [282] We are not persuaded, however, that this distinction between investment vehicles and operating companies warrants treating ownership interests in these two types of entities differently for purposes of the ''U.S. person'' definition, particularly given that the exposure of investors in a collective investment vehicle engaging in security-based swap transactions typically is capped at the amount of their investment and such investors generally are unlikely to seek to make the investment vehicle's counterparties whole for reputational or other reasons in the event of a default.[283] We do not believe risks created through ownership interests in collective investment vehicles are the types of risks that Title VII is intended to address with respect to security-based swaps.[284]

Because we are not adopting an ownership test for funds, we are also not following the suggestion of some commenters that we exclude from the ''U.S. person'' definition investment vehicles that are offered publicly only to non-U.S. persons and are not offered to

appears to reflect this distinction. *See* CFTC Cross-Border Guidance, 78 FR 45309–311.

[275] As noted above, one commenter suggested that we adopt a definition of ''principal place of business'' that looked to where the operational management activities of the fund are carried out. *Cf.* note 200, *supra*. We are not convinced, however, that the location of such activities (which the commenter identified as including ''establishing the fund and selecting its investment manager, broker, and underwriter/placement agent''), absent an ongoing role by the person performing those activities in directing, controlling, and coordinating the investment activities of the fund, generally will be as indicative of activities, financial and legal relationships, and risks within the United States of the type that Title VII as the location of a fund manager.

[276] *See* note 213, *supra* (citing Citadel Letter).

[277] *See* Exchange Act section 30(c).

[278] *See* Cross-Border Proposing Release, 78 FR 31144 n.1454.

[279] *Cf.* note 195, *supra* (citing IAA letter urging the Commission to follow the CFTC in clarifying that retention of an asset manager that is a U.S. person alone would not bring a person within the scope of the ''U.S. person'' definition).

[280] We also noted in our proposal that a transaction by an adviser on behalf of a fund could be a ''transaction conducted within the United States'' as defined in the proposal and thus fall within the scope of Title VII. See Cross-Border Proposing Release, 78 FR 31144 n.1454. As noted above, we are not addressing the ''transaction conducted within the United States'' element of our proposal in the final rule and instead intend to address this element of the proposed dealer *de minimis* threshold calculations in a subsequent reproposal.

[281] *See* note 203, *supra* (citing BM Letter and AFR Letter). The CFTC also incorporated a majority-ownership inquiry in its interpretation of ''U.S. person'' as it applies to funds. *See* CFTC Cross-Border Guidance, 78 FR 45313.

[282] BM Letter at 10 (quoting CFTC Cross-Border Guidance, 78 FR 45314).

[283] *See* Cross-Border Proposal, 78 FR 31144 (noting that losses arising from investments in investment vehicles ''are generally limited to their investments in the form of equity or debt securities'' and that these risks are ''addressed by other provisions of U.S. securities law pertaining to issuances and offerings of equity or debt securities'').

[284] Several commenters also argued that a majority-ownership test, including any look-through requirements, may be difficult to implement in this context. *See* note 203, *supra* (citing ICI Letter and IAA Letter). We believe that our definition of ''principal place of business'' with respect to externally managed entities should help to ensure that the ''U.S. person'' definition encompasses investment vehicles that may generally have a significant portion of their financial and legal relationships within the United States and that may therefore raise the types of risk concerns within the United States that Title VII was intended to address.

We note that, because we are not following a majority-ownership approach for collective investment vehicles as part of the ''U.S. person'' definition, the U.S.-person status of accounts investing in such investment vehicles will not affect the U.S.-person status of such vehicles. *Cf.* IAA Letter at 4 (explaining that a majority-ownership test would capture non-U.S. funds with minimal nexus to the United States and present implementation challenges).

U.S. persons.[285] Although we recognize that the CFTC reasoned that such investment vehicles would generally not be within its interpretation of ''U.S. person,'' [286] we do not believe that it would be relevant under our final definition, which does not focus on an investment vehicle's ownership by U.S. persons.[287]

(c) Accounts

The final definition of ''U.S. person'' continues to mean ''any account (whether discretionary or not) of a U.S. person,'' irrespective of whether the person at which the account is held or maintained is a U.S. person.[288] As a general matter, we expect that market participants will determine their U.S.-person status under the prongs of that definition relating to natural persons or to legal persons.[289] This ''account'' prong of the definition is intended to clarify that a person's status for purposes of this rule generally does not differ depending on whether the person enters into security-based swap transactions through an account, or depending on whether the account is held or maintained at a U.S. person or a non-U.S. person intermediary or financial institution.[290]

Consistent with the overall approach to the definition of ''U.S. person,'' our focus under the ''account'' prong of this definition is on the party that actually bears the risk arising from the security-based swap transactions.[291] Accordingly, an account owned solely by one or more U.S. persons is a U.S. person, even if it is held or maintained at a foreign financial institution or other person that is itself not a U.S. person; an account owned solely by one or more non-U.S. persons is not a U.S. person, even if it is held or maintained at a U.S. financial institution or other person that is itself a U.S. person. For purposes of this ''account'' prong of the ''U.S. person'' definition, account ownership is evaluated only with respect to direct beneficial owners of the account. Because the status of an account turns on the status of the account's beneficial owners, the status of any nominees of an account is irrelevant in determining whether the account is a U.S. person under the final rule.

Where an account is owned by both U.S. persons and non-U.S. persons, the U.S.-person status of the account, as a general matter, should turn on whether any U.S.-person owner of the account incurs obligations under the security-based swap.[292] Consistent with the approach to U.S.-person and non-U.S.-person accounts described above, neither the status of the fiduciary or other person managing the account, nor the discretionary or non-discretionary nature of the account, nor the status of the person at which the account is held or maintained are relevant in determining the account's U.S.-person status.

(d) Estates

The final rule incorporates a new prong that expressly includes certain estates within the definition of ''U.S. person.'' Under the final rule any estate of a natural person who was a resident of the United States at the time of death is itself a U.S. person.[293] Our proposed rule did not expressly address estates because we did not believe that they typically engage in security-based swap activity and, to the extent that they do, their U.S.-person status would have been determined under the standard applicable to any legal person under our proposed rule. We received no comments in response to our questions regarding whether we should adopt a final rule that expressly addresses estates or that reflects the CFTC's proposed approach.[294]

We continue to believe that estates are not likely to be significant participants in the security-based swap market, but we also believe that, given the unique characteristics of estates, it is appropriate to include in the ''U.S. person'' definition an express reference to estates of decedents who were residents of the United States at the time of death. This element of our final definition reflects similar considerations to those that informed our inclusion of natural persons who are residents of the United States within the scope of that definition. We noted above that the security-based swap activity of a natural person who is a resident of the United States raises the types of risks that Title VII is intended to address, given that person's residence status and likely financial and legal relationships, and we expect that the estate of a natural person who was a resident of the United States at the time of his or her death is likely to operate within the same relationships that warranted subjecting such transactions to Title VII during the life of the decedent.

(e) Certain International Organizations

As under the proposal, the final rule expressly excludes certain international organizations from the definition of U.S. person.[295] This list includes ''the [IMF], the International Bank for Reconstruction and Development, the Inter-American Development Bank, the

[285] *See* note 205, *supra* (citing IAA Letter). *Cf.* CFTC Cross-Border Guidance, 78 FR 45314, 45317. One commenter suggested that the exclusion apply to funds offered publicly only to non-U.S. persons and are regulated in a foreign jurisdiction. *See* note 205, *supra* (citing ICI Letter, which suggested that funds regulated under foreign law be excluded from the ''U.S. person'' definition if they are (1) offered publicly only to non-U.S. persons; (2) offered publicly only to non-U.S. persons but offered privately to U.S. persons; or (3) authorized to offer publicly within the United States. but elect to offer only privately to non-U.S. institutional investors).

[286] *See* CFTC Cross-Border Guidance, 78 FR 45314.

[287] We also note that our guidance regarding the meaning of ''principal place of business'' is designed to identify, among other entities, investment vehicles that may pose risks to the United States, regardless of where they may be offered.

[288] Exchange Act rule 3a71–3(a)(4)(i)(C). Thus, if a partnership, corporation, trust, investment vehicle, or other legal person is a U.S. person, any account of that person is a U.S. person.

[289] *See* Exchange Act rule 3a71–3(a)(4)(i)(A) and (B).

[290] As we noted in the Cross-Border Proposing Release, this approach is consistent with the treatment of managed accounts in the context of the major security-based swap participant definition, whereby the swap or security-based swap positions in client accounts managed by asset managers or investment advisers are not attributed to such entities for purposes of the major participant definitions, but rather are attributed to the beneficial owners of such positions based on where the risk associated with those positions ultimately lies. *See* Intermediary Definitions Adopting Release, 77 FR 30690.

[291] In other words, the U.S.-person status of an account is relevant under our final rule to the extent that the security-based swap activity is carried out by or through the account. Because our final definition of ''U.S. person'' does not include investment vehicles that are majority-owned by U.S. persons, the underlying ownership of an investment vehicle that engages in security-based swap activity through an account is not relevant in determining the U.S.-person status of an account. *Cf.* note 224, *supra* (citing IAA Letter expressing concern about the relationship between the definition of accounts and treatment of funds).

[292] Two commenters urged us to exclude from the definition of ''U.S. person'' any account with a *de minimis* level of ownership by a U.S. person. *See* note 223, *supra* (citing letters from IAA and SIFMA/FIA/FSR). We, however, do not believe it would be appropriate to incorporate this concept wholesale into the definition of ''U.S. person,'' as a *de minimis* level of ownership by a U.S. person in the account does not necessarily indicate that such a U.S. person incurs only a *de minimis* level of risk or obligations under the security-based swap transactions entered into through the account. For example, the U.S. person may be jointly and severally liable with all of the other account owners for obligations incurred under a security-based swap. We recognize that account ownership may take different forms and that security-based swap transactions may impose risks and obligations on account holders in different ways. The approach we are taking here is intended to take into account the concerns expressed by commenters regarding *de minimis* U.S.-person interests in such accounts, while also recognizing that security-based swap transactions carried out through such accounts may pose risks to U.S. persons and to the U.S. financial system.

[293] *See* Exchange Act rule 3a71–3(a)(4)(i)(D).

[294] The CFTC subsequently issued an interpretation of ''U.S. person'' that expressly incorporates estates. *See* CFTC Cross-Border Guidance, 78 FR 45314.

[295] Exchange Act rule 3a71–3(a)(4)(iii).

Asian Development Bank, the African Development Bank, the United Nations, and their agencies and pension plans, and any other similar international organizations, their agencies and pension plans.'' [296] Although these organizations may have headquarters in the United States, the Commission continues to believe that their status as international organizations warrants excluding them from the definition of ''U.S. person.'' [297]

4. Representations Regarding U.S.-Person Status

Our proposed definition of ''U.S. person'' did not expressly provide that parties could rely on representations from their counterparties as to their counterparties' U.S.-person status, although we did anticipate that parties likely would request such representations.[298] On further consideration, we believe that market participants would benefit from an express provision permitting reliance on such representations.[299] Accordingly, under the final rule, a person need not consider its counterparty to be a U.S. person for purposes of Title VII if that person receives a representation from the counterparty that the counterparty does not satisfy the criteria set forth in Exchange Act rule 3a71–3(a)(4)(i), unless such person knows or has reason to know that the representation is not accurate. For purposes of the final rule a person would have reason to know the representation is not accurate if a reasonable person should know, under all of the facts of which the person is aware, that it is not accurate.[300]

Expressly permitting market participants to rely on such representations in the ''U.S. person'' definition should help mitigate challenges that could arise in determining a counterparty's U.S.-person status under the final rule. It permits the party best positioned to make this determination to perform an analysis of its own U.S.-person status and convey, in the form of a representation, the results of that analysis to its counterparty. In addition, such representations should help reduce the potential for inconsistent classification and treatment of a person by its counterparties and promote uniform application of Title VII.[301]

The final rule reflects a constructive knowledge standard for reliance. Under this standard, a counterparty is permitted to rely on a representation, unless the person knows or has reason to know that the representation is inaccurate. A person would have reason to know the representation is not accurate for purposes of the final rule if a reasonable person should know, under all of the facts of which the person is aware, that it is not accurate.[302] We believe that this ''know or have reason to know'' standard should help ensure that potential security-based swap dealers and major security-based swap participants do not disregard facts that call into question the validity of the representation.

D. Application of De Minimis Exception To Dealing Activities of Conduit Affiliates

1. Proposed Approach and Commenters' Views

The Cross-Border Proposing Release did not include requirements specific to ''conduit affiliates'' or other non-U.S. persons that enter into security-based swap transactions on behalf of their U.S. affiliates. Instead, the proposal would have treated those entities like other non-U.S. persons, and required them to count, against the *de minimis* thresholds, only their dealing transactions with U.S. persons other than foreign branches, and their dealing transactions conducted in the United States.[303] The proposal also noted that the general rule implementing the *de minimis* exception excludes transactions between majority-owned affiliates from the analysis.[304]

The proposal acknowledged the difference between its approach and the CFTC's approach in its proposed cross-border guidance, which encompassed special provisions for foreign affiliates that act as conduits for U.S. persons.[305] We thus cited the CFTC's proposed approach toward conduit affiliates in requesting comment regarding whether the Commission should follow a similar approach.[306] We also requested comment as to whether the Commission should, consistent with the CFTC's proposed approach, require a person that operates a ''central booking system''—whereby security-based swaps are booked to a single legal person—be subject to applicable dealer registration requirements as if the person had entered into the security-based swaps directly.[307] More generally, we requested comment as to whether foreign affiliates of U.S. persons, such as majority-owned subsidiaries of U.S.

[296] *Id.* Although three commenters requested that we list all such organizations that are excluded from U.S. persons, *see* note 226, *supra,* we do not believe it appropriate to attempt to enumerate an exclusive list of entities that may be eligible for such exclusion.

[297] Although three commenters requested that the final rule also exclude ''controlled affiliates'' of these international organizations from the definition of ''U.S. person,'' *see* note 229, *supra* (citing SC Letter, WB/IFC Letter, and IDB Letter), our final rule does not incorporate such an exclusion, as commenters did not provide us with information that leads us to change our view that we should not treat such affiliates' security-based swap or other activities differently from other persons that are incorporated, organized, or established in the United States or have their principal place of business here.

[298] *See* Cross-Border Proposing Release, 78 FR 31140.

[299] *Cf.* note 230, *supra* (citing IIB Letter requesting the Commission to confirm that, as a general matter, a representation is sufficient to fulfill diligence requirements under these rules).

[300] *See* Exchange Act rule 3a71–3(a)(4)(iii). This provision applies to each prong of the ''U.S. person'' definition, including the principal place of business prong. *Cf.* note 220, *supra.* As noted above, we are not providing that persons may rely solely on representations from counterparties that have been developed for purposes of the CFTC's interpretation of U.S. person. However, depending on how market participants have applied the CFTC's general facts-and-circumstances inquiry, they may be able to rely on such representations.

As we noted in the proposal, for purposes of the *de minimis* threshold, the U.S.-person status of a non-U.S. person's counterparty would be relevant only at the time of a transaction that arises out of the non-U.S. person's dealing activity. *See* Cross-Border Proposing Release, 78 FR 30994 n.264. Any change in a counterparty's U.S.-person status after the transaction is executed would not affect the original transaction's treatment for purposes of the de minimis exception, though it would affect the treatment of any subsequent dealing transactions with that counterparty. See also Product Definitions Adopting Release, 77 FR 48286 (''If the material terms of a Title VII instrument are amended or modified during its life based on an exercise of discretion and not through predetermined criteria or a predetermined self-executing formula, the Commissions view the amended or modified Title VII instrument as a new Title VII instrument'').

[301] The final rule permitting reliance on representations with respect to a counterparty's U.S.-person status applies only to the definition of ''U.S. person'' as used in this final rule and does not apply to any determinations of a person's U.S.-person status under any other provision of the federal securities laws, including Commission rules, regulations, interpretations, or guidance.

[302] *Cf.* IIB Letter at 5 n.9 (urging the Commission to permit reliance on counterparty representations, ''absent knowledge of facts that would cause a reasonable person to question the accuracy of the representation''). To the extent that a person has knowledge of facts that would lead a reasonable person to believe that a counterparty may be a U.S. person under the final definitions it may need to conduct additional diligence before relying on the representation.

We recognize that one commenter urged us to limit a reasonable reliance standard for such representations to representations concerning whether a person had its principal place of business in the United States. *Cf.* note 220, *supra* (citing ABA Letter). However, we believe that applying a single standard of reliance to all representations regarding a person's U.S.-person status will reduce the potential complexity of establishing policies and procedures associated with identifying the U.S.-person status of counterparties.

[303] *See* proposed Exchange Act rule 3a71–3(b)(1)(ii).

[304] *See* Cross-Border Proposing Release at 31006 (citing Exchange Act rule 3a71–1(d)).

[305] *See id.* at 31006 n.356.

[306] *See id.* at 31024.

[307] *See id.* at 31007.

parents, should be considered to be U.S. persons.[308]

One commenter took the view that the Commission's rules should not make use of the conduit affiliate concept notwithstanding its use in the CFTC Cross-Border Guidance, stating that the concept lacks any statutory or regulatory authority, would not advance efforts to reduce systemic risk, and, if applied to end-users, would interfere with internal risk allocations within a corporate group.[309] In contrast, one commenter depicted conduit affiliates as being a type of person that is subject to a *de facto* guarantee by a U.S. affiliate and that should thus be treated as a U.S. person, and also argued that the dealer registration requirement should apply to other types of entities subject to a *de facto* guarantee.[310]

One commenter further opposed the adoption of an approach that would require a ''central booking system'' or any other affiliate to register as a security-based swap dealer based solely on its inter-affiliate security-based swap transactions, arguing that such an approach would tie registration requirements to firms' internal risk management practices, and would hamper the ability to manage risk across a multinational enterprise.[311]

2. Final Rule

The final rule distinguishes ''conduit affiliates'' from other non-U.S. persons by requiring such entities to count all of their dealing transactions against the *de minimis* thresholds, regardless of the counterparty.[312] As discussed below, for these purposes a ''conduit affiliate'' is a non-U.S. affiliate of a U.S. person that enters into security-based swaps with non-U.S. persons, or with certain foreign branches of U.S. banks, on behalf of one or more of its U.S. affiliates (other than U.S. affiliates that are registered as security-based swap dealers or major security-based swap participants), and enters into offsetting transactions with its U.S. affiliates to transfer the risks and benefits of those security-based swaps.

After careful consideration, we believe that requiring such conduit affiliates to count their dealing transactions against the *de minimis* thresholds is appropriate to help ensure that non-U.S. persons do not facilitate the evasion of registration requirements under Dodd-Frank by participating in arrangements whereby a non-U.S. person engages in security-based swap activity outside the United States on behalf of a U.S. affiliate that is not a registered security-based swap dealer or major security-based swap participant,[313] and the U.S. affiliate assumes economic risks and benefits of those positions by entering into offsetting transactions with the non-U.S. affiliate. Absent such a requirement that conduit affiliates count their dealing transactions for purposes of the *de minimis* exception, a U.S. person may be able to effectively engage in unregistered dealing activity involving non-U.S. persons by having a non-U.S. affiliate enter into dealing transactions with other non-U.S. persons (which would not be counted against the *de minimis* thresholds because both counterparties are non-U.S. persons) or with foreign branches of U.S. banks that are registered as security-based swap dealers (which would not be counted against the *de minimis* thresholds because of an exclusion for dealing transactions with foreign branches of U.S. banks that are registered as security-based swap dealers). The U.S. person could enter into offsetting transactions with those non-U.S. affiliates, and those offsetting transactions would not be counted against the *de minimis* thresholds due to the inter-affiliate exception to the dealer analysis.[314]

Accordingly, in our view, requiring conduit affiliates to count their dealing transactions against the thresholds is necessary or appropriate to prevent the evasion of any provision of the amendments made to the Exchange Act by Title VII for the reasons given above.[315] We believe that this requirement is appropriately tailored to prevent the evasion of the dealer requirements,[316] while preserving participants' flexibility in managing risk exposures through inter-affiliate transactions.[317]

In light of the anti-evasion rationale for this use of the conduit affiliate concept, which is consistent with our statutory anti-evasion authority, we are not persuaded by a commenter's view that the use of the concept is outside of our authority.[318] We also are not persuaded by that commenter's suggestion that the use of the conduit affiliate concept would not advance risk-mitigation goals, given that the concept can be expected to help ensure that the provisions of Title VII applicable to dealers (including risk

[308] *See id.* at 30998–99.

[309] *See* CDEU Letter at 3–5 (adding that if the conduit concept is not rejected, at a minimum it should exclude non-dealers and should not be applied to security-based swaps in which neither party is a dealer or a major participant).

[310] *See* BM Letter at 3, 14–15.

[311] *See* SIFMA/FIA/FSR Letter at A–16 to A–17 (also stating that the final CFTC cross-border guidance does not include the central booking system concept). *See also* CDEU Letter at 3–5 (raising concerns that the regulation of conduit affiliates may have the potential to interfere with the use of centralized treasury units that corporate groups may use as a market-facing entity for a non-dealer's corporate group).

[312] *See* Exchange Act rule 3a71–3(b)(1)(ii).

[313] As discussed below, the ''conduit affiliate'' definition does not encompass persons that engage in such offsetting transactions solely with U.S. persons that are registered with the Commission as security-based swap dealers or major security-based swap participants because we do not believe that such transactions raise the types of evasion concerns that the conduit affiliate concept is designed to address.

[314] The rule requires that a conduit affiliate count all of its dealing activity, and is not limited to the conduit affiliate's dealing transactions that specifically are linked to offsetting transactions with a U.S. affiliate. This is because there may not be a one-to-one correspondence between dealing transactions and their offsets for reasons such as netting.

[315] *See* Exchange Act section 30(c); section 0, *supra.* In noting that this requirement is consistent with our anti-evasion authority under Exchange Act section 30(c), we are not taking a position as to whether such activity by a conduit affiliate otherwise constitutes a ''business in security-based swaps without the jurisdiction of the United States.''

[316] We recognize that not all dealing structures involving conduit affiliates may be evasive in purpose. We believe, however, that the anti-evasion authority of section 30(c) permits us to prescribe prophylactic rules to conduct without the jurisdiction of the United States, even if those rules would also apply to a market participant that has been transacting business through a pre-existing market structure established for valid business purposes, so long as the rule is designed to prevent possible evasive conduct. *See* Cross-Border Proposing Release, 78 FR 30987; *see also* section 0, *supra* (discussion of anti-evasion authority); *Abramski* v. *United States,* No. 12–1493, slip op. at 14 (S. Ct. June 16, 2014) (noting ''courts' standard practice, evident in many legal spheres and presumably known to Congress, of ignoring artifice when identifying the parties to a transaction'').

We also note that while this requirement appears consistent with the views of a commenter that supported the use of the conduit affiliate concept, we take no position on that commenter's view that conduit affiliates represent a type of entity that is subject to a de facto guarantee by a U.S. person. *See* note 310, *supra.* Indeed, in our view the conduit affiliate concept will serve as a useful anti-evasion tool even in the situation where the conduit affiliate's counterparty does not consider the U.S. person's creditworthiness in determining whether to enter into a security-based swap with the conduit affiliate.

[317] For example, one potential alternative anti-evasion safeguard could be to narrow the inter-affiliate exception to counting dealing transactions against the *de minimis* thresholds, such as by making the exception unavailable in the context of transactions between non-U.S. persons and their U.S. affiliates. We believe, however, that such an approach would be less well-targeted than the use of the conduit affiliate concept, as that alternative could impact a corporate group's ability to use specific market-facing entities to facilitate the group's security-based swap activities (given that the market-facing entities would arguably be acting as a dealer on behalf of its affiliates).

[318] *See* CDEU Letter at 3 (''The concept of a conduit affiliate is not based on statutory or regulatory authority, and does not decrease the potential for systemic risk.''). *See also* note 309, *supra.*

mitigation provisions such as margin and capital requirements) are implemented, which can be expected to produce risk mitigation benefits.

At the same time, we recognize the significance of commenter concerns that the use of the ''conduit affiliate'' concept or the use of a ''central booking system'' approach to registration could impede efficient risk management practices.[319] The conduit affiliate concept serves as a prophylactic anti-evasion measure, and we do not believe that any entities currently act as conduit affiliates in the security-based swap market, particularly given that a framework for the comprehensive regulation of security-based swaps did not exist prior to the enactment of Title VII, suggesting that market participants would have had no incentives to use such arrangements for evasive purposes.

Moreover, in light of this anti-evasion purpose, the definition of ''conduit affiliate'' does not include entities that may otherwise engage in relevant activity on behalf of affiliated U.S. persons that are registered with the Commission as security-based swap dealers or major security-based swap participants, as we do not believe that transactions involving these types of registered entities and their foreign affiliates raise the types of evasion concerns that the conduit affiliate concept is designed to address.[320]

In addition, in the context of the dealer *de minimis* exception, the relevant rules would require the conduit affiliate to count only its dealing transactions. The rules accordingly distinguish dealing activity by a conduit affiliate from a corporate group's use of affiliates for non-dealing purposes, such as a corporate group's use of a single affiliated person to enter into transactions with the market for risk management not involving dealing activity (accompanied by offsetting inter-affiliate transactions that place the economic substance of the instrument into another person within the group). The requirement we are adopting here—under which a conduit affiliate will count only its dealing transactions against the *de minimis* thresholds—is not expected to impact persons that enter into security-based swaps with affiliates for non-dealing purposes.[321]

Consistent with these goals, the final rule defines ''conduit affiliate'' in part as a non-U.S. person that directly or indirectly is majority-owned by one or more U.S. persons.[322] To be a conduit affiliate, moreover, such a person must in the regular course of business enter into in security-based swaps with one or more other non-U.S. persons or with foreign branches of U.S. banks that are registered as security-based swap dealers,[323] for the purposes of hedging or mitigating risks faced by, or otherwise taking positions on behalf of, one or more U.S. persons [324] (other than U.S. persons that are registered as security-based swap dealers or major security-based swap participants) that control, are controlled by, or are under common control with the potential conduit affiliate, and enter into offsetting security-based swaps or other arrangements with such affiliated U.S. persons to transfer risks and benefits of those security-based swaps.[325]

E. Application of De Minimis Exception To Dealing Activities of Other Non-U.S. Persons

As noted above, the proposal would have required non-U.S. persons to count, against the *de minimis* thresholds, only their dealing transactions involving U.S. persons other than foreign branches, and their dealing transactions conducted within the United States.[326]

Aside from issues related to conduit affiliates, addressed above, commenters discussed other issues regarding the application of the *de minimis* exception to the dealing activities of non-U.S. persons, particularly relating to: (i) Dealing transactions of non-U.S. persons that are guaranteed by their U.S. affiliates; (ii) activities within the United States; and (iii) dealing activities of other non-U.S. persons whose counterparties are U.S. persons (including foreign branches of U.S. banks) or non-U.S. persons guaranteed by U.S. persons. We are addressing those groups of issues separately, given the distinct issues relevant to each.[327] As discussed below, the final rule requires non-U.S. persons (apart from the conduit affiliates addressed above) to count all of their dealing transactions where: (1) The transaction is subject to a recourse guarantee against a U.S. affiliate of the non-U.S. person; or (2) the counterparty to the transaction is a U.S. person, other than the foreign branch of a registered security-based swap dealer.

[319] *See* note 311, *supra* (citing CDEU Letter).

[320] As discussed below, we also are applying the conduit affiliate concept to the major participant analysis to help guard against evasive practices. *See* section 0, *infra.*

[321] One commenter particularly suggested that the conduit affiliate concept, if implemented, should exclude non-dealers. *See* CDEU Letter. As the requirement related to counting by conduit affiliates for purposes of the *de minimis* dealer exception is relevant only to the extent that a conduit affiliate engages in dealing activity, however, we do not believe that it is necessary to otherwise tailor the requirement to address the possibility that a conduit affiliate is acting on behalf of an affiliated U.S. non-dealer for risk management or other non-dealing purposes.

Moreover, as discussed above, over a recent six-year period, entities that are recognized as dealers are responsible for almost 85 percent of transactions involving single-name CDS. *See* Table 1, section 0, *supra.*

[322] *See* Exchange Act rule 3a71–3(a)(1)(i)(A).

For purposes of the definition, the majority-ownership standard is met if one or more U.S. persons directly or indirectly own a majority interest in the non-U.S. person, where ''majority interest'' is the right to vote or direct the vote of a majority of a class of voting securities of an entity, the power to sell or direct the sale of a majority of a class of voting securities of an entity, or the right to receive upon dissolution, or the contribution of, a majority of the capital of a partnership. *See* Exchange Act rule 3a71–3(a)(1)(ii). This parallels the majority-ownership standard in the inter-affiliate exclusion from the dealer analysis. *See* Exchange Act rule 3a71–1(d).

[323] The definition does not require a conduit affiliate to exclusively transact with such non-U.S. persons and foreign branches. Accordingly, transactions with other types of U.S. persons would not cause a person to fall outside the ''conduit affiliate'' definition.

[324] For these purposes, it would not be necessary that the non-U.S. person transfer the risks and benefits of all of its security-based swaps. It also would not be necessary that the non-U.S. person transfer all of the risks and benefits of any particular security-based swap; for example, the non-U.S. person may retain the credit risk associated with a security-based swap with a non-U.S. counterparty, but transfer to its U.S. affiliate the market risk associated with the instrument.

[325] *See* Exchange Act rule 3a71–3(a)(1)(i)(B).

The reference to ''other arrangements'' to transfer the risks and benefits of security-based swaps, as an alternative to entering into offsetting security-based swaps, may encompass, for example, the use of swaps to transfer risks and benefits of the security-based swaps (for example, two CDS based on slightly different indices of securities could be used to approximately replicate a security-based swap such as a CDS based on a single reference entity).

We note that while the CFTC Cross-Border Guidance also states the view that as a general matter conduit affiliates should count their dealing activity against the *de minimis* thresholds (*see* 78 FR 45318–19), the CFTC's interpretation of what constitutes a ''conduit affiliate'' differs in certain ways from our final rule. For example, the CFTC's approach takes into account whether the conduit affiliate's financial results are consolidated in the U.S. person's financial statements, and the CFTC states that it did not ''intend that the term 'conduit affiliate' would include affiliates of swap dealers.'' *See* CFTC Cross-Border Guidance, 78 FR 45359; *see also id.* at 45318–19 n.258.

In our view, the final rule's definition—including its prerequisite that the conduit affiliate be majority-owned by non-natural U.S. persons appropriately focuses the meaning of the term ''conduit affiliate'' on persons who may engage in security-based swap activity on behalf of U.S. affiliates in connection with dealing activity (and, as discussed below, *see* section 0, *infra,* in connection with other security-based swap activity in the context of the major participant definition).

[326] *See* proposed Exchange Act rule 3a71–3(b)(1)(ii).

[327] In addition, some commenters requested an exclusion for transactions that are executed anonymously and cleared. Those comments—and our incorporation of an exception for certain cleared anonymous transactions—are addressed below. *See* section 0, *infra.*

1. Dealing Transactions of Non-U.S. Persons That Are Subject To Recourse Guarantees by Their U.S. Affiliates

(a) Proposed Approach and Commenters' Views

Under the proposal, a non-U.S. person's transactions involving security-based swaps guaranteed by its U.S. affiliate would have been treated the same as other transactions of non-U.S. persons for purposes of the *de minimis* exception. In other words, the non-U.S. guaranteed affiliate would have counted, against the *de minimis* thresholds, only its dealing transactions involving U.S. persons other than foreign branches, and its dealing transactions otherwise conducted within the United States.[328]

In the Cross-Border Proposing Release, we solicited comment regarding whether the ''U.S. person'' definition should incorporate foreign entities that are guaranteed by their U.S. affiliates.[329] We also expressed the preliminary view that the primary risk related to such guaranteed transactions of non-U.S. persons was the risk posed to the United States via the guarantee from a U.S. person, rather than the dealing activity occurring between two non-U.S. persons outside the United States, and sought to address this risk via the proposed attribution principles in the ''major security-based swap participant'' definition, and we also expressed the view that the use of the major participant definition effectively would address those regulatory concerns.[330]

Two commenters supported an alternative approach to require such guaranteed non-U.S. persons to count all of their dealing transactions against the thresholds. One commenter stated that non-U.S. persons that receive guarantees from U.S. persons should count all of their dealing transactions toward the *de minimis* thresholds, arguing that the failure to do so would be inconsistent with the resulting flow of risk to the United States and that major participant regulation was not the appropriate means of addressing those risks.[331] Another commenter took the position that the proposed approach would provide a loophole whereby U.S. entities trading in security-based swaps could avoid regulation under the Dodd-Frank Act.[332] Both commenters further suggested that affiliates of U.S. persons be presumed to be beneficiaries of guarantees,[333] with the presumption potentially subject to rebuttal if there is notice that no guarantee would be provided.[334]

One comment letter did not explicitly address this issue, but did support the Commission's proposed approach not to require non-U.S. persons to aggregate the dealing transactions of their U.S.-guaranteed affiliates against the *de minimis* thresholds, stating that this would pose too tenuous a nexus with the U.S. to justify registration.[335]

(b) Final Rule

Under the final rule, a non-U.S. person (other than a conduit affiliate, as discussed above) must count, against the *de minimis* thresholds, any security-based swap transaction connected with its dealing activity for which, in connection with that particular security-based swap, the counterparty to the security-based swap has rights of recourse against a U.S. person that is controlling, controlled by, or under common control with the non-U.S. person.[336] For these purposes, the counterparty would be deemed to have a right of recourse against a U.S. affiliate of the non-U.S. person if the counterparty has a conditional or unconditional legally enforceable right, in whole or in part, to receive payments from, or otherwise collect from, the U.S. affiliate in connection with the non-U.S. person's obligations under the security-based swap.

We understand that such rights may arise in a variety of contexts. For example, a counterparty would have such a right of recourse against the U.S. person if the applicable arrangement provides the counterparty the legally enforceable right to demand payment from the U.S. person in connection with the security-based swap, without conditioning that right upon the non-U.S. person's non-performance or requiring that the counterparty first make a demand on the non-U.S. person. A counterparty also would have such a right of recourse if the counterparty itself could exercise legally enforceable rights of collection against the U.S. person in connection with the security-based swap, even when such rights are conditioned upon the non-U.S. person's insolvency or failure to meet its obligations under the security-based swap, and/or are conditioned upon the counterparty first being required to take legal action against the non-U.S. person to enforce its rights of collection.

The terms of the guarantee need not necessarily be included within the security-based swap documentation or even otherwise reduced to writing (so long as legally enforceable rights are created under the laws of the relevant jurisdiction); for instance, such rights of recourse would arise when the counterparty, as a matter of law in the relevant jurisdiction, would have rights to payment and/or collection that may arise in connection with the non-U.S. person's obligations under the security-based swap that are enforceable.[337] We would view the transactions of a non-U.S. person as subject to a recourse guarantee if at least one U.S. person (either individually or jointly and severally with others) bears unlimited responsibility for the non-U.S. person's obligations, including the non-U.S. person's obligations to security-based

[328] *See* proposed Exchange Act rule 3a71–3(b)(1)(ii).

[329] *See* Cross-Border Proposing Release, 78 FR 30998.

[330] *See id.* at 31006. As part of the proposal, we also expressed the preliminary view that dealer regulation of such persons would not materially increase the programmatic benefits of the dealer registration requirement, and that such an approach would impose programmatic costs without a corresponding increase in programmatic benefits to the U.S. security-based swap market. *See id.* at 31146–47. For the reasons discussed below, however, we have concluded that it is appropriate to require non-U.S. guaranteed affiliates of U.S. persons to count, against the *de minimis* thresholds, their dealing transactions that are subject to a right of recourse against a U.S. person. *See* 0 (discussing the final rule's changes to the preliminary view).

[331] *See* BM Letter at 17–18.

[332] *See* AFR Letter I at 7–8, 14.

[333] *See id.* at 14 (''In cases where a guarantee is implicit, the use of a rebuttable presumption of a guarantee will put the burden on the foreign affiliate in question to demonstrate to regulators that it is not guaranteed.''); BM Letter at 14 (suggesting in part that support should be presumed if a foreign affiliate incorporates a ''de facto guarantor's name in its own'').

[334] *See* AFR Letter I at 7 (''This presumption could be rebutted by showing clear evidence that counterparties were informed of the absence of a guarantee.''); BM Letter at 14–15 (suggesting that presumptions of support might be rebutted by explicit statements within trade documentation accompanied by explicit counterparty waivers, and discussing the potential additional use of associated public filing requirements and of possible ''ring-fence'' systems for determining which affiliates should be considered U.S persons).

[335] *See* SIFMA/FIA/FSR Letter at A–17.

[336] *See* Exchange Act rule 3a71–3(b)(1)(iii)(B). Consistent with the rule generally requiring a person to consider its affiliates' dealing activities for purposes of the *de minimis* exception (Exchange Act rule 3a71–2(a)(1)), the Commission interprets control to mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract or otherwise. *See* Intermediary Definitions Adopting Release, 77 FR 30631 n.437.

[337] For purposes of the dealer *de minimis* exception, rights of recourse would not be present if legally enforceable rights were to arise by operation of law following the transaction, such as due to later actions that evidence the disregard of corporate form by a party to the transaction and its affiliate. Rights of recourse, in contrast, would encompass rights existing at the time of the transaction but conditioned upon the non-U.S. person's insolvency or failure to meet its obligations under the security-based swap or conditioned upon the counterparty first being required to take legal action against the non-U.S. person to enforce its right of collection.

swap counterparties. Such arrangements may include those associated with foreign unlimited companies or unlimited liability companies with at least one U.S.-person member or shareholder, general partnerships with at least one U.S.-person general partner, or entities formed under similar arrangements such that at least one U.S. persons bears unlimited responsibility for the non-U.S. person's liabilities. In our view, the nature of the legal arrangement between the U.S. person and the non-U.S. person—which makes the U.S. person responsible for the obligations of the non-U.S. person—is appropriately characterized as a recourse guarantee, absent countervailing factors. More generally, a recourse guarantee is present if, in connection with the security-based swap, the counterparty itself has a legally enforceable right to payment or collection from the U.S. person, regardless of the form of the arrangement that provides such a legally enforceable right to payment or collection.

Accordingly, the final rule clarifies that for these purposes a counterparty would have rights of recourse against the U.S. person ''if the counterparty has a conditional or unconditional legally enforceable right, in whole or in part, to receive payments from, or otherwise collect from, the U.S. person in connection with the security-based swap.'' [338]

In revising the proposal, we have been influenced by commenter concerns that the proposed approach could allow non-U.S. persons to conduct a dealing business involving security-based swaps that are guaranteed by a U.S. affiliate without being regulated as a dealer, even though the guarantee exposes the U.S. person guarantor to risk in connection with the dealing activity.[339]

This final rule also reflects our conclusion that a non-U.S. person—to the extent it engages in dealing activity involving security-based swaps subject to a recourse guarantee by its U.S. affiliate—engages in dealing activity that occurs, at least in part, within the United States. As discussed above, the economic reality is that by virtue of the guarantee the non-U.S. person effectively acts together with its U.S. affiliate to engage in the dealing activity that results in the transactions, and the non-U.S. person's dealing activity cannot reasonably be isolated from the U.S. person's activity in providing the guarantee. The U.S. person guarantor together with the non-U.S. person whose dealing activity it guarantees jointly may seek to profit by providing liquidity and otherwise engaging in dealing activity in security-based swaps, and it is the U.S. guarantor's financial resources that enable the guarantor to help its affiliate provide liquidity and otherwise engage in dealing activity. It is reasonable to assume that the counterparties of the non-U.S. person whose dealing activity is guaranteed look to both the non-U.S. person and the U.S. guarantor for performance on the security-based swap. Moreover, the U.S. guarantor bears risks arising from any security-based swap between the non-U.S. person whose dealing activity it guarantees and that affiliate's counterparties, wherever located.

This approach is consistent with the purposes of Title VII. The exposure of the U.S. guarantor creates risk to U.S. persons and potentially to the U.S. financial system via the guarantor to a comparable degree as if that U.S. person had directly entered into the transactions that constituted dealing activity by the affiliate. In many cases the counterparty to the non-U.S. person whose dealing activity is guaranteed may not enter into the transaction with that non-U.S. person, or may not do so on the same terms, absent the guarantee. The U.S. guarantor usually undertakes obligations with respect to the security-based swap regardless of whether that non-U.S. person ultimately defaults in connection with the security-based swap.[340]

In requiring non-U.S. persons whose dealing involves security-based swaps that are guaranteed by a U.S. person to apply those dealing transactions against the *de minimis* thresholds, the final rule further reflects the fact that the economic reality of an offshore dealing business using such non-U.S. persons may be similar or identical to an offshore dealing business carried out through a foreign branch. In both cases the risk of the dealing activity has directly been placed into the United States, and non-U.S. counterparties generally may be expected to look to a U.S. person's creditworthiness in deciding whether to enter into the transaction with the guarantor's non-U.S. affiliate or the foreign branch (and on what terms). The final rule thus should help apply dealer regulation in similar ways to differing organizational structures that serve similar economic purposes, and help avoid disparities in applying dealer regulation to differing arrangements that pose similar risks to the United States.[341]

We believe, moreover, that this final rule is necessary or appropriate as a prophylactic measure to help prevent the evasion of the provisions of the Exchange Act that were added by the Dodd-Frank Act, and thus help ensure that the relevant purposes of the Dodd-Frank Act are not undermined. Without this rule, U.S. persons may have a strong incentive to evade dealer regulation under Title VII simply by conducting their dealing activity via a guaranteed affiliate, while the economic reality of transactions arising from that activity—including the risks these transactions introduce to the U.S. market—would be no different in most respects than transactions directly entered into by U.S. persons. In other words, for example, if a U.S. entity engaged in security-based swap dealing wanted to either avoid registration or otherwise have its security-based swap transactions with foreign counterparties be outside the various Title VII requirements with respect to those transactions, it could establish an overseas affiliate and simply extend a

[338] *See* Exchange Act rule 3a71–3(b)(1)(B). This approach of looking to the presence of rights of recourse to identify guarantees is consistent with our prior views in connection with Title VII implementation. *See generally* Intermediary Definitions Adopting Release, 77 FR 30689 (stating that in connection with the application of the major participant definition, ''positions in general would be attributed to a parent, other affiliate or guarantor for purposes of the major participant analysis to the extent that the counterparties to those positions would have recourse to that other entity in connection with the position''); Cross-Border Proposing Release, 78 FR 30977 (noting that a guarantee would typically give the counterparties to a U.S. non-bank dealer direct recourse to a holding company, as though the guarantor had entered into the transactions directly).

[339] *See* BM Letter at 12, 17–18 (stating that the ''proposed exemption has the potential to create a large loophole for foreign market participants, while leaving the risk with the American taxpayer,'' also stating that ''*de facto* guaranteed affiliates'' should be classified as U.S. persons ''under the SEC's territorial or anti-evasion authority''); AFR Letter I at 5 (suggesting that the proposed treatment of U.S.-guaranteed affiliates, as well as certain other aspects of the proposal, could result in regulatory arbitrage).

[340] We understand that, in practice, a guarantor's obligation to a derivatives counterparty of a person whose security-based swap activity is guaranteed may be based on the same terms as that of the guaranteed person, and that the guarantor's obligation to make payments under the contract may not be contingent upon the guaranteed person's default. Moreover, we understand that margin payments under a contract at times may be made directly by a U.S. guarantor to the counterparty of the guaranteed person, particularly when the corporate group uses a consolidated back office located within a parent guarantor, or when the derivative is denominated in U.S. dollars. We further understand that a counterparty may, for risk management purposes, use a single credit limit for all transactions guaranteed by a parent, regardless of which particular affiliate may be used for booking the transaction with that counterparty.

[341] For the above reasons, we conclude that this final rule is not being applied to persons who are ''transact[ing] a business in security-based swaps without the jurisdiction of the United States,'' within the meaning of Exchange Act section 30(c). *See* section 0, *supra.*

payment guarantee. The purpose for doing so would be to evade the requirements of Title VII and the incentives to do so could be high, making it necessary and appropriate to invoke our Title VII authority, because the economic reality of these transactions would be no different in most respects, including the risks these transactions could introduce to the U.S. market. Arrangements between a U.S. person and a non-U.S. person that, as a matter of law in the relevant jurisdiction, make the U.S. person responsible for the non-U.S. person's liabilities may create similarly strong incentives to restructure business operations to avoid the application of Title VII by providing the economic equivalent of an express guarantee through an arrangement that under relevant law provides the non-U.S. person counterparty with direct recourse against the U.S. person. For these reasons, we believe that it is necessary and appropriate to adopt this rule pursuant to our anti-evasion authority under Exchange Act section 30(c).[342]

Compared to the proposal, this approach also more fully accounts for differences between the regulatory regimes applicable to security-based swap dealers and major security-based swap participants. The definition of ''major security-based swap participant'' focuses on systemic risk issues, in that it particularly targets persons that maintain ''substantial positions'' that are ''systemically important,'' or that pose ''substantial counterparty exposure that could have serious adverse effects on the financial stability of the United States banking system or financial markets.'' [343] The thresholds associated with the major participant definition reflect that systemic risk focus.[344] The dealer definition, in contrast, is activity-focused, addresses the significance of a person's dealing activity only via the *de minimis* exception, and addresses regulatory interests apart from risk.[345] Accordingly, upon further consideration, we believe that availability of major participant regulation does not mitigate the above considerations regarding risk and regulatory treatment of similar business models, and those considerations are better addressed by counting dealing activities guaranteed by U.S. affiliates against the *de minimis* thresholds of the non-U.S. persons whose transactions are subject to the guarantees.[346]

In adopting these provisions, we acknowledge that the final rule does not go as far as some commenters have requested, in that it does not require a non-U.S. person to count its dealing transactions involving security-based swaps that do not grant its counterparty a recourse guarantee against the U.S. affiliate of that non-U.S. person, even if the U.S. affiliate is subject to a recourse guarantee with respect to other security-based swaps of the same non-U.S. person. The final rule also does not incorporate the suggestion from certain commenters that we should treat U.S. entities and their affiliates as equivalent for purposes of the cross-border implementation of Title VII.[347] The final rule further does not incorporate the suggestion that affiliates of a U.S. person should be presumed to be recipients of *de facto* guarantees, which could be rebutted via disclosure.[348]

Those commenters raise important concerns regarding the possibility that, even absent explicit financial support arrangements, U.S. entities that are affiliated with non-U.S. persons for reputational reasons may determine that they must support their non-U.S. affiliates at times of crisis. In those commenters' view, such considerations impose risks upon U.S. markets even absent explicit legal obligations. As a result, the commenters suggest that foreign affiliates of U.S. entities should have to count all their dealing transactions against the *de minimis* thresholds, or that such foreign affiliates should be deemed to be ''U.S. persons'' for purposes of Title VII.[349]

Our modification requiring these non-U.S. persons to count certain of their dealing transactions with non-U.S. persons against the *de minimis* thresholds partially addresses those commenter concerns.[350] We also recognize that there may be circumstances in which a U.S. person provides its foreign affiliate with non-recourse support that is not specifically linked to particular instruments or to derivatives activities generally. Our final rule, however, targets recourse-based arrangements whereby the counterparties to the non-U.S. affiliate would be particularly likely to look to the U.S. person for satisfaction of some or all of the obligations arising under the security-based swap. On balance, we believe that an approach that focuses on the presence of recourse arrangements appropriately addresses dealing activities that have a particularly direct effect on the U.S. market, as well as the ability of a U.S. person to use such guarantees to conduct a security-based

[342] Exchange Act section 30(c) particularly provides that ''[n]o provision of [Title VII] . . . shall apply to any person insofar as such person transacts a business in security-based swaps without the jurisdiction of the United States,'' unless that business is transacted in contravention of rules prescribed to prevent evasion of Title VII.

[343] *See* Exchange Act section 3(a)(67).

[344] For example, for cleared security-based CDS, a person would have to write $200 billion notional of CDS protection to meet the relevant $2 billion ''potential future exposure'' threshold that is used as part of the major participant analysis. *See* Intermediary Definitions Adopting Release, 77 FR 30671 n.914.

[345] *See id.* at 30629 (''The statutory requirements that apply to swap dealers and security-based swap dealers include requirements aimed at the protection of customers and counterparties, . . . as well as requirements aimed at helping to promote effective operations and transparency of the swap and security-based swap markets.''; footnotes omitted).

[346] This is consistent with the view of one commenter that highlighted the differences in purpose between dealer and major participant regulation. *See* BM Letter.

[347] *See id.* at 14, 17–18 (''Thus, regardless of whether an affiliate is 'guaranteed' by a U.S. person, that affiliate may be effectively guaranteed, having the same connection with and posing the same risks to the United States.''). *See also* AFR Letter I at 7–8.

[348] *See* notes 333 and 334, *supra* and accompanying text. We note that any U.S. person that is subject to the reporting requirements of section 13(a) or section 15(d) of the Exchange Act, 15 U.S.C. 78m(a) or 15 U.S.C. 78o(d) respectively, regardless of whether that person provides a recourse guarantee relating to its non-U.S. affiliates' obligations, must consider whether there are disclosures that must be made in its periodic reports regarding any of its obligations. These disclosures would include any known trends, events, demands, commitments and uncertainties that are reasonably likely to have a material effect on the financial condition or operating performance of the U.S. person that would be required to be disclosed pursuant to Item 303 of Regulation S–K. As required by Item 303 of Regulation S–K, the disclosures are presented with regard to the registrant (the U.S. person) and its subsidiaries on a consolidated basis. *See* Item 303 of Regulation S–K, 17 CFR 229.303, and *Commission's Guidance Regarding Management's Discussion and Analysis of Financial Condition and Results of Operations,* Securities Act Release No. 8350 (Dec. 19, 2003), 68 FR 75056 (Dec. 29, 2003). *See also* Item 305 of Regulation S–K, 17 CFR 229.305.

[349] *See* AFR Letter I at 7 (stating that ''[b]oth explicit and implicit guarantees of support from the parent institution should be counted,'' with a rebuttable presumption that a subsidiary of a U.S. entity is guaranteed, and that ''[s]hould the SEC not include guaranteed affiliates and subsidiaries in the definition of 'U.S. person', at the very least SBS with such entities should count toward entities *de minimis* calculation''); BM Letter at 12, 17 (stating that guaranteed affiliate should be defined ''to include those affiliates that are de factor guaranteed, even though not explicitly subject to a guarantee agreement,'' and that transactions with non-U.S. persons that receive guarantees from U.S. persons should be included in the *de minimis* calculation).

[350] This final rule regarding the *de minimis* exception does not encompass non-U.S. persons who receive a guarantee from an *unaffiliated* U.S. person. We do not expect that U.S. persons would use guarantees of unaffiliated persons as a substitute for dealing activity via a foreign branch, and we do not believe such arrangements comprise a significant part of dealing activity in the market. Our final rules do, however, generally require such non-affiliate arrangements to be included in the major security-based swap participant threshold calculations. *See* section 0, *infra.*

swap dealing business as an alternative to using a foreign branch.

This is not to say that more general financial support arrangements do not also pose risks to U.S. persons and potentially to the U.S. financial system, including risks posed by the activity of non-U.S. persons to their U.S. parents or affiliates. However, we believe that this focus on recourse guarantees appropriately addresses the most direct risks posed by such guarantee arrangements to U.S. persons and potentially to the U.S. financial system. We also note that Congress has provided additional regulatory tools apart from Title VII to address such risks. Indeed, in enacting the Dodd-Frank Act, Congress provided general tools—not merely tools focusing on derivatives activities—to address the risks associated with U.S.-based financial groups as a whole, including the risks posed by such groups' non-guaranteed foreign affiliates engaged in financial services business. This holistic approach to risks that could flow back to the United States may reflect the fact that financial services activities apart from security-based swaps constitute the great majority of such groups' overall financial activities outside the United States that can produce such risks. The regulatory tools substantially enhanced by the Dodd-Frank Act to better address these cross-border risks posed by financial services activities other than security-based swaps and such tools include globally consolidated capital requirements (including enhanced capital and leverage standards, group-wide single-counterparty credit limits, and capital surcharges for firms with particularly high levels of risk), and globally consolidated liquidity and risk management standards (including stress testing, debt-to-equity limitations, living will requirement, and timely remediation measures). By accounting for risks at the consolidated level, these tools address risks posed by guaranteed and non-guaranteed subsidiaries within U.S.-based financial groups, regardless of whether the subsidiaries are based in the United States or outside the United States.[351] Our focus on recourse guarantees appropriately targets the concerns raised by security-based swap activity that Title VII was intended to address, recognizing that Congress has established other regulatory tools that are specifically intended, and better suited, to address risks to bank holding companies and financial holding companies, arising from the financial services activities of a foreign affiliate of those holding companies where the foreign affiliate does not engage in security-based swap activity in the United States.

Conversely, one commenter implicitly appeared to oppose any requirement that non-U.S. persons count their guaranteed transactions carried out in a dealing capacity with non-U.S. person counterparties against their *de minimis* thresholds.[352] For the reasons discussed above, however, we believe that the targeted counting required by the final rule is appropriate to reflect activity involving security-based swaps that occurs in the United States and presents risks to U.S. persons and potentially to the U.S. financial system.

Finally, in adopting these provisions we recognize that the CFTC Cross-Border Guidance appears to broadly opine that non-U.S. persons who receive any express guarantee from a U.S. affiliate should, as a general matter, count all of their dealing activity against the *de minimis* thresholds, regardless of whether a counterparty has recourse against the U.S. person in connection with the swap.[353] Our final rule is more targeted than the CFTC approach, in that our final rule requires a non-U.S. guaranteed affiliate to count only those dealing transactions for which the counterparty to the security-based swap has recourse against a U.S. person that is affiliated with the non-U.S. person. This reflects our decision to focus the application of the *de minimis* exception on recourse arrangements involving security-based swaps, while recognizing that some non-recourse arrangements could influence a U.S. person to provide financial support to non-U.S. persons and thereby present risk to the U.S. person and potential risk to the U.S. financial system.

2. Dealing Transactions of Non-U.S. Persons Involving U.S. and Other Counterparties

(a) Proposed Approach and Commenters' Views

Under the proposal, non-U.S. persons also would be required to count their dealing transactions entered into with a U.S. person, other than a foreign branch.[354] As discussed below, this proposed exclusion for transactions in which the counterparty is a foreign branch reflected concerns regarding U.S. banks being limited in their access to foreign counterparties when conducting dealing activity through their foreign branches.

The proposal solicited comment regarding whether non-U.S. persons should be required to count, towards their *de minimis* thresholds, transactions with U.S. persons or with foreign branches of U.S. banks. It also solicited comment regarding whether non-U.S. persons should be required to count the dealing transactions they enter into with registered security-based

[351] *See, e.g.,* Public Law 111–203, sections 165–166 of the Dodd Frank Act, 124 Stat. 1376, 1423–32 (2010). In the Cross-Border Proposing Release, in connection with our preliminary view that the risks posed by guarantees could be adequately addressed via the regulation of major security-based swap participants, we referenced the Bank Holding Company Act of 1956, and the provisions of Title I of the Dodd-Frank Act regarding the regulation of certain nonbank financial companies and bank holding companies that pose a threat to the financial stability of the United States. *See* Cross-Border Proposing Release, 78 FR 31006 n.360.

For the reasons discussed above, however, we have concluded that the presence of those particular regulatory safeguards do not warrant the conclusion that non-U.S. guaranteed affiliates of U.S. persons should not have to count, against the *de minimis* thresholds, their dealing activity involving other non-U.S. persons when the transaction is subject to a right of recourse against the U.S. affiliate. Although those provisions encompass regulatory safeguards that can be expected to address the risks associated with U.S.-based financial groups, upon further consideration we conclude that it is appropriate for the application of the *de minimis* test to directly account for those specific security-based swap transactions that are subject to recourse guarantees, as opposed to more generalized risks arising from the range of activities conducted by non-guaranteed foreign affiliates, given the U.S. person's participation in the security-based swap transaction through the guarantee.

[352] *See* note 335, *supra,* and accompanying text.

[353] *See* CFTC Cross-Border Guidance, 78 FR 45319. For those purposes, the CFTC Cross-Border Guidance interprets guarantees generally to include ''not only traditional guarantees of payment or performance of the related swaps, but also other formal arrangements that, in view of all the facts and circumstances, support the non-U.S. person's ability to pay or perform its swap obligations with respect to its swaps,'' and also refers to ''keepwells and liquidity puts, certain types of indemnity agreements, master trust agreements, liability or loss transfer or sharing agreements, and any other explicit financial support arrangements'' as being types of guarantees notwithstanding that that they ''may provide for different third-party rights and/or address different risks than traditional guarantees.'' *See id.* at 45319–20.

[354] *See* proposed Exchange Act rule 3a71–3(b)(1)(ii). For those purposes, ''foreign branch'' was defined to mean any branch of a U.S. bank if: The branch is located outside the United States; the branch operates for valid business reasons; And the branch is engaged in the business of banking and is subject to substantive banking regulation in the jurisdiction where it is located. *See* proposed Exchange Act rule 3a71–3(a)(1). The proposal also included a definition of ''transaction conducted through a foreign branch'' that encompassed transactions solicited, negotiated, or executed through a foreign branch where the foreign branch is the counterparty to the transaction, and the transaction was not solicited, negotiated, or executed by a person within the United States. *See* proposed Exchange Act rule 3a71–3(a)(4).

Under the CFTC's cross-border guidance, as a general matter non-U.S. persons may exclude their dealing activities involving foreign branches of U.S. persons only if the U.S. person is registered with the CFTC as a swap dealer. *See* CFTC Cross-Border Guidance, 78 FR 45319.

swap dealers, and regarding whether non-U.S. persons should be able to conduct dealing transactions within the United States without registering if their transactions are with a registered security-based swap dealer.[355]

Two commenters took the position that non-U.S. persons should have to count their transactions with foreign branches of U.S. banks against the *de minimis* thresholds, noting that those foreign branches themselves fall within the ''U.S. person'' definition,[356] and stating that excluding those transactions would serve as a loophole from regulation.[357] In contrast, one commenter stated that such transactions should be excluded from the *de minimis* analysis even if U.S. personnel are involved in soliciting, negotiating, executing or booking the transaction.[358]

Commenters also addressed the application of the exception to non-U.S. persons' dealing activities involving counterparties that are guaranteed affiliates of non-U.S. persons. The proposal did not require such transactions to be counted. One commenter expressed support for the fact that our proposal, unlike the CFTC's guidance, did not require non-U.S. persons to count certain transactions with non-U.S. counterparties that are guaranteed by U.S. persons.[359] On the other hand, one commenter stated that non-U.S. persons should count against the thresholds security-based swaps entered into with guaranteed affiliates and subsidiaries of U.S. persons if those affiliates and subsidiaries are not included within the ''U.S. person'' definition.[360] Also, as noted above, that commenter and one other commenter generally suggested that the presence of explicit or implicit guarantees of foreign affiliates should trigger application of the Exchange Act.[361]

(b) Final Rule

The final rule has been modified from the proposal to require non-U.S. persons (other than conduit affiliates [362]) to count, against the *de minimis* thresholds, their dealing transactions with U.S. persons other than certain transactions with the foreign branches of registered security-based swap dealers.[363] The proposal would have excluded all of the non-U.S. person's transactions with a foreign branch (other than ''transactions conducted within the United States'') regardless of the branch's registration status.

The requirement that such non-U.S. persons must count their dealing transactions with U.S. persons against the *de minimis* thresholds reflects the fact that dealing activity involving counterparties who are U.S. persons necessarily involves the performance, at least in part, of dealing activity within the United States. As discussed above, a non-U.S. person engaged in dealing activity with U.S. persons in an amount sufficient to implicate the *de minimis* thresholds reasonably can be concluded to constitute dealing activity within the United States by virtue of indicating that the non-U.S. person is commonly known in the trade as a security-based swap dealer within the United States, and that the non-U.S. person is regularly entering into security-based swaps as an ordinary course of business within the United States.[364] Similarly, that non-U.S. person seeks to profit by, among other things, providing liquidity within the United States and engaging in market making in security-based swaps within the United States, and its decision to engage in dealing activity with U.S. persons affects the liquidity of the security-based swap market within the United States. U.S. persons incur risks arising from this dealing activity, which in turn potentially creates risk to the U.S. financial system more generally. Transactions with U.S. persons further raise market transparency and counterparty protection concerns that Title VII is intended to address. Accordingly, the dealing activity of such a non-U.S. person is best characterized as occurring, at least in part, within the United States to the extent that the dealing activity involves a U.S. person.[365] No commenters to the Cross-

[355] *See* Cross-Border Proposing Release, 78 FR 30995.

[356] *See* AFR Letter I at 6 (supporting the premise that offices and branches of U.S. persons are ''an integral part of the U.S. person'' but arguing that it is inconsistent to treat such foreign branches different from their U.S. parent institutions); BM Letter at 18 (noting that the foreign branch of a U.S. person should be treated no differently than the U.S. person).

[357] *See* AFR Letter I at 6–7 (''With these incentives [related to transactions with foreign branches, offices and guaranteed subsidiaries and affiliates of U.S. persons], it is unlikely that any foreign entities will choose to trade within the United States directly, and quite likely that U.S. financial institutions will simply advise their clients to trade with their foreign branches if they want to avoid Dodd-Frank''); BM Letter at 3, 18–19 (''This exception is no more than a loophole based upon a scare tactic, which will cause U.S. firms to operate their SBS business through offshore branches.'').

[358] *See* SIFMA/FIA/FSR Letter at A–15 to A–16 (supporting the proposed approach and urging the Commission to extend the exclusion to transactions between non-U.S. persons and foreign branches even if they are conducted within the United States).

[359] *See* SIFMA/FIA/FSR Letter at A–17. Under the CFTC's guidance, non-U.S. persons would generally count certain dealing transactions involving counterparties that are guaranteed affiliates of U.S. persons, subject to exceptions. *See* CFTC Cross-Border Guidance, 78 FR 45319.

[360] *See* AFR Letter I at 7–8 and note 28 (stating that the proposal ''incentivizes U.S. institutions to execute SBS indirectly by using foreign affiliates, subsidiaries, branches and offices,'' and thus lead U.S. institutions to incur risks ''by trading with foreign entities without the full regulatory protections of Dodd-Frank''; also acknowledging that U.S. guarantors would count those trades for determining whether the guarantor is a major participant, but adding that major participants are subject to fewer requirements than dealers ''so this is not a satisfactory method for addressing the risks presented by U.S. parent institutions guaranteeing the swaps of foreign subsidiaries and affiliates'').

[361] *See* note 333, *supra.*

[362] The separate counting requirements applicable to conduit affiliates are addressed above. *See* section 0, *supra.*

[363] *See* Exchange Act rule 3a71–3(b)(1)(iii)(A). ''Foreign branch'' is defined in Exchange Act rule 3a71–3(a)(2).

[364] *See* section 0, *supra.* We also note that the Commission's traditional approach toward the registration of securities brokers and dealers under the Exchange Act generally requires registration of foreign brokers or dealers that, from outside the United States, induce or attempt to induce securities transactions by persons within the United States. *See* Cross-Border Proposing Release, 78 FR 30990 n.213 and accompanying text.

In this regard we recognize that Exchange Act rule 15a–6, which provides an exemption for the activities of certain foreign broker-dealers, includes an exemption for transactions in securities with or for persons ''that have not been solicited by the foreign broker or dealer.'' Exchange Act rule 15a–6(a)(1). In adopting this provision, the Commission stated that it ''does not believe, as a policy matter, that registration is necessary if U.S. investors have sought out foreign broker-dealers outside the United States and initiated transactions in foreign securities markets entirely of their own accord.'' *See* 54 FR 30013, 30017 (Jul. 18, 1989). The Commission further stated that a narrow construction of ''solicitation'' would be inconsistent with the Exchange Act. *See id.* at 30018. We do not believe that a similar unsolicited exception—which reflects a policy decision rather than a matter of statutory scope—would be appropriate in this context, particularly given that situations in which non-U.S. persons engage in dealing activity with U.S. persons in an amount that is significant enough to implicate the *de minimis* thresholds would not appear consistent with a policy allowing non-U.S. persons to accommodate transactions which U.S. persons initiate ''entirely of their own accord.'' Moreover, we note that the definition of ''security-based swap dealer'' includes persons that hold themselves out as security-based swap dealers or that are commonly known in the trade as security-based swap dealers. *See* Exchange Act section 3(a)(71)(A). Such persons may not actively solicit transactions from particular customers, and nothing in the statutory definition suggests that active solicitation on the part of such persons is required for them to fall within the definition of ''security-based swap dealer.''

[365] For the above reasons, we conclude that this final rule is not being applied to persons who are ''transact[ing] a business in security-based swaps without the jurisdiction of the United States,'' within the meaning of Exchange Act section 30(c). *See* section 0, *supra.* We also believe, moreover, that this final rule is necessary or appropriate as a prophylactic measure to help prevent the evasion of the provisions of the Exchange Act that were added by the Dodd-Frank Act, and thus help ensure that the relevant purposes of the Dodd-Frank Act are not undermined. Without this rule, market participants could engage in dealing activity with persons within the U.S. market, causing the U.S.

Border Proposing Release expressed opposition to generally requiring non-U.S. persons to count their dealing transactions with U.S. persons (other than comments regarding transactions with foreign branches, as discussed below).

The final rule permits such non-U.S. persons not to count certain dealing transactions conducted through a foreign branch of a counterparty that is a U.S. bank as part of the *de minimis* analysis. For this exclusion to be effective, persons located within the United States cannot be involved in arranging, negotiating, or executing the transaction. Moreover—and in contrast to the proposal—the counterparty bank must be registered as a security-based swap dealer,[366] unless the transaction occurs prior to 60 days following the effective date of final rules providing for the registration of security-based swap dealers.[367] Registration of the counterparty U.S. bank would not be required for the exclusion to be effective before then, given that the non-U.S. person would not be able to know with certainty whether the U.S. bank in the future would register with the Commission as a security-based swap dealer.[368]

As we noted in the proposal, although a foreign branch is part of a ''U.S. person,'' and dealing transactions with foreign branches pose risk to the U.S. financial system, requiring non-U.S. persons to count transactions with foreign branches ''could limit access of U.S. banks to non-U.S. counterparties when they conduct their foreign security-based swap dealing activity through foreign branches because non-U.S. persons may not be willing to enter into transactions with them in order to avoid being required to register as a security-based swap dealer.'' [369] We continue to believe that generally permitting a non-U.S. person not to count those types of transactions that do not involve U.S. personnel against the thresholds thus should help avoid the disparate treatment of foreign branches that engage in security-based swap dealing activity and that seek to access offshore dealing services, compared to other persons that engage in security-based swap dealing activities outside the U.S.

The final rule differs from the proposal in that the final rule permits a non-U.S. person not to count its transactions with a foreign branch of a U.S. person against the *de minimis* thresholds only when the foreign branch is part of a registered security-based swap dealer (or for a temporary period of time prior to 60 days prior to the effectiveness of the dealer registration requirements), rather than transactions with any foreign branch. This tailoring of the proposal seeks to balance the above concerns that the proposed approach would result in disparate treatment of foreign branches and U.S. persons having inadequate access to liquidity located outside the United States, against the purposes of dealer regulation under Title VII. This consideration of competing interests results in an approach that will help to focus the application of the *de minimis* exception in such a way as to ensure that a registered security-based swap dealer is involved in the transaction, and thus that relevant Title VII provisions applicable to dealers (such as margin requirements) will apply to the transaction.[370] This manner of focusing the exclusion also is consistent with the approach taken by the CFTC in its cross-border guidance.[371]

In adopting an exclusion for certain transactions with foreign branches, we recognize that some commenters opposed having any such exclusion for a non-U.S. person's transactions with a foreign branch, stating that the breadth of the proposed exclusion would facilitate the avoidance of the Dodd-Frank Act even while U.S. entities incur the risks of transactions with foreign entities, and that the exclusion would be based on a ''scare tactic.'' [372] We nonetheless believe that this approach is justified by concerns about disparate treatment, along with associated liquidity concerns.[373] We also note that the modification of the proposal—such that transactions with foreign branches are excluded only if the foreign branch is part of a registered dealer—should help address concerns that the exclusion would promote evasion of the dealer requirements.[374] Also, as discussed below, a transaction would not constitute a ''transaction conducted through a foreign branch'' if personnel located in the United States were responsible for arranging, negotiating or executing the transaction.

We also recognize that commenters took the view that such an exclusion is inconsistent with the fact that foreign branches fall within the ''U.S. person'' definition.[375] In our view, the exclusion does not disregard the U.S.-person status of foreign branches. Instead, as discussed above, we believe that this exclusion is appropriate to address market concerns regarding disparate treatment of the dealing activity of foreign branches, notwithstanding that U.S.-person status.

We also have considered the view of one commenter that all of a non-U.S. person's transactions with foreign branches should be excluded from the

person counterparties to incur associated risks simply by using non-U.S. persons to engage in those transactions with U.S. counterparties.

[366] *See* Exchange Act rule 3a71–3(b)(1)(iii)(A)(1).

As addressed in the Cross-Border Proposing Release, the ability of U.S. banks to conduct security-based swap activity potentially will be limited by section 716 of the Dodd-Frank Act, which in part prohibits certain federal assistance to security-based swap dealers, and by section 619 of the Dodd-Frank Act, which in part prohibits banking entities from engaging in proprietary trading. *See* Cross-Border Proposing Release, 78 FR 31002 n.326. The prohibitions of section 619 do not extend to certain market making activities. *See* Dodd-Frank Act section 619(d)(1)(B). In December of 2013, the Commission, together with the Office of the Comptroller of Currency, the Federal Reserve Board, the Federal Deposit Insurance Corporation, and the CFTC, issued final rules implementing section 619 of the Dodd-Frank Act. *See* 79 FR 5536 (Jan. 31, 2014). In addition, based on our understanding of changes in the way major U.S. dealers engage with non-U.S. counterparties in the single-name CDS market following the issuance of the CFTC Cross-Border Guidance, we believe that few, if any, U.S. persons currently may participate in the single-name CDS market through their foreign branches.

[367] *See* Exchange Act rule 3a71–3(b)(1)(iii)(A)(2).

[368] In other words, this provision will help to avoid requiring non-U.S. persons to speculate whether their counterparties would register, and to face the consequences of their speculation being wrong.

[369] Cross-Border Proposing Release, 78 FR 31003.

[370] We note that the mere involvement of a registered dealer in a transaction by itself would not implicate the above concerns regarding disparate treatment and liquidity that balance against the purposes of dealer regulation when it is not acting through a foreign branch, and thus by itself would not be sufficient to justify a more general exception to these counting principles (*e.g.,* an exception for a non-U.S. person's dealing transactions involving any U.S. person that is registered as a security-based swap dealer).

[371] *See* CFTC Cross-Border Guidance, 78 FR 45319.

[372] *See* note 357, *supra.*

[373] In this regard we recognize that dealing activity involving foreign branches of U.S. banks does pose risks to the U.S. bank of which the foreign branch is a part and potentially to the U.S. financial system. Such risks are mitigated in part, however, in that foreign branches of banks that are registered security-based swap dealers will be subject to a number of Title VII regulatory requirements, including capital and margin requirements, that are designed to protect the system against those risks. Furthermore, this limitation is designed to help preserve liquidity throughout the system, given that absent the exclusion non-U.S. dealers may have reasons to favor non-U.S. counterparties to avoid the regulatory requirements of Title VII, which could threaten to fragment liquidity across geographical or jurisdictional lines.

[374] This modification—in conjunction with the fact that dealing transactions conducted through the foreign branch of a U.S. bank will have to be counted against the bank's *de minimis* thresholds regardless of counterparty (as was proposed)—will limit the possibility that U.S. banks could engage in a significant amount of security-based swap business through their foreign branches without either the banks or their non-U.S. counterparties being subject to dealer regulation.

[375] *See* note 356, *supra.*

analysis, even if U.S. personnel are involved in soliciting, negotiating, executing or booking the transaction.[376] As discussed elsewhere, we conclude that a non-U.S. person's dealing transactions within the United States should be counted against the thresholds.[377] More generally, for the reasons addressed above we conclude that the proposed exclusion related to a non-U.S. person's transactions with a foreign branch should be narrowed—not widened.

The final rule retains the proposed definition of ''foreign branch,'' which encompasses any branch of a U.S. bank that is located outside the United States, operates for valid business reasons, and is engaged in the business of banking and is subject to substantive banking regulation in the jurisdiction where it is located.[378] As discussed in the Cross-Border Proposing Release, we believe these factors appropriately focus on the location of the branch, the nature of its business and its regulation in a foreign jurisdiction.[379]

The final rule modifies the proposed definition of ''transaction conducted through a foreign branch'' to provide that the definition addresses transactions that are arranged, negotiated, and executed by a U.S. person through a foreign branch if both: (a) The foreign branch is the counterparty to the transaction; and (b) the security-based swap transaction is arranged, negotiated, and executed on behalf of the foreign branch solely by persons located outside the United States.[380] We believe that this definition identifies the functions associated with foreign branch activity in a manner that appropriately focuses the exclusion for non-U.S. person's transactions toward situations in which the branch performs the core dealing functions outside the United States.[381]

Similar to the proposal, the final definition of ''transaction conducted through a foreign branch'' also states that a person need not consider its counterparty's activities in connection with the transaction—*i.e.,* where its counterparty's personnel arranged, negotiated and executed the transaction—if the person received a representation from the counterparty that the transaction is arranged, negotiated, and executed on behalf of the branch solely by persons located outside the United States, unless the person knows or has reason to know that the representation is not accurate. For these purposes a person would have reason to know the representation is not accurate if a reasonable person should know, under all of the facts of which the person is aware, that it is not accurate.[382] This is intended to help address operational difficulties that a non-U.S. person otherwise could face in investigating the activities of its counterparty to ensure compliance with the rule.

Separately, the final rule, consistent with the proposal, does not require such non-U.S. persons to count, against the *de minimis* thresholds, their dealing transactions with non-U.S. persons whose security-based swap transactions are guaranteed by a U.S. person. We recognize the significance of commenter concerns regarding the risk posed to the United States by such security-based swaps, and regarding the potential use of such guaranteed affiliates to evade the Dodd-Frank Act.[383] We nonetheless believe that such concerns are adequately addressed by the requirement that guaranteed affiliates count their own dealing activity against the *de minimis* thresholds when the counterparty has recourse to a U.S. person. Although there can remain residual risk to U.S. markets associated with the security-based swaps involving such non-U.S. guaranteed affiliates, we do not believe that such risk is significant enough to warrant a requirement that non-U.S. persons count all of their dealing activity involving such non-U.S. guaranteed affiliates against their own *de minimis* thresholds. In this regard we note that such a requirement would necessitate certain non-U.S. persons to incur compliance costs associated with assessing whether their counterparties are guaranteed affiliates.[384] For similar reasons, the final rule does not require such non-U.S. persons to count, against the thresholds, their dealing transactions involving non-U.S. persons that are conduit affiliates.

F. Application of the Exception's Aggregation Principles to Cross-Border Dealing Activity

1. Proposed Approach and Commenters' Views

The Cross-Border Proposing Release also addressed the cross-border

[376] *See* note 358, *supra.*

[377] *See* section 0, *supra.*

[378] *See* Exchange Act rule 3a71–3(a)(2).

[379] *See* Cross-Border Proposing Release, 78 FR 31002. No commenters specifically addressed the proposed definition of ''foreign branch.''

We are adopting this definition as proposed while recognizing that it differs from the CFTC's interpretation of ''foreign branch'' in its cross-border guidance. *See* CFTC Cross-Border Guidance, 78 FR 45329 (interpreting ''foreign branch'' in part by reference to designation by banking regulators, and by reference to the accounting of profits and losses). However, we believe that any foreign branch of a U.S. bank that would generally be considered a foreign branch under the CFTC Cross-Border Guidance also likely would be a foreign branch under our final rule.

[380] *See* Exchange Act rule 3a71–3(a)(3)(i). No commenters specifically addressed the proposed definition.

[381] The proposed definition would have addressed transactions that are ''solicited, negotiated, or executed'' by persons outside the United States. The final rule refers to ''arranged'' in lieu of ''solicited'' to reflect the fact that a person may engage in dealing activity not only through transactions that the person actively solicits, but also through transactions that result from counterparties reaching out to the person. *See generally* Exchange Act section 3(a)(71)(A)(i) (defining ''security-based swap dealer'' in part to encompass any person who ''holds themselves out as a dealer in security-based swaps'').

Under the proposed rule, ''transaction conducted through a foreign branch'' was defined, in part, to exclude any transaction solicited, negotiated, *or* executed by a person within the United States on behalf of the foreign branch. *See* proposed Exchange Act rule 3a71–3(a)(4)(i)(B). Under the final rule, this element of the definition is set forth in the affirmative and provides that the transaction must be arranged, negotiated, *and* executed on behalf of the foreign branch solely by persons located outside the United States. *See* Exchange Act Rule 3a71–3(a)(3)(i)(B). Consistent with the proposed rule, the final definition requires all relevant activity to be performed outside the United States for a transaction to fall within the definition of ''transaction conducted through a foreign branch.''

[382] *See* Exchange Act rule 3a71–3(a)(3)(ii). This representation provision within the final definition also contains certain clarifying changes from the proposal, in part to reflect the reference to ''arranged'' in lieu of ''solicited.'' *See* note 364, *supra.* The final rule has been modified from the proposal to reflect the change in the definition of ''transaction conducted through a foreign branch'' described above. *See* note 382, *supra.* Also, consistent with the analogous representation provisions of the ''U.S. person'' definition, the final rule also changes the proposal to reflect that the non-U.S. person may not rely on the representation if it knows that the representation is not accurate, or has reason to know that the representation is not accurate; for these purposes a person would have reason to know the representation is not accurate if a reasonable person should know, under all of the facts of which the person is aware, that it is not accurate. This ''know or have reason to know'' standard should help ensure that potential security-based swap dealers and major security-based swap participants do not disregard facts that may call into question the validity of the representation. *See* note 302, *supra,* and accompanying text. In addition, applying a single standard of reliance to all representations regarding the status of a person or transaction for purposes of the final rule will reduce the potential complexity of establishing policies and procedures associated with reliance on such representations. *See* section 0, *supra.*

[383] *See* note 360, *supra.*

[384] In taking this position we also recognize that the CFTC takes a different approach in its cross-border guidance, which generally considers it appropriate for such non-U.S. persons to count their dealing transactions with guaranteed affiliate counterparties, subject to certain exceptions. *See* CFTC Cross-Border Guidance, 78 FR 45319, 45324 (stating there generally is no need for non-U.S. persons to count such dealing transactions with a counterparty that is a registered dealer, an affiliate of a registered dealer whose own dealing activities are below the relevant *de minimis* thresholds, or is guaranteed by a U.S. person that is not a financial entity).

implementation of a previously adopted rule requiring a person to count dealing transactions by its affiliates against its own *de minimis* thresholds.[385] Under the proposal, a person engaged in dealing activity would have had to count: (i) Dealing transactions by its U.S. affiliates, including transactions conducted through a foreign branch; and (ii) all dealing transactions of its non-U.S. affiliates where the counterparty is a U.S. person other than a foreign branch, or where the transaction is conducted within the United States.[386]

In the Cross-Border Proposing Release we took the view that the approach would be consistent with the Dodd-Frank Act's statutory focus on the U.S. security-based swap market, in that the dealing of a person's U.S. affiliates would impact the U.S. financial system regardless of the location of the affiliate's counterparty, but that the dealing of a person's non-U.S. affiliates with other non-U.S. persons outside the United States would not impact the U.S. financial system to the same extent. We also took the view that the aggregation approach would minimize the opportunity for a person to evasively engage in large amounts of dealing activity, and that the approach would be in accordance with other aspects of the proposal governing which transactions would be applied against the thresholds.[387]

The proposal separately would have permitted a person not to include, as part of the *de minimis* analysis, transactions by an affiliate that is registered as a security-based swap dealer, so long as the person's dealing activity is ''operationally independent'' of the dealer's activity.[388] For these purposes, the person and its registered dealer affiliate would be considered to be ''operationally independent'' if the two entities maintained separate sales and trading functions, operations (including separate back offices) and risk management.[389]

This aspect of the proposal recognized that any person affiliated with a registered dealer otherwise would have to count the registered affiliate's dealing activity against the person's own *de minimis* thresholds, which likely would require the person to register as a dealer if it engages in any dealing activity. We stated in the Cross-Border Proposing Release that, in our preliminary view, this outcome of preventing all affiliates of a dealer from taking advantage of the *de minimis* exception would not be consistent with the statutory purpose of the exception. We noted, moreover, that this scenario would not appear to raise the anti-evasion concerns at the core of the aggregation provisions, given that it would apply only where a corporate group already included a registered dealer subject to Commission oversight.[390]

A number of commenters opposed the operational independence condition to the proposed exclusion, arguing that it would hinder operational efficiency—including the use of group-wide risk management—without any countervailing benefit,[391] and that the requirement was vague and would impede the growth of different business models.[392] Commenters also pointed out that, in the parallel discussion in the CFTC's cross-border guidance, the CFTC did not interpret its cross-border statute as requiring operational independence.[393] One of these commenters further opposed the use of any aggregation requirement in connection with the *de minimis* exception.[394] One commenter expressed particular concerns regarding the application of aggregation principles in connection with joint venture arrangements involving dealer shareholders.[395] One commenter supported the proposed approach as an anti-evasion safeguard.[396] One commenter suggested we eliminate the ''operationally independent'' requirement but, to prevent evasion of the dealer requirements, prohibit a registered dealer from using an unregistered affiliate as a booking vehicle.[397]

2. Final Rule

The final rule governing aggregation, like the proposal, generally applies the principles that govern the counting of a person's own dealing activity to also determine how the person must count its affiliates' dealing activities for purposes of the *de minimis* exception. Accordingly, the rule has been modified from the proposal to be consistent with changes to the proposed provisions regarding the counting of a person's dealing activity.

Moreover, the final rule modifies the exclusion from having to aggregate the dealing transactions of a person's registered dealer affiliate from the proposal, both to remove the operational independence condition and to address situations in which a person's affiliate has exceeded the *de minimis* thresholds but is in the process of registering as a dealer.

(a) General Provisions Regarding Aggregation of Cross-Border Transactions

The final rule, like the proposal, provides in part that if a person engages in dealing transactions counted against the *de minimis* thresholds, the person also must count all dealing transactions in which any U.S. person controlling, controlled by, or under common control with the person engages, including transactions conducted through a foreign branch.[398] The final rule has been revised from the proposal to further provide that the person should

[385] *See* Exchange Act rule 3a71–2 (requiring that a person count against the thresholds its dealing activity plus that of ''any other entity controlling, controlled by, or under common control with the person'').

[386] *See* proposed Exchange Act rule 3a71–3(b)(2).

[387] *See* Cross-Border Proposing Release, 78 FR 31004.

[388] *See* proposed Exchange Act rule 3a71–4.

[389] *See* Cross-Border Proposing Release, 78 FR 31005.

[390] *See id.*

[391] *See* SIFMA/FIA/FSR Letter at A–13 to A–15 (stating that the operational independence condition is overbroad and unnecessary to achieve the statutory goals in that it ''would have the effect of tying registration requirements to firms' internal risk management strategies or limited efficient leverage of back office functions'' without any regulatory benefit and noting that the requirement would be burdensome for smaller market participants who would need to register solely due to their affiliation with larger entities); IIB Letter at 14–15 (stating that preventing the sharing of group-wide risk management and other resources would have the effect of nullifying the exclusion from the aggregation requirement for affiliates that are registered security-based swap dealers); JSDA Letter at 4–5 (stating that the ''operationally independent'' condition would discourage efficient global management of transactions).

[392] *See* JFMC Letter at 6–7.

[393] *See* SIFMA/FIA/FSR Letter at A–15; JFMC Letter at 6–7; IIB Letter at 14.

[394] *See* SIFMA/FIA/FSR Letter at A–12 to A–13 (stating that the aggregation requirement ''effectively disregards the legal independence of entities'' and that the Commission's existing anti-evasion capabilities are sufficient to guard against abuses; also stating that had the aggregation requirement been proposed as part of the underlying definitional rules SIFMA would have objected to the requirement).

[395] *See* JSDA Letter at 5 (requesting that aggregation not be required of the minority shareholder of a joint venture); *see also* MUFJ Letter at 2–8 (generally opposing aggregation for such joint venture arrangements).

[396] *See* BM Letter at 17 (stating that the condition is a safeguard that addresses evasion concerns while promoting the purpose of the *de minimis* exception).

[397] IIB Letter at 14–15.

[398] *See* Exchange Act rule 3a71–3(b)(2)(i). Consistent with our position in the Intermediary Definitions Adopting Release (*see* 77 FR 30631 n.437) and in the Cross-Border Proposing Release (*see* 78 FR 31004), and with our position regarding the *de minimis* exception when there is a right of recourse against a U.S. person (*see* note 336, *supra*) for purposes of determining whether a person is controlling, controlled by, or under common control with another person (*i.e.,* an affiliate), we interpret control to mean the direct or indirect power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract or otherwise.

count all dealing transactions of its conduit affiliates.[399] Finally, the final rule has been modified from the proposal to provide that the person must count all dealing transactions of non-U.S. person affiliates that: (a) Are entered into with U.S. persons other than the foreign branches of registered dealers; or (b) constitute dealing activity subject to a guarantee giving the non-U.S. person's counterparty rights of recourse against a U.S. person affiliated with the non-U.S. person.[400]

These modifications from the proposal are consistent with similar modifications made to the rules regarding the counting of a person's own transactions for purposes of the *de minimis* exception, and reflect the risk concerns and interests discussed above. The aggregation requirement serves to prevent evasion of the dealer registration requirements by persons that otherwise may seek to avoid dealer registration by simply dividing up dealing activity in excess of the *de minimis* thresholds among multiple affiliates.[401] In keeping with that purpose, in the cross-border context it is appropriate to require a person's affiliates to count the same dealing transactions that the person itself would be required to count for purposes of the *de minimis* exception—unless, as discussed below, the person is registered as a dealer.[402] Because this approach incorporates the direct counting standards discussed above, we believe that the approach implements the *de minimis* exception in a manner that is consistent with the Dodd-Frank Act's focus on the U.S. security-based swap market.[403]

(b) Application To Dealing Activities of Registered Affiliates

In addition, we are adopting an exception which provides that a person need not count against the *de minimis* thresholds the security-based swap transactions of an affiliate that either is: (1) Registered with the Commission as a dealer; or (2) deemed not to be a dealer pursuant to the provisions of Exchange Act rule 3a71–2(b), which addresses persons who have exceeded the *de minimis* thresholds but are in the process of registering.[404]

In part, this final rule has been modified from the proposal by removing the proposed operational independence condition. After considering the views of several commenters that the proposed operational independence condition would tend to inhibit operational efficiencies,[405] we are persuaded that excluding the condition from the final rule would help facilitate efficiency and avoid deterring beneficial group-wide risk management practices. In this regard we also note that even with the removal of the proposed operational independence condition, the aggregation provisions would prevent a corporate group from cumulatively engaging in aggregate relevant dealing activity—outside of its registered dealers—in excess of the *de minimis* thresholds.[406]

The final rule also has been modified from the proposal to permit a person to rely on this provision if its affiliate is in the process of registering as a dealer. The *de minimis* rule generally provides that a person that is not registered as a dealer but that no longer falls below the applicable *de minimis* thresholds nonetheless will be deemed not to be a dealer until the earlier of the date in which it submits a complete application for registration as a dealer, or two months after the end of the month that it becomes no longer able to take advantage of the exception.[407] That provision was intended to avoid market disruption in conjunction with the registration process.[408] Upon further consideration, we similarly believe that the provision at issue here should allow a person not to count the transactions of its affiliates that are in the process of registering as dealers, to avoid market disruption that may otherwise result due to the prospect of a person intermittently exceeding the *de minimis* thresholds when its affiliates are in the process of registering. Such situations, moreover, would not appear to provide practical opportunities for corporate groups to evade dealer registration by

[399] *See* Exchange Act rule 3a71–3(b)(2)(ii).

[400] *See* Exchange Act rule 3a71–3(b)(2)(iii) (cross-referencing the direct counting provisions of paragraph (b)(1)(iii), applicable to non-U.S. persons other than conduit affiliates); *see also* Sections 0, *supra* (addressing counting by non-U.S. persons engaged in dealing activity whose counterparties are U.S. persons); and 0 (addressing counting by non-U.S. persons engaged in dealing activity when their counterparties have recourse against a U.S. person).

[401] *See* Intermediary Definitions Adopting Release, 77 FR 30631.

[402] As noted above, one commenter questioned whether any aggregation principles should be applied in the *de minimis* context, arguing that the requirement disregards the legal independence of entities and disregards the possibility that two entities under common control may operate independently of each other. The comment further stated that the Commission's existing anti-evasion capacities are sufficient to guard against abuse without requiring aggregation. *See* note 391, *supra.* In our view, however, the aggregation provision is tailored appropriately to prevent evasion of the limits of the *de minimis* exception. *See* Intermediary Definitions Adopting Release, 77 FR 30631 (discussing the use of the aggregation principles in light of the ''increased notional thresholds of the final [definitional] rules, and the resulting opportunity for a person to evasively engage in large amounts of dealing activity if it can multiply those thresholds''; and addressing the use of the common control standard ''as a means reasonably designed to prevent evasion of the limitations of that exception''). We further believe that this aggregation approach would be more effective at implementing the *de minimis* exception than a case-by-case approach, because the aggregation provision would provide upfront objective standards regarding which affiliate transactions must be counted against the thresholds, and thus help avoid uncertainty. Moreover, as discussed below, we are revising the aggregation provisions to allow the exclusion of the positions of affiliates that are registered as dealers (or that are in the process of registering), in response to comments.

[403] In short, we believe that this final rule is necessary or appropriate as a prophylactic measure to help prevent the evasion of the provisions of the Exchange Act that were added by the Dodd-Frank Act, and thus help ensure that the relevant purposes of the Dodd-Frank Act are not undermined. Without this rule, corporate groups may engage in dealing activity above the *de minimis* thresholds within the United States while avoiding dealer regulation under Title VII by dividing up the dealing activity among multiple affiliated entities, none of which individually engages in dealing activity above the thresholds.

[404] *See* Exchange Act rule 3a71–4. This exception, when available, applies to all of the dealing of a person's registered dealing affiliate (or affiliate deemed not to be a dealer pursuant to the provisions of Exchange Act rule 3a71–2(b)), regardless of the counterparty or the location of the transaction, and regardless of whether the dealing transaction otherwise implicates cross-border issues.

[405] *See* notes 391 and 392, *supra.*

[406] We recognize that one commenter supported the proposed operational independence condition, stating that the condition would address evasion concerns while promoting the statutory purpose of the *de minimis* exception. *See* note 396, *supra.* After further consideration, however, we believe that the fact that the aggregation provision will still limit cumulative group-wide dealing activity by unregistered entities to no more than the *de minimis* thresholds should suffice as a safeguard against evasive activity. This is particularly true given that those thresholds are significantly below the amounts of dealing typically engaged in by persons above the thresholds. *See* Intermediary Definitions Adopting Release, 77 FR 30636 (noting that, out of 28 potential dealers that had three or more counterparties that themselves were not recognized as dealers by ISDA, 15 of those exceeded a notional transaction threshold of $100 billion and accounted for over 98 percent of the total activity of all 28 entities).

We also note that certain commenters raised concerns about the application of the aggregation provisions generally in the context of joint ventures, particularly in the context of minority shareholders. *See* note 395, *supra.* Those issues regarding the scope of the aggregation provisions that the Commission previously adopted are not unique to the cross-border context, and in our view are outside the scope of this release. We note generally, however, that in the Intermediary Definitions Adopting Release we concluded that a common control standard is more appropriate than a majority-ownership standard in the context of the anti-evasive purposes of the aggregation requirement. *See* Intermediary Definitions Adopting Release, 77 FR 30631 n.437.

[407] *See* Exchange Act rule 3a71–2(b).

[408] *See* Intermediary Definitions Adopting Release, 77 FR 30643.

dividing dealing activities among multiple affiliates.

G. Exception for Cleared Anonymous Transactions

1. Proposed Approach and Commenters' Views

Three commenters expressed the view [409] that the Commission's final rules should include a provision similar to an aspect of the CFTC Cross-Border Guidance, which stated the CFTC's view that certain dealing transactions that are executed anonymously and cleared generally would not be counted against the *de minimis* thresholds.[410] One commenter particularly emphasized that market participants would not have information available regarding a counterparty's identity in an anonymous transaction, and suggested that the prospect of becoming subject to dealer registration could deter non-U.S. liquidity providers from participating on security-based swap markets that provide access to U.S. persons.[411]

2. Final Rule

After considering commenter views we have concluded that this type of exception is appropriate, particularly given that the final *de minimis* rules turn in part on the domicile of the counterparty to the non-U.S. person, and this information would be unavailable to the non-U.S. person that is a counterparty to a cleared anonymous transaction. Absent such an exception, it is possible that execution facilities would exclude U.S. market participants to prevent their non-U.S. members from having to face the prospect of dealer regulation, which could impair market liquidity and increase costs and risks.[412]

For those reasons, the final rule has been revised from the proposal to except, from having to be counted against the *de minimis* thresholds, certain security-based swap transactions that a non-U.S. person enters into anonymously on an execution facility or national securities exchange and that are cleared through a clearing agency.[413]

In particular, the final rule in part provides that a non-U.S. person need not count such cleared anonymous transactions against the threshold, unless the non-U.S. person is a conduit affiliate.[414] In addition, the final rule permits an affiliate (that itself may be a U.S. or non-U.S. person) of such a non-U.S. person not to count such transactions of the non-U.S. person against the affiliate's own thresholds for purposes of the aggregation provisions, unless the non-U.S. person is a conduit affiliate.[415]

The exception is not available when the non-U.S. person is a conduit affiliate because conduit affiliates are required to count all of their dealing transaction against the thresholds regardless of whether their counterparty is a U.S. or a non-U.S. person. As a result, the anonymous nature of the transaction would not cause implementation issues for conduit affiliates.

For purposes of the exception, a transaction would be ''anonymous'' only if the counterparty to the transaction in fact is unknown to the non-U.S. person prior to the transaction. The transaction would not be ''anonymous'' if, for example, a person submitted the transaction to an execution facility after accepting a request for quotation from a known counterparty or a known group of potential counterparties, even if the process of submitting the transaction itself did not involve a named counterparty.

H. Additional Issues

1. Particular Activities and Entities

Commenters to the Cross-Border Proposing Release raised issues regarding the application of the dealer registration requirement to limited security-based swap activities by certain ''run-off'' entities,[416] and in the context of portfolio compression.[417] Those

[409] *See* IIB Letter at 13–14; JSDA Letter at 4; JFMC Letter at 5.

[410] *See* CFTC Cross-Border Guidance, 78 FR 45325 (stating that when a non-U.S. person that is not a guaranteed or conduit affiliate enters in to swaps anonymously on CFTC-registered platforms, and the swaps are cleared, the non-U.S. person would generally not have to count those swaps against the applicable thresholds, noting that, in such circumstances, the non-U.S. person would not have any prior information regarding its counterparty; also interpreting the CFTC's cross-border jurisdiction such that, with respect to such cleared and anonymously executed swaps, the non-U.S. person would generally satisfy certain transaction-level requirements).

The Cross-Border Proposing Release generally requested comment as to whether the proposed *de minimis* approach would place market participants at a competitive advantage or disadvantage, and as to whether there are other measures the Commission should consider to implement the *de minimis* exception. *See* Cross-Border Proposing Release, 78 FR 30996. More generally, the Commission also requested comment regarding the proposals as whole, and regarding consistency with the CFTC's cross-border approach, including comments regarding the impact of differences between the two approaches, and comments regarding whether the Commission's proposed approach should be modified to conform with that taken by the CFTC. *See id.* at 31102.

[411] *See* IIB Letter at 13–14.

[412] The exclusion for cleared anonymous transactions is intended to avoid placing market participants in a position where counterparty-related information needed for compliance would be unavailable, which may in turn lead execution facilities to exclude U.S. persons. We also note that the exclusion would strengthen incentives for shifting activity to transparent trading venues, which is a key goal of Title VII. While these transactions may pose risks to U.S. persons and to the U.S. financial system as a whole, those risks may be offset by the liquidity and transparency benefits that occur due to trading on transparent venues. Furthermore, the characteristics expected to be associated with central clearing (*e.g.,* the daily exchange of mark-to-market margin) have parallels to the capital and margin requirements for registered dealers in terms of helping to protect the financial system against the risks introduced by particular transactions. On the other hand, such risk mitigation may be absent to the extent that the relevant clearing agency—which under the exception is not required to be registered with the Commission—does not follow standards consistent with the Title VII requirements applicable to registered clearing agencies.

[413] *See* Exchange Act rule 3a71–5. This exception solely addresses the issue of whether a particular transaction needs to be counted against the *de minimis* thresholds. It does not address the issue of when a particular execution facility or clearing agency needs to register with the Commission. The Cross-Border Proposing Release separately addressed cross-border issues regarding when an execution facility or clearing agency would have to register with the Commission. *See* Cross-Border Proposing Release, 78 FR 31054–58 (regarding security-based swap execution facility registration), 78 FR 31038–40 (regarding clearing agency registration); *see also* Registration and Regulation of Security-Based Swap Execution Facilities, Exchange Act Release No. 63825 (Feb. 2, 2011), 76 FR 10948 (Feb. 28, 2011) (proposed rules regarding registration and other requirements applicable to security-based swap execution facilities).

This exception also does not address the application of section 5 of the Securities Act to such transactions. Rule 239 under the Securities Act (17 CFR 230.239) provides an exemption under the Securities Act for certain security-based swap transactions involving an eligible clearing agency. This exemption does not apply to security-based swap transactions not involving an eligible clearing agency, such as the anonymous transactions entered into on the execution facility or national securities exchange, regardless of whether the security-based swaps subsequently are cleared by an eligible clearing agency. *See* Exemptions for Security-Based Swaps Issued By Certain Clearing Agencies, Securities Act Release No. 9308 (Mar. 30, 2012), 77 FR 20536 (Apr. 5, 2012).

[414] *See* Exchange Act rule 3a71–5(a). This exception applies regardless of whether the execution facility on which the transaction is entered into, or the clearing agency through which it is cleared, needs to be registered with the Commission. This is because the exclusion of U.S. market participants from an overseas execution or clearing facility—a result this exception is intended to guard against—could impair the markets regardless of whether the facility from which U.S. persons are excluded in fact are registered, and thus lead to increased costs and risks.

[415] *See* Exchange Act rule 3a71–5(a)(2), (b).

[416] *See* SIFMA/FIA/FSR Letter at A–18 (addressing entities that are consolidating U.S.-facing dealing activities worldwide into one or a few registered dealers, but that may not be able to transfer or terminate their legacy security-based swap portfolios and thus may need to enter into new transactions in connection with those legacy portfolios); JSDA Letter at 4 (suggesting that including contract cancellations, alternations and transfers within the *de minimis* calculation ''might invite a rush of cancellation before the enforcement of the proposed rules and make it difficult to cancel or transfer contracts for reducing risks'').

[417] *See* TriOptima Letter at 3–4 (explaining that portfolio compression services do not involve any

Continued

issues are not unique to the cross-border context, and are outside of the scope of this release. We generally note, moreover, that in the Intermediary Definitions Adopting Release we considered and rejected certain requests for categorical exclusions from dealer definition. With regard to issues regarding the relevance of those or other activities to the *de minimis* analysis, we generally note that the dealer registration requirement necessarily distinguishes between a person's dealing and non-dealing activities.[418]

2. Foreign Public Sector Financial Institutions and Government-Related Entities

As discussed above, the final rule defining ''U.S. person'' (like the proposed definition of that term) specifically excludes several foreign public sector financial institutions and their agencies and pension plans, and more generally excludes any other similar international organization and its agencies and pension plans.[419] Certain commenters requested that we take further action to address the application of the dealer definition and its *de minimis* exception to security-based swap activities involving such foreign public sector financial institutions. Those commenters in part stated that such organizations should not be required to register as security-based swap dealers, and that those organizations' affiliates should be considered immune from domestic regulation to the same extent as the organizations themselves.[420] In our view, however, such issues are outside the scope of this release, given that the source of any such privileges and immunities is found outside of the Dodd-Frank Act and the federal securities laws.

Separately, commenters stated that non-U.S. persons should not have to count their dealing transactions involving those organizations against the non-U.S. persons' dealer *de minimis* thresholds, on the grounds that counting such transactions would constitute the impermissible regulation of such organizations even if those were ''transactions conducted within the United States.''[421] As noted below, we have determined not to include the ''transaction conducted within the United States'' provisions in this final rule. With that said, we do not concur with the suggestion that counting a person's dealing transactions with such organizations against the *de minimis* thresholds—when otherwise provided for by the rules—involves the regulation of such organizations. Requiring a person to count, against the *de minimis* thresholds, the person's dealing transactions involving such an international organization as counterparty simply reflects the application of the federal securities laws to that person and its dealing activities, and does not constitute the regulation of the international organization. A person's security-based swap dealing transaction with such an international organization accordingly are considered the same, for purposes of applying the *de minimis* thresholds and other Title VII requirements, as a dealing transaction with some other non-U.S. person counterparty.

Finally, two commenters stated that they should not be subject to the possibility of dealer regulation for comity reasons, on the grounds that they are arms of a foreign government.[422] We believe that such issues best are addressed on a case-by-case basis, but we generally note that the prospect of dealer regulation is relevant only to the extent that a person engages in dealing activity.

I. Economic Analysis of the Final Cross-Border Dealer De Minimis Rule

These final rules and guidance regarding the cross-border implementation of the *de minimis* exception to the ''security-based swap dealer'' definition will affect the costs and benefits of dealer regulation by determining which dealing transactions will be counted against the exception's thresholds.[423] The cross-border rules have the potential to be important in determining the extent to which the risk mitigation and other benefits of Title VII (such as market transparency and customer protection) are achieved, given the core role that dealers play within the security-based swap market and the market's cross-border nature.[424]

Commenters addressed the associated cost-benefit issues from a variety of perspectives. Some directly addressed the link between the cross-border scope of the dealer definition and the associated costs and benefits, by arguing that cost-benefit principles warranted greater harmonization with approaches taken by the CFTC or foreign regulators.[425] Commenters also

of the enumerated factors that the Commission has identified as indicators of dealing activity).

[418] *See generally* Intermediary Definitions Adopting Release, 77 FR 30616–20 (discussing application of the dealer-trader distinction to security-based swap transactions).

[419] *See* section 0, *supra.*

[420] *See, e.g.,* WB/IFC Letter at 2–4, 6–7 (also stating that such organizations should not be required to register as major participants or to clear security-based swaps, and that affiliates of such organizations should be excluded from the ''U.S. person'' definition); SC Letter at 16–24 (contending that the privileges and immunities afforded such organizations would be violated by their direct regulation as dealers or major participants, or by direct regulation equivalents, and that affiliates of such organizations also are immune from regulation); IDB Letter at 5. *See also* notes 225 and 229, *supra.*

[421] *See* SC Letter at 18–19 (stating that the inclusion of such transactions against a counterparty's *de minimis* thresholds would be ''tantamount to regulation of the operations of the World Bank and the IFC, in violation of their privileges and immunities''); WB/IFC Letter (incorporating SC Letter). These comments did not object to the inclusion of transactions between a U.S. person and an FPSFI, because the Commission would have jurisdiction to regulate that ''U.S. person'' for other reasons and it would not be regulated simply because it does business with the FPSFI. *See* SC Letter at note 21.

[422] *See* KfW Letter; FMS–WM Letter.

[423] As we noted in the Intermediary Definitions Adopting Release, because the *de minimis* exception will determine which entities engaged in security-based swap dealing activity ultimately will be regulated as dealers under Title VII, the exception will have an effect on the burdens and benefits associated with dealer regulation. *See* Intermediary Definitions Adopting Release, 77 FR 30628–30. The thresholds used in the *de minimis* exception accordingly were set at a level that sought to meet the goals of Title VII while appropriately minimizing the costs to market participants by providing for the regulation, as dealers, ''of persons responsible for the vast majority of dealing activity within the market.'' *See id.* at 30638–40.

[424] *See* section 0, *supra.*

[425] *See, e.g.,* IIB Letter (stating that cost-benefit considerations warrant harmonization to the CFTC and foreign regulatory authorities with regard to cross-border rules, and that divergence generally would be warranted only if the Commission's rules are more flexible, and thence would not preclude the voluntary adoption of consistent practices).

Although we have considered those comments that expressed complete or partial support in favor of consistency with the CFTC guidance, these final rules nonetheless follow approaches that differ from those taken by the CFTC in certain regards, generally by taking approaches that are narrower in scope than those adopted by the CFTC. *See supra* note 255 (Commission's definition of ''U.S. person'' differs from the CFTC approach in part by not including investment companies that beneficially are majority-owned by U.S. persons); note 353 and accompanying text (Commission's rules regarding the treatment of guaranteed affiliates of U.S. persons focuses on the presence of recourse against a U.S. guarantor, in contrast to the CFTC approach that more generally accounts for financial support commitments regardless of recourse rights), note 325(Commission's definition of ''conduit affiliate'' differs from the CFTC's approach in part by not considering financial statement treatment); note 379 (discussing expectation that any foreign branch of a U.S. bank that generally would be considered a foreign branch under the CFTC Cross-Border Guidance also likely would be a foreign branch under our final rule).

We also have considered initiatives by foreign regulators related to the regulation of OTC derivatives. In that regard, we note that the regulatory regimes in certain other jurisdictions do not provide for the registration of persons who function as dealers, in contrast to the approach Congress took in Title VII. Also, we expect to take into account the regulatory frameworks followed in other jurisdictions as we assess requests for substituted compliance in connection with the substantive requirements applicable to security-based swap dealers and other market participants.

addressed the need for cost-benefit analysis,[426] or questioned the adequacy of the Cross-Border Proposal's cost-benefit assessment.[427] Other comments that addressed the dealer definition implicate the tradeoff between the costs and benefits associated with the definition's scope, even when the commenters did not directly address the economic analysis in the Cross-Border Proposing Release or otherwise explicitly raise cost-benefit considerations.[428]

We have taken economic effects into account in adopting these final cross-border rules and providing guidance. In doing so, we believe that a narrow application of dealer regulation under Title VII—such as one that is limited to dealing activity that might be viewed as occurring solely within the United States—would not be sufficient to achieve the purposes of Title VII in light of the attributes of the security-based swap market, including the market's global nature, the concentration of dealing activity, the key role played by dealers and the risks posed by dealers via their legal and financial relationships. At the same time, we recognize that the cross-border application of Title VII has the potential to reduce liquidity within the U.S. market to the extent it increases the costs of entering into security-based swaps or provides incentives for particular market participants to avoid the U.S. market by operating wholly outside the Title VII framework.

The cross-border rules applying the ''security-based swap dealer'' definition to cross-border dealing activity implicate two categories of costs and benefits. First, certain current and future participants in the security-based swap market will incur assessment costs in connection with determining whether they fall within the ''security-based swap dealer'' definition and thus would have to register with the Commission.

Second, the registration and regulation of some entities as security-based swap dealers will lead to programmatic costs and benefits arising as a consequence of the Title VII requirements that apply to registered security-based swap dealers, such as the capital, margin, and business conduct requirements.[429] These requirements may be expected to impose certain costs on participants acting as dealers, but also to produce benefits to the market and its participants, including counterparty protections and risk-mitigation benefits.

We discuss the programmatic and assessment costs and benefits associated with the final rules more fully below. We also discuss the economic impact of certain potential alternatives to the approach taken by the final rules.

1. Programmatic Costs and Benefits

(a) Cost-Benefit Considerations of the Final Rules

Exchange Act rules 3a71–3, 3a71–4, and 3a71–5 will permit market participants to exclude certain dealing transactions from their *de minimis* calculations, and thus may cause particular entities that engage in certain dealing activities not to be regulated as security-based swap dealers. The rules accordingly may be expected to affect the programmatic costs and benefits associated with the regulation of security-based swap dealers under Title VII, given that those costs and benefits are determined in part by which persons will be regulated as security-based swap dealers.[430]

This does not mean that there is a one-to-one relationship between a person not being a ''security-based swap dealer'' as a result of these cross-border rules, and the resulting change to programmatic benefits and costs. Indeed, although these rules may determine which particular entities will be regulated as dealers, it does not follow that total programmatic costs and benefits will vary by an amount proportional to the volume of those entities' dealing activity. As the Commission explained in the Intermediary Definitions Adopting Release, some of the costs and benefits of regulating dealers may be fixed, while others may be variable depending on a particular person's security-based swap dealing activity.[431] In practice, the programmatic benefits associated with the regulation of persons engaged in security-based swap dealing activity—in other words, the expected transparency, customer protection and market efficiency objectives associated with dealer regulation—likely will vary depending on the type and nature of those persons' dealing activity, including the degree to which those persons engage in security-based swap dealing activity within the United States or in a manner likely to give rise to Title VII concerns within the United States.

We believe that the cross-border rules we are adopting today will focus the regulation of security-based swap dealers under Title VII upon those entities that engage in security-based swap transactions that occur in the United States, or on the prevention of evasion. Our definition of ''security-based swap dealer'' seeks to capture those entities for which regulation of security-based swap activity is warranted due to the nature of their activities with other market participants.[432] Specifically, we have focused the rules on those market participants that are likely to have financial and legal relationships within the United States. This set of entities includes those that currently provide liquidity to U.S. persons as market makers in the OTC security-based swap market and those that trade with U.S. persons as market makers for security-based swaps on organized trading venues. Regulation of these entities will

Those substituted compliance assessments are geared to promote Title VII in a way that fairly accounts for other regimes by assessing the requirements of those regimes on a function-by-function basis.

[426] *See* BM Letter, note 28, *supra.* As stated above, the Commission in fact is sensitive to the economic consequences of its rules, and has taken the costs and benefits into account in adopting these rules.

[427] *See* CDEU Letter, note 28, *supra.* This commenter particularly expressed the view that the Commission's proposal had failed to engage in an adequate consideration of cost-benefit principles, and instead stated that the Commission should ''conduct a direct cost-benefit analysis of the conflicting rule regimes (*e.g.,* with the European Market Infrastructure Regulation and the CFTC's cross-border guidance).'' That commenter further expressed the view that, in requesting comment on the proposal's cost-benefit analysis, the Commission actually ''asks the public to conduct such an analysis for the SEC'' in lieu of the Commission having conducted its own analysis. *See id.*

In actuality, our request for comment simply gave the public the opportunity to address our economic analysis. The economic assessment in this release specifically addresses those economic impacts in a context where many entities may have taken steps to follow the CFTC's cross-border guidance, and also recognizes that market participants may seek to structure their activities to avoid Title VII given differences between Title VII regulation and the regulation present in foreign regimes.

[428] For example, one comment in opposition to the proposed ''operational independence'' condition to the exception to the aggregation requirement for positions of affiliates that are registered as security-based swap dealers in part addressed the extra costs that would be associated with such a provision. *See* SIFMA/FIA/FSR Letter, note 391, *supra.* As discussed above, that proposed condition has been removed. *See* section IV.F, *supra.*

[429] *See* Cross-Border Proposing Release, 78 FR 31135.

[430] *See* Intermediary Definitions Adopting Release, 77 FR 30724.

[431] *See id.* (''Some of the costs of regulating a particular person as a dealer or major participants, such as costs of registration, may largely be fixed. At the same time, other costs associated with regulating that person as a dealer or major participant (*e.g.,* costs associated with margin and capital requirements) may be variable, reflecting the level of the person's security-based swap activity. Similarly, the regulatory benefits that would arise from deeming that person to be a dealer or major participant (*e.g.,* benefits associated with increased transparency and efficiency, and reduced risks faced by customers and counterparties), although not quantifiable, may be expected to be variable in a way that reflects the person's security-based swap activity.'').

[432] *See id.* at 30617.

mitigate risk and promote stability for U.S. persons and potentially the U.S. financial markets by increasing the likelihood that they are able to meet their obligations under security-based swap contracts against counterparties with ties to the U.S. financial system once they are subject to the final adopted rules regarding the requirements applicable to dealers (rules establishing capital and margin requirements for registered security-based swap dealers). Furthermore, regulation of these entities as dealers may enable them to continue to provide liquidity to their counterparties, particularly in times when the markets are under financial stress and their counterparties may struggle to meet their financial obligations. We also believe that regulation of these entities will further other goals of Title VII, particularly as we consider future substantive regulation of the security-based swap market. In other words, these requirements will direct the application of the *de minimis* thresholds—which themselves are the product of cost-benefit considerations—toward those dealing activities in U.S. financial markets that most directly implicate the purposes of Title VII. As such, these rules reflect our assessment and evaluation of those programmatic costs and benefits:

• *Dealing by U.S. persons*—The ''U.S. person'' definition captures entities whose security-based swap activities pose risks to the United States that may raise the concerns intended to be addressed by Title VII, regardless of the status of their counterparty.[433] The requirement that U.S. persons, including foreign branches, count all of their dealing transactions against the *de minimis* thresholds reflects the domestic nature of their dealing activity, particularly given that it is the financial resources of the entire person that enable it to engage in dealing activity.[434]

• *Dealing by guaranteed affiliates of U.S. persons*—The requirement that non-U.S. persons count all their dealing transactions that are subject to a recourse guarantee by a U.S. affiliate, even when the counterparty is another non-U.S. person, reflects the domestic nature of that activity and the risks that those recourse guarantees pose to U.S. persons and potentially to the U.S. financial system via the U.S. person guarantor.[435]

• *Dealing by other non-U.S. persons with U.S.-person counterparties*—The general requirement that non-U.S. persons count their dealing transactions with counterparties that are U.S. persons reflects the domestic nature of that activity and the concerns raised by the performance of dealing activity within the United States, impacts on U.S. market liquidity, risks that this dealing activity poses to U.S. persons and potentially toward the U.S. financial system as a whole, and counterparty and market transparency concerns.[436] This general requirement is limited, however, as it does not extend to transactions with foreign branches of U.S. banks that are registered as dealers, or to certain cleared anonymous transactions. While those excluded transactions also involve the performance, at least in part, of relevant dealing activity within the United States, implicate Title VII concerns, and import risk into the United States—and their counting against the thresholds thus would be consistent with achieving the programmatic benefits of dealer regulation—their exclusion is nevertheless warranted by considerations regarding market access by U.S. persons (in the case of transactions with certain foreign branches of U.S. banks)[437] and by considerations regarding information availability and market liquidity (in the case of the exclusion for cleared anonymous transactions).[438]

• *Anti-evasion provisions*—The requirement that conduit affiliates count all of their dealing activities against the thresholds, and the cross-border application of the aggregation requirements related to the *de minimis* exception, both reflect targeted efforts to prevent evasion of the security-based swap dealer requirements of Title VII.[439] We are adopting a definition of ''conduit affiliate'' that excludes affiliates of registered security-based swap dealers and major security-based swap participants to avoid imposing costs on registered persons in situations where the types of evasion concerns that the conduit affiliate definition is intended to address are minimal.

In short, these final rules apply the *de minimis* thresholds—which themselves reflect cost-benefit considerations[440]—to cross-border security-based swap activity in a way that directs the focus of dealer regulation toward those entities whose security-based swap dealing activities most fully implicate the purposes of Title VII, or that is reasonably designed to prevent evasion of dealer regulation under Title VII.

In the Cross-Border Proposing Release, we concluded that ''[t]o the extent that an entity engaged in dealing activity wholly outside the United

[433] *See* section 0, *supra.*

[434] *See* section 0, *supra.*

[435] *See* section 0, *supra.* In the Cross-Border Proposing Release we preliminarily concluded that the risks associated with such guarantees could be adequately addressed through major participant regulation. We have reconsidered that view for the reasons discussed above.

[436] *See* section 0, *supra.*

[437] *See* section 0, *supra.* Although dealing activity involving foreign branches of U.S. banks does pose risks to the U.S. bank of which the foreign branch is a part and potentially to the U.S. financial system, foreign branches of registered security-based swap dealers will be subject to a number of Title VII regulatory requirements, including capital and margin requirements, that are designed to protect the system against those risks. Furthermore, this limitation is guided in part by the desire to preserve liquidity throughout the system, given that absent the exclusion non-U.S. dealers may have reasons to favor non-U.S. counterparties to avoid the regulatory requirements of Title VII, which could threaten to fragment liquidity across geographical or jurisdictional lines.

[438] *See* section 0, *supra.* As noted above, *see* note 412, *supra,* the exclusion for cleared anonymous transactions is driven by concerns about counterparty-related information needed for compliance being unavailable, which in turn may lead U.S. persons to be excluded from certain execution facilities. The exclusion for such transactions also would be expected to have the effect of strengthening incentives for shifting activity to transparent trading venues, a key goal of Title VII. While these transactions of non-U.S. persons may pose risks to the U.S. bank of which the foreign branch is a part and potentially to the U.S. financial system as a whole, those risks may be offset by the liquidity and transparency benefits that occur due to trading on transparent venues. Furthermore, certain of the characteristics we expect to be associated with central clearing (*e.g.,* the daily exchange of mark-to-market margin) serve similar functions as the capital and margin requirements for registered dealers in terms of helping to protect the financial system against the risks introduced by particular transactions. Of course, such risk mitigation may be absent to the extent that the relevant clearing agency—which under the exception is not required to be registered with the Commission—does not follow standards consistent with the Title VII requirements applicable to registered clearing agencies. As noted above, moreover, *see* note 413, *supra,* we are not addressing the registration requirements for such clearing agencies in this release.

[439] *See* sections 0 and 0, *supra.*

[440] Based on an analysis of dealing activity within the security-based swap market, we concluded that a *de minimis* threshold of $3 billion for dealing activity involving security-based swaps would capture over 99 percent of dealing activity within the single-name CDS market under the ambit of dealer regulation. *See* Intermediary Definitions Adopting Release, 77 FR 30639. We also concluded that this amount constituted a reasonable threshold, though not the only such threshold, for addressing the relevant competing factors—including the fact that the economic benefits provided by dealer requirements in large part will depend on the proportion of security-based swaps that are transacted subject to those requirements, while certain of the costs associated with dealer regulation would include costs that are independent of the amount of a person's dealing activity. *See* Intermediary Definitions Adopting Release, 77 FR 30629, 30639.

As noted above, in application the general *de minimis* threshold currently is subject to an $8 billion phase-in level, and that phase-in level will remain in place until the Commission, following a study, either determines to terminate the phase-in level or adopts a different threshold. *See* part IV.A, *supra.*

States poses risks to the U.S. financial system, we preliminarily believe that subjecting it to dealer registration and the related requirements would not generate the types of programmatic benefits that Title VII dealer regulation is intended to produce, as the dealing activity of such entity poses risks to counterparties outside the United States.'' [441] These final rules and guidance regarding which transactions are to be counted against the *de minimis* thresholds are consistent with that principle, although in part they reflect a further assessment of the programmatic benefits resulting from the application of dealer regulation to non-U.S. persons when there is a recourse guarantee against a U.S. affiliate, including the benefits resulting from the application of financial responsibility requirements imposed upon registered security-based swap dealers. In this regard, the final rules and guidance reflect a reconsideration of our earlier conclusion that the risks to U.S. persons arising from such guarantees could adequately be addressed by the regulation of major security-based swap participants. In addition, these final rules and guidance more fully account for anti-evasion concerns associated with the potential for a U.S. person to engage in dealing activity using a guaranteed non-U.S. affiliate that is economically equivalent to the U.S. person itself entering into those dealing transactions.

(b) Evaluation of Programmatic Impacts

In setting the *de minimis* thresholds as part of the Intermediary Definitions Adopting Release, we attempted to identify a level of dealing activity that would identify and capture the entities for which the Title VII dealer requirements are most appropriate, without imposing the costs of Title VII on those entities for which regulation currently may not be justified in light of the purposes of the statute.[442] We particularly took into account data regarding the activities of participants in the security-based swap market, including data regarding activity suggestive of dealing. Based on this analysis, we estimated that up to 50 entities in the security-based swap market might register as security-based swap dealers.[443] Those estimates—made outside of the context the cross-border application of the dealer definition—provide a baseline against which the Commission can analyze the programmatic costs and benefits and assessment costs of the final rules applying the *de minimis* exception to cross-border activities.

We believe the methodology used in the Intermediary Definitions Adopting Release also is appropriate for considering the potential programmatic costs and benefits associated with the final cross-border rules. This methodology particularly can help provide context as to how rules regarding the cross-border application of the *de minimis* exception may change the number of entities that must register as security-based swap dealers, and thus help provide perspective regarding the corresponding impact on the programmatic costs and benefits of Title VII. Applying that methodology to 2012 data regarding the single-name CDS market suggests that under these final rules approximately 50 entities may have to register as dealers—a number that is consistent with our estimates as part of the Intermediary Definitions Adopting Release.[444]

We recognize that there are limitations to using this methodology to consider the potential programmatic impact of the cross-border rules. These include limitations associated with the fact that the available data does not extend to all types of security-based swaps,[445] and challenges in extrapolating transaction data into inferences of dealing activity.[446] Also, the available single-name CDS data in certain regards potentially may lead the impact of these rules to be underestimated or overestimated:

- The Commission's access to data on CDS that are written on non-U.S. reference entities does not extend to data regarding transactions between two counterparties that are not domiciled in the United States, or guaranteed by a person domiciled in the United States.[447] More generally, the

[441] *See* Cross-Border Proposing Release, 77 FR 31137.

[442] *See* Intermediary Definitions Adopting Release, 77 FR 30724–25.

[443] *See* section 0, *supra; see also* Intermediary Definitions Adopting Release, 77 FR 30635.

We stated that this was a ''conservative'' estimate. *See* Intermediary Definitions Adopting Release, 77 FR 30725 and n.1457. In establishing the *de minimis* threshold, we analyzed the percentage of the market activity that would likely be attributable to registered security-based swap dealers under various thresholds and various screens designed to identify entities that are engaged in dealing activity. *See id.* at 30636. Our analysis placed particular weight on the screen that identified entities that engaged in security-based swap transactions with three or more counterparties that themselves were not identified as dealers by ISDA. *See id.* at 30636. Of the 28 firms and corporate groups that satisfied this criterion, 25 also engaged in activity over the $3 billion threshold. *See id.* Based on this analysis, together with our expectation that some of the included corporate groups would register more than a single security-based swap dealer and that new entrants may be likely to enter the market, we estimated that as many as 50 entities would ultimately be required to register as a security-based swap dealer. *See id.* at 30725 n.1457.

[444] While these revised figures are based on methodology similar to what Commission staff employed in the Intermediary Definitions Adopting Release, they make use of newer data and also account for the final rules' approach to counting dealing transactions against the *de minimis* thresholds.

Consistent with that methodology regarding the use of market data to identify entities that may be engaged in dealing activity pursuant to the dealer-trader distinction (*see id.* 30636 n.478), the data indicated that in 2012, 40 entities engaged in the single-name security-based swap market had three or more counterparties that were not identified by ISDA as dealers. Of those 40 entities, 27 had $3 billion or more in notional single-name CDS activity over a 12 month period. Applying the principles reflected in these final rules regarding the counting of transactions against the *de minimis* thresholds suggests that 25 of those entities would have $3 billion or more in notional transactions counted against the thresholds. Applying the aggregation rules (by aggregating the transactions, that are subject to counting, of other affiliates within a corporate group that individually do not have $3 billion in transactions subject to counting) increases that number to 26 entities. Based on this data, we believe that it is reasonable to conclude that up to 50 entities ultimately may register as security-based swap dealers, although fewer dealers also is possible.

To apply the counting tests of these final rules to the data, Commission staff identified DTCC–TIW accounts associated with foreign branches and foreign subsidiaries of U.S. entities and counted all transaction activity in these accounts against the firm's *de minimis* threshold. Commission staff further counted non-U.S. persons' activity against U.S. persons and foreign branches and subsidiaries of U.S. persons against the *de minimis* thresholds.

[445] In these assessments, we have taken into account data obtained from DTCC–TIW regarding the activity of participants in the single-name CDS market. *See* Intermediary Definitions Adopting Release, 77 FR 30635. The present assessments use data from 2012, rather than the 2011 period used in connection with the Intermediary Definitions Adopting Release.

As part of the Intermediary Definitions Adopting Release we also considered more limited publicly available data regarding equity swaps. *See id.* at 30636 n.476, and 30637 n.485. The lack of market data is significant in the context of total return swaps on equity and debt, in that we do not have the same amount of information regarding those products as we have in connection with the present market for single name CDS. *See id.* at 30724 n.1456. Although the definition of security-based swaps is not limited to single-name CDS, we believe that the single-name CDS data are sufficiently representative of the market to help inform the analysis. *See id.* at 30636.

[446] As we noted in the Intermediary Definitions Adopting Release, the data incorporates transactions reflecting both dealing activity and non-dealing activity, including transactions by persons who may engage in no dealing activity whatsoever. *See id.* at 30635–36. For these purposes we have identified potential dealers based on whether an entity engaged in the single-name security-based swap market had three or more counterparties that were not identified by ISDA as dealers. We recognize that this may be imperfect as a tool for identifying dealing activity, given that the presence or absence of dealing activity ultimately turns upon the relevant facts and circumstances of an entity's security-based swap transactions, as informed by the dealer-trader distinction.

[447] The Commission has more complete access to data regarding transactions involving single-name CDS on U.S. reference entities.

Commission's access to data also does not extend to transactions among affiliated entities. The available data thus does not extend to the activities of non-U.S. conduit affiliates, to the extent that they engage in transactions with non-U.S. persons (that themselves are not the subject of a guarantee), and potentially makes the assessment underinclusive to the extent that conduit affiliates engaged in dealing activity during the relevant period.

• The available data also does not specifically distinguish those transactions of non-U.S. persons that are subject to a guarantee by a U.S. person, and other (non-guaranteed) transactions by such non-U.S. persons. As a result, we have assumed that all foreign subsidiaries of U.S. persons rely on guarantees for all transactions, which potentially overestimates the level of transaction activity that would count toward *de minimis* thresholds for U.S. persons with foreign subsidiaries.

Separately, the programmatic costs and benefits associated with the implementation of these rules cannot be quantified with any degree of precision because the full range of the *de minimis* exception's effects on the programmatic costs and benefits also will reflect final rules—which have yet to be finalized—implementing the Title VII entity-level and transaction-level requirements applicable to security-based swap dealers.

In addition, the programmatic benefits and costs associated with the cross-border application of the *de minimis* exception may change as market participants modify their business structure or practices in response to these rules. To avoid the prospect of being regulated as a security-based swap dealer, some market participants may restructure their businesses or take other steps (such as avoiding engaging in security-based swap activities involving U.S. persons) to avoid having their dealing transactions counted against the *de minimis* thresholds. Other market participants may take similar steps in response to counterparty demands. We understand that some market participants already have taken these types of steps to restructure their derivatives operations in response to the implementation of Title VII requirements related to swaps. More fundamentally, there are inherent challenges associated with attempting to quantify the risk-mitigation and other benefits of financial regulation.[448] The programmatic impact of these rules may further reflect the fact that certain entities that are deemed to be security-based swap dealers, and hence are subject to the applicable Title VII dealer requirements, separately may be subject to other regulatory requirements that are analogous to the security-based swap dealer requirements. For example, we recognize that certain entities that are deemed to be security-based swap dealers pursuant to these rules also may be registered as swap dealers with the CFTC, pursuant to the CEA. Those entities' compliance with CFTC requirements applicable to swap dealers potentially may mitigate the programmatic effect of these rules—in terms of both costs and benefits—to the extent that those CFTC requirements are comparable with the SEC's yet-to-be-finalized substantive rules applicable to security-based swap dealers. The potential availability of substituted compliance, whereby a market participant may comply with a Title VII security-based swap dealer requirement by complying with a comparable requirement of a foreign financial regulator, also may affect the final programmatic impact of these rules.

In general, however, and consistent with our territorial approach, we believe that these rules are targeted appropriately, and do not apply dealer regulation to those entities that have a more limited involvement in the U.S. financial system and hence whose regulation as a security-based swap dealer under Title VII would be less linked to programmatic benefits (*i.e.,* non-U.S. persons that engage in security-based swap dealing activity entirely, or almost entirely, outside the United States with non-U.S. persons or with certain foreign branches), while applying dealer regulation to those entities whose dealing activity would be more likely to produce programmatic benefits under Title VII. The nexus between specific aspects of these requirements and the programmatic costs and benefits also is addressed below in connection with our consideration of various alternatives to the approach taken in the final rules.

Finally, we recognize that the U.S. market participants and transactions regulated under Title VII are a subset of the overall global security-based swap market and that shocks to risk or liquidity arising from a foreign entity's dealing activity outside the United States may spill into the United States. Such spillover risks associated with dealing activity that falls outside the scope of Title VII have the potential to affect U.S. persons and the U.S. financial system either through a foreign entity's transactions with foreign entities, which, in turn, transact with U.S. persons (and may, as a result, be registered security-based swap dealers or major security-based swap participants), or through membership in a clearing agency that may provide CCP services in the United States or have a U.S. person as a clearing member. We also have considered these spillovers in connection with our analysis of the effects of these final cross-border rules on efficiency, competition and capital formation.[449]

2. Assessment Costs

The analysis of how these cross-border rules will affect the assessment costs associated with the ''security-based swap dealer'' definition and its *de minimis* exception is related to the assessment cost analysis described in the Intermediary Definitions Adopting Release,[450] but must also account for certain issues specific to these cross-border rules. While in certain regards those assessment costs can more readily be estimated than the programmatic effects discussed above, the assessment costs associated with the cross-border application of the Title VII dealer requirements will be considerably smaller in significance than those programmatic effects.

The Intermediary Definitions Adopting Release addressed how certain market participants whose security-based swap activities exceed or are not materially below the *de minimis* threshold may be expected to incur assessment costs in connection with the dealer analysis.[451] In that release we estimated that 166 entities—out of over one thousand U.S. and non-U.S. entities

[448] In the Intermediary Definitions Adopting Release, we and the CFTC noted that we are ''not of the general view that the costs of extending regulation to any particular entity must be outweighed by the quantifiable or other benefits to be achieved with respect to that particular entity.'' *See* Intermediary Definitions Adopting Release, 77 FR 30630. We also noted that ''it does not appear possible to demonstrate empirically—let alone quantify—the increase or decrease in the possibility that a financial crisis would occur at a particular future time and with a particular intensity in the absence of financial regulation or as a result of varying levels or types of financial regulation.'' *See id.* at 30630 n.421 (also noting the difficulty of demonstrating empirically ''that the customer protections associated with dealer regulation would increase or decrease the likelihood that any particular market participant would suffer injury (or the degree to which the participant would suffer injury) associated with entering into an inappropriate swap or security-based swap'').

[449] *See* section 0, *supra.*

[450] *See* Intermediary Definitions Adopting Release, 77 FR 30731–32.

[451] *See id.* at 30731. These assessment costs include costs associated with analyzing a person's security-based swap activities to determine whether those activities constitute dealing activity and the costs of monitoring the volume of dealing activity against the *de minimis* threshold.

that engaged in single-name CDS transactions in 2011—had more than $2 billion in single-name CDS transactions over the previous 12 months, and as a result would engage in the dealer analysis.[452] Based on those numbers, and assuming that that all of those entities retain outside counsel to analyze their status under the security-based swap dealer definition, including the *de minimis* exception, we estimated that the legal costs associated with assessing market participants' *potential* status as security-based swap dealers may approach $4.2 million.[453]

Application of these cross-border rules to the *de minimis* exception can be expected to affect the assessment costs that market participants will incur. In part, certain non-U.S. persons may be expected to incur personnel costs and legal costs—beyond the legal costs addressed as part of the Intermediary Definitions Adopting Release—associated with analyzing these cross-border rules and developing systems and procedures to assess which transactions would have to be counted against the *de minimis* thresholds (or with the purpose of avoiding activities within the United States that would be sufficient to meet the applicable thresholds). On the other hand, while certain market participants also would incur additional legal costs associated with the dealer determination (*i.e.,* the assessment of whether particular activities constitute dealing activity for purposes of the analysis) addressed in the Intermediary Definitions Adopting Release, the application of the cross-border rules may reduce the number of entities that incur such legal costs.

In adopting these rules we estimate the assessment costs that market participants may incur as a result. As discussed below, however, these costs in practice may be mitigated in large part by steps that market participants already have taken in response to other regulatory initiatives, including the CFTC Cross-Border Guidance.

(a) Legal Costs

The implementation of these cross-border rules in some circumstances has the potential to change the legal costs identified in the Intermediary Definitions Adopting Release, including by adding new categories of legal costs that non-U.S. persons may incur in connection with applying the *de minimis* exception in the cross-border context.

Legal costs related to application of the dealer-trader distinction—As discussed in the Intermediary Definitions Adopting Release, certain market participants will incur assessment costs relating to performing the analysis as to whether their security-based swap activities constitute dealing. For purposes of that release we assumed that only entities with more than $2 billion in security-based swap transactions over the previous 12 months would be likely to engage in the full dealer analysis, and, based on analysis of single-name CDS data, we concluded that there were 166 market participants that would meet those criteria.[454]

In the cross-border context, we believe that some non-U.S. persons that have more than $2 billion in total security-based swap transactions over the previous 12 months nonetheless may be expected to forgo the costs of performing the dealing activity analysis, if only a comparatively low volume of their security-based swap activity involves U.S. counterparties or otherwise potentially needs to be counted against the *de minimis* thresholds. In particular, we believe that it is unlikely that non-U.S. persons would engage in the dealer analysis (and hence would not be likely to incur such legal costs described in the Intermediary Definitions Adopting Release) if over the previous 12 months they have less than $2 billion in security-based swap transactions that potentially would have to be counted against the thresholds.[455]

Available data from 2012 indicates that 218 entities worldwide (147 of which are domiciled in the United States and 71 domiciled elsewhere) had security-based swap activity, with all counterparties, of $2 billion or more. Of those 218 entities 202 had total activity of $2 billion or more that—to the extent it constituted dealing activity—would appear to have to be counted against the *de minimis* thresholds. Those 202 entities consisted of 147 entities domiciled in the United States (which would have to count all of their dealing transactions), and 55 entities domiciled elsewhere that have $2 billion in transactions with U.S. counterparties or that otherwise may have to be counted for purposes of the *de minimis* analysis.[456] To the extent that all 202 of those entities engage in the legal analysis related to which of their security-based swap activities constitutes dealing under the dealer-trader distinction (while recognizing that some such entities may conclude that, based on the nature of their business, they engage in dealing activities and that no such additional analysis is necessary), and assuming that such analyses amount to $30,000 per entity,[457] those 202 entities would incur a total of approximately $6.1 million in such legal costs.[458]

Legal costs related to systems and analysis—As noted above, out of the 218 entities that had total security-based swap activity of $2 billion or more in 2012, 71 are domiciled outside of the United States. Upon further consideration (and in addition to the estimates in the Cross-Border Proposing Release), we also believe that it is reasonable to conclude that those 71 entities may have to incur one-time

[452] *Id.* at 30731–32. As discussed below, a comparable assessment using 2012 data indicates that there were approximately 210 entities in the single-name CDS market with more than $2 billion in transactions over 12 months. That analysis accounts for the aggregation of affiliate activity for purposes of the *de minimis* analysis, by first counting individual accounts with more than $2 billion in activity, and then aggregating any remaining accounts to the level of the ultimate parent and counting those also.

[453] *See id.* We estimated that the per-entity cost of the dealer analysis would be approximately $25,000. Our estimate of aggregate industry-wide costs of $4.2 million reflected the costs that may be incurred by all 166 entities. *See id.*

[454] *See id.* at 30731–32. Using an estimate of $25,000 in legal costs per firm, this led to a total estimate of $4.2 million. *See id.* at 30732.

[455] *See* Cross-Border Proposing Release, 78 FR 31141.

[456] A total of 16 of those 71 entities that are not domiciled in the United States appear to have less than $2 billion in activity that involve U.S. counterparties or that otherwise would appear to potentially have to be counted against the *de minimis* thresholds.

[457] In the Intermediary Definitions Adopting Release, we estimated that such costs may range from $20,000 to $30,000. *See* Intermediary Definitions Adopting Release, 77 FR 30732. For purposes of this analysis, we conservatively are using the upper end of that range.

[458] This analysis of data related to potential assessment costs reflects both the activities of individual DTCC–TIW accounts as well as the activities of transacting agents. The analysis in particular first considers the number of accounts that have $2 billion or more in annual security-based swap activity, and then, after removing those particular accounts, considers activity aggregated at the level of individual transacting agents. This analysis is comparable to the analysis we use to estimate the potential number of dealers under the final rules. *See* note 444, *supra.* This analysis is distinct from the analogous analysis we used in the Intermediary Definitions Adopting Release to estimate the number of entities that may be expected to perform the dealer-trader analysis (*see* notes 149 through 151 and accompanying text, *supra*), which focuses on activity at the transacting agent level, because further experience with the associated data permits us to conduct a more granular analysis of that data. *See generally* Cross-Border Proposing Release, 78 FR 31137 n.1407.

These estimates do not reflect a new category of costs arising from the cross-border rules. They instead are a revision of a category of previously identified costs that market participants may incur in engaging in the dealer-trader analysis, using newer data and reflecting only trades that are counted under the final cross-border rules.

legal expenses related to the development of systems and analysis expenses—discussed below—to identify which of their total security-based swap transactions potentially must be counted for purposes of the *de minimis* analysis consistent with these cross-border rules. This additional cost estimate reflects the fact that the development of such systems and procedures must address cross-border rules that require accounting for factors such as whether an entity's security-based swaps are subject to guarantees from affiliated U.S. persons, and whether its counterparties are U.S. persons.[459] We estimate that such legal costs would amount to approximately $30,400 per entity, and that those 60 entities would incur total costs of approximately $2.2 million.[460]

(b) Costs Related to Systems, Analysis, and Representations

Transaction-monitoring systems—The elements introduced by the final cross-border rules may cause certain non-U.S. persons to implement systems to identify whether their dealing transactions exceed the *de minimis* thresholds.[461] Such systems may reflect the need for non-U.S. persons to: (i) Identify whether their dealing counterparties are ''U.S. persons''; (ii) determine whether their dealing transactions with a U.S. person constitutes ''transactions conducted through a foreign branch'' (which itself requires consideration of whether their counterparty is a ''foreign branch'') and—of those—determine which transactions involve a foreign branch of a U.S. bank that itself is registered as a security-based swap dealer; (iii) determine whether particular transactions are subject to a recourse guarantee against a U.S. affiliate; (iv) evaluate the applicability of the aggregation principles; and (v) evaluate the availability of the exception for cleared anonymous transactions.[462]

In general, we believe that the costs of such systems should be similar to the costs estimated in the Intermediary Definitions Adopting Release for a system to monitor positions for purposes of the major security-based swap participant thresholds. In both cases—the assessment of dealer status in the cross-border context and the assessment of major participant status—such systems would have to flag a person's security-based swaps against the specific criteria embedded in the final rules, and then compare the cumulative amount of security-based swaps that meet those criteria against regulatory thresholds.[463] Based on the methodology set forth in the Intermediary Definitions Adopting Release related to systems associated with the major participant analysis, we estimate that such systems would be associated with one-time programming costs of $14,904 and ongoing annual systems costs of $16,612 per entity.[464]

Analysis of counterparty status, including representations—Non-U.S. market participants also would be likely to incur costs arising from the need to assess the potential U.S.-person status of their counterparties, and in some cases to obtain and maintain records related to representations regarding their counterparties' U.S.-person status.[465] We anticipate that non-U.S. persons are likely to review existing information (*e.g.,* information already available in connection with account opening materials and ''know your customer'' practices) to assess whether their

[459] We would not expect U.S. persons with more than $2 billion in activities to incur such costs, given that U.S. persons would need to count all of their dealing activities against the *de minimis* thresholds.

[460] This estimate of $30,400 reflects an assumption that such efforts would require 80 hours of in-house legal or compliance staff's time. Based upon data from SIFMA's Management & Professional Earnings in the Securities Industry 2012 (modified by the Commission staff to account for an 1800-hour-work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead), the staff estimates that the average national hourly rate for an in-house attorney is $380.

[461] It is possible that a subset of non-U.S. dealers may reasonably conclude they are above the *de minimis* thresholds and should register with the Commission as security-based swap dealers, without establishing systems to analyze their status under the exception, in light of the nature of their operations and their activity within the United States.

Moreover, in considering the assessment costs associated with the final rules, we continue to hold the expectation, noted in the Intermediary Definitions Adopting Release, that market participants generally would be aware of the notional amount of their activity involving security-based swaps as a matter of good business practice. *See* Intermediary Definitions Adopting Release, 77 FR 30732. These systems cost estimates for non-U.S. persons are provided in recognition of the fact that non-U.S. persons will likely need to distinguish those transactions that must be counted against their *de minimis* thresholds and those that do not need to be included.

[462] In considering the assessment costs associated with the final rules, we believe that a potential dealer assessment of whether it is a ''conduit affiliate'' would not require the use of any systems. A conduit affiliate must count all of its dealing transactions, making transaction-specific tracking unnecessary. Moreover, the question of whether a person acts as a conduit affiliate would turn upon whether it engages in certain security-based transactions on behalf of a U.S. affiliate, accompanied by back-to-back transactions with that affiliate. That analysis fundamentally is different from the transaction-specific assessments that are more likely to require the development of new systems for monitoring the attributes of particular transactions.

[463] As discussed in the Cross-Border Proposing Release, we would expect that market participants would be aware of the notional amount of their security-based swap activity as a matter of good business practice. *See* Cross-Border Proposing Release, 78 FR 31140.

[464] In the Intermediary Definitions Adopting Release, we estimated that the one-time programming costs of $13,692 per entity and annual ongoing assessment costs of $15,268. *See* Intermediary Definitions Adopting Release, 77 FR 30734–35 and accompanying text (providing an explanation of the methodology used to estimate these costs). The hourly cost figures in the Intermediary Definitions Adopting Release for the positions of Compliance Attorney, Compliance Manager, Programmer Analyst, and Senior Internal Auditor were based on data from SIFMA's Management & Professional Earnings in the Securities Industry 2010.

For purposes of the cost estimates in this release, we have updated these figures with more recent data as follows: The figure for a Compliance Attorney is $334/hour, the figure for a Compliance Manager is $283/hour, the figure for a Programmer Analyst is $220/hour, and the figure for a Senior Internal Auditor is $209/hour, each from SIFMA's Management & Professional Earnings in the Securities Industry 2013, modified by SEC staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead. We also have updated the Intermediary Definitions Adopting Release's $464/hour figure for a Chief Financial Officer, which was based on 2011 data, with a revised figure of $500/hour, for a Chief Financial Officer with five years of experience in New York, that is from *http://www.payscale.com,* modified by Commission staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead. *See http://www.payscale.com* (last visited Apr. 16, 2014). Incorporating these new cost figures, the updated one-time programming costs based upon our assumptions regarding the number of hours required in the Intermediary Definitions Adopting Release would be $15,287 per entity, *i.e.,* (Compliance Attorney at $334 per hour for 2 hours) + (Compliance Manager at $283 per hour for 8 hours) + (Programmer Analyst at $220 per hour for 40 hours) + (Senior Internal Auditor at $209 per hour for 8 hours) + (Chief Financial Officer at $500 per hour for 3 hours) = $14,904, and the annual ongoing costs would be $16,612 per entity, *i.e.,* ((Senior Internal Auditor at $209 per hour for 16 hours) + Compliance Attorney at $334 per hour for 4 hours) + (Compliance Manager at $283 per hour for 4 hours) + (Chief Financial Officer at $500 per hour for 4 hours) + (Programmer Analyst at $220 per hour for 40 hours) = $16,612).

[465] Non-U.S. market participants potentially may also assess and seek representations related to whether their security-based swap activity with a particular counterparty constitutes transactions conducted through a foreign branch of a U.S. bank (including representations regarding the non-involvement of U.S. personnel) that is registered as a security-based swap dealer. Based on our understanding of changes in the way major U.S. dealers engage with non-U.S. counterparties in the single-name CDS market following the issuance of the CFTC Cross-Border Guidance, we believe that few, if any, U.S. persons currently may participate in this market through their foreign branches. Also, as noted above, other regulatory provisions may limit the ability of U.S. banks to conduct security-based swap activity. *See* note 366, *supra.* Accordingly, we do not believe that it is likely that non-U.S. market participants will independently assess, and seek representations related to, the foreign branch status of their counterparties. Instead, we believe that it is likely that such non-U.S. persons will focus on assessing the U.S.-person status of the bank for which the foreign branch is a part.

counterparties are U.S. persons. Non-U.S. persons at times may also request and maintain representations from their counterparties to help determine or confirm their counterparties' status. Accordingly, in our view, such assessment costs primarily would encompass one-time costs to review and assess existing information regarding counterparty domicile, principal place of business, and other factors relevant to potential U.S.-person status, as well as one-time costs associated with requesting and collecting representations from counterparties.[466] The Commission believes that such one-time costs would be approximately $732 thousand per firm.[467]

Monitoring of counterparty status—In addition, market participants may be expected to adapt the systems described above to monitor the status of their counterparties for purposes of their future security-based swap activities. Such refinements would permit these systems to maintain records of counterparty status for purposes of conducting the *de minimis* assessments (*e.g.,* representations regarding a counterparty's U.S.-person status, or whether a counterparty's transaction through a foreign branch involve U.S. personnel), such as by monitoring for the presence of existing representations, to obviate the need to request representations on a transaction-by-transaction basis.[468] Market participants also may need to monitor for the presence of information that may indicate that the representation they have received are outdated or otherwise are not valid.[469] We estimate that this would require one-time costs of approximately $12,436 per firm.[470]

Summary of system, analysis and representation costs—In sum, we estimate that the costs that certain non-U.S. market participants would incur in connection with systems, analysis of counterparty status and representations in connection with these cross-border rules would be approximately $759 thousand in one-time costs,[471] and their estimated annual ongoing costs would be $16,612. The available data provided by the DTCC–TIW, subject to the limitations associated with the use of data analysis discussed above, suggests that such costs may be incurred by 71 non-U.S. domiciled entities with total annual activity of at least $2 billion. Assuming that each of these 71 entities concludes it has a need to monitor the above categories of information in connection with its security-based swap activities, we estimate that the total one-time industry-wide costs associated with establishing such systems would amount to approximately $54 million, and total annual ongoing costs would amount to approximately $1.2 million.

(c) Overall Considerations Related to Assessment Costs

In sum, we believe that the effect of these final cross-border rules would be an increase over the amounts that otherwise would be incurred by certain non-U.S. market participants, both in terms of additional categories of legal costs and in terms of the need to develop certain systems and procedures.

Requiring certain non-U.S. persons to incur such assessment costs is an unavoidable adjunct to the implementation of a set of rules that are appropriately tailored to apply the ''security-based swap dealer'' definition under Title VII to a global security-based swap market in a way that yields the important transparency, accountability, and counterparty protection benefits associated with dealer regulation under Title VII. The alternative—avoiding application of the Title VII dealer requirements to non-U.S. persons—would be inappropriate because, in our view, the dealing

[466] We expect that an assessment of whether a particular counterparty is a U.S. person—once properly made—generally will not vary over time, given that the components of the ''U.S. person'' definition generally would not be expected to vary for a particular counterparty absent changes such as a corporate reorganization, restructuring or merger. With that said, we believe market participants will likely monitor for the presence of information that may indicate that the representations they have received in connection with a person's U.S.-person status are outdated or otherwise are no longer accurate (*e.g.,* information regarding a counterparty's reorganization, restructuring, or merger).

We also believe that such non-U.S. persons will likely obtain the relevant information regarding the U.S.-person status of their new accounts as part of the account opening process, as a result of these and other regulatory requirements.

[467] In part, this estimate is based on each firm incurring an estimated one-half hour compliance staff time and one-half hour of legal staff time—per counterparty of the firm—to review and assess information regarding the counterparty, and potentially to request and obtain representations regarding the U.S.-person status of their counterparties. These are in addition to the assessment cost estimates we made in the Cross-Border Proposing Release, and reflect further consideration of the issue in light of industry experience in connection with the CFTC Cross-Border Guidance. For these purposes, we conservatively assume that each of those non U.S. firms will have 2400 single-name CDS counterparties (based on data indicating that the 60 non-U.S. persons with total single-name CDS transactions in 2012 of $2 billion or less all had fewer than 2400 counterparties in connection with single-name CDS), which produces an estimate of 1200 hours of compliance staff time and 1200 hours of legal staff time per firm. Based upon data from SIFMA's Management & Professional Earnings in the Securities Industry 2013 (modified by the Commission staff to account for an 1800-hour-work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead), the staff estimates that the average national hourly rate for a senior compliance examiner is $217 and that the average national hourly rate for an in-house attorney is $380; this leads to a cumulative estimate of approximately $716 thousand per firm for such costs.

Consistent with the Cross-Border Proposing Release, moreover, this estimate is further based on estimated 40 hours of in-house legal or compliance staff's time (based on the above rate of $380 per hour for an in-house attorney) to establish a procedure of requesting and collecting representations from trading counterparties, taking into account that such representation may be incorporated into standardized trading documentation used by market participants. This leads to an estimate of $15,200 per firm for such costs.

[468] The exclusion for a non-U.S. person's dealing transactions conducted through the foreign branch of a counterparty that is a registered security-based swap dealer is predicated on U.S.-based personnel of the counterparty not being involved in arranging, negotiating or executing the transaction at issue. Notwithstanding the potentially transaction-specific nature of that assessment, we believe that parties may structure their relationships in such a way that the non-U.S. person may rely on general representations by its counterparty, without the need for a separate representation in conjunction with each individual transaction.

[469] It is possible that the need to monitor for information inconsistent with existing representations would be more significant in the context of representations regarding whether a transaction has been conducted through a foreign branch of a U.S. bank, than they would be in the context of representations regarding the U.S.-person status of a counterparty. This is because a counterparty's potential status as a U.S. person would not be expected to vary on a transaction-by-transaction basis. At the same time, we believe that few, if any, U.S. persons currently may participate in this market through their foreign branches. *See* note 465, *supra.*

[470] In part, this is based on an estimate of the time required for a programmer analyst to modify the software to track whether the counterparty is a U.S. person (including whether it is a foreign branch of a U.S. bank that is not registered as a security-based swap dealer), and to record and classify whether a transaction constitutes dealing activity conducted through a foreign branch of a registered dealer This includes time associated with consultation with internal personnel, and an estimate of the time such personnel would require to ensure that these modifications conformed to those aspects of the final rule. Using the estimated hourly costs described above, we estimate the costs as follows: (Compliance Attorney at $334 per hour for 2 hours) + (Compliance Manager at $283 per hour for 4 hours) + (Programmer Analyst at $220 per hour for 40 hours) + (Senior Internal Auditor at $209 per hour for 4 hours) + (Chief Financial Officer at $500 per hour for 2 hours) = $12,436. *See* note 464, *supra* (for source of the estimated per-hour costs).

As noted above, we generally would not expect a counterparty's U.S.-person status to vary over time absent changes such as reorganization, restructuring or merger. *See* note 466, *supra.*

[471] Consistent with the above discussion, the estimated one-time costs of $759 thousand represent: The costs to establish a system to assess the status of their dealing activities under the definitions and other provisions specific to these cross-border rules ($14,904); the costs related to the assessment of counterparty status, including costs of assessing existing information and of requesting and obtaining representations, as well as costs of related procedures ($732 thousand), and the costs for monitoring the status of their counterparties for purposes of their future security-based swap activities ($12,436).

activity of non-U.S. persons required to count their dealing activity under these final rules constitutes part of the U.S. financial system. The benefits that arise from Title VII regulatory requirements, including risk management and transparency benefits associated with dealer regulation accordingly could be undermined if a significant portion of U.S. dealing activity by non-U.S. persons were excluded from the Title VII framework. In certain respects, however, decisions embedded in these final rules are designed to avoid imposing assessment costs upon market participants.[472]

It is important to recognize that our estimates of the assessment costs associated with these rules in practice may tend to overestimate that costs that market participants actually will incur as a result of these rules. This is because in practice, the assessment costs associated with the cross-border scope of the dealer definition (like the potential programmatic effects of that cross-border scope) may be tempered to the extent that the assessments that market participants conduct in connection with their security-based swap activities correspond to the assessments they otherwise would follow due to other regulatory requirements or business practices. Significantly, we understand that a substantial number of market participants already have engaged in assessment activities—including activities to determine whether their counterparties are U.S. persons—conforming to the requirements applicable to swaps. Given our expectation that persons that are not ''U.S. persons'' under the CFTC's policy (as set forth in its cross-border guidance) generally also would not be ''U.S. persons'' under our rules, certain market participants may reasonably determine that as part of the implementation of the rules we are adopting today they need not duplicate work already done in connection with implementing the CFTC's swaps regulations. In this regard we recognize the significance of commenter views emphasizing the importance of harmonization with the CFTC to control the costs associated with assessments under Title VII.[473] We acknowledge that, to the extent our final rules differ from the CFTC's approach—especially if they were to require counting of transactions that would not be captured by the requirements applicable to swaps in the cross-border context, or were to require the collection and/or consideration of information that is materially different from that collected under the CFTC's approach—market participants may face higher costs than if regulations were identical.[474] As discussed in connection with the specific aspects of these rules, however, we believe that such differences are justified, as are any associated assessment (or programmatic) costs.

Finally, we also anticipate that certain market participants that wish to limit the possibility of being regulated as a dealer under Title VII, including the programmatic and assessment costs associated with the dealer definition, may choose to structure their business to avoid engaging in dealing transactions with U.S. persons (other than foreign branches of banks registered with the Commission as dealers).

3. Alternative Approaches

As discussed above, the final rules incorporate a number of provisions designed to focus Title VII dealer regulation upon those persons that engage in the performance of security-based swap dealing activity within the United States in excess of the *de minimis* thresholds, taking into account the mitigation of risks to U.S. persons and potentially to the U.S. financial markets, as well as other purposes of Title VII.

In adopting these final rules we have considered alternative approaches suggested by commenters, including the economic effects of following such alternative approaches. In considering the economic impact of potential alternatives, we have sought to isolate the individual alternatives to the extent practicable, while recognizing that many of those alternatives are not mutually exclusive.

We further have considered such potential alternatives in light of the methodologies discussed above, by assessing the extent to which following particular alternatives would be expected to increase or decrease the number of entities that ultimately would be expected to be regulated as dealers under the final rules, as well as the corresponding economic impact. As discussed below, however, analysis of the available data standing alone would tend to suggest that various alternative approaches suggested by commenters would not produce large changes in the numbers of market participants that may have to be regulated as security-based swap dealers. These results are subject to the above limitations, however, including limitations regarding the ability to quantitatively assess how market participants may adjust their future activities in response to the rules we adopt or for independent reasons. Accordingly, while such analyses provide some context regarding alternatives, their use as tools for illustrating the economic effects of such alternatives is limited.

(a) Dealing Activity by Foreign Branches of U.S. Banks

The final rules require U.S. banks to count all dealing transactions of their foreign branches against the *de minimis* thresholds, even when the counterparty is a non-U.S. person or another foreign branch of a U.S. person. Certain commenters to the rules addressed in the Intermediary Definitions Adopting Release had expressed the view that such transactions by foreign branches should not have to count their dealing transactions involving non-U.S. persons.[475] For the reasons discussed above, we believe that it is appropriate for the analysis to include dealing transactions conducted through foreign branches to the same extent as other dealing transactions by U.S. persons.[476]

Adopting such an alternative approach potentially could provide market participants that are U.S. persons with incentives to execute higher volumes through their foreign branches. Such an outcome may be expected in part to reduce the programmatic and assessment costs associated with dealer regulation under Title VII. Such an outcome also would be expected to reduce the programmatic benefits associated with dealer regulation, given that those U.S. banks (and potentially the U.S. financial system) would incur risks via their foreign branches equivalent to the risk that might arise from transactions of

[472] For example, the final rules incorporate an express representation provision in the ''U.S. person'' definition, to help the parties best positioned to make the U.S.-person determination and convey the results of that analysis to its counterparty. *See* section IV.C.4, *supra.*

[473] For example, one commenter urged the Commission to exempt from the definition of U.S. person collective investment vehicles that are publicly offered only to non-U.S. persons, consistent with the CFTC's interpretation, on account of the costs that would be required for collective investment vehicles that transact in both swaps and security-based swaps to develop separate compliance systems and operations for swaps and security-based swaps.

[474] In this regard we also note that in certain areas the Commission has taken an approach that is narrower than the CFTC analogue.

[475] *See* note 181, *supra,* and accompanying text. This issue—regarding whether a foreign branch of a U.S. bank should count all of its dealing activity against the *de minimis* thresholds—is distinct from the issue regarding the extent to which a non-U.S. person should count its dealing activity involving a foreign branch of a U.S. bank as a counterparty. That latter issue is addressed below. *See* section IV.I.3(d), *supra.*

[476] *See* section 0, *supra.*

U.S. banks that are not conducted through foreign branches, but without the additional oversight (including risk mitigation requirements such as capital and margin requirements) that comes from regulation as a dealer.

Using the 2012 data to assess the impact associated with this alternative does not indicate a change to our conservative estimate that up to 50 entities potentially would register as security-based swap dealers.[477] This assessment, as well as the other assessments of alternatives discussed below, is subject to the limitations discussed above, including limitations regarding the ability to assess how market participants would change their activities in response to the final rules.

(b) Dealing Activity by Guaranteed Affiliates of U.S. Persons

The final rules require a non-U.S. person to count, against the *de minimis* thresholds, dealing transactions for which the non-U.S. person's performance in connection with the transaction is subject to a recourse guarantee against a U.S. affiliate of the non-U.S. person. Although the proposal instead would have treated such guaranteed affiliates like any other non-U.S. persons, we believe that this provision is appropriate for the reasons discussed above, including that such recourse guarantees pose risks to U.S. persons and potentially to the U.S. financial system via the U.S. guarantor.

This aspect of the final rules reflects a middle ground between commenter views, given that some commenters opposed any consideration of guarantees as part of the dealer analysis, while others expressed the view that all affiliates of a U.S. person should be assumed to be the beneficiary of a *de facto* guarantee from the U.S. person and, absent a showing otherwise, should have to count all of their dealing activity against the thresholds.[478] This diversity of commenter views suggests a range of potential alternatives to the final rules—including one alternative in which the final rules do not address guarantees at all, as well as alternatives in which (based on the concept of a *de facto* guarantee) all affiliates of a U.S. person, or at least all affiliates within a U.S.-based holding company structure, should have to count their dealing activity against the thresholds (with a potential exception if they demonstrate to the market that there will be no guarantee). For the reasons discussed above, we believe that the approach taken by the final rules is appropriate.[479]

Following such alternative approaches could be expected to lead to disparate economic effects depending on which approach is followed. On the one hand, an approach that does not require counting against the thresholds of a non-U.S. person's transactions with non-U.S. counterparties that are guaranteed by their U.S. affiliates would help provide incentives for greater use of guarantees by U.S. persons, with an increase of the associated risk flowing to the United States.[480] On the other hand, an approach that requires the conditional or unconditional counting of transactions by all affiliates of U.S. persons could provide incentives for certain non-U.S. holding companies to limit or eliminate relationships with U.S.-based affiliates, even if these affiliates perform functions unrelated to security-based swap activity. Additionally, a more limited approach that requires counting by non-U.S. subsidiaries of U.S. holding companies could reduce liquidity in the security-based swap market even if such a subsidiary's participation does not depend on the financial position or backing of its parent.

Data assessment of the first alternative does not indicate a change to our estimate that up to 50 entities may be expected to register with the Commission as security-based swap dealers.[481] The available data does not permit us to assess the other approaches, whereby all affiliates within a U.S.-based holding company, or all affiliates of any U.S. person generally, should have to count their dealing activity against the thresholds.[482]

(c) Dealing by Conduit Affiliates

The final rules require that conduit affiliates of U.S. persons count all of their dealing transactions against the *de minimis* thresholds. The available data does not permit us to identify which market participants currently engage in security-based swap dealing activity on behalf of U.S. affiliates, and hence would be deemed to be conduit affiliates. Accordingly, we are limited in our ability to quantify the economic impact of this anti-evasion provision.

The economic effects of not including these provisions—and instead treating conduit affiliates the same as other non-U.S. persons—has the potential to be significant, as it would remove a tool that should help to deter market participants from seeking to evade dealer regulation through arrangements whereby U.S. persons effectively engage in dealing activity with non-U.S. persons via back-to-back transactions involving non-U.S. affiliates.[483] Following that alternative thus may partially impair the effective functioning of the Title VII dealer requirements, and lead risk and liquidity to concentrate outside of the U.S. market.

[477] The DTCC–TIW data permits us to separately consider dealing activity involving accounts of foreign branches of U.S. banks from other accounts of U.S.-domiciled persons. As a result, it is possible to consider the potential impact of a requirement under which—in contrast to the final rules—dealing activity conducted through a foreign branch only needs to be counted against the thresholds when the counterparty is a U.S.-domiciled person. Under such an alternative approach, the U.S. person would not have to count dealing transactions in which the counterparty is a non-U.S. person or another foreign branch of a U.S. bank.

As discussed above, current data indicates that there are 27 market participants that have three or more counterparties that are not recognized as dealers by ISDA, and that have $3 billion or more in notional single-name CDS transactions over a 12 month period. Screening those entities against a cross-border test that is identical to the one we are adopting, except that it does not count foreign branches of U.S. banks as U.S. persons, leads to an estimate of 25 market entities that have $3 billion or more in activity that must be counted against the thresholds (rather than the 26 estimated in connection with the test we are adopting). That difference does not appear to warrant a change in the conservative estimate that up to 50 entities may register as security-based swap dealers.

[478] *See* note 310, *supra.*

[479] *See* section 0, *supra.*

[480] In the Cross-Border Proposing Release, we expressed the preliminary view that dealer regulation of such persons would not materially increase the programmatic benefits of the dealer registration requirement, and that such an approach would impose programmatic costs without a corresponding increase in programmatic benefits to the U.S. security-based swap market. *See* Cross-Border Proposing Release, 78 FR 31146–47. For the reasons discussed above, we have reached a different conclusion in conjunction with these final rules. *See* section IV.E.1(b), *supra.*

[481] Although the data available to the Commission includes data regarding transactions of non-U.S. persons that are guaranteed by their U.S. affiliates, the data does not allow us to identify which individual transactions of those non-U.S. persons are subject to guarantees by their U.S. affiliates, or to distinguish the guaranteed and non-guaranteed transactions of such non-U.S. persons. As a result, the assessment of the final rule presumed that all transactions of foreign subsidiaries of U.S. persons for which we have data available constitute guaranteed transactions.

Screening the 27 market participants that have three or more counterparties that are not recognized as dealers by ISDA, and that have $3 billion or more in notional single-name CDS transactions over a 12 month period, with a revised *de minimis* test that does not include any transactions with non-U.S. person counterparties entered into by a foreign subsidiary of a U.S. person produces 26 entities that would have more than $3 billion in notional transactions over 12 months counted against the threshold—a number that is identical to the number associated with the test we are adopting.

[482] The available data does not include information about the single-name security-based swap transactions of non-U.S. domiciled persons (including non-U.S. affiliates of U.S.-domiciled persons) for single-name CDS involving a non-U.S. reference entity.

[483] *See* note 314, *supra,* and accompanying text.

Another potential alternative approach to addressing such evasive activity could be to narrow the inter-affiliate exception to having to count dealing transactions against the *de minimis* thresholds, such as by making the exception unavailable when non-U.S. persons transact with their U.S. affiliates. Such an alternative approach may be expected to reduce the ability of corporate groups to use central market-facing entities to facilitate the group's security-based swap activities, and as such may increase the costs faced by such entities (*e.g.,* by requiring additional entities to directly face the market and hence negotiate master agreements with dealers and other counterparties). We believe that the more targeted approach of incorporating the conduit affiliate concept would achieve comparable anti-evasion purposes with less cost and disruption.

(d) Dealing Activity by Non-U.S. Counterparties With Foreign Branches of U.S. Banks and Certain Other Counterparties

The final rules require non-U.S. persons to count, against the thresholds, their dealing transactions involving counterparties that are foreign branches of U.S. banks unless the U.S. bank is registered as a security-based swap dealer and unless no U.S.-based personnel of the counterparty are involved in arranging, negotiating and executing the transaction. This reflects a change from the proposal, which would have excluded all such transactions with a foreign branch regardless of whether the U.S. bank was registered as a dealer. The change appropriately takes into consideration the benefits of having relevant Title VII provisions applicable to dealers apply to the transaction against the liquidity and disparate treatment rationales underlying the exclusion.[484]

This aspect of the final rules reflects a middle ground between commenter views regarding transactions with foreign branches, given that some commenters expressed the view that all transactions with foreign branches should be counted against a non-U.S. person's *de minimis* threshold, while another commenter took the view that no such transaction should be counted.[485] This suggests at least two possible alternatives to the final rule—one in which all transactions with foreign branches are excluded from being counted against the thresholds, and one in which all transactions with foreign branches are counted against the thresholds (just like other transactions with U.S. person counterparties).

The effect of adopting the first alternative—whereby all transactions with foreign branches are excluded from being counted—could provide U.S. market participants that are not registered as dealers with incentives to execute higher volumes of security-based swaps through their foreign branches, resulting in higher amounts of risk being transmitted to the United States without the risk-mitigating attributes of having a registered dealer involved in the transaction.[486] Adopting the second alternative—whereby all of a non-U.S. person's transactions with foreign branches are counted regardless of the registration status of the U.S. counterparty—would raise the potential for disparate impacts upon U.S. persons trading with foreign branches, along with associated concerns about liquidity impacts.

The available data allows for estimates related to both potential alternatives subject to the limitations discussed above, and neither alternative would be expected to indicate a change to our assessment that up to 50 entities may be expected to register with the Commission as security-based swap dealers.[487]

The final rules also incorporate definitions of ''foreign branch'' and ''transaction conducted through a foreign branch'' that potentially could be modified to reflect alternative approaches. While we do not believe that the economic impact of following such alternatives is readily quantifiable given the available data, we generally believe that any such effects would be limited, particularly in light of our understanding that few, if any, U.S. persons currently may participate in the single-name CDS market through their foreign branches.

Separately, the final rules do not require non-U.S. persons to count their dealing transactions with non-U.S. counterparties. Potential alternatives to that approach could be to require non-U.S. persons to count their dealing transactions with counterparties that are guaranteed affiliates of U.S. persons (at least with regard to transactions subject to the guarantees), or their dealing transactions with counterparties that are conduit affiliates.[488] The alternative approach of requiring non-U.S. persons to count dealing transactions with either or both of those types of non-U.S. counterparties potentially would increase the programmatic benefits associated with Title VII dealer regulation, by applying the risk mitigating aspects of dealer regulation (such as capital and margin requirements) to the dealer counterparties of persons whose security-based swap activities directly affect the United States, while recognizing that such risk mitigating benefits would be more attenuated than those that are associated with the final rules' approach of directly counting dealing transactions of such guaranteed and conduit affiliates. On the other hand, requiring non-U.S. persons to count such transactions would be expected to increase assessment costs by requiring such persons to evaluate and track whether their non-U.S. counterparties are guaranteed or conduit affiliates. Also, to the extent such an alternative approach causes non-U.S. dealers to avoid entering into transactions with affiliates of U.S. persons to avoid the need to conduct such assessments, the approach could reduce the liquidity available to corporate groups with U.S. affiliates, and further could provide an incentive for such corporate groups to move their security-based swap activity entirely outside the United States (which could impair the transparency goals of Title VII).

As we discussed in the Cross-Border Proposing Release, another potential approach related to the treatment of non-U.S. persons' dealing activities would be to not require the registration of non-U.S. persons that engage in dealing activity with U.S. person counterparties through an affiliated U.S. person intermediary.[489] In our view,

[484] *See* note 370, *supra,* and accompanying text.

[485] *See* notes 359 through 361, *supra,* and accompanying text.

[486] In practice, based on our understanding of changes in the way major U.S. dealers engage with non-U.S. counterparties in the single-name CDS market following the issuance of the CFTC Cross-Border Guidance, we believe that few, if any, U.S. persons currently may participate in the single-name CDS market through their foreign branches. Also, as noted above, we recognize that other regulatory provisions may limit the ability of U.S. banks to conduct security-based swap activities. *See* note 366, *supra.*

[487] Screening the 27 market participants that have three or more counterparties that are not recognized as dealers by ISDA, and that have $3 billion or more in notional single-name CDS transactions over a 12 month period, with the two revised *de minimis* tests addressed above produces 26 entities that would have more than $3 billion in notional transactions over 12 months counted against the threshold—a number identical to the number associated with the test we are adopting.

[488] For the reasons discussed above, we do not believe that it is necessary to require non-U.S. persons to count their dealing transactions with such non-U.S. counterparties. *See* section 0, *supra.*

Also, as discussed above, we anticipate soliciting additional public comment regarding counting of dealing transactions between two non-U.S. persons towards the *de minimis* exception when activities related to the transaction occur in the United States. *See* section 0, *supra.*

[489] *See* Cross-Border Proposing Release, 78 FR 31146.

such an approach would reduce the programmatic benefits associated with dealer regulation under Title VII, and would raise particular concerns related to financial responsibility and counterparty risk, as well as create risk to U.S. persons and potentially to the U.S. financial system.

(e) ''U.S. Person'' Definition

The ''U.S. person'' definition used by the final rules seeks to identify those persons for whom it is reasonable to infer that a significant portion of their financial and legal relationships are likely to exist within the United States and for whom it is therefore reasonable to conclude that risks arising from their security-based swap activities could manifest themselves within the United States, regardless of location of their counterparties. Because the definition incorporates decisions regarding a range of issues, the definition potentially is associated with a number of alternative approaches that could influence the final rules' economic impact.[490]

A particularly significant element of this definition addresses the treatment of investment vehicles. Under the final rule, a fund is a ''U.S. person'' if the vehicle is organized, incorporated or established within the United States, or if its principal place of business is in the United States, which we are interpreting to mean that the primary locus of the investment vehicle's day-to-day operations is within the United States. One potential alternative approach to this element would be to make use of a narrower definition that does not use a principal place of business test for investment vehicles, and hence does not encompass vehicles that are not established, incorporated, or organized within the United States, even if the primary locus of their day-to-day operations is located here. Another potential approach would be to focus the meaning of ''principal place of business'' on the location where the operational management activities of the fund are carried out, without regard to the location of the fund's managers.

Similarly, another potential alternative approach to the ''U.S. person'' definition would be for the definition not to incorporate a principal place of business test for operating companies. Under such an alternative approach, an operating company would not fall within the ''U.S. person'' definition if it is not organized, incorporated or established within the United States, even if the officers or directors who direct, control and coordinate the operating company's overall business activities are located in the United States.

Following an alternative approach whereby the ''U.S. person'' definition did not encompass a ''principal place of business'' test, or whereby the definition followed a narrower such test with regard to particular types of market participants, may be expected to reduce the programmatic costs and benefits associated with dealer regulation, in that it may lead certain non-U.S. persons not to have to register as dealers notwithstanding dealing activities with such counterparties above the *de minimis* thresholds. Such an alternative approach also may promote market participants' use of such counterparties that are closely linked to the United States but that are not organized, incorporated or established within the United States, or that do not have operational management activities within the United States, in lieu of entering into security-based swaps with U.S. persons. While such an approach may be expected to reduce programmatic costs, it also would reduce the programmatic risk mitigation and other benefits of dealer regulation under Title VII given that the ''principal place of business'' test helps to identify persons for which the risks associated with their security-based swap activities can manifest themselves within the United States.[491] Such an alternative approach may also be expected to reduce assessment costs incurred by non-U.S. persons, although such assessment costs in any event would be reduced by the ability of non-U.S. persons to rely on a counterparty's representation that the counterparty is not a U.S. person.

Aside from those issues related to the use of a ''principal place of business'' test, other aspects of the ''U.S. person'' definition also may affect the programmatic costs and benefits and assessment costs associated with dealer regulation. For example, the final rules do not encompass funds that are majority-owned by U.S. persons, although two commenters supported such an approach.[492] Also, the final ''U.S. person'' definition does not exclude investment vehicles that are offered publicly only to non-U.S. persons and are not offered to U.S. persons, although some commenters also supported this type of exclusion.[493]

For the reasons detailed above, we believe that including majority-owned funds within the definition of ''U.S. person'' would be likely to increase programmatic costs (by causing more investment funds to be subject to Title VII requirements) as well as assessment costs, while not significantly increasing programmatic benefits given our view that the composition of a fund's beneficial owners is not likely to have significant bearing on the degree of risk that the fund's security-based swap activity poses to the U.S. financial system. Moreover, for the reasons discussed above, we also believe that an exclusion for publicly offered funds that are offered only to non-U.S. persons and not offered to U.S. persons, while likely to reduce programmatic costs, would also reduce programmatic benefits, by excluding certain funds from the definition of U.S. person based on factors that we do not believe are directly relevant to the degree of risk a fund's security-based swap activities are likely to pose to U.S. persons and potentially to the U.S. financial system.

Apart from those potential alternatives regarding the treatment of majority-owned funds and of investment vehicles offered only to non-U.S. persons, an additional alternative approach would be for the Commission simply to adopt the CFTC's interpretation of ''U.S. person.'' We do not believe that following that alternative approach would be expected to have a significant effect on programmatic costs and benefits, given the substantive similarities between the CFTC's interpretation and our final rule. Adopting such an alternative approach, however, could have an impact on assessment costs. We particularly are mindful that some commenters requested that we adopt a consistent definition notwithstanding their views regarding specific features of the definition, in part because they believed that differences between our definition of ''U.S. person'' and the CFTC's interpretation of that term would significantly increase costs associated with determining whether they or their counterparties are U.S. persons for purposes of Title VII. We recognize that differences between the two definitions could lead certain market participants to incur additional costs that they would not incur in the presence of identical definitions. At the same time, we are adopting definitions of ''U.S. person''

[490] The issues regarding the treatment of foreign branches of U.S. banks—as potential dealers or as counterparties to non-U.S. persons that engage in dealing activity—that are addressed above also implicate the status of those foreign branches as ''U.S. persons.''

[491] *See* section IV.C.3(b)(ii), *supra.*

[492] *See* section IV.C.3(b)(iii), *supra.* The CFTC Cross-Border Guidance follows such an approach.

[493] *See* note 285 through 287, *supra,* and accompanying text. Here too, the CFTC Cross-Border Guidance follows such an approach.

and ''principal place of business'' that should be relatively simple and straightforward to implement, which should mitigate commenters' concerns about the costs associated with different approaches to these terms. More generally, for the reasons discussed above we believe that the definitions we are adopting are the appropriate definitions for the cross-border implementation of Title VII in the security-based swap context.[494]

In addition, as discussed above, the final ''U.S. person'' definition does not follow an approach similar to the one used in Regulation S.[495] Because such an alternative approach would treat certain foreign branches of U.S. persons as non-U.S. persons, notwithstanding the entity-wide nature of the associated risks, following such an approach would be expected to reduce programmatic benefits by causing Title VII dealer regulation not to apply to certain dealing activities that occur in the United States and pose direct risks to U.S. persons. Although such an alternative approach potentially could impact assessment costs, given that certain market participants may already be familiar with the parameters of such a Regulation S approach, in our view the ''U.S. person'' definition we are adopting is more appropriate and simpler than an approach based on Regulation S.

Another potential alternative approach for addressing the ''U.S. person'' definition would be for the definition not to include the exclusion we are adopting with regard to specified international organizations. The alternative approach of not explicitly excluding such organizations from the definition could be expected to increase assessment costs—as counterparties to such organizations would have to consider those organizations' potential status as U.S. persons, which would implicate analysis of the privileges and immunities granted such persons under U.S. law—without likely countervailing programmatic benefits.[496]

The available data suggests that an alternative in which offshore funds managed by U.S. persons are excluded from *de minimis* calculations by non-U.S. persons would not be expected to indicate a change to our assessment that up to 50 entities may be expected to register with the Commission as security-based swap dealers.[497] We do not believe that other alternative approaches to the ''U.S. person'' definition are readily susceptible to quantitative analysis that would illustrate their potential programmatic and assessment effects.[498]

(f) Aggregation Requirement

The final rules apply the *de minimis* exception's aggregation requirement to cross-border activities in a way that reflects the same principles that govern when non-U.S. persons must directly count their dealing activity against the thresholds. The final rules thus have been revised from the proposal to incorporate other aspects of the way that the final rules require counting of particular transactions against the thresholds. The final rules further have been modified from the proposal to remove the proposed ''operational independence'' condition to the exclusion that permits a person not to count transactions of its affiliates that are registered as security-based swap dealers.[499] These rules—like the incorporation of the aggregation requirement as part of the Intermediary Definitions Adopting Release—are intended to avoid evasion of the Title VII dealer requirements.

The final rules regarding the aggregation provision represent a middle ground between commenter views. One commenter specifically supported the proposal's ''operational independence'' condition that would limit when a person could exclude the dealing transactions of affiliates that are registered as dealers.[500] On the other hand, other commenters opposed any application of the aggregation provisions in the cross-border context (as well as more generally).[501] This suggests at least two alternatives—one in which the ''operational independence'' condition is retained, and one in which the aggregation requirement is further limited to only require U.S. persons to count dealing activities of affiliated U.S. persons.

The economic impact of retaining the proposed operational independence condition potentially would reduce efficiencies and deter beneficial group-wide risk management practices. Conversely, the impact of the alternative approach of further limiting the aggregation requirement, such that it addresses only affiliated U.S. persons, would facilitate market participants' evasion of the dealer regulation requirement by dividing their dealing activity among multiple non-U.S. entities.

The economic impact of the alternative approach of retaining the ''operational independence'' condition is not readily susceptible to quantification, given the lack of data regarding the extent to which affiliates that engage in security-based swap activities jointly make use of back office, risk management, sales or trades, or other functions. Analysis of data related to the alternate approach under which the requirement would be further limited to aggregating transactions of affiliated U.S. persons would not be expected to indicate a change to our assessment that up to 50 entities may be expected to register with the Commission as security-based swap dealers, subject to the limitations discussed above.[502]

(g) Exception for Cleared Anonymous Transactions

The final rules include an exception whereby non-U.S. persons need not

[494] *See* section 0, *supra.*

[495] *See* section 0, *supra.*

[496] Separately, as discussed above, we do not concur with the view of some commenters that a person's dealing activities involving such international organizations as counterparty should be excluded from having to be counted under the final rules. *See* section IV.3(e), *supra.* An alternative approach that followed those views would reduce the programmatic benefits of dealer regulation under Title VII, such as by permitting dealers that are U.S. persons to escape dealer regulation, notwithstanding the risk such U.S. dealers pose to the U.S. market, simply by focusing their dealing activities toward transactions with such international organizations.

[497] Screening the 27 market participants that have three or more counterparties that are not recognized as dealers by ISDA, and that have $3 billion or more in notional single-name CDS transactions over a 12 month period, with a revised *de minimis* test that does not count non-U.S. persons' dealing transactions involving offshore funds managed by U.S. persons produces 26 entities that would have more than $3 billion in notional transactions over 12 months counted against the threshold—a number identical to the number associated with the test we are adopting.

[498] We note generally, however, that similarities between the definition of ''U.S. person'' in the final rules and the CFTC's interpretation of that term would help mitigate the assessment costs associated with the ''U.S. person'' determination. We do not believe that there are any significant differences, whereby a person that is a ''U.S. person'' for purposes of our final rules would generally not be a ''U.S. person'' for purposes of the CFTC Cross-Border Guidance, that may tend to increase assessment costs.

[499] By removing the proposed ''operational independence'' condition, the final rule provides that a person need not count the transactions of its registered dealer affiliate regardless of whether the person and the registered dealer affiliate are operationally independent.

The final rule also has been revised from the proposal to make the exclusion for registered dealer affiliates also available when an affiliate is in the process of registering as a dealer.

[500] *See* note 396, *supra.*

[501] *See* note 391 through 395, *supra.*

[502] Screening the 27 market participants that have three or more counterparties that are not recognized as dealers by ISDA, and that have $3 billion or more in notional single-name CDS transactions over a 12 month period, with a revised *de minimis* test that limits aggregation to U.S. affiliates within a corporate group produces 26 entities that would have more than $3 billion in notional transactions over 12 months counted against the threshold—a number identical to the number associated with the test we are adopting.

count, against the thresholds, transactions that are entered into anonymously and are cleared. This exception reflects limits on the potential availability of relevant information to non-U.S. persons, as well as potential impacts on liquidity that may result absent such an exception.

The likely impact of the alternative approach of not including such an exception could be to deter the development of anonymous trading platforms, or to reduce U.S. persons' ability to participate in such platforms. In this regard the alternative can be expected to help reduce the programmatic benefits of Title VII. The impact of the alternative approach of not including this type of exception is not readily susceptible to quantification.[503]

V. Cross-Border Application of Major Security-Based Swap Participant Thresholds

A. Overview

The statutory definition of ''major security-based swap participant'' encompasses persons that are not dealers but that nonetheless could pose a high degree of risk to the U.S. financial system.[504] The statutory focus of the ''major security-based swap participant'' definition differs from that of the ''security-based swap dealer'' definition, in that the latter focuses on *activity* that may raise the concerns that dealer regulation is intended to address, while the former focuses on *positions* that may raise systemic risk concerns within the United States.[505] The definition focuses on systemic risk issues by targeting persons that maintain ''substantial positions'' that are ''systemically important,'' or whose positions create ''substantial counterparty exposure that could have serious adverse effects on the financial stability of the United States banking system or financial markets.'' [506] The statute further directed us to define the term ''substantial position'' at the ''threshold that the Commission determines to be prudent for the effective monitoring, management, and oversight of entities that are systemically important or can significantly impact the financial system of the United States.'' [507]

In the Intermediary Definitions Adopting Release, we, together with the CFTC, adopted rules defining what constitutes a ''substantial position'' and ''substantial counterparty exposure.'' [508] In doing so, we concentrated on identifying persons whose large security-based swap positions pose market risks that are significant enough that it is prudent to regulate and monitor those persons.[509] The definition incorporates a current exposure test and a potential future exposure test designed to identify such persons.[510]

We addressed the application of the major participant definition to cross-border security-based swaps in the Cross-Border Proposing Release, proposing that a U.S. person consider all security-based swap positions entered into by it, and also proposing that a non-U.S. person consider only its positions with U.S. persons but not its positions with other non-U.S. counterparties, even if the positions are entered into within the United States or the non-U.S. counterparties are guaranteed by a U.S. person.[511]

In the proposal, we also explained our preliminary view on the application in the cross-border context of the general principles regarding attribution, which were set forth in guidance in the Intermediary Definitions Adopting Release. Specifically, we stated that a person's security-based swap positions must be attributed to a parent, affiliate, or guarantor for purposes of the major security-based swap participant analysis to the extent that the counterparties to those positions have recourse to that parent, affiliate, or guarantor in connection with the position.[512] This treatment was intended to reflect the risk focus of the major security-based swap participant definition by providing that entities will be regulated as major security-based swap participants when the guarantees they provide pose a sufficiently high level of risk to the U.S. financial system.[513]

Commenters raised several issues related to the proposed approach for applying the major security-based swap participant definition to cross-border security-based swaps. As discussed below, these include issues regarding: The treatment of a non-U.S. person's positions with foreign branches of U.S. banks, the treatment of guarantees, and the treatment of entities with legacy positions. Commenters also requested that the Commission generally harmonize its rules and guidance with the CFTC's Cross-Border Guidance.

After considering commenters' views, we are adopting final rules that have been modified from the proposal in certain important respects. As addressed in further detail below, key changes to the proposal include:

- A requirement that a conduit affiliate, as defined above, must include in its major security-based swap participant threshold calculations all of its security-based swap positions;
- A requirement that a non-U.S. person other than a conduit affiliate

[503] Based on our understanding of the market, transactions in security-based swaps in general currently would not be eligible for the exception because transactions currently are not anonymous.

[504] As discussed in the Intermediary Definitions Adopting Release, the major security-based swap participant definition employs tests incorporating terms—particularly ''systemically important,'' ''significantly impact the financial system'' or ''create substantial counterparty exposure''—that denote a focus on entities that pose a high degree of risk through their security-based swap activities. *See* Intermediary Definitions Adopting Release, 77 FR 30661 n.761. That discussion also noted that the link between the major participant definitions and risk was highlighted during the congressional debate on the statute. *See id.* (citing 156 Cong. Rec. S5907 (daily ed. July 15, 2010) (citing colloquy between Senators Hagen and Lincoln, discussing how the goal of the major participant definitions was to ''focus on risk factors that contributed to the recent financial crisis, such as excessive leverage, under-collateralization of swap positions, and a lack of information about the aggregate size of positions.'')).

[505] *See* section 0, *supra.*

[506] *See* section 3(a)(67) of the Exchange Act. The statute defines a ''major security-based swap participant'' as a person that satisfies any one of three alternative statutory tests: A person that maintains a ''substantial position'' in swaps or security-based swaps for any of the major swap categories as determined by the Commission; a person whose outstanding security-based swaps create substantial counterparty exposure that could have serious adverse effects on the financial stability of the U.S. banking system or financial markets; or a person that is a ''financial entity'' that is ''highly leveraged'' relative to the amount of capital it holds (and that is not subject to capital requirements established by an appropriate Federal banking agency) and maintains a ''substantial position'' in outstanding security-based swaps in any major category as determined by the Commission.

[507] *See* Exchange Act section 3(a)(67)(B).

[508] *See* Intermediary Definitions Adopting Release, 77 FR 30663–84.

[509] *See id.* at 30661, 30666.

[510] *See id.* at 30666 (noting the use of such tests in context of ''substantial position'' definition); *id.* at 30682 (noting use of such tests in context of ''substantial counterparty exposure'' definition). We also noted that our definition of ''substantial position'' was intended to address default-related credit risks, the risk that would be posed by the default of multiple entities close in time, and the aggregate risks presented by a person's security-based swap activity, as these considerations reflect the market risk concerns expressly identified in the statute. We interpreted ''substantial counterparty exposure'' in a similar manner, noting the focus of the statutory test on ''serious adverse effects on financial stability or financial markets.'' *Id.* at 30683. *Cf.* section 3(a)(67)(A)(ii)(II) of the Exchange Act (encompassing as major security-based swap participants persons ''whose outstanding security-based swaps create substantial counterparty exposure that could have serious adverse effects on the financial stability of the United States banking system or financial markets'').

[511] *See* proposed Exchange Act rule 3a67–10(c); Cross-Border Proposing Release, 78 FR 31030.

[512] *See* Cross-Border Proposing Release, 78 FR 31031 and n.625. *Cf.* Intermediary Definitions Adopting Release, 77 FR 30689 (describing same attribution treatment in context of domestic security-based swap activities).

[513] *See* Cross-Border Proposing Release, 78 FR 31032.

must include in its major security-based swap participant threshold calculations all of its security-based swap positions for which its counterparty has rights of recourse against a U.S. person; and

• A modification to the proposed requirement that a non-U.S. person must include in its major security-based swap participant threshold calculations security-based swap positions with foreign branches of U.S. banks.[514]

Our approach to the application of the major security-based swap participant definition in the cross-border context incorporates certain principles that also apply in the context of the dealer definition and that are set forth in the Intermediary Definitions Adopting Release.[515] First, as in the Intermediary Definitions Adopting Release, we interpret the term ''person'' to refer to a particular legal person, meaning that we view a trading desk, department, office, branch, or other discrete business unit that is not a separately organized legal person as a part of the legal person that enters into security-based swap positions.[516] Thus, a legal person with a branch, agency, or office that exceeds the major security-based swap participant thresholds is required to register as a major security-based swap participant as a legal person, even if the legal person's positions are limited to such branch, agency, or office.[517] In addition, consistent with rules adopted in the Intermediary Definitions Adopting Release, cross-border security-based swap positions between majority-owned affiliates will not be considered for purposes of determining whether the person as a whole is a major security-based swap participant.[518]

B. Application of the Major Security-Based Swap Participant Definition to U.S. Persons

1. Proposed Approach and Commenters' Views

Under the proposal, a U.S. person would have considered all of its security-based swap positions for purposes of the major participant analysis.[519] Commenters did not comment on this aspect of the proposed approach, although, as discussed above, several commenters addressed the proposed scope of the ''U.S. person'' definition.[520]

2. Final Rule

Consistent with the proposal, the final rules require a U.S. person to consider all of its security-based swap positions in its major security-based swap participant threshold calculations.[521] The final rule incorporates the definition of ''U.S. person'' used in the context of a security-based swap dealer's *de minimis* calculation.[522]

As discussed above, in our view, the security-based swap positions of a U.S. person exist in the United States and raise, at the thresholds set forth in our further definition of major security-based swap participant, risks to the stability of the U.S. financial system or of U.S. entities, including those that may be systemically important.[523] As noted above, it is the U.S. person as a whole and not merely a foreign branch or office that bears the risk of the security-based swap. Accordingly, it is consistent with our territorial approach to require a U.S. person to include all of its security-based swap positions in its major security-based swap participant threshold calculations.

C. Application of the Major Security-Based Swap Participant Definition to Conduit Affiliates

1. Proposed Approach and Commenters' Views

The proposal would have treated non-U.S. persons acting as ''conduits'' for their U.S. affiliates the same as any other non-U.S. person for purposes of the major participant analysis, and, as such would have required those persons to include in their major participant threshold calculations only positions with U.S. persons.[524]

The proposal solicited comment regarding whether a non-U.S. person's major participant analysis should incorporate security-based swaps other than those entered into with U.S. persons.[525] Also, as discussed above, the proposal requested comment on the use of the conduit affiliate concept and the treatment of entities that operate a ''central booking system.''[526]

As discussed above, two commenters opposed applying the ''conduit affiliate'' definition to entities that serve as ''central booking systems'' for a corporate group, noting that the ''central booking systems'' are used to manage internal risk.[527] The commenters argued that applying the conduit affiliate definition in this manner would tie regulatory requirements to firms' internal risk management practices, and would hamper the firms' ability to manage risk across a multinational enterprise.[528] Another commenter suggested that conduit affiliates are the recipients of a *de facto* guarantee from their U.S. affiliates and thus should be treated as U.S. persons.[529]

2. Final Rule

The final rule modifies the proposal to require conduit affiliates to include all of their security-based swap positions in their major participant threshold calculations.[530] Consistent with the dealer *de minimis* rules, a ''conduit affiliate'' is a non-U.S. affiliate of a U.S. person that enters into security-based swaps with non-U.S. persons, or with foreign branches of U.S. banks that are registered security-based swap dealers, on behalf of one or more of its U.S. affiliates (other than U.S. affiliates that are registered as security-based swap dealers or major security-based swap participants),[531]

[514] In addition to the changes listed above, the final rules do not include certain provisions that were included in proposed Exchange Act rule 3a67–10 because those provisions, which defined ''foreign major security-based swap participant,'' and addressed the application of business conduct requirements to registered foreign major security-based swap participants, were relevant to proposed rules regarding substantive requirements that were included in the Cross-Border Proposing Release. As this release only addresses various definitional rules and not those substantive requirements that were proposed, those provisions are not relevant to this release and are not addressed. Those provisions may, however, be relevant to matters addressed in subsequent rulemakings.

The final rules applying the major security-based swap participant definition also incorporate a conforming change by referring to such person's ''positions'' rather than ''transactions.'' This is consistent with the use of the term ''positions'' in the statutory definition of major security-based swap participant and the rules further defining that term.

[515] *See* Intermediary Definitions Adopting Release, 77 FR 30624 (discussing our guidance regarding the meaning of the term ''person'' as used in security-based swap dealer definition). *Cf.* section 0, *supra.*

[516] *See* section 0. *Cf.* Intermediary Definitions Adopting Release, 77 FR 30624.

[517] *Cf.* Intermediary Definitions Adopting Release, 77 FR 30624; *see also* Cross-Border Proposing Release, 78 FR 30993.

[518] *See* Exchange Act rule 3a67–3(e); Intermediary Definitions Adopting Release, 77 FR 30687.

[519] *See* proposed Exchange Act rule 3a–67–10(c)(1).

[520] *See* section 0 and notes 192–194 (citing comment letters regarding ''U.S. person'' definition generally), *supra.*

[521] *See* Exchange Act rule 3a67–10(b)(1).

[522] *See* Exchange Act rule 3a67–10(a)(4) (defining ''U.S. person'' by referring to rule 3a71–3(a)(4)).

[523] *See* section 0; *Cf.* Exchange Act section 3(a)(67)(B).

[524] Cross-Border Proposing Release, 78 FR 31006. *See id.* at 31006 n.356 (acknowledging that such treatment differed from the CFTC's proposal and citing CFTC's proposed cross-border guidance).

[525] *Id.* at 31036.

[526] *See* section 0, *supra.*

[527] *See id.*

[528] *See* section 0, *supra,* notes 309 and 311 (citing SIFMA/FIA/FSR Letter and CDEU Letter).

[529] *See* section 0, note 310, *supra* (citing BM Letter).

[530] Exchange Act rule 3a67–10(b)(2).

[531] As noted in the discussion of conduit affiliate in the context of the application of dealer *de minimis* exception, the ''conduit affiliate'' definition does not encompass persons that engage in such offsetting transactions solely with U.S. persons that are registered with the Commission as security-based swap dealers or major security-based

and enters into offsetting transactions with its U.S. affiliates to transfer risks and benefits of those security-based swaps.[532]

After careful consideration and as discussed in the context of the dealer *de minimis* exception, we believe that requiring such conduit affiliates to include their positions in their major participant threshold calculations is consistent with our statutory anti-evasion authority and necessary or appropriate to help ensure that non-U.S. persons do not facilitate the evasion of major participant regulation under the Dodd-Frank Act. Absent a requirement that conduit affiliates include their positions in the threshold calculations, a U.S. person may be able to evade registration requirements under the Dodd-Frank Act by participating in arrangements whereby a non-U.S. person engages in security-based swap activity outside the United States on behalf of a U.S. affiliate that is not a registered security-based swap dealer or major security-based swap participant. The U.S. person could enter into offsetting transactions with the non-U.S. affiliate, thereby assuming the risks and benefits of those positions.[533] Requiring conduit affiliates to include their positions in their major participant threshold calculations will help guard against evasion of major participant regulation and the risk that such entities could pose to the U.S. financial system.[534]

In this context, as in the dealer context, we recognize the significance of commenters' concerns that the ''conduit affiliate'' concept may impede efficient risk management procedures, such as the use of central booking entities.[535] As in the context of the *de minimis* exception to the dealer analysis, the ''conduit affiliate'' definition serves as a prophylactic anti-evasion measure, and we do not believe that any entities currently act as conduit affiliates in the security-based swap market, particularly given that a framework for the comprehensive regulation of security-based swaps did not exist prior to the enactment of Title VII, suggesting that market participants would have had no incentives to use such arrangements for evasive purposes.

Moreover, we believe that commenter concerns may be mitigated by certain features of the major participant analysis and that, to the extent risk mitigation procedures such as ''central booking systems'' are impacted by the final rules on conduit affiliates, such anticipated impact is appropriate given the purpose of the major participant definition to identify entities that may pose significant risk to the market. As discussed in the Intermediary Definitions Adopting Release, we believe the major participant thresholds are high enough that they will not affect entities, including centralized hedging facilities, of any but the largest security-based swap users.[536] We would not expect that centralized hedging facilities would generally hold positions at the level of the major participant thresholds.[537] Further, the first test in the major security-based swap participant definition, which calculates whether a person maintains a ''substantial position,'' excludes positions held for hedging or mitigating commercial risk.[538] In the Intermediary Definitions Adopting Release, we explained that the exclusion includes hedging on behalf of a majority-owned affiliate, such as a centralized hedging facility.[539] We believe this exclusion in the first test of the major participant definition is likely to lessen the impact that the conduit affiliate rules will have on centralized hedging facilities.[540]

In addition to these features of the major security-based swap participant definition that we anticipate will mitigate the impact of the conduit affiliate rules on risk mitigation practices, we believe the focus of the major participant definition on the degree of risk to the U.S. financial system justifies regulation of certain entities that perform this function if they maintain positions at a level that may pose sufficient risk to trigger the major participant definition, regardless of the nature of their security-based swap activity.

For the foregoing reasons, we believe that the final rules regarding conduit affiliates are necessary or appropriate to prevent the evasion of any provision of the amendments made to the Exchange Act by Title VII and appropriately target potentially evasive scenarios that present the level of risk that the major security-based swap participant definition is intended to address.[541]

D. Application to Other Non-U.S. Persons

The proposed rules would have required a non-U.S. person to include in its major security-based swap participant analysis all positions with U.S. persons, including foreign branches of U.S. banks.[542] A non-U.S. person would not have had to include its security-based swap positions with non-U.S. person counterparties, even if such positions were guaranteed by another

swap participants because we believe the registered status of the U.S. person mitigates evasion concerns. *See* note 313, *supra.*

[532] *See* section 0, *supra;* Exchange Act section 3a67–10(a)(1) (incorporating the ''conduit affiliate'' definition used in the dealer *de minimis* rule).

[533] *See* Exchange Act section 30(c); section 0, *supra.* In noting that this requirement is consistent with our anti-evasion authority under section 30(c), we are not taking a position as to whether such activity by a conduit affiliate otherwise constitutes a ''business in security-based swaps without the jurisdiction of the United States.'' *See* note 315, *supra.*

We recognize that not all structures involving conduit affiliates may be evasive in purpose. We believe, however, that the anti-evasion authority of Exchange Act section 30(c) permits us to prescribe prophylactic rules to conduct without the jurisdiction of the United States, even if those rules would also apply to a market participant that has been transacting business through a pre-existing market structure established for valid business purposes, so long as the rule is designed to prevent possible evasive conduct. *See* Cross-Border Proposing Release, 78 FR 30987; *see also* section 0 and note 316, *supra* (discussion of anti-evasion authority).

[534] Consistent with the approach we are taking in the dealer context, the rule under the major participant analysis requires a conduit affiliate to count all of its positions. *See* section 0 and note 312, *supra.* It is not limited to the conduit affiliate's positions that are specifically linked to offsetting positions with its U.S. affiliate because the correspondence between positions and their offsets may not be one-to-one, such as due to netting.

[535] *See* note 311, *supra* (citing SIFMA/FIA/FSR Letter and CDEU Letter).

[536] *See* Intermediary Definitions Adopting Release, 77 FR 30671–72 and n.914 (explaining that, for cleared security-based CDS, a person would have to write $200 billion notional of CDS protection to meet the relevant $2 billion threshold for potential future exposure).

[537] We note that of the five non-U.S. domiciled entities that we expect to perceive the need to engage in the major security-based swap participant calculation threshold analysis (*see* section 0, *infra*), none appear to have any U.S.-based affiliates.

[538] *See* Exchange Act rule 3a67–1(a)(2)(i).

[539] *See* Intermediary Definitions Adopting Release, 77 FR 30675–76.

[540] We also note that the third test of the major participant definition, rule 3a67–1(a)(2)(iii), which only applies to ''highly leveraged financial entities,'' excludes centralized hedging facilities acting on behalf of a non-financial entity from the definition of financial entity. To the extent commenters expressed concern that the conduit affiliate rules would affect financial entities and their risk mitigation procedures, this exclusion for centralized hedging facilities is designed to limit that impact. However, to the extent that an entity is not able to use the exclusion and falls within the definition of a highly leveraged financial entity, we believe that requiring such positions to be included is consistent with the focus of the major participant definition. *Cf.* CDEU Letter at 1 (stating that financial and non-financial end-users should be subject to the same cross-border requirements); IIB Letter at 22 (noting that many financial institutions that do not enter into CDS for dealing purposes still enter into them for hedging purposes).

[541] *See* section 0, *supra.*

[542] *See* Cross-Border Proposing Release, 78 FR 31031 (explaining that the ''U.S. person'' definition applies to the entire person, including its branches and offices that may be located in a foreign jurisdiction and, as such, the potential impact in the United States due to a non-U.S. counterparty's default would not differ depending on whether the non-U.S. counterparty entered into the security-based swap transaction with the home office of a U.S. bank or with a foreign branch of a U.S. bank).

person.[543] A few commenters criticized the proposed requirement that a non-U.S. person include its positions with foreign branches of U.S. banks in its calculation thresholds.[544] Regarding the treatment of a non-U.S. person whose positions with non-U.S. persons are guaranteed by a U.S. person, one commenter supported our proposed approach not to require the person whose position is guaranteed to include such guaranteed positions in its calculation,[545] while other commenters requested that such entities be treated as U.S. persons.[546] The final rules applying the major participant definition to non-U.S. persons are tailored to address the market impact and risk that we believe a person's security-based swap positions would pose to the U.S. financial system.

1. Positions With U.S. Persons Other Than Foreign Branches of U.S. Banks

(a) Proposed Approach and Commenters' Views

As noted above, the proposed rules would have required a non-U.S. person to include in its major security-based swap participant threshold calculations all positions with U.S. persons, including foreign branches of U.S. banks.[547] The proposal stated that requiring non-U.S. persons to include their positions with U.S. persons, as defined in the proposal, would ''provide an appropriate indication of the degree of default risk proposed by such non-U.S. person's security-based swap positions to the U.S. financial system,'' by accounting for such non-U.S. person's outward exposures to U.S. persons.[548] One commenter objected to the proposal's approach to look to the U.S.-person status of a clearing agency when a non-U.S. person enters into a security-based swap that is cleared and novated through a clearing agency.[549] In the proposal, we explained that we would consider the clearing agency as the non-U.S. person's counterparty and because the clearing agency is a U.S. person we would require such novated security-based swap to be included in the non-U.S. person's major security-based swap participant calculation threshold calculations.[550] The commenter objected, arguing that the location of clearing should be irrelevant for purposes of determining major security-based swap participant status.[551] Although some commenters took issue with the scope of the ''U.S. person'' definition, as described above, commenters did not otherwise address this specific requirement within the application of the major security-based swap participant definition.

(b) Final Rule

The final rule, like the proposal, generally requires that non-U.S. persons (apart from the conduit affiliates, which are addressed above) [552] include in their major security-based swap participant threshold calculations their positions with U.S. persons.[553]

Generally requiring non-U.S. persons to consider their security-based swap positions with U.S. persons (except for positions with foreign branches of registered security-based swap dealers, as discussed below) will help ensure that persons whose positions are likely to pose a risk to the U.S. financial system at the relevant thresholds are subject to regulation as a major security-based swap participant.[554] Security-based swap positions involving a U.S.-person counterparty exist within the United States by virtue of being undertaken with a counterparty that is a U.S. person. For these reasons, positions entered into with U.S. persons are likely to raise, at the thresholds set forth in our further definition of major security-based swap participant, risks to the stability of the U.S. financial system or of U.S. entities, including those that may be systemically important.[555]

While we considered one commenter's concern that the location of clearing should not be relevant for purposes of determining a non-U.S. person's major security-based swap participant status,[556] we continue to believe that, as such positions are cleared through a U.S.-person clearing agency, they exist within the United States and create risk in the United States of the type the major security-based swap participant definition is intended to address.[557] We note, in response to commenters' opinions about the risk-mitigating effects of central clearing, and the additional level of rigor that clearing agencies may have with regards to the process and procedures for collecting daily margin, that the final rules further defining ''substantial position'' provide that the potential future exposure associated with positions that are subject to central clearing by a registered or exempt clearing agency is equal to 0.1 times the potential future exposure that would otherwise be calculated.[558] This treatment reflects our view that clearing the security-based swap substantially mitigates the risk of such positions but cannot eliminate such risk.[559] We believe that this previously adopted provision may provide additional incentives for market participants to clear their positions through registered or exempt clearing agencies, and that the requirement to include such positions in the major security-based swap participant threshold calculations should not discourage market participants from clearing positions through U.S.-based clearing agencies.

2. Positions With Foreign Branches of U.S. Banks

(a) Proposed Approach and Commenters' Views

As noted above, the proposal would have required non-U.S. persons to include their positions with U.S. persons in their threshold calculations. This requirement would have extended to positions with foreign branches of U.S. banks.[560] Two commenters criticized the proposal's requirement that a non-U.S. person would need to include positions with foreign branches

[543] *See* proposed Exchange Act rule 3a67–10(c)(2).

[544] *See* SIFMA/FIA/FSR Letter at A–19 to A–20 (noting that the requirement may provide an incentive for non-U.S. persons to limit trading with foreign branches of U.S. persons and differs from the CFTC guidance); IIB Letter at 12 (noting that the requirement that non-U.S. person include its positions with foreign branches of U.S. persons in its major participant calculation is inconsistent with the proposed requirement in the *de minimis* context and the CFTC guidance).

[545] *See* SIFMA/FIA/FSR Letter at A–10 to A–11 (stating that a guaranteed non-U.S. person does not have the necessary ''requisite jurisdictional nexus'' to be classified as a U.S. person, and thereby supporting the Commission's proposal to address the risk of such guarantees through the attribution process in the major security-based swap participant requirements); note 209, *supra.*

[546] *See* note 207 (citing AFR Letter I and BM Letter).

[547] *See* Cross-Border Proposing Release, 78 FR 31031.

[548] *See id.* at 31030 n.612.

[549] *See* CME Letter at 2–3.

[550] *See* Cross-Border Proposing Release, FR 78 31030 n.612.

[551] CME Letter at 3 (explaining that the requirement will discourage market participants from clearing through a clearing agency in the United States).

[552] *See* section 0, *supra.*

[553] *See* Exchange Act rule 3a67–10(b)(3)(i).

[554] *See* Cross-Border Proposing Release, 78 FR 31030 (explaining that the risk to the U.S. financial system would be measured by calculating a non-U.S. person's aggregated outward exposures to U.S. persons, meaning what such non-U.S. person owes, or potentially could owe, on its security-based swaps with U.S. persons).

[555] *Cf.* section 3(a)(67)(B) of the Exchange Act.

[556] *See* CME Letter, *supra,* note 549.

[557] *See* section 0, *supra.*

[558] This results in a 90 percent discount on the notional exposure under the security-based swap. *See* Exchange Act rule 3a67–3(c)(3)(i)(A); Intermediary Definitions Adopting Release, 77 FR 30670.

[559] *See* Intermediary Definitions Adopting Release, 77 FR 30670.

[560] *See* proposed rule 3a67–10(c)(2).

of U.S. banks.[561] One of these commenters suggested that the Commission adopt the CFTC policy, which set forth an exception generally permitting a non-U.S. person that is a non-financial entity to exclude from its calculation positions with foreign branches of U.S. banks that are registered swap dealers.[562] One of the commenters suggested that if the Commission did not allow all non-U.S. persons to exclude transactions with foreign branches of U.S. banks from their calculation, the Commission should at least adopt the approach taken by the CFTC in its cross-border guidance of allowing a non-U.S. person that is a financial entity to exclude transactions, subject to certain additional conditions, with foreign branches of U.S. banks that are registered security-based swap dealers.[563]

(b) Final Rule

The final rule has been modified from the proposal to require non-U.S. persons (other than conduit affiliates, as discussed above) to count, against their major security-based swap participant threshold calculations, their positions with U.S. persons other than positions with foreign branches of registered security-based swap dealers.[564] The proposal would have required non-U.S. persons to all include their positions with U.S. persons in their threshold calculations, including any positions with foreign branches of U.S. banks.[565]

The final rule permits non-U.S. persons not to count certain positions that arise from transactions conducted through a foreign branch of a counterparty that is a U.S. bank.[566] For this exclusion to be effective, persons located within the United States cannot be involved in arranging, negotiating, or executing the transaction.[567] Moreover, the counterparty bank must be registered as a security-based swap dealer,[568] unless the transaction occurs prior to 60 days following the effective date of final rules providing for the registration of security-based swap dealers.[569] Registration of the counterparty U.S. bank would not be required for the exclusion to be effective before then, given that the non-U.S. person would not be able to know with certainty whether the U.S. bank in the future would register with the Commission as a security-based swap dealer.[570]

We believe that the revision to the proposal allowing for an exclusion from counting positions that arise from transactions conducted through foreign branches of registered security-based swap dealers appropriately accounts for the risk in the U.S. financial system created by such positions. In our view, the risk of such positions is lessened when the U.S. bank itself is registered with the Commission as a security-based swap dealer because the U.S. bank, and its transactions, will be subject to the relevant Title VII provisions applicable to security-based swap dealers (for example, margin and reporting requirements).[571] The exception is also consistent with our application of the dealer *de minimis* exception in our final rule, which requires non-U.S. persons, other than conduit affiliates, to include in their *de minimis* threshold calculations dealing transactions with U.S. persons other than the foreign branch of a registered security-based swap dealer (or for a temporary period of time prior to 60 days prior to the effectiveness of the dealer registration rules).[572]

The final rule should help mitigate concerns that non-U.S. persons will limit or stop trading with foreign branches of U.S. banks for fear of too easily triggering major security-based swap participant registration requirements under Title VII. Moreover, the inclusion of this exception in our final rule addresses comments expressing concern that non-U.S. persons would have to include positions with foreign branches of U.S. banks in their major security-based swap participant threshold calculations.[573] We also note that the exception reduces divergence between our major participant threshold calculation and that outlined in the CFTC's guidance, as requested by commenters.[574]

3. Positions of Non-U.S. Persons That Are Subject to Recourse Guarantees by a U.S. Person

(a) Proposed Approach and Commenters' Views

The proposal would have not required a non-U.S. person to count towards its major security-based swap participant calculation thresholds, those positions that it entered into with non-U.S.

[561] *See* SIFMA/FIA/FSR Letter at A–19 to A–20 (stating that the proposal would result in disparate treatment of foreign branches of U.S. banks because non-U.S. persons could exclude such transactions from their dealer *de minimis* threshold calculations but not from their major security-based swap participant threshold calculations, and noting that the proposal differs from the CFTC Cross-Border Guidance, which takes the approach that non-U.S. person financial entities generally should exclude swaps with foreign branches of U.S. swap dealers, subject to certain conditions); IIB Letter at 12 (stating that the same rationale that applies to excluding transactions with foreign branches of U.S. banks in the dealer context should apply in the major security-based swap participant context and that the proposed approach is inconsistent with the CFTC Cross-Border Guidance).

[562] *See* IIB Letter at 12–13 (suggesting that the CFTC's general policy of not counting non-financial entities' swaps with guaranteed affiliates that are swap dealers or foreign branches that are swap dealers reflects an understanding that non-financial entities present less risk than financial entities). *Cf.* CFTC Cross-Border Guidance at 45324–25.

[563] *See* SIFMA/FIA/FSR Letter at A–20 (stating that the proposal to include transactions with foreign branches in a non-U.S. person's major security-based swap participant threshold calculations may cause non-U.S. persons that would otherwise be considered major security-based swap participants to limit or stop trading with foreign branches of U.S. banks); *id.* at A–20 to A–21 (noting that the approach differs from the CFTC Cross-Border Guidance with respect to counting such transactions towards the major swap participant threshold); *see also* IIB Letter at 12–13 (stating that the proposal is inconsistent with the CFTC Cross-Border Guidance, whose exceptions demonstrate an understanding that the risk to the U.S. financial system can be addressed through different means and noting that the proposal may cause non-U.S. counterparties to stop transacting with foreign branches of U.S. banks).

[564] *See* Exchange Act rule 3a67–10(b)(3)(i). Exchange Act rule 3a67–10(a)(2) defines ''foreign branch'' by referring to Exchange Act rule 3a71–3(a)(2). We note for clarification that the rule described here uses the defined term ''transactions conducted through a foreign branch'' (as defined in Exchange Act rule 3a71–3(a)(3)) to describe the manner in which the U.S.-person must enter into the position in order for the non-U.S. person counterparty to avail itself of this exception. The non-U.S. person counterparty that is calculating its major security-based swap participant calculation thresholds is entering into the position with the foreign branch of the U.S. person.

[565] Proposed Exchange Act rule 3a67–10(c)(2).

[566] *See* Exchange Act rule 3a67–10(b)(3)(i). *See also* 0 (discussing similar exception in the context of the *de minimis* analysis).

[567] *See* Exchange Act rule 3a67–10(b)(3)(i) (using the term ''transaction conducted through a foreign branch,'' which requires that ''the security-based swap transaction is arranged, negotiated, and executed on behalf of the foreign branch solely by persons located outside the United States,'' as defined in Exchange Act rule 3a71–3(a)(3)(i)(B)).

[568] *See* Exchange Act rule 3a67–10(b)(3)(i)(A).

A non-U.S. person would still have to count such positions for purposes of calculating its major security-based swap participant calculation thresholds if the non-U.S. person's counterparty (*i.e.,* the U.S. bank) has rights of recourse against a U.S. person in the position with the non-U.S. person. *See* Exchange Act rule 3a67–10(b)(3)(ii).

[569] *See* Exchange Act rule 3a67–10(b)(3)(i)(B).

[570] In other words, this provision will help to avoid requiring non-U.S. persons to speculate whether their counterparties would register, and to face the consequences of their speculation being wrong.

[571] *See* section 0 and note 373 (discussing that the risk of such positions is mitigated in part because the foreign branch of a registered security-based swap dealer will be subject to a number of Title VII regulatory requirements).

[572] *See* Exchange Act rule 3a71–3(b)(1)(iii)(A); section 0, *supra.*

[573] *See* note 561, *supra.*

[574] *See* notes 562 and 563, *supra.* Although our inclusion of this exception brings us closer to the general policy set forth by the CFTC, our approaches are not entirely identical, as the CFTC includes certain additional inputs for non-U.S. persons that are financial entities that we have determined not to incorporate in our final rule. *See* CFTC Cross-Border Guidance, 78 FR 45326–27.

persons, regardless of whether the counterparty to the position has a right of recourse against a U.S. person under the security-based swap.[575] To address the risk posed by the existence of a recourse guarantee against a U.S. person, the proposal would have required that all security-based swaps entered into by a non-U.S. person and guaranteed by a U.S. person be attributed to such U.S. person guarantor for purposes of determining such U.S. person guarantor's major security-based swap participant status.[576]

As noted above, one commenter supported the Commission's proposed approach not to require a non-U.S. person whose positions with other non-U.S. persons are subject to a recourse guarantee from a U.S. person, to include such guaranteed positions in its own major participant threshold calculations, expressing support for using the major security-based swap participant attribution requirements to address the risk posed to the U.S. markets by such guarantees.[577] Two commenters argued that non-U.S. persons whose positions are guaranteed by U.S. persons should be treated as U.S. persons for purposes of the major participant threshold calculations, which would require them to include all their positions in their major participant threshold calculations.[578] Additionally, although commenters did not refer specifically to the application of the major security-based swap participant definition, some commenters requested that the Commission generally harmonize its approach to cross-border activities with that of the CFTC.[579]

(b) Final Rule

We are adopting a final rule that requires a non-U.S. person to include in its major security-based swap participant threshold calculations those positions for which the non-U.S. person's counterparty has rights of recourse against a U.S. person.[580] We believe that when a U.S. person guarantees a position, the position exists within the United States and poses risk to the U.S. person guarantor,[581] and the non-U.S. person that enters directly into the position should be required to include the position in its major security-based swap participant threshold calculations. The final rule will also help to apply major participant regulation in a consistent manner to differing organizational structures that serve similar economic purposes, and help avoid disparities in applying major participant regulation to differing arrangements that pose similar risks to the United States.

Accordingly, the final rule modifies the proposal by requiring a non-U.S. person to include in its major security-based swap participant threshold calculations security-based swap positions for which a counterparty to the security-based swap has legally enforceable rights of recourse against a U.S. person, even if a non-U.S. person is counterparty to the security-based swap.[582] For these purposes, and as addressed in the context of *de minimis* exception to the ''security-based swap dealer'' definition, the counterparty would be deemed to have a right of recourse against a U.S. person if the counterparty has a conditional or unconditional legally enforceable right, in whole or in part, to receive payments from, or otherwise collect from, a U.S. person in connection with the non-U.S. person's obligations under the security-based swap.

We understand that such rights may arise in a variety of contexts. For example, a counterparty would have such a right of recourse against the U.S. person if the applicable arrangement provides the counterparty the legally enforceable right to demand payment from the U.S. person in connection with the security-based swap, without conditioning that right upon the non-U.S. person's non-performance or requiring that the counterparty first make a demand on the non-U.S. person. A counterparty also would have such a right of recourse if the counterparty itself could exercise legally enforceable rights of collection against the U.S. person in connection with the security-based swap, even when such rights are conditioned upon the non-U.S. person's insolvency or failure to meet its obligations under the security-based swap, and/or are conditioned upon the counterparty first being required to take legal action against the non-U.S. person to enforce its rights of collection.

The terms of the guarantee need not necessarily be included within the security-based swap documentation or even otherwise reduced to writing (so long as legally enforceable rights are created under the laws of the relevant jurisdiction); for instance, such rights of recourse would arise when the counterparty, as a matter of law in the relevant jurisdiction, would have rights to payment and/or collection that may arise in connection with the non-U.S. person's obligations under the security-based swap that are enforceable. We would view the positions of a non-U.S. person as subject to a recourse guarantee if at least one U.S. person (either individually or jointly and severally with others) bears unlimited responsibility for the non-U.S. person's obligations, including the non-U.S. person's obligations to security-based swap counterparties. Such arrangements may include those associated with foreign unlimited companies or unlimited liability companies with at least one U.S.-person member or shareholder, general partnerships with at least one U.S.-person general partner, or entities formed under similar arrangements such that at least one U.S. persons bears unlimited responsibility for the non-U.S. person's liabilities. In our view, the nature of the legal arrangement between the U.S. person and the non-U.S. person—which makes the U.S. person responsible for the obligations of the non-U.S. person—is appropriately characterized as a recourse guarantee, absent countervailing factors. More generally, a recourse guarantee is present if, in connection with the security-based swap, the counterparty itself has a legally enforceable right to payment or collection from the U.S. person, regardless of the form of the arrangement that provides such an enforceable right to payment or collection.[583]

[575] *See* Cross-Border Proposing Release, 78 FR 31031 and n.622; *see also* proposed Exchange Act rule 3a67–10(c)(2). In the proposal, we stated that the non-U.S. person counterparties of a non-U.S. person would bear the risk of loss if that non-U.S. person was unable to pay what it owes, and therefore, that the non-U.S. person need not include in its major participant threshold calculations positions with a non-U.S. counterparty, even if its obligations under the security-based swap are guaranteed by a U.S. person. *See* Cross-Border Proposing Release, 78 FR 31031.

[576] *See id.* at 31032.

[577] *See* note 545, *supra* (citing SIFMA/FIA/FSR Letter).

[578] *See* note 207, *supra* (citing AFR Letter I and BM Letter).

[579] *See* note 25, *supra.*

[580] *See* Exchange Act rule 3a67–10(b)(3)(ii). *Cf.* note 350, *supra* (noting that this final rule encompasses non-U.S. persons who receive a guarantee from an unaffiliated U.S. person, whereas the final rule under the *de minimis* exception only encompasses non-U.S. persons who receive a guarantee from a U.S. affiliate).

We note that we have retained the requirement in the proposal that the U.S. guarantor also attribute to itself, for purposes of its own major security-based swap participant threshold calculations, all security-based swaps entered into by a non-U.S. person that are guaranteed by the U.S. person. *See* Cross-Border Proposing Release, 78 FR 31032; section 0, *infra.*

[581] *See* section 0, *supra.*

[582] Exchange Act rule 3a67–10(b)(3)(ii).

[583] Consistent with the rule implementing the dealer *de minimis* exception, this final rule clarifies that for these purposes a counterparty would have rights of recourse against the U.S. person ''if the counterparty has a conditional or unconditional legally enforceable right, in whole or in part, to receive payments from, or otherwise collect from, the U.S. person in connection with the security-

In light of comments received and upon further consideration, we believe that the revised approach addresses, in a targeted manner, the risk to the U.S. financial system posed by entities whose counterparties are able to turn to a U.S. person for performance of the non-U.S. person's obligations under a security-based swap position.[584] We believe our final approach strikes an appropriate balance by directly regulating a non-U.S. person that enters into a position with a counterparty that has a recourse guarantee against a U.S. person, while not treating that non-U.S. person as a U.S. person.[585]

The final rule reflects our conclusion that a non-U.S. person—to the extent it enters into security-based swap positions subject to a recourse guarantee by a U.S. person—enters into security-based swap positions that exist within the United States.[586] The economic reality of such positions is that by virtue of the guarantee the non-U.S. person effectively acts together with a U.S. person to engage in the security-based swap activity that results in the positions, and the non-U.S. person's positions cannot reasonably be isolated from the U.S. person's engagement in providing the guarantee.[587] Both the guarantor and guaranteed entity are involved in the position and may jointly seek to profit by engaging in such security-based swap positions.[588] The final rule echoes our approach, consistent with our approach to regulation of security-based swap dealers that, to the extent that a single non-U.S. person is responsible for positions within the United States (whether by entering into positions with U.S.-person counterparties or for which its non-U.S. person counterparties have recourse against a U.S. person) that rise above the major participant thresholds, the entity that directly enters into such positions should be required to register as a major security-based swap participant and should be subject to direct regulation as a major security-based swap participant.

The final rules regarding positions for which a counterparty to the position has rights of recourse against a U.S. person aim to apply major participant regulation in similar ways to differing organizational structures that serve similar economic purposes, such as positions entered into by a non-U.S. person that are subject to a recourse guarantee by a U.S. person and security-based swap positions carried out through a foreign branch of a U.S. person.[589] These two differing organizational structures serve similar economic purposes and thus should be treated similarly.

As discussed below, we have maintained the proposed approach requiring a U.S. person to attribute to itself any position of a non-U.S. person for which the non-U.S. person's counterparty has rights of recourse against the U.S. person. This attribution requirement further reflects the focus of the major security-based swap participant definition on positions that may raise systemic risk concerns within the United States.[590] Such positions exist within the United States by virtue of the U.S. person's guarantee, which transmits risk to the U.S. financial system to the extent obligations are owed under the security-based swap by the guaranteed non-U.S. person because the non-U.S. person's counterparty may seek recourse from the U.S. person guaranteeing the position.[591] Additionally, the economic reality of this position, even though entered into by a non-U.S. person, is substantially identical, in relevant respects, to a transaction entered into directly by the U.S. guarantor, because a U.S. person is participating directly in the transaction.[592] For these reasons the attribution requirement, which is consistent with our territorial approach and the approach taken in the proposal, reflects the focus of the major security-based swap participant definition.

We note that, consistent with our proposal, we are not requiring non-U.S. persons to include in their major security-based swap participant threshold calculations positions for which they (as opposed to their counterparties) have a guarantee creating a right of recourse against a U.S. person. As we noted in the proposal, non-U.S. persons with a right of recourse against a U.S. person pursuant to a security-based swap do not pose a direct risk to the person providing a guarantee, as that person's failure generally will not trigger any obligations under the guarantee.[593]

E. Attribution

The Cross-Border Proposing Release stated the preliminary view that a person's security-based swap positions in the cross-border context would be attributed to a parent, other affiliate, or guarantor for purposes of the major participant analysis to the extent that the person's counterparties in those positions have recourse to that parent, other affiliate, or guarantor in connection with the position. Positions would not be attributed in the absence of recourse.[594]

The final rules codify the proposed guidance related to attribution of guaranteed positions to provide clarity to market participants. We continue to believe that a U.S. person should attribute to itself any positions of a non-U.S. person for which the non-U.S.

based swap.'' *See* Exchange Act rule 3a67–10(b)(3)(ii).

[584] We are not requiring a non-U.S. person whose performance with respect to one or more security-based swap positions is subject to a recourse guarantee to include all of its positions with non-U.S. persons towards its major security-based swap participant threshold calculations. We recognize that the CFTC Cross-Border Guidance uses the term ''guaranteed affiliate'' and states the view that such entities should include all of their swap positions in their major swap participant threshold calculations. *See* CFTC Cross-Border Guidance, 78 FR 45319. We believe that our final rule, which requires a non-U.S. person to include only those positions with non-U.S. persons where the counterparty has rights of recourse to a U.S. person, appropriately in the context of the security-based swap markets reflects the risk that such positions may create within the United States.

[585] *Cf.* notes 577 and 578 (discussing comment letters).

[586] *See* section 0, *supra.*

[587] *See* section 0, *supra* (discussing the same point in the context of the application of the *de minimis* exception).

[588] *Cf.* section 0, *supra* (discussing a non-U.S. person's dealing activity that is subject to a recourse guarantee).

[589] *See* section 0 and note 341, *supra.* For the above reasons, we conclude that this final rule is not being applied to persons who are ''transact[ing] a business in security-based swaps without the jurisdiction of the United States,'' within the meaning of section 30(c). *See* section 0, *supra.* We also believe, moreover, that this final rule is necessary or appropriate as a prophylactic measure to help prevent the evasion of the provisions of the Exchange Act that were added by the Dodd-Frank Act, and thus help ensure that the relevant purposes of the Dodd-Frank Act are not undermined. Without this rule, U.S. persons would be able to evade major participant regulation under Title VII simply by conducting their security-based swap positions via a guaranteed non-U.S. person, while still being subject to risks associated with those positions.

[590] *See* section 0, *supra.*

[591] *See* section 0, *infra.*

[592] *See* section 0, *infra.*

[593] *See* Cross-Border Proposing Release, 78 FR 31031 and n.622. We recognize that the CFTC Cross-Border Guidance does set forth the concept that non-U.S. persons should generally include in their major swap participant analysis positions with entities that fall within the CFTC's description of a ''guaranteed affiliate,'' subject to certain exceptions. *See* CFTC Cross-Border Guidance, 78 FR 45326–27. We continue to believe, however, consistent with the proposal, that it is not necessary that such non-U.S. person that has rights of recourse against a U.S. person include that position in its major participant threshold calculations because the inability of that non-U.S. person counterparty to pay what it owes pursuant to a security-based swap will generally not pose risk to the U.S. financial system because it will not trigger the obligation of the U.S. guarantor. *See* Cross-Border Proposing Release, 78 FR 31031.

[594] *See id.* 31032 and n.625 (noting that we were not proposing to alter the approach with respect to attribution of guarantees that was adopted by the Commission and the CFTC in the Intermediary Definitions Adopting Release, but rather proposing to apply the same principles in the cross-border context).

person's counterparty has rights of recourse against the U.S. person, as the position exists within the United States by virtue of the U.S. person guarantor's involvement in the position.[595] Similarly, a non-U.S. person should attribute to itself any positions of a U.S. person for which that U.S. person's counterparty has rights of recourse against the non-U.S. person.[596] We also continue to believe that when a non-U.S. person guarantor has extended a recourse guarantee on the obligations of a U.S. person, those positions exist within the United States by virtue of the guaranteed U.S. person's involvement in the positions as a direct counterparty to the transaction and therefore the positions should be attributed to the non-U.S. person guarantor that is participating in that position through providing its guarantee. The final rules requiring attribution also aim to apply major participant regulation in similar ways to differing organizational structures that serve similar economic purposes, thus helping to ensure that the relevant purposes of the Dodd-Frank Act are not undermined.

1. Positions Attributed to U.S. Person Guarantors

(a) Proposed Approach and Commenters' Views

Our preliminary view was that a U.S. person would attribute to itself all security-based swap positions for which it provides a guarantee for performance on the obligations of a non-U.S. person, other than in limited circumstances.[597] We noted that the proposed approach did not alter the guidance regarding attribution that was adopted in the Intermediary Definitions Adopting Release, but proposed an approach in the cross-border context applying the principles set forth in the Intermediary Definitions Adopting Release.[598] This attribution standard was based on our preliminary view that, when a U.S. person acts as a guarantor of a position of a non-U.S. person, the guarantee creates risks within the United States whether the underlying security-based swaps that they guarantee are entered into with U.S. persons or with non-U.S. persons.[599] One commenter argued that attribution is beyond the scope of section 30(c) of the Exchange Act.[600] One commenter argued that our preliminary view regarding attribution for entities guaranteed by U.S. persons would result in ''double-counting'' and that security-based swap positions should only be attributed to a U.S. guarantor where the direct counterparty to the security-based swap is not otherwise required to count those positions toward its own calculation.[601]

(b) Final Rule

We are adopting rules that codify the preliminary views set forth in our proposal: A U.S. person is required to attribute to itself any security-based swap position of a non-U.S. person for which the non-U.S. person's counterparty to the security-based swap has rights of recourse against that U.S. person.[602] Although we considered commenters' objections to our proposed attribution requirement, we continue to believe that this approach is necessary because, as stated in the Intermediary Definitions Adopting Release, attribution is intended to reflect the risk posed to the U.S. financial system when a counterparty to a position has recourse against a U.S. person.[603] The final rule also includes a note to clarify that a U.S. person is still expected to attribute to itself positions of other U.S. persons for which the counterparty to that U.S. person has a recourse guarantee against the U.S.-person guarantor, as explained in interpretation in the Intermediary Definitions Adopting Release.[604]

We believe that attribution of positions to guarantors is consistent with Exchange Act section 30(c), notwithstanding the argument by one commenter that attribution to a guarantor ''extends beyond the intended limits of [s]ection 30(c) of the Exchange Act.'' [605] As we discuss in more detail above, the major security-based swap participant definition focuses on positions that may raise systemic risk concerns within the United States.[606] It is our view that a security-based swap position exists within the United States when it is held by or with a U.S. person, or when a counterparty to the security-based swap has recourse against a U.S. person, as the risks associated with such positions are borne within the United States, and given the involvement of U.S. persons may, at the thresholds established for the major security-based swap participant definition, give rise to the types of systemic risk within the United States that major security-based swap participant regulation is intended to address.[607]

As discussed above, the final rules regarding positions for which a counterparty to the position has rights of recourse against a U.S. person aim to apply major participant regulation to in similar ways to differing organizational structures that serve similar economic purposes, including structures such as security-based swap positions entered into by a non-U.S. person that are subject to a recourse guarantee by a U.S. person and security-based swap positions carried out through a foreign branch.[608]

While we recognize one commenter's concern that attribution would require ''double counting'' certain positions, we do not agree with that commenter's assertion that the final rule constitutes double-counting, given that both entities assume the risk of the position by either entering into it directly or by guaranteeing it. Because both entities are involved in the position that poses risk to the U.S. financial system, both entities are required to include it in their respective major participant

[595] As discussed above in section 0, the economic reality of this position, even though entered into by a non-U.S. person, is substantially identical, in relevant respects, to a transaction entered into directly by the U.S. guarantor.

[596] The economic reality of the non-U.S. person's position is substantially identical, in relevant respects, to a position entered into directly by the non-U.S. person.

[597] Cross-Border Proposing Release, 78 FR 31032 and n.628. *See also* Cross-Border Proposing Release, 78 FR 31033 and section 0, *infra* (discussing limited circumstances where attribution of guaranteed security-based swap positions do not apply).

[598] *See* Cross-Border Proposing Release, 78 FR 31032 n.624; *see also* Intermediary Definitions Adopting Release, 77 FR 30689 n.1132.

[599] Cross-Border Proposing Release, 78 FR 31032.

[600] SIFMA/FIA/FSR Letter at A–20 to A–21 (asserting that only the guaranteed entity, which is the direct counterparty to the security-based swap transactions, should include the positions and that to require the guarantor to include the positions goes ''beyond the intended limits of Section 30(c) of the Exchange Act'').

[601] *See id.* at A–20 to A–21.

[602] Exchange Act rule 3a67–10(c)(1)(i).

[603] *See* Intermediary Definitions Adopting Release, 77 FR 30689 n.1135 (stating that the type of attribution addressed at that time may also be expected to raise special issues in the context of guarantees involving security-based swap positions of non-U.S. entities). As noted in the Cross-Border Proposing Release, these risk concerns are the same regardless of whether the underlying security-based swap positions of the non-U.S. person that the U.S. person guarantees are entered into with U.S. persons or non-U.S. persons. *See* Cross-Border Proposing Release, 78 FR 31032.

[604] *See* Intermediary Definitions Adopting Release, 77 FR 30689.

[605] *See* SIFMA/FIA/FSR Letter at A–21.

[606] *See* section 0, *supra.*

[607] *See id.*

[608] *See* section 0, *supra.* For the above reasons, we conclude that this final rule is not being applied to persons who are ''transact[ing] a business in security-based swaps without the jurisdiction of the United States,'' within the meaning of Exchange Act section 30(c). *See* section 0, *supra.* We also believe, moreover, that this final rule is necessary or appropriate as a prophylactic measure to help prevent the evasion of the provisions of the Exchange Act that were added by the Dodd-Frank Act, and thus help ensure that the relevant purposes of the Dodd-Frank Act are not undermined. Without this rule, U.S. persons would be able to evade major participant regulation under Title VII simply by conducting their security-based swap positions via a guaranteed non-U.S. person, while still being subject to the risks associated with those positions.

threshold calculations, at least until the entity whose position is guaranteed is required to register as a major security-based swap participant.[609]

2. Positions Attributed to Non-U.S. Person Guarantors

(a) Proposed Approach and Commenters' Views

In the proposal, we expressed our preliminary view that a non-U.S. person that provides a recourse guarantee for performance on the obligations of a U.S. person should attribute to itself the security-based swap positions of the U.S. person that are subject to guarantees by the non-U.S. person.[610] However, when a non-U.S. person provides a guarantee to another non-U.S. person, the non-U.S. person providing the guarantee would have been required to attribute to itself only those positions for which a U.S. person counterparty has rights of recourse against the non-U.S. person guarantor under the security-based swap. As noted above, one commenter argued that attribution is beyond the scope of section 30(c) of the Exchange Act.[611]

(b) Final Rule

Consistent with our preliminary view, the final rule requires a non-U.S. person to attribute to itself any security-based swap positions of a U.S. person that are subject to a guarantee by the non-U.S. person.[612] In other words, the non-U.S. person guarantor will attribute to itself all security-based swap positions of the U.S. person for which a counterparty of the U.S. person has rights of recourse against the non-U.S. person guaranteeing the position.[613] The rule reflects our view that the guarantee may enable the U.S. person to enter into significantly more security-based swap positions with both U.S.-person and non-U.S. person counterparties than it would be able to absent the guarantee, increasing the risk that such persons could incur, amplifying the risk of the non-U.S. person's inability to carry out its obligations under the guarantee.[614]

Under the final rule, if a U.S. person in a transaction with a non-U.S. person counterparty has rights of recourse against another non-U.S. person under the security-based swap, the non-U.S. person guaranteeing the transaction must attribute the security-based swap to itself for purposes of its major security-based swap participant threshold calculations.[615] We note that, consistent with the rule requiring non-U.S. persons to count positions entered into with U.S. persons, a non-U.S. person that attributes a position of another non-U.S. person to itself does not need to attribute to itself positions arising from a transaction conducted through a foreign branch of the U.S.-person counterparty when the counterparty is a registered security-based swap dealer or positions arising from a transaction conducted through a foreign branch of a U.S.-person counterparty, when the transaction is entered into prior to 60 days following the earliest date on which registration of security-based swap dealers is first required.[616]

As explained above, we believe that attribution of positions to guarantors is consistent with Exchange Act section 30(c), notwithstanding the argument by one commenter that attribution to a guarantor ''goes beyond the intended limits of section 30(c) of the Exchange Act.'' [617] As we discuss in more detail above, the major security-based swap participant definition focuses on positions that may raise systemic risk concerns within the United States.[618] It is our view that a security-based swap position exists within the United States when it is held by or with a U.S. person, or when it is guaranteed by a U.S. person, as the risks associated with such positions are borne within the United States, and given the involvement of U.S. persons may give rise, at the thresholds established for the major security-based swap participant definition, to the types of systemic risk within the United States that major security-based swap participant regulation is intended to address.[619]

The final rules requiring non-U.S. persons to attribute certain positions to themselves for purposes of calculating their own major security-based swap participant calculation thresholds aims to apply major participant regulation in similar ways to differing organizational structures that serve similar economic purposes. For example, when a U.S. person has rights of recourse against a non-U.S. person, the economic reality of the position is substantially identical, in relevant respects, to a position entered into directly by the non-U.S. person with the U.S. person. The relevant attribution requirements reflect that a non-U.S. person would need to include such positions were it to enter into them directly.[620]

3. Limited Circumstances Where Attribution of Guaranteed Security-Based Swap Positions Does Not Apply

(a) Proposed Approach and Commenters' Views

The proposal stated our preliminary view that a guarantor would not be required to attribute to itself the security-based swap positions it guarantees, and, therefore, may exclude those positions from its threshold calculations, if the person whose positions it guarantees is already subject to capital regulation by the Commission or the CFTC (for example, by virtue of being regulated as a swap dealer, security-based swap dealer, major swap participant, major security-based swap participant, FCMs, brokers, or dealers), is regulated as a bank in the United States, or is subject to capital standards adopted by its home country supervisor that are consistent in all respects with the Capital Accord of the Basel Committee on Banking Supervision (''Basel Accord'').[621] This preliminary

[609] *See* Exchange Act rule 3a67–10(c)(2)(i).

[610] *See* Cross-Border Proposing Release, 78 FR 31032–33.

[611] *See* note 600, *supra.*

[612] Exchange Act rule 3a67–10(c)(1)(ii)(A).

[613] Exchange Act rule 3a67–10(c)(1)(ii)(A) may be broader than the CFTC Cross-Border Guidance in this context because the final rule requires the non-U.S. person to attribute to itself all the positions of the U.S. person that are guaranteed by the non-U.S. person, whereas the CFTC Cross-Border Guidance states that the non-U.S. person would generally not attribute to itself positions of the U.S. person that it guarantees where the counterparty is another non-U.S. person that is not guaranteed by a U.S. person. *See* CFTC Cross-Border Guidance at 45326 (stating that a non-U.S. person would generally consider in its own calculation (*i.e.,* attribute to itself) any swap position (of a U.S. or non-U.S. person) that it guarantees in which the counterparty is a U.S. person or a guaranteed affiliate).

[614] *See* Cross-Border Proposing Release, 78 FR 31032–33.

[615] Exchange Act rule 3a67–10(c)(ii)(B).

[616] *See* section 0 (describing exception for transaction conducted through a foreign branch of a registered security-based swap dealer), *supra;* Exchange Act rule 3a67–10(c)(ii)(B) (incorporating Exchange Act rule 3a67–10(b)(3)(i)(A) and (B)).

[617] *See* SIFMA/FIA/FSR Letter at A–20 to A–21.

[618] *See* section 0, *supra.*

[619] *See id.*

[620] *See* section 0, *supra.* For the above reasons, we conclude that this final rule is not being applied to persons who are ''transact[ing] a business in security-based swaps without the jurisdiction of the United States,'' within the meaning of section 30(c). *See* section 0, *supra.* We also believe, moreover, that this final rule is necessary or appropriate as a prophylactic measure to help prevent the evasion of the provisions of the Exchange Act that were added by the Dodd-Frank Act, and thus help ensure that the relevant purposes of the Dodd-Frank Act are not undermined. Without this rule, non-U.S. persons would be able to evade major participant regulation under Title VII simply by conducting their security-based swap positions by guaranteeing another entity that would then enter into the positions.

[621] *See* Cross-Border Proposing Release, 78 FR 31033 (explaining that the non-U.S. person must be subject to capital standards that are consistent with the capital standards such non-U.S. person would have been subject to if it was a bank subject to the prudential regulators' capital regulation, *i.e.,* the Basel Accord); *see also* Intermediary Definitions Adopting Release, 77 FR 30689 (stating that it is not

Continued

view applied both to U.S. persons and non-U.S. persons that are subject to registration and regulation in the enumerated categories.[622] Our preliminary view was that such consistent foreign regulatory capital requirements would adequately address the risks arising from such positions, making it unnecessary to separately address the risks associated with guarantees of those same positions.[623] We noted that this approach was consistent with the capital standards of the prudential regulators with respect to foreign banks that are bank holding companies subject to the Federal Reserve Board of Governors' supervision.[624]

One commenter supported our preliminary view that a non-U.S. person's guaranteed positions would not be attributed to the guarantor if the guaranteed non-U.S. person is subject to capital regulation by the Commission, the CFTC, or capital standards in its home jurisdiction that are consistent with the Basel Accord.[625] Another commenter sought clarification that a U.S. guarantor will not be required to attribute transactions of guaranteed entities while the guaranteed person's registration as a major security-based swap participant is pending.[626]

(b) Final Rules

Although the final rules require, in some circumstances, both the guarantor and the guaranteed person to include guaranteed positions in their respective major security-based swap participant threshold calculations, the final rules do not require a guarantor to attribute guaranteed positions to itself when the guaranteed person is subject to capital regulation by the Commission or the CFTC (including, but not limited to regulation as a swap dealer, major swap participant, security-based swap dealer, major security-based swap participant, futures commission merchant, broker, or dealer).[627] This codifies our preliminary view.[628] The final rule, moreover, does not require a guarantor to attribute to itself positions that it guarantees when the guaranteed person is regulated as a bank in the United States, or is subject to capital standards adopted by its home country supervisor that are consistent in all respects with the Basel Accord.[629] Consistent with our preliminary view, we believe that consistent foreign regulatory capital requirements would adequately address the risks arising from such positions, making it unnecessary to separately address the risks associated with guarantees of those same positions.[630] We continue to view such regulatory treatment as adequate to address the risks that the attribution requirement is intended to address. We also note that this approach is consistent with the capital standards of the prudential regulators with respect to foreign banks that are bank holding companies subject to the Federal Reserve Board of Governors' supervision.

As noted above, one commenter requested that a U.S. guarantor not be required to attribute to itself a person's positions for which it provides a guarantee while that person's registration as a major security-based swap participant is pending.[631] Upon further consideration, we believe that it is appropriate to permit a guarantor not to attribute the positions of such entities to itself. This change will mitigate market disruption that may otherwise result due to the prospect of a person intermittently exceeding the major participant threshold when a person that it guarantees is in the process of registering as a major security-based swap participant. This approach is also consistent with the approach under the application of the *de minimis* exception that allows a person not to count the transactions of its affiliates that are in the process of registering as dealers.[632]

F. Other Issues Related to the Application of the Major Security-Based Swap Participant Definition

1. Threshold for Registration as a Major Security-Based Swap Participant

One commenter commented generally that the threshold for having to register as a major-security-based swap participant is too high.[633] This threshold, however, was adopted in the Intermediary Definitions Adopting Release and is not under consideration in this rulemaking. In addition, the Intermediary Definitions Adopting Release provided that the Commission staff will prepare a report subsequent to the effectiveness of the security-based swap reporting requirements that will examine a number of aspects of our definitional rules and related interpretations, including relevant major security-based swap participant thresholds.[634]

2. Entities That Maintain Legacy Portfolios

The Cross-Border Proposing Release did not address the treatment of legacy portfolios, but we stated in the Intermediary Definitions Adopting Release that ''the fact that these entities no longer engage in new swap or security-based swap transactions does not overcome the fact that entities that are major participants will have portfolios that are quite large and could pose systemic risk to the U.S. financial system.'' [635] Based on this understanding, the Commissions jointly determined that such entities should not be excluded from major participant regulation but explained that the Commissions would pay particular attention to special issues raised by the application of substantive rules to those legacy portfolios.[636]

In the Commission's proposed capital and margin requirements, we proposed exceptions from certain account equity requirements, such as collection of

necessary to attribute a person's positions to a parent or other guarantor if the person already is subject to capital regulation by the CFTC or SEC or if the person is a U.S. person regulated as a bank in the United States). Thus, once the person whose position is guaranteed registers as a major security-based swap participant, attribution would no longer be required.

[622] *See* Cross-Border Proposing Release, 78 FR 31033 at n. 636.

[623] *See id.* at 31033–34.

[624] *See id.* at 31033 (citing § 225.2(r)(3) of Regulation Y, which states that ''[f]or purposes of determining whether a foreign banking organization qualifies under paragraph (r)(1) of this section: (A) A foreign banking organization whose home country supervisor . . . has adopted capital standards consistent in all respects with the Basel Accord may calculate its capital ratios under the home country standard . . .'').

[625] *See* SIFMA/FIA/FSR Letter at A–21 to A–22; *see also* Cross-Border Proposing Release, 78 FR 31033.

[626] *See* AFGI Letter I at 3 (stating that this clarification would be within the spirit and language of the proposed rules).

[627] *See* Exchange Act rule 3a67–10(c)(2)(i).

[628] *See* Cross-Border Proposing Release, 78 FR 31032–33, notes 629, 632, and 634.

[629] Exchange Act rule § 240.3a67–10(c)(2)(ii) and (iii). *See* Cross-Border Proposing Release, 78 FR 31033 (explaining that the non-U.S. person must be subject to capital standards that are consistent with the capital standards such non-U.S. person would have been subject to if it were a bank subject to the prudential regulators' capital regulation, *i.e.,* the Basel Accord); Intermediary Definitions Adopting Release, 77 FR 30689. This approach generally is consistent with the CFTC Cross-Border Guidance. *See* CFTC Cross-Border Guidance, 78 FR 45326 (stating that ''where a subsidiary is subject to Basel-compliant capital standards and oversight by a G20 prudential supervisor, the subsidiary's positions would generally not be attributed to a parental guarantor in the computation of the parent's outward exposure under the MSP definition'').

[630] *See* Cross-Border Proposing Release, 78 FR 31033–34.

[631] *See* note 626, *supra.*

[632] *See* Exchange Act rule 3a67–10(c)(2)(iv) (referring to rule 3a67–8(a)); *see also* Exchange Act rule 3a71–4 (addressing persons who have exceeded the *de minimis* thresholds but are in the process of registering); section 0, *supra.*

[633] BM Letter at 15–16 (stating that the excessively high major participant threshold excludes most market participants, thus leaving large, non-U.S. entities that are active in the market subject only to dealer requirements).

[634] *See* Intermediary Definitions Adopting Release, 77 FR 30697–30699.

[635] *Id.* at 30691.

[636] *Id.* at 30691 and n. 1170.

margin, for non-bank security-based swap dealers' and non-bank major security-based swap participants' accounts holding legacy security-based swaps and we requested comment on these proposals.[637] As explained in the Intermediary Definitions Adopting Release, we may entertain requests for relief or guidance on a case-by-case basis.[638] One commenter requested that, at a minimum, the Commission provide flexibility in any requirements that require a person to register as a major security-based swap participant solely due to activity related to its legacy portfolios.[639] With respect to the activities of financial guaranty insurers, one commenter suggested that amendments made to an existing insured security-based swap or entry into a new security-based swap with the same or a substituted counterparty in connection with loss mitigation or risk reduction efforts, should receive the same regulatory treatment given to legacy portfolio security-based swaps because such security-based swaps do not increase notional exposure.[640]

In the context of the cross-border application of the major security-based swap participant definition, we are maintaining our approach to legacy portfolios as described in the Intermediary Definitions Adopting Release and are not excluding entities that maintain legacy portfolios from the major security-based swap participant definition.[641] Given the foregoing, we are not adopting an exclusion from the cross-border application of the major security-based swap participant definition for entities that maintain legacy portfolios.

G. Foreign Public Sector Financial Institutions and Government-Related Entities

In the Cross-Border Proposing Release, we did not propose to specifically address the treatment of entities such as foreign central banks, international financial institutions, multilateral development banks, and sovereign wealth funds in the context of the major security-based swap participant definition and instead sought comment regarding the types, levels, and natures of security-based swap activity that such organizations regularly engage in in order to allow us to better understand the roles of these organizations in the security-based swap markets.[642]

The final rule defining ''U.S. person'' (like the proposed definition of that term) specifically excludes several foreign public sector financial institutions and their agencies and pension plans, and more generally excludes any other similar international organization and its agencies and pension plans.[643] As explained in the context of the *de minimis* exception, certain commenters requested that we take further action to address the application of the dealer definition and its *de minimis* exception to security-based swap activities involving such organizations.[644] Additionally, we noted that two commenters stated that they should not be subject to the possibility of dealer regulation for comity reasons, on the grounds that they were arms of a foreign government.[645] Commenters did not make arguments specific to the application of the major security-based swap participant definition but articulated their arguments in conjunction with their arguments related to the application of the dealer definition. However, one commenter explained that, though it understands that multilateral development banks do not currently engage in security-based swap at the level that would trigger major security-based swap participant registration, even if they did, regulation would violate their privileges and immunities.[646]

As discussed in the context of the *de minimis* exception, it is our view that such issues are outside the scope of this release given that the source of any such privileges and immunities is found outside of the Dodd-Frank Act and the federal securities laws.[647]

Similar to the discussion in the context of the *de minimis* exception, commenters also stated that non-U.S. persons should not have to count their security-based swap positions involving these organizations against their major security-based swap participant threshold calculations on the basis that counting such positions would constitute the impermissible regulation of such organizations.[648] As discussed in the context of the *de minimis* exception, we do not agree with the suggestion that counting a person's positions with such organizations against the major participant calculation thresholds—when otherwise provided for by the rules—involves the regulation of such organizations.[649] Requiring a person to count, against their major participant calculation thresholds, the person's positions involving such an international organization as counterparty simply reflects the application of the federal securities laws to that person and its positions, and does not constitute the regulation of the international organization.[650] A person's security-based swap positions with such an international organization are considered the same, for purposes of applying the major participant calculation thresholds and other Title VII requirements, as a position with some other non-U.S. person counterparty.

H. Economic Analysis of Final Rules Regarding ''Major Security-Based Swap Participants''

These final rules and guidance regarding the cross-border

[637] *See* Exchange Act proposed rules 18a–3(c)(1)(iii)(D) and 18a–3(c)(2)(iii)(C); *see also* Capital and Margin Proposing Release, 77 FR 70214, 70247, 70265, 70269–70, 70271–72 (proposed capital, margin and segregation requirements for security-based swap dealers and major security-based swap participants).

[638] Intermediary Definitions Adopting Release, 77 FR 30691.

[639] AFGI Letter I at 2 (suggesting that the Commission consider providing an exemption from major security-based swap participant registration for entities that will be required to register solely due to their legacy portfolios, if their legacy positions are expected to decline below the major security-based swap participant threshold within 12 to 14 months of the effective date due to projected run-off or terminations); AFGI Letter II at 2–5; AFGI letter, dated February 18, 2011 (''AFGI Letter V'') at 11 (stating that attribution to a financial guaranty insurer is not appropriate when the insurer guarantees a security-based swap obligation of an unaffiliated entity) (incorporated by reference in AFGI Letter I).

[640] AFGI Letter I at 3 (stating that such activities, like activities related to legacy swaps, do not constitute new business and that regulators should implement consistent regulatory treatment in this area to reduce exposure resulting from these legacy transactions); AFGI Letter II at 2–3. *See also* AFGI Letter III at 5 (arguing that an amendment to a legacy account for loss mitigation or credit strengthening without increasing notional exposure should still be considered the legacy account instead of a new security-based swap); AFGI letter, dated July 20, 2011 (''AFGI Letter IV'') at 2–4 (supporting exclusion for state-regulated insurers) (incorporated by reference in AFGI Letter I); AFGI Letter V at 3 (same).

[641] *See* Intermediary Definitions Adopting Release, 77 FR 30691.

[642] *See* Cross-Border Proposing Release, 78 FR 31034–35. *See* section 0 and Exchange Act rule 3a71–3(a)(4)(iii) (listing the international organizations that are excluded from the definition of ''U.S. person'').

[643] *See* section 0, *supra.*

[644] *See, e.g.,* WB/IFC Letter at 2–4, 6–7 (also stating that such organizations should not be required to register as major participants or to clear security-based swaps, and that affiliates of such organizations should be excluded from the ''U.S. person'' definition); SC Letter at 16–24 (contending that the privileged and immunities afforded such organizations would be violated by their direct regulation as dealers or major participants, or by direct regulation equivalents, and that affiliates of such organizations also are immune from regulation); IDB Letter at 5. *See* note 420, *supra.*

[645] *See* note 422, *supra.*

[646] *See* SC Letter at 16.

[647] *See* section 0, *supra.*

[648] *See* section 0, *supra;* SC Letter at 18–19; WB/IFC Letter (incorporating SC Letter).

[649] *See* 0, *supra.*

[650] *See id.*

implementation of the application of the definition of major security-based swap participants will affect the costs and benefits of major security-based swap participant regulation by determining which positions will be counted against a market participant's major security-based swap participant calculation thresholds.[651] The cross-border rules have the potential to be important in determining the extent to which the risk mitigation and other benefits of Title VII are achieved, by identifying those market participants with sufficiently large exposures to raise the types of systemic risk concerns that the major security-based swap participant definition was intended to address.[652]

As discussed in the context of the cost-benefit analysis of the application of the *de minimis* exception in the cross-border context, commenters addressed cost-benefit issues from a variety of perspectives, including arguing that cost-benefit principles warranted greater harmonization with the approaches taken by the CFTC or foreign regulators.[653] Commenters, however, did not separately address cost-benefit issues related to the application of the major security-based swap participant definition.

We have taken economic effects into account in adopting these final cross-border rules and providing guidance. Because security-based swap contracts are associated with complex risks and the markets are highly interconnected, we believe that positions that exist within the United States, which are most likely to expose the U.S. financial system to financial risk, should generally be included in the major security-based swap participant threshold calculations. At the same time, we recognize that the cross-border application of Title VII has the potential to reduce liquidity within the U.S. market to the extent it increases the costs of entering into security-based swaps or provides incentives for particular market participants to avoid the U.S. market to operate wholly outside the Title VII framework.[654]

As addressed in the analysis of the costs and benefits of our application of the *de minimis* rule, the application of the major security-based swap participant definition implicates two types of costs and benefits: Assessment costs and programmatic costs and benefits.[655] First, certain current and future participants in the security-based swap market will incur assessment costs in connection with determining whether they fall within the ''major security-based swap participant'' definition and thus would have to register with the Commission.

Second, the registration and regulation of some entities as major security-based swap participants will lead to programmatic costs and benefits arising as a consequence of the Title VII requirements that apply to registered major security-based swap participants.[656]

We discuss these costs and benefits associated with the final rules more fully below. We also discuss the economic impact of certain potential alternatives to the approach taken in the final rules.

1. Programmatic Costs and Benefits

(a) Cost-Benefit Considerations of the Final Rules

Exchange Act rule 3a67–10 will permit market participants to exclude certain of their positions from their major security-based swap participant threshold calculations, and thus may cause particular entities that engage in security-based swap transactions not to be regulated as major security-based swap participants. The rules accordingly may be expected to affect the programmatic costs and benefits associated with the regulation of major security-based swap participants under Title VII, given that those costs and benefits are determined in part by which persons will be regulated as major security-based swap participants.[657]

As discussed in the context of the application of the *de minimis* exception, this does not mean that there is a one-to-one relationship between a person not being a ''major security-based swap participant'' as a result of these cross-border rules, and the resulting change to programmatic benefits and costs.[658] In practice, we believe that these rules will focus the regulation of major security-based swap participants on those market participants whose security-based swap positions may expose the U.S. financial system to the levels of risk we identified as warranting regulation as a major security-based swap participant in the Intermediary Definitions Adopting Release, or on the prevention of evasion. To the extent that a person's positions within the United States remain below these thresholds, we believe that regulating it as a major security-based swap participant under Title VII would be less likely to produce the types of programmatic benefits that Title VII was intended to address. In other words, these requirements will direct the application of the major security-based swap participant definition—which itself is the product of cost-benefit considerations—towards those entities whose security-based swap positions are most likely to pose the type and level of risk to the U.S. financial system that Title VII was intended to mitigate.

As such, the rules reflect our assessment and evaluation of programmatic costs and benefits:

- *Positions of U.S. persons*—Requiring U.S. persons, as defined in the final rules (including the foreign branches of such persons), to include all of their positions in their major participant threshold calculations, addresses risks that these positions pose to the U.S. financial system.
- *Positions guaranteed by U.S. persons*—Requiring non-U.S. persons to include in their major security-based swap participant threshold calculations all their positions that are guaranteed by a U.S. person, where their counterparties have recourse to the guarantor, reflects both the economic reality of the position—that the position exists within the United States—and addresses the risks posed to the U.S. financial system by the positions of such persons that are guaranteed by U.S. persons.[659]
- *Positions with U.S.-person counterparties*—Requiring non-U.S. persons to include their positions with counterparties that are U.S. persons, unless the positions are with a foreign branch of a registered security-based swap dealer, addresses risks to the U.S. financial system arising from positions entered into with U.S. persons.[660]
- *Attribution of certain positions to guarantors of performance under a security-based swap*—Requiring guarantors of performance under security-based swaps to attribute to themselves, for purposes of their own major security-based swap participant threshold calculations, positions that they guarantee, addresses risks that

[651] *See* section 0, *supra; see also* Intermediary Definitions Adopting Release, 77 FR 30666 (explaining that in developing the rules further defining ''substantial position,'' we were mindful of the costs associated with regulating major participants and considered cost and benefit principles as part of that analysis).

[652] *See* section 0, *supra.*

[653] *See* section 0, *supra.*

[654] *See id., supra.*

[655] *See id., supra.*

[656] *See* Cross-Border Proposing Release, 78 FR 31139.

[657] *See* Intermediary Definitions Adopting Release, 77 FR 30727.

[658] *See* section 0 and note 431, *supra* (discussing various fixed and variable costs).

[659] *See* Exchange Act rule 3a67–10(b)(3)(ii); section 0, *supra.*

[660] *See* Exchange Act rule 3a67–10(b)(3)(i); section 0; *see also* note 437, *supra* (discussing rationale for this limitation in context of *de minimis* exception).

guarantees pose to the U.S. financial system. To the extent that the guarantee involves a position within the United States or brings a position within the United States, our final rules would typically require attribution to the guarantor. These requirements are intended to help ensure that positions that pose risks to the U.S. financial system are included in the guarantor's major participant threshold calculations.[661]

• *Positions subject to anti-evasion provisions*—Requiring conduit affiliates to include all of their positions in their major participant threshold calculations addresses, in a targeted manner, the potential for evasion of the major security-based swap participant requirements of Title VII.[662] As noted above we are adopting a definition of ''conduit affiliate'' that excludes affiliates of registered security-based swap dealers and major security-based swap participants to avoid imposing costs on registered persons in situations that would not appear to implicate the types of evasion concerns that the conduit affiliate definition is intended to address.

In short, these final rules apply the major security-based swap participant definition—which itself reflects cost-benefit considerations[663]—to cross-border security-based swap positions in a way that directs the focus of major participant regulation toward those entities whose security-based swap positions may expose the U.S. financial system to the levels of risk we identified as warranting regulation as a major security-based swap participant.

(b) Evaluation of Programmatic Impacts

In defining ''substantial position'' and ''substantial counterparty exposure'' as part of the Intermediary Definitions Adopting Release, we sought to capture persons whose security-based swap positions pose sufficient risk to counterparties and the markets generally that regulation as a market participant was warranted, without imposing costs of Title VII on those entities for which regulation currently may not be justified in light of the purposes of the statute.[664] As discussed above in the context of the dealer analysis, we estimated in the Intermediary Definitions Adopting Release that, under those rules, approximately 12 entities had outstanding positions large enough that they would likely carry out threshold calculations and that fewer than five entities, and potentially zero, would ultimately be required to register as major security-based swap participants.[665] Those estimates provide a baseline against which the Commission can analyze the programmatic costs and benefits and assessment costs of the final rules applying the major security-based swap participant definition to cross-border activities.

We believe the methodology used in the Intermediary Definitions Adopting Release also is appropriate for considering the potential programmatic costs and benefits associated with the final cross-border rules. This methodology particularly can help provide context as to how rules regarding the cross-border application of the definition of major security-based swap participant may change the number of entities that must register as major security-based swap participants, and thus help provide perspective regarding the corresponding impact on the programmatic costs and benefits of Title VII. Applying that methodology to 2012 data regarding the single-name CDS market suggests that under these final rules five or fewer entities may have to register as major security-based swap participants—a number that is consistent with our estimates in the Intermediary Definitions Adopting Release.[666]

The factors that are described in more detail in section IV.I.1(b) regarding the application of the *de minimis* exception are also relevant to and may impact the programmatic benefits and costs associated with the implementation of the cross-border application of the major security-based swap participant definition. Those factors include limitations of the methodology and data used, the impact of the not yet finalized rules implementing Title VII entity-level and transaction-level requirements applicable to major security-based swap participants, market participants' modifications to their business structure or practices in response to the final rules, and the impact on market participants of other regulatory requirements that are analogous to the major security-based swap participant requirements.[667]

In general, however, and consistent with our territorial approach, we believe that these rules are targeted appropriately and do not apply major security-based swap participant regulation to those entities whose positions have a more limited impact on the U.S. financial system and hence whose regulation as a major security-based swap participant under Title VII would be less linked to programmatic benefits (*i.e.,* non-U.S. persons that engage in security-based swap transactions entirely, or almost entirely, outside the United States with non-U.S. persons or with certain foreign branches), while applying major participant regulation to those entities whose positions would be more likely to produce programmatic benefits under Title VII. The nexus between specific

[661] *See* Exchange Act rule 3a67–10(c); section 0, *supra.*

[662] *See* Exchange Act rule 3a67–10(b)(2); section 0, *supra.*

[663] *See* Intermediary Definitions Adopting Release, 77 FR 30666 (explaining that in developing the rules further defining ''substantial position,'' we were mindful of the costs associated with regulating major participants and considered cost and benefit principles as part of that analysis).

[664] *See id.* at 30724–25.

[665] *See id.* at 30727 and note 1529; section 0.

That methodology determined that an entity that margins its positions would need to have security-based swap positions approaching $100 billion to reach the levels of potential future exposure required to meet the substantial position threshold, even before accounting for the impact of netting, while an entity that clears its security based swaps generally would need to have positions approaching $200 billion. We believed that it was reasonable to assume that most entities that will have security-based swap positions large enough to potentially cause them to be major participants in practice will post variation margin in connection with those positions that they do not clear, making $100 billion the relevant measure. The available data from 2011 showed that only one entity had aggregate gross notional positions (*i.e.,* aggregate buy and sell notional positions) in single-name CDS exceeding $100 billion, and three other entities had aggregate gross notional positions between $50 and $100 billion. We explained, however, that an entity's positions reflecting single-name credit protection sold to its counterparties, as opposed to purchased, may be expected to be a more key determinant of potential future exposure under those rules. The data showed that zero entities had more than $100 billion in positions arising from selling single-name credit protection and that only two entities had between $50 and $100 billion arising from such positions. *See id.* at 30727, 30734 and note 1529.

In the Intermediary Definitions Adopting Release, we noted that to the extent that an entity's security-based swap positions are not cleared or associated with the posting of variation margin, security-based swap positions of $20 billion may lead to sufficient potential future exposure to cause the entity to be a major participant, though we believed that few, if any, entities would have a significant number of such positions. The data indicated that only 32 entities have notional CDS positions in excess of $10 billion. *See id.* at note 1529.

[666] *See* note 444, *supra* (noting that the data on which the methodology is based has been updated).

Consistent with the methodology used in the Intermediary Definitions Adopting Release, the 2012 data indicated that two entities had aggregate gross notional positions (*i.e.,* aggregate buy and sell notional positions) in single-name CDS exceeding $100 billion. Applying the principles reflected in these final rules regarding the counting of positions against the major security-based swap participant thresholds suggests that two entities would have aggregate gross notional positions in single name CDS exceeding $100 billion. No additional entities would be required to register as a result of aggregation. Based on this data, we believe that it is reasonable to conclude that five or fewer entities ultimately may register as major security-based swap participants.

[667] *See* section 0, *supra.*

aspects of these requirements and the programmatic costs and benefits also is addressed below in connection with our consideration of various alternatives to the approach taken in the final rules.

Finally, as discussed in the context of the *de minimis* exception, we recognize that the U.S. market participants and positions regulated under Title VII are a subset of the overall global security-based swap market and that shocks to risk or liquidity arising from a foreign entity's positions outside the United States may spill into the United States.[668] We also have considered these spillovers in connection with our analysis of the effects of these final cross-border rules on efficiency, competition, and capital formation.[669]

2. Assessment Costs

The analysis of how these cross-border rules will affect the assessment costs associated with the ''major security-based swap participant'' definition is related to the assessment cost analysis described in the Intermediary Definitions Adopting Release,[670] but must also account for certain issues specific to these cross-border rules. While in certain regards those assessment costs can more readily be estimated than the programmatic effects discussed above, the assessment costs associated with the cross-border application of the Title VII major participant requirements will be considerably less significant than those programmatic effects.

The Intermediary Definitions Adopting Release addressed how certain market participants could be expected to incur costs in connection with their determination of whether they have a ''substantial position'' in security-based swaps or pose ''substantial counterparty exposure'' created by their security-based swaps, which is necessary for determining whether they are major security-based swap participants.[671] In that release we estimated that as many as 12 entities would likely perceive the need to perform these calculations, given the size of their security-based swap positions.[672] We preliminarily believed that entities that perceive the need to perform the threshold calculations as a result of the proposed rules and guidance set forth in the Cross-Border Proposing Release would incur only relatively minor incremental costs to those described in the Intermediary Definitions Adopting Release.[673] Based on the estimate that no more than 12 entities would perceive the need to engage in the analysis of whether they are a major security-based swap participant, we estimated that the total legal costs associated with evaluating the various elements of the definition may approach $360,000.[674]

As discussed in the context of the *de minimis* exception, application of these cross-border rules can be expected to affect the assessment costs that market participants will incur. In part, certain non-U.S. persons may be expected to incur personnel costs and legal costs—beyond the legal costs addressed as part of the Intermediary Definitions Adopting Release—associated with analyzing these cross-border rules and developing systems and procedures to assess which transactions would have to be counted against the major security-based swap participant calculation thresholds (or with the purpose of avoiding positions that pose risk to the United States financial system that would be sufficient to meet the applicable thresholds). On the other hand, while certain market participants also would incur additional legal costs associated with the major security-based swap participant determination (*i.e.,* the assessment of whether particular positions should be included in the major participant threshold calculations) addressed in the Intermediary Definitions Adopting Release, the application of the cross-border rules may reduce the number of entities that incur such legal costs.[675]

In adopting these rules we estimate the assessment costs that market participants may incur as a result. As discussed below, however, these costs in practice may be mitigated in large part by steps that market participants already have taken in response to other regulatory initiatives, including compliance actions taken in connection with the requirements applicable to swaps.

(a) Legal Costs

The implementation of these cross-border rules in some circumstances has the potential to change the legal costs identified in the Intermediary Definitions Adopting Release, including by adding new categories of legal costs that non-U.S. persons may incur in connection with applying the major security-based swap participant definition in the cross-border context.

Legal costs related to the cross-border application of major security-based swap participant definition—As discussed in the Intermediary Definitions Adopting Release, certain market participants will incur assessment costs related to the analysis of whether their positions rise to the levels set by the major security-based swap participant definition. For purposes of that release, we assumed that entities with aggregate gross notional single-name CDS positions exceeding $25 billion may identify a need to perform the major participant analysis.[676] Based on that figure, we estimated that 12 entities would perceive the need to perform the major participant analysis.[677]

Under the final rules described above, available data from 2012 indicates that approximately nine persons will have relevant positions exceeding $25 billion, and we continue to believe that firms whose positions exceed this amount will be likely to perform the major participant threshold analysis.[678] Of those nine, five entities are not domiciled in the United States. Consistent with our view in the proposing release, we expect that non-U.S. firms in this set will incur additional costs beyond those described in the Intermediary Definitions Adopting Release. These additional costs would arise due to information that non-U.S. market participants would have to collect and maintain in order to calculate the size of positions that count towards the major participant thresholds. Consistent with our analysis in the Intermediary Definitions Adopting Release, we believe that it is reasonable to conclude that at least some entities with security-based swap positions approaching the major participant thresholds are likely to seek

[668] *See* section 0, *supra* (describing spillover risks).

[669] *See* section 0, *infra.*

[670] *See* Intermediary Definitions Adopting Release, 77 FR 30733–36.

[671] *See id.* at 30734–36.

[672] *See id.* at 30734.

[673] *See* Cross-Border Proposing Release, 77 FR 31141.

[674] *See* Intermediary Definitions Adopting Release, 77 FR 30736. We also noted in that release that if 32 entities were to perform the analysis, the market wide legal costs would total $960,000. *See id.* at 30736 n. 1539; *see also* note 665, *supra* (noting that if an entity did not clear or post variation margin, $20 billion in notional CDS positions may be sufficient exposure to cause the entity to be a major participant and that 32 entities have notional CDS positions exceeding $10 billion).

[675] *See* section 0, *supra.*

[676] *See* Intermediary Definitions Adopting Release, 77 FR note 1529.

[677] Based on data as of December 2011, in that release we found that 1 entity had aggregate gross notional positions from bought and sold credit protection exceeding $100 billion, 4 entities had aggregate gross notional single-name CDS positions exceeding $50 million, and 12 entities had aggregate gross notional CDS positions exceeding $25 billion. *See id.* at 30734 n. 1529.

[678] *See* section 0, *supra.* The difference between this and our previous estimate of 12 entities reflects changes in security-based swap activity since the Intermediary Definitions Adopting Release and the final rules' treatment of positions between non-U.S. persons in the absence of guarantees from U.S. persons.

legal counsel for interpretation of various aspects of the rules pertaining to the major participant definition.[679] Though the costs associated with obtaining such legal services would vary depending on the facts and circumstances regarding an entity's positions, we believe that $40,000 is a reasonable estimate of the upper end of the range of the costs of obtaining the services of outside counsel in undertaking the legal analysis of the entity's status as a major security-based swap participant.[680]

Legal costs related to systems analysis—As noted in the assessment cost analysis related to the *de minimis* exception (and in addition to the estimates in the Cross-Border Proposing Release), we believe that it is reasonable to conclude that those five entities not domiciled in the United States may have to incur one-time legal expenses related to the development of systems and analysis expenses—discussed below—to identify which of their security-based swap positions potentially must be counted for purposes of the major security-based swap participant analysis, consistent with these cross-border rules. As in the dealer context, this additional cost estimate reflects the fact that the development of such systems and procedures must address cross-border rules that require accounting for factors such as whether an entity's security-based swaps are subject to guarantees from U.S. persons, whether its counterparties are U.S. persons, and, specific to the major security-based swap participant analysis, whether the entity must attribute the position to itself pursuant to the attribution rules. As in the analysis of assessment costs related to the dealer definition, we estimate that such legal costs would amount to approximately $30,400 per entity, and that those five entities would incur total costs of approximately $152,000.[681]

(b) Costs Related to New Systems, Analysis, and Representations

Transaction-monitoring systems—The elements introduced by the final cross-border rules may cause certain non-U.S. persons to implement systems to identify whether their positions exceed the major security-based swap participant calculation thresholds. Such systems may reflect the need for non-U.S. persons to: (i) Identify whether their counterparties are ''U.S. persons''; (ii) determine whether their positions with U.S. persons arise from transactions conducted through a foreign branch (which itself requires consideration of whether their counterparty is a ''foreign branch'') and—of those—determine which positions involve a foreign branch of a U.S. bank that itself is a registered security-based swap dealer; (iii) determine whether particular positions are subject to a recourse guarantee against a U.S. person; and (iv) evaluate the applicability of the attribution rules.[682] Our estimates for the required systems are the same in the major participant analysis as they are in the dealer analysis: One-time programming costs of $14,904 and ongoing annual systems costs of $16,612 per entity.[683]

Analysis of counterparty status, including representations—As discussed in the context of the *de minimis* exception, non-U.S. market participants would be likely to incur costs arising from the need to assess the potential U.S.-person status of their counterparties, which we would typically expect to be dealers, and in some cases to obtain and maintain records related to representations regarding their counterparty's U.S.-person status.[684] We anticipate that non-U.S. persons are likely to review existing information about their counterparties to assess whether those counterparties are U.S. persons.[685] Non-U.S. persons at times may also request and maintain representations from their dealer and non-dealer counterparties to help determine or confirm their counterparties' status.[686] Accordingly, as in the discussion of dealer assessment costs, in our view, such assessment costs primarily would encompass one-time costs to review and assess existing information regarding counterparty domicile, principal place of business, and other factors relevant to potential U.S.-person status, as well as one-time costs associated with requesting and collecting representations from counterparties.[687] The costs associated with representations in the context of the major participant analysis would be one-time costs of approximately $24,200 per firm.[688]

Monitoring of counterparty status—Also as addressed in the context of the *de minimis* exception, market participants may be expected to adapt their systems to monitor the status of their counterparties for purposes of future security-based swap activities, which would allow market participants to maintain records of counterparty status for purposes of conducting the

[679] *See* Intermediary Definitions Adopting Release, 77 FR 30735.

[680] The average cost incurred by such entities in connection with outside counsel is based on staff experience in undertaking legal analysis of status under federal securities laws. The staff believes that costs associated with obtaining outside legal counsel relating to such determinations range from $20,000 to $40,000 depending on the complexity of the entity. *See id.* at 30735–36 n. 1537 (estimating the upper bound of such costs at $30,000). We note that the additional $10,000 added to the estimate in the Intermediary Definitions Adopting Release is intended to account for the additional complexity that non-U.S. persons may face in performing the analysis.

These estimates do not reflect a new category of costs arising from the cross-border rules. They instead are a revision of a category of previously identified costs that market participants may incur in obtaining legal services to assist in performing the major participant analysis, using newer data and reflecting only positions that are counted under the final cross-border rules.

[681] *See* section 0 and note 460 (addressing calculations of costs), *supra.*

[682] We do not believe that a potential major security-based swap participant will need to use any systems to determine if it is a ''conduit affiliate.'' *See* note 462, *supra.*

[683] *See* section 0 and note 464, *supra.*

[684] *See* Exchange Act rule 3a67–10(a)(4) and (3) (incorporating the definitions of ''U.S. person'' ''transaction conducted through a foreign branch,'' including provisions permitting reliance on representations); *see also* section 0 and note 465, *supra* (noting that non-U.S. market participants may seek representations as to whether positions arise from transactions conducted through a foreign branch of a U.S. bank that is registered as a security-based swap dealer and also noting our understanding that few, if any, U.S. persons may participant in the single-name CDS market through their foreign branches).

[685] *See* section 0, *supra.*

[686] *See id.*

[687] *See* section 0 and note 466, *supra* (explaining that determination of U.S.-person status generally will not vary over time absent changes involving corporate reorganizations).

[688] *See* section 0, *supra.* The cumulative estimate is based on the same methodology and SIFMA Management & Professional Earnings in the Securities Industry 2013 data that we used to estimate these one-time costs for dealers. *See* note 467, *supra.* With respect to major security-based swap participants, we conservatively assume that each of the non-U.S. firms will have 30 single-name CDS counterparties (based on data indicating that the five non-U.S. firms persons with total single-name CDS positions in 2012 exceeding $25 billion all had fewer than 45 counterparties in connection with single-name CDS, which produces an estimate of 15 hours of compliance staff time and 15 hours of legal staff time per firm. Based upon data from SIFMA's Management & Professional Earnings in the Securities Industry 2013 (modified by the Commission staff to account for an 1800-hour-work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead), the staff estimates that the average national hourly rate for a senior compliance examiner is $217 and that the average national hourly rate for an in-house attorney is $380; this leads to a cumulative estimate of $9,000 per firm for such costs.

Consistent with the Cross-Border Proposing Release, moreover, this estimate is further based on estimated 40 hours of in-house legal or compliance staff's time (based on the above rate of $380 per hour for an in-house attorney) to establish a procedure of requesting and collecting representations from trading counterparties, taking into account that such representation may be incorporated into standardized trading documentation used by market participants. This leads to an estimate of $15,200 per firm for such costs. *See* section 0 and note 467, *supra.*

major participant assessment.[689] Market participants also may need to monitor for the presence of information that may indicate that the representations they have received are outdated or otherwise are not valid.[690] The costs associated with adapting the systems described above to monitor the status of their counterparties for purposes of their future security-based swaps would be the same as the costs in the dealer analysis: One-time costs of approximately $12,436.[691]

Summary of systems, analysis, and representation costs—The summary of costs that certain non-U.S. market participants would incur in connection with systems, analysis of counterparty status and representations in connection with these cross-border rules would be approximately $51,500 in one-time costs[692] and $16,612 in estimated annual ongoing costs.[693] Based on our estimate, subject to the limitations associated with the use of data analysis discussed above, that five non-U.S. domiciled entities will incur these assessment costs, we estimate that the total one-time industry-wide costs associated with establishing such systems would amount to approximately $257,500 and total ongoing costs would amount to approximately $83,100.

(c) Overall Considerations Related to Assessment Costs

In sum, we believe that the effect of these final cross-border rules would be an increase over the amounts that otherwise would be incurred by certain non-U.S. market participants, both in terms of additional categories of legal costs and in terms of the need to develop certain systems and procedures. As discussed in the context of the assessment costs applicable to the dealer analysis, we believe that requiring certain non-U.S. persons to incur such assessment costs is an unavoidable adjunct to the implementation of a set of rules that are appropriately tailored to apply the ''major security-based swap participant'' definition under Title VII to a global security-based swap market in a way that yields the relevant benefits associated with the regulation of major participants and achieves the benefits of Title VII.[694] The benefits of Title VII's regulatory requirements applicable to major security-based swap participants could be undermined if a significant portion of positions held by non-U.S. persons that impose risk on the U.S. financial system were excluded from the Title VII framework. In certain respects, however, decisions embedded in these final rules are designed to avoid imposing assessment costs upon market participants.[695]

As explained in the context of the analysis for dealers, we recognize that our estimates of assessment costs may result in an overestimation as such costs may be tempered to the extent that market participants' assessments correspond to the assessments they otherwise would follow due to other regulatory requirements or business practices, particularly with respect to assessments they may have made regarding the U.S.-person status of their counterparties.[696]

Also as noted in the dealer discussion, we acknowledge that certain aspects of the final rules may differ from those of the CFTC, which may result in higher costs for market participants, but we believe that such differences are justified and we discuss those differences in the substantive discussions of the specific rules.[697] We also recognize other factors that may impact the assessment costs for potential major security-based swap participants, such as the possibility that certain market participants will choose to restructure their business to avoid major security-based swap participant regulation.[698]

3. Alternative Approaches

As discussed above, the final rules incorporate a number of provisions designed to focus Title VII major security-based swap participant regulation upon those persons whose security-based swap positions may raise the risks within the United States that the major participant definition was intended to address.[699]

In adopting these final rules we have considered alternative approaches suggested by commenters, including the economic effects of following such alternative approaches. In considering the economic impact of potential alternatives, we have sought to isolate the individual alternatives to the extent practicable, while recognizing that many of those alternatives are not mutually exclusive.[700]

We further have considered such potential alternatives in light of the methodologies discussed above, by assessing the extent to which following particular alternatives would be expected to increase or decrease the number of entities that ultimately would be expected to be regulated as major security-based swap participants under the final rules, as well as the corresponding economic impact. Analysis of the available data would tend to suggest that various alternative approaches suggested by commenters would not produce any changes in the numbers of market participants that may have to be regulated as major security-based swap participants. These results are subject to the above limitations, however, including limitations regarding the ability to quantitatively assess how market participants may adjust their future activities in response to the rules we adopt or for independent reasons. Accordingly, while such analyses provide some context regarding alternatives, their use as tools for illustrating the economic effects of such alternatives is limited.

(a) Security-Based Swap Positions Held by Foreign Branches of U.S. Banks

As with the final rules in the context of the *de minimis* exception, the final rules applying the major security-based swap participant definition require U.S. banks to count all positions of their foreign branches against the major participant calculation thresholds, even when the counterparty is a non-U.S. person or another foreign branch of a U.S. person. The proposed definition of ''U.S. person'' plays a central role in the application of Title VII in the cross-border context, directly affecting which

[689] We also recognize that the final rules requiring attribution may impose certain additional monitoring costs on market participants whose position in a security-based swap is guaranteed by another entity and on the entities that provide the guarantee. We anticipate that the guarantors may receive reports from the market participants whose position is guaranteed in order to allow the guarantors to monitor the amount of such positions for purposes of determining whether the positions attributed to the guarantor rise to the level that would require them to register as a major security-based swap participant.

[690] *See* section 0 and note 469, *supra.*

[691] *See* section 0 and note 468 (noting that parties may structure their relationships in a way that will not require a separate representation in conjunction with each individual position) and 470, *supra* (describing calculations for this estimate).

[692] Consistent with the above discussion, the estimated one-time costs of $51,500 represent: The costs to establish a system to assess the status of their positions under the definitions and other provisions specific to these cross-border rules ($14,904); the costs related to the assessment of counterparty status, including costs of assessing existing information and of requesting and obtaining representations, as well as costs of related procedures ($24,200); and the costs for monitoring the status of their counterparties for purposes of their future security-based swap activities ($12,436). *See* section 0 and note 471, *supra.*

[693] *See* section 0, *supra.*

[694] *See* section 0, *supra.*

[695] *See id.*

[696] *See id.*

[697] *See id.*

[698] *See id.*

[699] *See* section 0, *supra.*

[700] *Cf.* section 0, *supra.*

positions a person must include in its major security-based swap participant threshold calculations and ultimately, the number of entities that will register as major security-based swap participants. An alternative approach would permit U.S. persons not to include the positions of their foreign branches in their major security based swap participant calculation thresholds. As discussed above, we believe our approach to U.S. persons as described above, is consistent with our overall territorial approach to the application of Title VII requirements to the cross-border security-based swap market, because it requires that major security-based swap participant calculation thresholds include the positions of such persons that are most likely to cause risk to the U.S. financial system at the threshold levels set in the major security-based swap participant definition.[701] For the reasons discussed above, we believe that it is appropriate for a U.S. person to include in its calculation thresholds positions conducted through foreign branches to the same extent as other positions help by U.S. persons.[702]

As in the dealer analysis, using the 2012 data to assess the impact associated with this alternative does not indicate a change to our estimate that up to five entities potentially would register as major security-based swap participants, and the analysis is subject to the limitations discussed in the context of the dealer analysis.[703] Adopting an alternative approach that does not require foreign branches to count their positions with non-U.S. persons could incentivize U.S. persons to execute higher volumes through their branches.[704]

(b) Positions of Non-U.S. Persons for Which the Counterparty Has Rights of Recourse Against a U.S. Person

The final rules require a non-U.S. person to count, against its major security-based swap participant calculation thresholds, positions for which the non-U.S. person's performance in connection with the transaction is subject to a recourse guarantee against a U.S. person. Although the proposal instead would have treated such guaranteed affiliates like any other non-U.S. persons, we believe that this provision is appropriate for the reasons discussed above, including the fact that such recourse guarantees pose risks to the U.S. financial system via the guarantor.[705]

This aspect of the final rules reflects a middle ground between commenter views, as is discussed above regarding the approach taken in the dealer analysis.[706] The same two alternatives that are presented in the analysis of alternatives to the approach to the dealer final rules are relevant to the discussion of the application of the major security-based swap participant definition—one alternative in which the final rules do not address guarantees at all, and one in which (based on the concept of a *de facto* guarantee) all affiliates of a U.S. person should have to count their security-based swap positions against the calculation thresholds, with a potential exception if they demonstrate to the market that there will be no guarantee.[707] A third alternative and the approach taken in the proposal would require the non-U.S. person to include in its threshold calculations only those positions with U.S. persons that are not guaranteed but would require those positions that are guaranteed to be attributed to the U.S. person guarantor for purposes of its own threshold calculations.

The analysis of the first two alternatives discussed in the context of the application of the dealer requirements above also applies in the context of applying the major security-based swap participant definition.[708] The third alternative, which is the approach taken in the proposal, may have reduced programmatic benefits by increasing the likelihood that, even when a person exceeds the thresholds by virtue of its own positions, which exist within the United States by virtue of the U.S. person guarantor, it will not be subject to direct regulation as a major participant.[709] Under the proposed approach, only the U.S. person guarantor would have counted the positions for which the non-U.S. person's counterparty had rights of recourse against the U.S. person, meaning that such positions would not be accounted for in the major participant threshold calculations of the entity that directly enters into the positions. The economic reality of such positions is that by virtue of the guarantee the non-U.S. person effectively acts together with a U.S. person to engage in the security-based swap activity that results in the positions, and the non-U.S. person's positions cannot reasonably be isolated from the U.S. person's engagement in providing the guarantee.[710] The final rule reflects this economic reality by requiring the non-U.S. person whose position is guaranteed to include such positions in its major security-based swap participant threshold calculations.[711]

For the foregoing reasons, we believe that the approach taken in the final rules is appropriate. We note that an assessment of the data regarding the first alternative does not indicate a change in the number of entities that may be expected to register as major security-based swap participants.[712] Due to data limitations that prevent us from identifying which individual transactions of non-U.S. persons are subject to guarantees by U.S. persons and data limitations preventing us from obtaining information about the single-name security-based swap transactions of non-U.S. domiciled persons for single-name CDS involving a non-U.S. reference entity, the available data does not enable us to assess the second and third alternatives.[713]

(c) Positions of Conduit Affiliates

The final rules require conduit affiliates to count all of their security-based swap positions in their major security-based swap participant threshold calculations. The available data does not permit us to identify which market participants would be deemed conduit affiliates.[714] As explained in the corollary discussion in the dealer analysis, we believe the alternative of not requiring such entities to count their positions would remove a tool that should help to deter market participants from seeking to evade regulation.

As addressed in the dealer analysis another alternative to address such evasive activity could be to narrow the inter-affiliate exception, such as by making the exception unavailable when non-U.S. persons enter into positions

[701] *See* section 0, *supra.*

[702] *See* section 0, *supra.*

[703] *See* section 0 and note 477, *supra.*

[704] *See* section 0, *supra* (discussing the same issue in the dealer context).

[705] *See* section 0, *supra* (addressing similar discussion in the context of the dealer analysis).

[706] *See id., supra.*

[707] *See id.*

[708] *See* section 0, *supra* (explaining that not requiring non-U.S. persons to include positions for which their counterparty has a recourse guarantee against a U.S. person could incentivize U.S. persons to use such guarantees, whereas an approach that requires an affiliate of a non-U.S. person to include all of its positions in its major security-based swap participant calculation thresholds may negatively impact liquidity).

[709] *See* section 0, *supra.*

[710] *See* section 0, *supra.*

[711] *See id.*

[712] *See* section 0 and note 481 (explaining that the data does not enable us to identify which positions of non-U.S. persons are subject to guarantees by U.S. persons).

[713] *See* section 0 and notes 481 and 482, *supra.*

[714] *See* section 0, *supra.*

with their U.S. affiliates.[715] While this alternative may be expected to reduce costs to such entities, we believe the final rules will achieve comparable anti-evasion purposes with less cost and disruption.[716]

(d) Positions of Non-U.S. Persons With Foreign Branches of U.S. Banks and Certain Other Counterparties

The final rules require non-U.S. persons to include their positions arising from transactions conducted through foreign branches of U.S. banks unless the U.S. bank is registered as a security-based swap dealer. This reflects a change from the proposal, which would have required non-U.S. persons to include all positions with foreign branches of U.S. banks without exception. The final approach, as in the context of the dealer analysis, reflects a middle ground between commenter views, which provided two alternatives: That all positions arising from transactions conducted through foreign branches be counted or that no such position be counted against a non-U.S. person's major security-based swap participant calculation thresholds.[717] Adopting the first alternative requiring non-U.S. persons to include all positions with foreign branches would raise the potential for disparate impacts upon U.S. persons with foreign branches, along with associated concerns about liquidity impacts.[718] Adopting the second alternative excluding all such positions from being counted, could incentivize U.S. market participants that are not registered as dealers to execute higher volumes of security-based swaps through their foreign branches, resulting in higher levels of risk being transmitted to the United States without the risk-mitigating attributes of having a registered dealer involved in the position.[719]

The available data related to these alternatives is subject to the limitations discussed above and does not indicate a change to our assessment of the number of entities that may be expected to register as major security-based swap participants.[720]

Another alternative approach would require non-U.S. persons to include in their major security-based swap participant threshold calculations those positions for which they have rights of recourse against a U.S. person or their positions with counterparties that are conduit affiliates.[721] We believe that the positions of such non-U.S. persons do not transmit risk to the United States in the same way as if the potential major security-based swap participant is the entity whose performance is guaranteed by a U.S. person because the default of the non-U.S. person who holds the right of recourse against the U.S. person guarantor will not impact the outward exposure of the U.S. person or the non-U.S. person whose position is guaranteed. While these alternatives may potentially increase programmatic benefits associated with Title VII major participant regulation, they would also likely increase assessment costs by requiring such non-U.S. persons to evaluate and track whether they have a right of recourse against a U.S. person, potentially reducing liquidity available to U.S. corporate groups that provide guarantees to non-U.S. persons.[722] We note that, under the final rules regarding guaranteed positions, the entity involved in the position with the closest connection to the United States, the non-U.S. person whose position is guaranteed, as well as the U.S. guarantor itself, will already be including the position in each of their calculations. Thus we believe such benefits would be more attenuated than those associated with the final rules' approach of directly counting the positions of such guaranteed non-U.S. persons. Accordingly, we do not believe these alternatives would generate significant additional programmatic benefits.

(e) Attribution

i. Attribution to U.S. Persons

Our final attribution approach requires U.S. persons to include, for purposes of their major security-based swap participant calculation thresholds, those positions for which a non-U.S. person's counterparty has rights of recourse against the U.S. person.

An alternative approach would not require a U.S. person to include such positions in its threshold calculations. This alternative potentially reduces the programmatic costs and benefits of major participant regulation because it would reduce the number of positions that U.S. guarantors would include in their calculations. By reducing the costs associated with providing guarantees, such an alternative could reduce the barriers to participation in the security-based swap market faced by participants who might benefit from risk sharing afforded by security-based swap positions but cannot credibly provide sufficient information for their counterparties to assess creditworthiness. We further believe that such an approach would only reduce the assessment costs associated with major participant regulation to the extent that U.S. guarantors do not have private incentives in place to collect information about positions they guarantee.

As noted in section V.D.3, however, we believe it is important to account for the risk to the U.S. financial system transmitted by such guaranteed positions. Ensuring that a U.S. person counts positions of potentially several entities whose counterparties have rights of recourse against it, where each of those entities may be individually below the major participant threshold, will generate the types of benefits that Title VII was intended to produce. The benefits of including these positions are significant because, through the U.S. guarantor, these positions expose the U.S. financial system to the type of risk that the definition of major security-based swap participant is intended to address.

ii. Attribution to Non-U.S. Persons

Under the final rules a non-U.S. person must include security-based swap positions of a U.S. person for which that person's counterparty has rights of recourse against the non-U.S. person, and security-based swap positions of another non-U.S. person that are with a U.S.-person counterparty who has rights of recourse against the non-U.S. person that is the potential major security-based swap participant.

An alternative approach to these requirements would be to not require non-U.S. persons to include such positions, even when those positions are entered into by U.S. persons or when a U.S. person has a right of recourse against them under those positions. Not requiring these positions to be attributed to the non-U.S. person could reduce assessment costs for non-U.S. persons and potentially result in fewer non-U.S. persons ultimately registering as major security-based swap participants. This alternative potentially improves risk sharing by U.S. persons who must rely on guarantees in order to participate in the security-based swap market by reducing the costs incurred by non-U.S. person guarantors. It likely would, however, also reduce programmatic benefits to the extent that non-U.S. persons that guarantee positions within the United States of multiple entities, each of which is below the major participant threshold, are not required

[715] *See id.*

[716] *See id.*

[717] *See* section 0, *supra.*

[718] *See id.*

[719] *See id.*

[720] *See id.*

[721] *See* note 576 (describing CFTC approach) and note 189 (describing comments suggesting to treat guaranteed entities as U.S. persons), *supra.*

[722] *See* section 0.

to include such positions in their own calculations.

Such non-U.S. persons who provide guarantees ultimately bear the risk of positions they guarantee, and the aggregate risk exposure of the U.S. financial system to a non-U.S. person guarantor varies more directly with the notional amount of positions involving U.S. persons that are guaranteed than with the number of entities to which it provides guarantees. As a result, the Commission believes it is appropriate to apply attribution requirements that treat non-U.S. person guarantors of positions to which U.S. persons are counterparties as if they were direct counterparties. With respect to guarantees provided by non-U.S. persons to U.S. persons, the Commission believes it is appropriate to attribute guaranteed positions because U.S. persons bear the risk that non-U.S. person guarantors will be unable to fulfill obligations under the guarantees they provide.

(f) Positions Cleared Through a Clearing Agency in the United States

The final approach requires non-U.S. persons to include in their major participant threshold calculations those positions that are entered into with U.S. persons, including positions that are cleared through a registered clearing agency in the United States. An alternative raised by a commenter suggested that the location of clearing not be relevant for purposes of determining whether a non-U.S. person is a major security-based swap participant.[723] This alternative would ignore the risk that is posed to the U.S. financial system by positions cleared through a U.S.-person clearing agency, and would be inconsistent with the general approach that all positions with U.S. counterparties should be counted towards the major security-based swap participant threshold calculation. For this reason, we believe the alternative would ignore important programmatic benefits that are incorporated in the final approach.

(g) Foreign Government-Related Entities

Several commenters suggested that foreign government-related entities, such as sovereign wealth funds and MDBs, should be excluded from the U.S. person, security-based swap dealer, and major security-based swap participant definitions.[724] By potentially capturing fewer major security-based swap participants, this alternative approach would correspondingly decrease the programmatic costs and benefits associated with Title VII regulation of major security-based swap participants. We believe that security-based swap transactions entered into by these types of foreign government-related entities with U.S. persons pose the same risks to the U.S. security-based swap markets as transactions entered into by entities that are not foreign-government related. Moreover, as noted above,[725] we understand that foreign government-related entities rarely enter into security-based swap transactions (as opposed to other types of swap transactions) in amounts that would trigger the obligation to register as a major security-based swap participant. To the extent that such entities do enter into security-based swaps with U.S. persons, however, we believe such requiring such entities to include those positions in their major participant threshold calculations will generate programmatic benefits, as such positions introduce risk into the United States of the type title VII intended to address.

VI. Substituted Compliance Procedural Rule

A. Proposed Approach and Commenters' Views

The Cross-Border Proposing Release addressed a range of substantive issues regarding the potential availability of substituted compliance, whereby a market participant could satisfy certain Title VII obligations by complying with comparable foreign requirements. These included issues regarding which requirements might be satisfied via substituted compliance, and regarding the showings necessary to obtain a substituted compliance order from the Commission.

The release also proposed to amend the Commission's Rules of General Application to establish procedures for considering substituted compliance requests, similar to the procedures that the Commission uses to consider exemptive order applications under section 36 of the Exchange Act.[726] Among other aspects, proposed Exchange Act rule 0–13 would require that substituted compliance applications be in writing and include any supporting documentation necessary to make the application complete—''including information regarding applicable requirements established by the foreign financial regulatory authority or authorities, as well as the methods used by the foreign financial regulatory authority or authorities to monitor compliance with such rules''—and that applications cite applicable precedent.[727] The proposed rule also stated that the Commission may choose to publish requests in the **Federal Register**, and stated that requestors may seek confidential treatment.[728] We preliminarily concluded that those proposed procedures would provide sufficient guidance regarding the submission process.[729] We also solicited comment regarding the sufficiency of the guidance provided by the proposed rule, and regarding whether foreign regulatory authorities should be able to submit substituted compliance requests.[730]

One commenter raised concerns that the proposed availability of confidential treatment ''would foreclose any public comment, debate or analysis of the applicant's claims about the foreign regulatory regime, leading to an industry-led process.'' That commenter urged us to disallow confidential treatment of applications, and to invite public comment as foreign jurisdictions are considered for comparability.''[731]

[723] *See* section 0 and note 549, *supra. See also* section VIII.A, *infra.*

[724] *See* section 0 and note 420 (addressing comments in *de minimis* context and citing WB/IFC Letter SC Letter and IDB Letter at 5), *supra.*

[725] *See* section 0, *supra.*

[726] *See generally* Cross-Border Proposing Release, 78 FR 31087–88.

[727] *See* proposed Exchange Act rule 0–13(a), (e). Proposed Exchange Act rule 0–13 further would provide that applications must comply with Commission rule 0–3 (regarding the filing of materials with the Commission). Under the proposal, all applications would be submitted to the Commission's Office of the Secretary electronically or in paper format, and in the English language. If an application is incomplete, the Commission may request that the application be withdrawn unless the applicant can justify why supporting materials have not been submitted and undertakes to submit promptly the omitted materials. The Commission would not consider hypothetical or anonymous requests for a substituted compliance order. The proposed rule further addressed issues regarding contact information, amendments to the application, the review process, and potential hearings regarding the application. *See* proposed Exchange Act rule 0–13; *see also* Cross-Border Proposing Release, 78 FR 31087–88.

[728] *See* proposed Exchange Act rule 0–13(a), (h). The proposal stated that requests for confidential treatment would be permitted to the extent provided under 17 CFR 200.81. *See* proposed Exchange Act rule 0–13(a); Cross-Border Proposing Release, 78 FR 31087–88. Under 17 CFR 200.81, persons submitting exemptions and related relief may also request that it be accorded confidential treatment for a specified period of time not exceeding 120 days. If the Commission staff determines that the request is reasonable and appropriate it will be granted and the letter or other communication will not be made available for public inspection or copying until the expiration of the specified period. If the staff determines that the request for confidential treatment should be denied, the staff shall advise the person making the request and the person may withdraw the letter or other communication within 30 days.

[729] *See* Cross-Border Proposing Release, 78 FR 31088.

[730] *See id.*

[731] *See* AFR Letter I at 11–12.

Commenters also asked for greater clarity regarding the information to be provided in connection with substituted compliance requests.[732] Commenters also asked that the Commission coordinate with the CFTC and foreign regulators in making substituted compliance determinations.[733]

Other commenters addressed a related issue regarding whether foreign regulators could submit substituted compliance requests. Proposed Exchange Act rule 3a71–5, regarding substituted compliance for foreign security-based swap dealers, specified that such requests may be filed by a foreign security-based swap dealer or group of dealers. A number of commenters took the contrasting position that foreign regulators should be able to submit substituted compliance requests.[734] Some commenters further stated that such requests solely should be submitted by foreign regulators.[735] Two commenters particularly emphasized the importance of the Commission's substituted compliance assessments taking into account foreign enforcement and supervisory practices.[736]

B. Final Rule

In large part, we expect to address issues regarding the availability of substituted compliance as part of future rulemakings, in conjunction with considering the cross-border application of the relevant substantive rules. As discussed above, we believe that it is appropriate to address issues regarding the cross-border application of the substantive requirements under Title VII in conjunction with considering the final rules to implement those substantive requirements, as substituted compliance potentially will constitute an integral part of the final approach toward cross-border application.

At this time, however, we believe that it is appropriate to adopt a final rule to address the procedures for submitting substituted compliance requests. Using the same general procedural requirements would facilitate the efficient consideration of substituted compliance requests. Proposed Exchange Act rule 0–13, moreover, is sufficiently flexible to accommodate requests related to a range of regulatory requirements, even when the requirements necessitate different approaches toward substituted compliance.

Accordingly, we are adopting Exchange Act rule 0–13 largely as proposed. In response to commenter input, however, the final rule has been modified from the proposal to provide that a request for a substituted compliance order may be submitted either by a party that potentially would comply with requirements under the Exchange Act pursuant to a substituted compliance order, or by a relevant foreign financial regulatory authority or authorities.[737] We are persuaded that allowing foreign regulators to submit such requests would promote the completeness of requests and promote efficiency in the process for considering such requests, in light of foreign regulators' expertise regarding their domestic regulatory system, including the effectiveness of their compliance and enforcement mechanisms, and to allow for a single point of contact to facilitate the consideration of substituted compliance requests associated with the jurisdiction. We are not, however, foreclosing the ability of a market participant itself to submit a request that it be able to comply with Exchange Act requirements pursuant to a substituted compliance order.[738]

The final rule further revises the proposal to provide that applications should include supporting documentation regarding the methods that foreign financial regulatory authorities use to enforce compliance with the applicable rules.[739] This type of information—which we expect would be best provided by the relevant foreign regulator—is consistent with the fact that our substituted compliance assessments will not be limited to a comparison of applicable rules and their underlying goals, but also will take into account the capability of a foreign financial regulatory authority to monitor compliance with its rules and take appropriate enforcement action in response to violations of such rules.[740]

[732] *See* FOA Letter at 4 (stating that the proposed requirement that an application include supporting documentation that the applicant believes necessary for the Commission to make the determination ''puts the burden of interpretation wholly on the applicant''; requesting additional guidance regarding the information needed to accompany requests, and greater specificity to ensure ''that the applications it receives address a similar range of compliance issues and contain a similar amount of supporting detail''); SIFMA/FIA/FSR Letter at A–38 (urging the Commission ''to provide a more granular and detailed framework regarding the considerations relevant to evaluating substituted compliance requests'').

[733] *See, e.g.,* FOA Letter at 8 (requesting that the Commission and the CFTC coordinate in making substituted compliance determinations and that the Commissions consider whether to accept joint submissions from foreign regulators or foreign market participants); CEDU Letter at 2 (stating that the Commission should work closely with the CFTC ''when determining whether substituted compliance is applicable with respect to a particular jurisdiction'').

[734] *See, e.g.,* SIFMA/FIA/FSR Letter at A–36 (''Foreign regulators are often best placed to describe their rules and provide information for the purposes of a comparability analysis. Such an approach would also allow for a more efficient use of resources.'').

[735] *See* EC Letter at 3 (suggesting that ''the review of a foreign regime should be conducted in cooperation solely with the relevant foreign regulators or legislators, as opposed to firms'' to avoid duplication or confusion); ESMA Letter at 3.

[736] *See* AFR Letter I at 12 (supporting ability to reject or withdraw substituted compliance determinations based on the failure of a foreign regime to exercise supervisory or enforcement authority); BM Letter at 30–31 (criticizing Cross-Border Proposing Release for including ''only passing reference to foreign supervision and enforcement as discretionary factors the SEC may consider in making a substituted compliance determination,'' and stating that any substituted compliance determinations be predicated on evaluation of ''a host of factors regarding the foreign regulatory system, including staff expertise, agency funding, agency independence, technological capacity, supervision *in fact,* and enforcement *in fact''*).

[737] The decision to permit foreign regulators to submit substituted compliance requests may impact our future consideration of proposed rule 3a71–5(c), which specified that applications for substituted compliance determinations in connection with security-based swap dealer requirements may be made by foreign dealers or by groups of foreign dealers.

[738] To the extent we receive multiple requests in connection with a particular jurisdiction, we may consider such requests together.

[739] *See* Exchange Act rule 0–13(e). The final rule addresses the need for applications to provide information regarding how foreign regulatory authorities ''monitor and enforce'' compliance with the applicable rules. The relevant language of the proposal simply referred to ''monitor.''

In addition, the final rule revises the proposed language regarding the Commission's ability to request applications to be withdrawn, by omitting the proposed reference to the Commission acting ''through its staff.'' *See* Exchange Act rule 0–13(a).

The final rule further revises the proposed language regarding the process for considering applications, by providing that an appropriate response will be issued following ''a vote by'' the Commission. *See* Exchange Act rule 0–13(g).

[740] We note that assessments of analogous factors occur in other contexts. For example, assessments conducted by the Federal Reserve in connection with applications by foreign banks to establish a branch, agency or commercial lending company in the United States consider—and the Federal Reserve requires applications to provide information regarding—the following factors regarding the role played by the foreign bank's home country supervisor: (a) The scope and frequency of on-site examinations by the home-country supervisor; (b) off-site monitoring by the home-country supervisor; (c) the role of external auditors; (d) regulation and monitoring of affiliate transactions; (e) other applicable prudential requirements (including capital adequacy, asset classification and provisioning, single or aggregate credit and foreign currency exposure limits, and liquidity) and associated supervisor monitoring; (f) remedial authority of the home-country supervisor to enforce compliance with prudential controls and other supervisory or regulatory requirements; and (g) prior approval requirements (related to investments in other companies or the establishment of overseas offices). *See* Federal Reserve Board, ''International Applications and Prior Notifications under Subpart B of Regulation K,'' (*http://www.federalreserve.gov/reportforms/forms/FR_K-220110331_f.pdf*). In noting this analogous requirement, we are not predicting the extent to which such factors may or may not be considered as part of the Commission's substituted compliance assessments.

Finally, the final rule revises the proposal by removing a provision that would have stated that requestors may seek confidential treatment of their application to the extent provided by Exchange Act rule 200.81. This change reflects the fact that under the final rules substituted compliance applications may be submitted by foreign financial regulatory authorities, and recognizes the importance of having the assessment consider potentially sensitive information regarding a foreign regime's compliance and enforcement capabilities and practices. Accordingly, requests for confidential treatment may be submitted pursuant to any applicable provisions governing confidentiality under the Exchange Act.[741] We expect confidential treatment requests will seek protection for privileged information obtained from foreign regulators.[742] Recognizing the significance of commenter concerns regarding the need for public comment, debate and analysis of substituted compliance requests, moreover, rule 0–13 provides that the Commission shall provide public notice of requests and solicit public comment when a complete application has been submitted.[743] We recognize that public comment regarding substituted compliance requests may be helpful to our consideration of particular requests.[744]

In adopting rule 0–13, we recognize that the requirement that an application ''include any supporting documents necessary to make the application complete'' implicates commenter concerns regarding the need for further guidance regarding what information must be submitted as part of substituted compliance requests. We expect to address such issues regarding supporting documentation in the future, as we consider the potential availability of substituted compliance in connection with particular Title VII requirements.

C. Economic Analysis

The availability of substituted compliance has the potential to impact the interplay between programmatic costs and benefits associated with the Title VII regulation of security-based swap dealers and major security-based swap participants, as well as those associated with other Title VII requirements. For example, substituted compliance potentially may permit the risk management and other programmatic benefits of dealer regulation to be achieved while avoiding costs that market participants otherwise may incur. At the same time, the process of making substituted compliance requests may cause certain market participants to incur extra costs, although that possibility may be obviated in part by the provision that permits foreign financial authorities to make such requests.

As discussed throughout this release, the security-based swap market is a global market that is subject to regulatory requirements that may vary by jurisdiction. As a result, market participants that operate globally potentially could be subject to overlapping or conflicting regulations. If Title VII requirements for non-U.S. market participants conflict with regulations in local jurisdictions, Title VII could act as a barrier to entry to the U.S. security-based swap market. In such cases, allowing market participants to comply with Title VII via substituted compliance could act as a mechanism to preserve access for non-U.S. persons to the U.S. security-based swap market, reducing the likelihood that non-U.S. persons exit the U.S. market entirely. Therefore, we expect that substituted compliance—so long as it is conditioned on a foreign regime's comparability to the relevant requirements under the Dodd-Frank Act, and on the foreign regime having adequate compliance and enforcement capabilities—would help preserve access and competition in the U.S. market, and thus benefit non-dealer participants in the security-based swap market.[745]

Although the costs associated with the process of making substituted compliance request may be uncertain at this time, the decision to request substituted compliance is purely voluntary. To the extent such requests are made by market participants, moreover, such participants would request substituted compliance only if, in their own assessment, compliance with applicable requirements under a foreign regulatory system was less costly than compliance with both the foreign regulatory regime and the relevant Title VII requirement. Even after a substituted compliance determination is made, market participants would only choose substituted compliance if the private benefits they expect to receive from participating in the U.S. market exceeds the private costs they expect to bear, including any conditions the Commission may attach to the substituted compliance determination. Where substituted compliance increases the number of dealers or other participants in the U.S. security-based swap market, or prevents existing participants from leaving the U.S. market, this may help mitigate the programmatic costs associated with the applicable Title VII requirements, while helping to ensure that the associated programmatic benefits are achieved.

The costs particularly associated with making substituted compliance requests, as well as the general costs and benefits associated with allowing substituted compliance, may be expected to vary between the various categories of Title VII requirements. Relevant considerations may include: Whether (and to what extent) substituted compliance is permitted in connection with a requirement; the relevant information required to demonstrate consistency between the foreign regulatory requirements and the Commission's analogous dealer requirements; the relevant information required to demonstrate the adequacy of the foreign regime's compliance and

[741] For example, Exchange Act rule 24b–2 addresses the potential availability of confidential treatment in connection with any registration statement, report, application, correspondence or other document filed pursuant to the Exchange Act. The rule provides that the person filing the information must make written objection to its public disclosure at the time of the filing. *See* 17 CFR 240.24b–2.

Separately, Commission Rule 200.83 is a procedural rule that addresses how persons submitting information to the Commission may request that the information not be disclosed pursuant to a request under the Freedom of Information Act for reasons permitted by Federal law. The rule does not apply when any other statute or Commission rule provides procedures for confidential treatment regarding particular categories of information, or where the Commission has specified that an alternative procedure be utilized in connection with a particular study, report, investigation or other matter. Under this rule, a person submitting information to the Commission must request confidential treatment at the time of the submission. *See* 17 CFR 200.83.

[742] Exchange Act Section 24(d) provides that the Commission generally shall not be compelled to disclose records obtained from a foreign securities authority if: (1) The foreign authority in good faith determines and represents that public disclosure of the records would violate the laws applicable to that foreign securities authority; and (2) the Commission obtains the records pursuant to procedures authorized for use in connection with the administration or enforcement of the securities laws, or a memorandum of understanding.

Exchange Act Section 24(f)(2) further provides that the Commission shall not be compelled to disclose privileged information obtain from any foreign securities authority or law enforcement authority if the foreign authority in good faith has determined and represented that the information is privileged.

[743] The text of the final rule has been revised from the proposal to eliminate a reference to the Commission having ''sole discretion'' to choose to publish a notice, and to provide that publication would occur following submission of a ''complete'' application. *See* Exchange Act rule 0–13(h).

[744] The final rule also makes technical change to the proposal by replacing references to the Commission's Division of Trading and Markets with general references to the ''staff,'' consistent with the broad range of issues that will likely arise in connection with evaluating substituted compliance requests. *See* Exchange Act rule 0–13(a), (g).

[745] *Cf.* Institute of International Finance (''IIF'') Letter (making a similar point).

enforcement mechanisms; and whether substituted compliance requests are made by market participants or by foreign regulatory authorities. These factors limit our ability to further predict the economic consequences of this procedural rule.

We recognize that commenters have asked that the Commission coordinate with the CFTC and foreign regulators in making substituted compliance determinations. As discussed above, the Commission is subject to obligations to consult and coordinate with the CFTC and foreign regulators in connection with Title VII.[746] Our revision of the final rule to permit foreign regulators to submit substituted compliance requests also helps address goals of increased coordination. Moreover, our substituted compliance assessments regarding particular requirements applicable to security-based swap dealers also as appropriate may take into account the way that other regulators address similar issues, subject to the need for any allowance of substituted compliance to be predicated on the extent to which compliance with another regulatory regime will help achieve the goals of Title VII.

VII. Antifraud Authority

A. Final Rule

The provisions of the rules and guidance, discussed above, do not limit the cross-border reach of the antifraud provisions or other provisions of the federal securities laws that are not specifically addressed by this release.

In section 929P(b) of the Dodd-Frank Act, Congress added provisions to the federal securities laws confirming the Commission's broad cross-border antifraud authority.[747] Congress enacted section 929P(b) in the wake of the Supreme Court's decision in *Morrison* v. *National Australia Bank*,[748] which created uncertainty about the Commission's cross-border enforcement authority under the antifraud provisions of the federal securities laws. Before *Morrison*, the federal courts of appeals for nearly four decades had construed the antifraud provisions to reach cross-border securities frauds when the fraud either involved significant conduct within the United States causing injury to overseas investors, or had substantial foreseeable effects on investors or markets within the United States.[749] With respect to the Commission's enforcement authority, section 929P(b) codified the courts of appeals' prior interpretation of the scope of the antifraud provisions' cross-border reach. Section 929P(b) also made clear that the scope of subject-matter jurisdiction was coextensive with the cross-border reach of the antifraud provisions.[750]

Specifically, the Commission's antifraud enforcement authority under section 17(a) of the Securities Act and the antifraud provisions of the Exchange Act—including sections 9(j) and 10(b)—extends to ''(1) conduct within the United States that constitutes significant steps in furtherance of [the antifraud violation], even if the securities transaction occurs outside the United States and involves only foreign investors,'' and ''(2) conduct occurring outside the United States that has a foreseeable substantial effect within the United States.'' [751] Similarly, the Commission's enforcement authority under section 206 of the Investment Advisers Act applies broadly to reach ''(1) conduct within the United States that constitutes significant steps in furtherance of the violation, even if the violation is committed by a foreign adviser and involves only foreign investors,'' and ''(2) conduct occurring outside the United States that has a foreseeable substantial effect within the United States.'' [752]

Although no commenters challenged the Commission's interpretation of its cross-border antifraud authority, we are aware that a federal district court recently expressed the view that the statutory language may be unclear.[753] We therefore have determined to adopt a rule that clearly sets forth our interpretation of the Commission's cross-border antifraud authority.[754] We believe that our interpretation is not only the better reading of the antifraud authorities and the statutory text added by section 929P(b), but that our reading is consistent with section 929P(b)'s legislative history and purpose.[755]

Further, we believe that our interpretation of the cross-border antifraud enforcement authority best advances the strong interest of the United States in applying the antifraud

[746] *See* section II.B, *supra.*

[747] The antifraud provisions of the securities laws include section 17(a) of the Securities Act, 15 U.S.C. 77q(a); sections 9, 10(b), 14(e), and 15(c)(1)–(2) & (7) of the Exchange Act, 15 U.S.C. 78i, 78j, 78n, 78o(c)(1)–(2); section 206 of the Investment Advisers Act of 1940, 15 U.S.C. 80b–6; and any rule or regulation of the Commission promulgated under these statutory authorities.

[748] *See* 130 S. Ct. 2869, 2888 (2010) (holding in a section 10(b) class action that ''it is . . . only transactions in securities listed on domestic exchanges, and domestic transactions in other securities, to which § 10(b) applies'').

[749] *See, e.g., Schoenbaum* v. *Firstbrook,* 405 F.2d 200, 206 (2d Cir. 1968), *modified on other grounds,* 405 F.2d 215 (1968) (*en banc*).

[750] *See* 156 Cong. Rec. H5237 (daily ed. June 30, 2010) (statement of Rep. Kanjorski, author of section 929P(b)) (''In the case of *Morrison* v. *National Australia Bank*, the Supreme Court last week held that section 10(b) of the Exchange Act applies only to transactions in securities listed on United States exchanges and transactions in other securities that occur in the United States. In this case, the Court also said that it was applying a presumption against extraterritoriality. This bill's provisions concerning extraterritoriality, however, are intended to rebut that presumption by clearly indicating that Congress intends extraterritorial application in cases brought by the SEC or the Justice Department. Thus, the purpose of the language of section 929P(b) of the bill is to make clear that in actions and proceedings brought by the SEC or the Justice Department, the specified provisions of the Securities Act, the Exchange Act and the Investment Advisers Act may have extraterritorial application, and that extraterritorial application is appropriate, irrespective of whether the securities are traded on a domestic exchange or the transactions occur in the United States, when the conduct within the United States is significant or when conduct outside the United States has a foreseeable substantial effect within the United States.''). *See also* 156 Cong. Rec. S5915–16 (daily ed. July 15, 2010) (statement of Senator Reed).

[751] Section 22 of the Securities Act, 15 U.S.C. 77v(a); section 27 of the Exchange Act, 15 U.S.C. 78aa.

[752] Section 214 of the Investment Advisers Act, 15 U.S.C. 80b–14.

[753] *See SEC* v. *A Chicago Convention Center, LLC,* 961 F. Supp. 2d 905 (N.D. Ill. 2013); *see also* Richard W. Painter *et al.,* ''When Courts and Congress Don't Say What They Mean: Initial Reactions to *Morrison* v. *National Australia Bank* and to the Extraterritorial Jurisdiction Provisions of the Dodd-Frank Act,'' 20 Minn. J. of Inter. L. 1 (Winter 2011). *But see Liu* v. *Siemens A.G.,* 2013 WL 5692504, *3 (S.D.N.Y. Oct. 21, 2013) (''Section 929P(b) permits the SEC to bring enforcement actions for certain conduct or transactions outside the United States.''); *SEC* v. *Tourre,* 2013 WL 2407172, *1 n.4 (S.D.N.Y. June 4, 2013) (929P(b) ''effectively reversed *Morrison* in the context of SEC enforcement actions''); *In re Optimal U.S. Litig.,* 865 F. Supp. 2d 451, 456 n.28 (S.D.N.Y. 2012) (''Congress has . . . restor[ed] the conducts and effects test for SEC enforcement actions.''); *SEC* v. *Gruss,* 2012 WL 3306166, *3 (S.D.N.Y. Aug. 13, 2012) (''Section 929P(b) . . . allows the SEC to commence civil actions extraterritorially in certain cases.''); *SEC* v. *Compania Internacional Financiera S.A.,* 2011 WL 3251813, *6 n.2 (S.D.N.Y. July 29, 2011) (''It may be that [929P(b)] was specifically designed to reinstate the Second Circuit's 'conduct and effects' test.''); *Cornwell* v. *Credit Suisse Grp.,* 729 F. Supp. 2d 620, 627 n.3 (S.D.N.Y. 2010) (''[I]n legislation recently enacted, Congress explicitly granted federal courts extraterritorial jurisdiction under the conduct or effect test for proceedings brought by the SEC.'').

[754] *See* rule 250.1.

[755] The *Morrison* decision does not preclude the Commission's interpretation. When the Supreme Court construed section 10(b) in *Morrison* to determine its territorial scope, it acknowledged that the language of section 10(b) neither required nor precluded extraterritorial application. *Morrison,* 130 S.Ct. at 2881–82. It was merely silent. The Court also looked to other provisions of the Exchange Act for evidence of extraterritorial intent, but found none. The Court thus applied a default ''presumption'' against extraterritoriality to find that section 10(b) lacked extraterritorial effect, while making clear that this presumption was not ''a limit upon Congress's power to legislate'' and only applied ''unless a contrary intent appears.'' *Id.* at 2877. Section 929P(b) now provides that contrary intent——in the words of *Morrison,* it supplies the ''indication of an extraterritorial application'' that had been missing. Our interpretation is thus, at a minimum, a reasonable reading of the antifraud provisions in light of section 929P(b)'s enactment.

provisions to cross-border frauds that implicate U.S. territory, U.S. markets, U.S. investors, other U.S. market participants, or other U.S. interests.[756] We believe that our interpretation of the cross-border antifraud authority is necessary to ensure honest securities markets and high ethical standards in the U.S. securities industry, and thereby to promote confidence in our securities markets among both domestic and foreign investors. Our interpretation of the cross-border antifraud authority will also allow us to better protect U.S. investors from securities frauds executed outside of the United States where those frauds may involve non-domestic securities transactions but nonetheless threaten to produce, foreseeably do produce, or were otherwise intended to produce effects upon U.S. markets, U.S. investors, other U.S. market participants, or other U.S. interests.

B. Economic Analysis

This rule is designed to ensure the antifraud provisions of the securities laws are provided broad cross-border reach. Effective cross-border enforcement of the antifraud provisions should help detect and deter or stop transnational securities frauds the final rule may mitigate inefficiencies in allocation of capital. For example, by directly diverting financial resources from more productive projects to less productive projects, serious transnational securities frauds can generate welfare losses.

Further, in the absence of the cross-border application of the antifraud provisions, the perceived risk of fraud may indirectly result in less efficient capital allocation if it reduces investors' trust in the securities market. [757] Additionally, given the global nature of the securities market, ensuring that antifraud provisions of the securities laws have cross-border reach will reduce the likelihood of a fragmented market. As a result of reduced ambiguity over the degree to which they are protected from fraud, U.S. market participants will have fewer incentives to avoid cross-border activity because, as explained above, they will have increased confidence in the integrity of the market. Through this channel, the final rules support a market that provides greater opportunities for U.S. market participants to share risks with market participants in other jurisdictions.

VIII. Impacts on Efficiency, Competition, and Capital Formation

In developing our approach to the cross-border application of the Title VII security-based swap dealer and major participant definitions, we have focused on meeting the goals of Title VII, including the promotion of the financial stability of the United States, by the improvement of accountability and transparency in the U.S. financial system and the protection of counterparties to security-based swaps. We also have considered the effects of our policy choices on competition, efficiency, and capital formation as mandated under section 3(f) of the Exchange Act. That section requires us, whenever we engage in rulemaking pursuant to the Exchange Act and are required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.[758] In addition, section 23(a)(2) of the Exchange Act requires us, when making rules under the Exchange Act, to consider the impact such rules would have on competition. Section 23(a)(2) also prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.[759]

In this section, we focus particularly on these effects. In adopting these final rules, we recognize that the most significant impact of the cross-border implementation of the dealer and major participant definitions will derive from the role of the definitions in determining which market entities are subject to security-based swap dealer and major security-based swap participant regulation under Title VII and which entities are not. That is, the scope of the final definitions will affect the ultimate regulatory costs and benefits that will accompany the full implementation of Title VII rules aimed at increasing transparency, accountability, and financial stability. Furthermore, the final cross-border rules may create incentives for market participants, including dealers as well as non-dealers and other non-registered entities who transact with dealers, to structure their businesses to operate wholly outside of the Title VII framework. This incentive may be particularly strong for entities at the boundaries of the definitions—for example, entities with relatively limited contact with U.S. persons—for whom the benefits of operating outside of Title VII may exceed the costs of restructuring or forgoing trading opportunities with U.S. counterparties.

A. Competition

As noted above, a key goal of Title VII of the Dodd-Frank Act is to promote the financial stability of the United States by improving accountability and transparency in the financial system. To that end, Title VII imposes new regulatory requirements on market participants who register as security-based swap dealers or major participants. The final cross-border implementation of the dealer and major participant definitions discussed in this release, including the cross-border implementation of the *de minimis* exception, will likely affect competition in the U.S. security-based swap market and potentially change the set of available counterparties that would compete for business and provide liquidity to U.S. market participants. Though these substantive Title VII requirements have not been finalized, application of Title VII to registered dealers and major participants may directly affect the competitive landscape of the security-based swap market.

As detailed above, the security-based swap market is a global, interconnected market. Within this global market, foreign and domestic dealers compete for business from counterparties, while non-dealers (including major participants) that participate in the market use security-based swaps for purposes that can include speculation and hedging. Because the market for security-based swaps is a global market and some participants may not engage in relevant security-based swap activity within the United States, the rules we adopt pursuant to Title VII will not reach all participants or all transactions in the global market. We are aware that application of rules to a subset of participants in the worldwide security-based swap market would change the costs and benefits of market participation for one group (those that engage in relevant security-based swap activity within the United States) relative to another (those that do not) and therefore create competitive effects.

More specifically, in addition to requiring U.S. dealers to register, our

[756] *See generally* Restatement (Third) of Foreign Relations Law of the United States § 402 (1987) (stating that ''the United States has authority to prescribe law with respect to . . . conduct that, wholly or in substantial part, takes place within its territory; the status of persons, or interests in things, present within its territory'' and ''conduct outside its territory that has or is intended to have substantial effect within its territory'').

[757] *See e.g.,* Luigi Guiso, Paola Sapienza, and Luigi Zingales. ''Trusting the stock market,'' 63 J. Fin. Vol. 63, No. 6: 2557 2600 (2008); *see also* David Easley and Maureen O'Hara, Microstructure and Ambiguity, 65 J. Fin. 1817 (2010).

[758] 15 U.S.C. 78c(f).

[759] 15 U.S.C. 78w(a)(2).

final rules implementing the cross-border approach to the security-based swap dealer definition would generally apply dealer registration and other Title VII requirements to non-U.S. entities that conduct dealing activity (as defined in the Intermediary Definitions Adopting Release) in excess of the *de minimis* threshold, but where calculation of the threshold depends on various features of the person's transactions (*e.g.,* whether the person's counterparty is a U.S. or non-U.S. person, whether the transaction is guaranteed by a U.S. person, whether the counterparty is a registered or non-registered foreign branch of a U.S. person, and whether the person is a conduit affiliate of a U.S. person). Similarly, our final rules implementing cross-border application of the major security-based swap participant definition would apply major participant registration and other Title VII requirements to entities that have exposures to U.S. persons that exceed the major participant thresholds (as defined in the Intermediary Definitions Adopting Release). Given the approach we are adopting with respect to application of the dealer *de minimis* and major participant threshold calculation requirements, U.S. persons should have no incentive to favor a non-U.S. person counterparty over a U.S.-person counterparty.

However, we recognize that the final rule treats U.S. persons and different types of non-U.S. persons differently. Unless their dealing activity is guaranteed by a U.S. person, non-U.S. persons may exclude from their *de minimis* calculations dealing activity with other non-U.S. persons. Similarly, unless their security-based swap activity is guaranteed by a U.S. person, non-U.S. persons may exclude from their major participant threshold calculations their positions with non-U.S. persons. U.S. persons, non-U.S. persons whose security-based swap transactions are guaranteed by a U.S. person, and conduit affiliates cannot exclude such transactions or positions from their own calculations. This differential treatment makes it more likely that non-U.S. persons will not be subject to the regulatory requirements associated with dealer and major participant registration. Furthermore, because transactions with U.S. persons in excess of the *de minimis* and major participant thresholds trigger registration requirements, non-U.S. dealers and other market participants may be reluctant to trade with U.S. counterparties or clear security-based swap transactions through U.S. person clearing agencies because of the potential application of Title VII regulation. For example, our final rules may produce competitive frictions insofar as market participants prefer to clear transactions using non-U.S. person clearing agencies who may have U.S. person members instead of U.S. person clearing agencies, because only positions held against the latter would count against their major participant thresholds.[760] Indeed, some entities may determine that the compliance costs arising from the requirements of Title VII warrant exiting the security-based swap market in the United States entirely. Non-U.S. persons may find this option more attractive than U.S. persons because they may find it easier to structure their foreign business so as to prevent it from falling within the scope of Title VII. However, U.S. entities may also have an incentive to establish separately-capitalized foreign subsidiaries to conduct their security-based swap operations, since such subsidiaries would qualify as non-U.S. persons.[761] In this case, the cross-border application of Title VII rules may affect participants depending on their size, as larger participants could be better-equipped to set up offshore vehicles enabling them to transact as non-U.S. persons.

To the extent that entities engaged in dealing activity exit the U.S. security-based swap market, the end result could be a U.S. market where fewer intermediaries compete less intensively for business. These exits could result in higher spreads and reduced liquidity, and could affect the ability and willingness of non-dealers within the United States to engage in security-based swaps. The concentrated nature of dealing activity suggests that there are high barriers to entry in connection with security-based swap dealing activity, which could preclude the ability of new dealers to enter the security-based swap market and compete away spreads.

Notwithstanding the potential that our final rule may reduce competition, the Commission believes it appropriate to require U.S. persons to count all dealing transactions towards the *de minimis* threshold and all positions toward the major security-based swap participant thresholds, given the potential for these transactions to create risk to U.S. persons and in the U.S. financial system. We also note that it is uncertain that such requirements will reduce competition. In fact, the final rule may enhance competition among dealers, as the Title VII regulatory requirements and the ability to meet the standards set by Title VII may allow registered dealers to credibly signal high quality, better risk management, and better counterparty protection relative to foreign unregistered dealers that compete for the same order flow. In this scenario, non-dealers in the U.S. market may be willing to pay higher prices for higher-quality services in regulated markets, and registration requirements may separate high-quality intermediaries that are willing and able to register from low-quality firms that are not.[762] Furthermore, while dealers and speculative traders may prefer to transact in opaque markets, transparency requirements that apply to U.S. dealers and transactions that occur within the scope of Title VII may be attractive to hedgers and other market participants who do not benefit from opacity. Therefore, Title VII requirements may promote liquidity in the U.S.; liquid markets should attract additional participants, thereby enhancing risk sharing and making markets more competitive. These regulatory benefits could mitigate the competitive burdens imposed by the proposed and anticipated final cross-border rules and substantive Title VII requirements applicable to registered security-based swap dealers by, for example, reducing incentives for firms to exit the market.

Similarly, the cross-border application of the *de minimis* exception

[760] *See* section 0.

[761] The rules we are adopting regarding conduit affiliates should mitigate this risk to some degree, as the foreign affiliate's non-U.S. person counterparties would not generally be able to engage in security-based swap dealing activity on behalf of its U.S.-person affiliate without itself being required to include those transactions in its own *de minimis* calculations.

[762] *Cf.* Carl Shapiro, ''Investment, Moral Hazard, and Occupational Licensing,'' The Review of Economic Studies, Vol. 53, No. 5 (1986) (using a theoretical model to show ''that licensing and certification tend to benefit customers who value quality highly at the expense of those who do not''). Oren Fuerst, ''A Theoretical Analysis of the Investor Protection Regulations Argument for Global Listing of Stocks,'' Working Paper (1998) (using a theoretical model of the listing decision to show how managers of high quality firms signal their quality more effectively in a strict regulatory regime). Craig Doidge, G. Andrew Karolyi, and Rene M. Stulz, ''Why are Foreign Firms Listed in the U.S. Worth More?'' Journal of Financial Economics, Vol. 71, Issue 2 (2004) (hypothesizing that firms cross-listed in the United States are better able to take advantage of growth opportunities, and finding that ''expected sales growth is valued more highly for firms listing in the U.S. and that this effect is greater for firms from countries with poorer investor rights''). While economic theory supports the assertion that registration can separate high-quality dealers from low-quality dealers, with corresponding differences in pricing, we received no comments either agreeing or disagreeing with the assertion that some market participants may be willing to pay higher prices to trade with a high-quality intermediary.

could reduce the number of entities likely to exit the U.S. market entirely because it would enable an established foreign entity to transact a *de minimis* amount of security-based swap dealing activity in the U.S. market before it determines whether to expand its U.S. business and become a registered security-based swap dealer.[763] However, since the ability of smaller entities to access the U.S. security-based swap market without registration would be limited to conducting dealing activity below the *de minimis* threshold, these entities would have an incentive to curtail their security-based swap dealing activity with U.S. persons as they approach the *de minimis* threshold to avoid dealer registration requirements.

Finally, incentives to restructure ultimately depend on future regulatory developments, both with respect to final Title VII rules and foreign regulatory frameworks; the differences in regulatory requirements across jurisdictions; and strategic interactions with non-dealer participants. For example, although pre-and post-trade transparency requirements provide a number of benefits both to financial markets and the real economy, dealers benefit from operating in opaque markets. To the extent that foreign jurisdictions require only regulatory reporting, without public dissemination requirements, dealers may wish to operate in jurisdictions where they can continue to benefit from opaque markets.

Other market participants, however, may prefer transparency, and the availability of transparent trading venues that result from Title VII pre- and post-trade transparency requirements could shift market power away from dealers. If non-dealer market participants are able to demand transparent trade execution, the incentives to restructure may be tempered, particularly if transparent venues attract liquidity away from opaque markets. Ultimately, the effects of transparency requirements on dealers' incentives to restructure depend on differences across jurisdictions, as well as whether non-dealer participants prefer transparency. These preferences may, in turn, depend on motives for trading among non-dealers. Hedgers and participants that need liquidity may prefer transparent venues while participants who believe they have private information about asset values may prefer opaque markets that allow them to trade more profitably on their information.

The potential restructurings and exits described above may impact competition in the U.S. market in different ways. On one hand, the ability to restructure one's business rather than exit the U.S. market entirely to avoid application of Title VII to a person's non-U.S. operations may reduce the number of entities that exit the market, thus mitigating the negative effects on competition described above. On the other hand, U.S. non-dealers may find that the only foreign security-based swap dealers that are willing to deal with them are those whose security-based swap business is sufficiently large to afford the costs of restructuring as well as registration and the ensuing compliance costs associated with applicable Title VII requirements. To the extent that smaller dealers continue to have an incentive to exit the market, the overall level of competition in the market may decline.

Moreover, regardless of the response of dealers to our approach, we cannot preclude the possibility that large non-dealer financial entities and other non-dealer market participants in the United States, such as investment funds, who have the resources to restructure their business also may pursue restructuring and move part of their business offshore in order to transact with dealers outside the reach of Title VII, either because liquidity has moved offshore or because these participants want to avoid Title VII requirements (such as transparency requirements) that may reveal information about trading strategies. This may reduce liquidity within the U.S. market and provide additional incentives for U.S. persons and non-U.S. persons to shift a higher proportion of their security-based swap business offshore, further reducing the level of competition within the United States. In this scenario, the competitive frictions caused by the application, in the cross-border context, of a *de minimis* threshold for dealing activity may affect the ability of small market participants of security-based swaps to access the security-based swap market more than large ones, as smaller participants are less likely to have the resources that would enable or justify a restructuring of their business.

In addition to the global nature of the security-based swap market and the implications for the reach of Title VII dealer and major participant registration requirements, we also noted above the current opacity of the over-the-counter derivatives market and the informational advantage that dealers currently have over non-dealers. By having greater private order flow information, dealers are in a position to make more-informed assessments of market values and can use that information to extract rents from less-informed counterparties. While this issue will be the focus of future Commission rulemaking covering pre- and post-trade transparency, we note that the final rule to exclude cleared, anonymous transactions from the *de minimis* threshold for non-U.S. persons has implications for competition in the security-based swap market. Because cleared, anonymous transactions will not trigger registration requirements, the exclusion strengthens incentives for trading in transparent venues, reducing market power and the competitive advantage currently enjoyed by dealers over non-dealer market participants. Furthermore, while Title VII rules governing clearing, trade execution, and trade reporting have not been finalized, providing stronger incentives to trade on transparent venues and through CCPs increases the likelihood that the benefits of Title VII, including increased transparency and reduced potential for risk spillovers, will be realized.[764]

The overall effects of the final approach described in this release on competition among dealing entities in the U.S. security-based swap market will depend on the way market participants ultimately respond to different elements of Title VII. Application of the dealer and major participant registration requirements may create incentives for dealers and market participants to favor non-U.S. counterparties; incentives to restructure due to inconsistent regulatory requirements may increase concentration among security-based swap dealers providing services to U.S. non-dealers. However, registration and compliance with Title VII may signal high quality and mitigate the incentive to restructure and exit U.S. markets for intermediaries with the ability to meet the standards set by Title VII. Furthermore, if hedgers and other market participants who do not benefit from opacity demand transparency and counterparty protections that come from trading with a registered dealer, dealers may prefer to register if serving this market is profitable. Finally, while fewer dealing entities could lead to decreased competition and wider

[763] *See* IIF Letter (noting that, ". . . the rule proposal if adopted would make it much easier for foreign market participants to offer services in the U.S., providing greater choice and competition, and making it easier for instance for corporates to hedge their risks)."

[764] The exclusion for cleared, anonymous transactions does not require participants to use a registered clearing agency. Therefore, this benefit may be limited if final Title VII rules for registered clearing agencies create incentives for market participants to trade through CCPs that are not registered and regulated under Title VII.

spreads in the security-based swap market, exclusion of cleared, anonymous trades from the *de minimis* threshold strengthen incentives to trade in transparent venues, reducing the ability of dealing entities to post wider spreads and reducing the competitive advantage over access to information enjoyed by dealers.

B. Efficiency

As noted above, in adopting the rules and guidance discussed in this release, we are required to consider whether these actions would promote efficiency. In significant part, the effect of these rules on efficiency is linked to the effect of these rules on competition. Definitional rules that promote, or do not unduly restrict, competition can be accompanied by regulatory benefits that minimize the risk of liquidity crises, aggregate capital shortfalls, and other manifestations of contagion. Furthermore, by reducing the costs that individual market participants impose on others through their trades—that is, by imposing registration requirements and substantive regulations on dealers and major participants who, by virtue of the volume of their transactions, their number of counterparties, and their aggregate positions and exposures, are most likely to contribute to risk spillovers—the rules promote efficiency within the market. Generally, rules and interpretations that promote competitive capital markets can be expected to promote the efficient allocation of risk, capital, and other resources by facilitating price discovery and reducing costs associated with dislocations in the market for security-based swaps.[765]

As discussed several times throughout this release, the global nature of the security-based swap market suggests that the regulatory framework adopted under Title VII may not reach all participants or all transactions. Additionally, differing regulatory timelines and differences in regulatory scope may moderate the benefits flowing from Title VII. In particular, if other regulatory regimes offer more opacity in transactions, those who are most harmed by transparency (including dealers who currently benefit from privately observing order flow) have incentives to restructure their business to operate abroad or otherwise take advantage of regulatory gaps. Restructuring itself, while potentially optimal for an individual participant, represents a form of inefficiency for the overall market in that firms expend resources simply to circumvent regulation and not for any productive purpose.

More importantly, altering business models to take advantage of looser regulatory regimes undermines other efficiency benefits to Title VII. For example, U.S. dealers may have an incentive to restructure their businesses by setting up separately capitalized entities in non-U.S. jurisdictions, through which they would continue their dealing operations in order to take advantage of the rules applicable to non-U.S. persons. As discussed above, if some market participants choose to operate wholly outside of the Title VII regulatory framework, risk and liquidity may concentrate in less regulated, opaque corners of the market, undermining the benefits of Title VII. Moreover, insofar as the types of restructuring contemplated above purely constitute attempts at arbitraging regulations, including regulations applied to registered dealers, such as capital and reporting regulations, they represent a use of resources that could potentially be put to more productive uses. Ultimately, the incentive to restructure, and the corresponding loss of benefits, depends on the extent to which other jurisdictions implement comprehensive OTC derivatives regulations. If foreign jurisdictions subject security-based swap transactions to regulatory oversight consistent with Title VII, the ability to arbitrage regulations will be limited.[766]

Nevertheless, two features of our rules adopted today may mitigate the incentive for market participants to undermine the benefits of Title VII through inefficient restructuring or evasion. First, the requirement that conduit affiliates count all dealing activity towards the *de minimis* threshold closes one potential path for evasion. We have tailored the application of these requirements in connection with affiliates of registered security-based swap dealers and major security-based swap participants, as we do not believe that transactions involving these types of registered entities and their foreign affiliates raise the types of evasion concerns that the conduit affiliate concept is designed to address.[767] Second, the exclusion of cleared, anonymous transactions from the *de minimis* threshold for non-U.S. persons strengthens incentives for trading in transparent venues, reducing the incentive to trade in opaque corners of the market in order to avoid the reach of Title VII. Strengthening incentives for non-U.S. persons to trade in transparent venues reduces the likelihood that liquidity will fragment to opaque corners of the market and increases the likelihood that risks that non-U.S. persons present to the U.S. financial system will be covered by the Title VII regulatory framework. Furthermore, shifting trades to transparent venues produces benefits associated with pre- and post-trade price transparency, including more efficient valuations of financial assets.[768]

Finally, we received several comments from outside commenters urging us to harmonize our final rules with interpretations set forth in the CFTC's guidance.[769] While our final rules track the CFTC's guidance in many respects—for example, in the treatment of conduit affiliates, the treatment of transactions with foreign branches, and the exclusion for cleared, anonymous transactions from non-U.S. persons' *de minimis* calculations—we are not adopting rules identical to the policies and interpretations in the guidance. For example, our treatment of investment funds with respect to the U.S. person definition differs from the CFTC's, which, in addition to looking to the location of incorporation and principal place of business, considers majority-ownership. While we acknowledge the benefits of harmonization, we believe our rules meet the goals of Title VII while appropriately minimizing the costs to security-based swap market participants. More specifically, our rules are designed to capture transactions and entities that pose risk to U.S. persons and potentially to the U.S. financial system, while excluding those transactions and entities that do not warrant regulation under Title VII. In the case of investment funds, we have decided not to look to majority-ownership for determining U.S.-person status, notwithstanding that the CFTC Cross-Border Guidance articulates such an approach. Our belief is that, by adopting an approach that generally focuses on the location of economic decisions made on behalf of a fund, we are more accurately measuring whether a fund poses risks to U.S. persons and to the U.S. financial system of the type that Title VII was intended to

[765] Definitional rules do not promote efficiency by themselves; rather, the effect is through the number of entities required to register as dealers and major participants, and the corresponding effect on the programmatic costs and benefits associated with registration requirements.

[766] *See* Section 0, *supra* (discussing global regulatory efforts).

[767] *See* note 320, *supra.*

[768] As discussed above, this benefit may be limited if final Title VII rules for registered clearing agencies create incentives for market participants to trade through CCPs that are not registered and regulated under Title VII.

[769] *See* note 193, *supra.*

address.[770] Nevertheless, we acknowledge that different regulations for swaps and security-based swaps may create inefficiencies for market participants due to conflicting or overlapping requirements, particularly for those participants who deal in both swaps and security-based swaps.

C. Capital Formation

We believe that many aspects of the final cross-border approach to the dealer and major participant definitions are likely to promote capital formation, by focusing dealer and major participant regulation on activity and entities that are most likely to serve as conduits of risk to U.S. persons and potentially to the U.S. financial system. We also believe that applying the full range of Title VII requirements to this group of entities will increase the likelihood that the benefits of Title VII, including increased transparency, accountability, and financial stability, will be realized. To the extent that these requirements reduce asymmetric information about market valuations, we expect that a security-based swap market with enhanced transparency and enhanced regulatory oversight may facilitate entry by a wide range of market participants seeking to engage in a broad range of hedging and trading activities.

Additionally, strengthening incentives for non-U.S. persons to trade in transparent venues encourages market participants to express their true valuations for security-based swaps; information revealed through transparent trades allows market participants to derive more-informed assessments with respect to asset valuations, leading to more efficient capital allocation. This should be true for the underlying assets as well. That is, information learned from security-based swap trading provides signals not only about security-based swap valuation, but also about the value of the reference assets underlying the swap.[771] Similarly, we expect transparency to benefit the real economy as well. Transparent prices provide better signals about the quality of a business investment, promoting capital formation in the real economy by helping managers to make more-informed decisions and making it easier for firms to obtain new financing for new business opportunities.[772]

However, the Commission recognizes that, to the extent that the cross-border implementation of the dealer and major participant definitions encourages inefficient restructuring or results in market fragmentation, the final rules may impair capital formation and result in a redistribution of capital across jurisdictional boundaries. We note that, unlike in the proposed rules, we are requiring non-U.S. persons with U.S. guarantees to include all transactions that benefit from a U.S. guarantee in their *de minimis* calculations. Similarly, we are requiring conduit affiliates to include all transactions in their *de minimis* calculations, whether with a U.S. person or not. Inclusion of these transactions will limit the risk these participants pose to U.S. persons and to the U.S. financial system. More generally, the definition of ''U.S. person'' mitigates the risk of contagion affecting U.S. markets as a result of cross-border swap activity. To the extent that future substantive regulation under Title VII is conditioned on entities' registration status, this definition may also improve transparency and provide increased customer protection for U.S. persons who participate in the security-based swap market. Nevertheless, expanding the scope of transactions that must be included in these calculations may also increase the scope of potential market fragmentation, to the extent that it raises the costs that market participants will incur if they engage in security-based swap activity through guaranteed non-U.S. persons or conduit affiliates.

IX. Paperwork Reduction Act

A. Introduction

The Paperwork Reduction Act of 1995 (''PRA'')[773] imposes certain requirements on Federal agencies in connection with their conducting or sponsoring any ''collection of information.''[774] An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. In addition, 44 U.S.C. 3507(a)(1)(D) provides that before adopting (or revising) a collection of information requirement, an agency must, among other things, publish a notice in the **Federal Register** stating that the agency has submitted the proposed collection of information to the Office of Management and Budget (''OMB'') and setting forth certain required information, including: (1) A title for the collection of information; (2) a summary of the collection of information; (3) a brief description of the need for the information and the proposed use of the information; (4) a description of the likely respondents and proposed frequency of response to the collection of information; (5) an estimate of the paperwork burden that shall result from the collection of information; and (6) notice that comments may be submitted to the agency and director of OMB.[775]

In the Cross-Border Proposing Release, we identified a number of proposed rules that contained ''collection of information requirements'' within the meaning of the PRA.[776] The majority of those proposed rules and forms are outside of the scope of the dealer and major participant definitions at issue in this release.[777] In two areas, however, Exchange Act rule 3a71–3 which we are adopting today contains collections of information requirements. First, the rule's definition of ''transaction conducted through a foreign branch,'' which we are adopting largely as proposed, contains a representation provision that constitutes a collection of information. Moreover, the rule's final definition of ''U.S. person'' incorporates, as an addition to the proposal, a representation provision that constitutes a collection of information.[778] Commenters did not

[770] For instance, as discussed above, LTCM demonstrated that an investment vehicle could have a negative impact on U.S. financial institutions and on the stability of the U.S. financial system more generally when the vehicle is directed, controlled, or coordinated from within the United States. *See* note 271, *supra.*

[771] *See* Sugato Chakravarty, Huseyin Gulen, and Stewart Mayhew, ''Informed Trading in Stock and Option Markets,'' Journal of Finance, Vol. 59, No. 3 (2004) (estimating that the proportion of information about underlying stocks revealed first in option markets ranges from 10 to 20 percent).

[772] *See* Philip Bond, Alex Edmans, and Itay Goldstein, ''The Real Effects of Financial Markets,'' Annual Review of Financial Markets, Vol. 4 (Oct. 2012) (reviewing the theoretical literature on the feedback between financial market prices and the real economy).

[773] 44 U.S.C. 3501 *et seq.*

[774] 44 U.S.C. 3502(3).

[775] 44 U.S.C. 3507(a)(1)(D) (internal formatting omitted); *see also* 5 CFR 1320.5(a)(1)(iv).

[776] *See* Cross-Border Proposing Release, 77 FR 31103.

[777] In particular, the present release does not address the following proposed rules and forms that implicated collections of information under the Paperwork Reduction Act: Proposed Rule 3Ch–2; reproposed Forms SBSE, SBSE–A and SBSE–BD; proposed Rule 18a–4, and reproposed Rules 242.900 through 242.911 of Regulation SBSR. We expect to address those Paperwork Reduction Act issues in connection with our consideration of those proposed rules and forms.

In addition, the representation provision of the proposed definition of ''transaction conducted within the United States'' contained a collection of information. These final rules do not encompass that collection of information requirement, however, because we are not adopting the ''transaction conducted within the United States'' element of the proposed rule in this release. *See* section I.A, *supra.*

[778] We also note that Exchange Act rule 0–13, which we are adopting today, determines the procedures for market participants and foreign regulatory authorities to submit substituted compliance requests. The rule, however, does not

Continued

address Paperwork Reduction Act issues in connection with the proposal.

The Commission previously submitted proposed rule 3a71–3, as well as certain other rules proposed as part of the Cross-Border Proposing Release, to OMB for review in accordance with 44 U.S.C. 3507 and 5 CFR 1320.11. The title of the collection related to proposed rule 3a71–3 is ''Reliance on Counterparty Representations Regarding Activity Within the United States.'' OMB has not yet assigned Control Numbers in connection with rule 3a71–3 or the other rules submitted in connection with the proposal.

B. Reliance on Counterparty Representations Regarding Transactions Conducted Through a Foreign Branch

1. Summary of Collection of Information

When determining whether a security-based swap transaction constitutes a ''transaction conducted through a foreign branch,'' a person may rely on its counterparty's representation that the transaction ''was arranged, negotiated, and executed on behalf of the foreign branch solely by persons located outside the United States, unless such person knows or has reason to know that the representation is not accurate.'' [779]

2. Proposed Use of Information

Under the final rules, a non-U.S. person need not count, against the applicable thresholds of the dealer exception and the major security-based swap participant definition, dealing transactions with foreign branches of U.S. banks that are registered as security-based swap dealers. For these purposes, the foreign branch must be the counterparty to the security-based swap transaction, and the transaction must be arranged, negotiated, and executed on behalf of the foreign branch solely by persons located outside the United States.[780]

As discussed in the Cross-Border Proposing Release, the Commission acknowledges that verifying whether a security-based swap transaction falls within the definition of ''transaction conducted through a foreign branch'' could require significant due diligence. The definition's representation provision would mitigate the operational difficulties and costs that otherwise could arise in connection with investigating the activities of a counterparty to ensure compliance with the corresponding rules.[781]

These representations would be provided voluntarily by the counterparties to certain security-based swap transactions to other counterparties; therefore, the Commission would not typically receive confidential information as a result of this collection of information. However, to the extent that the Commission receives confidential information described in this representation provision through our examination and oversight program, an investigation, or some other means, such information would be kept confidential, subject to the provisions of applicable law.[782]

3. Respondents

Based on our understanding of the OTC derivatives markets, including the size of the market, the number of counterparties that are active in the market, and how market participants currently structure security-based swap transactions, the Commission estimates that up to 15 entities that are registered as security-based swap dealers may include a representation that a security-based swap is a ''transaction conducted through a foreign branch'' in their trading relationship documentation (*e.g.,* the schedule to a master agreement).[783]

4. Total Initial and Annual Reporting and Recordkeeping Burdens

The estimates in this section reflect the Commission's experience with burden estimates for similar requirements and discussions by our staff with market participants. The Commission believes that, in most cases, the representations associated with the definition of ''transaction conducted through a foreign branch'' would be made through amendments to the parties' existing trading documentation (*e.g.,* the schedule to a master agreement).[784] Because these representations relate to new regulatory requirements, the Commission anticipates that counterparties may elect to develop and incorporate these representations in trading documentation soon after the effective date of the Commission's security-based swap regulations, rather than incorporating specific language on a transactional basis. The Commission believes that parties would be able to adopt, where appropriate, standardized language across all of their security-based swap trading relationships. This language may be developed by individual firms or through a combination of trade associations and industry working groups.

The Commission estimates the maximum total paperwork burden associated with developing new representations would be, for each U.S. bank registered as a security-based swap dealer that may make such representations, no more than five hours, and up to $2,000 for the services of outside professionals, for an estimate of approximately 75 hours and $30,000 across all security-based swap counterparties that may make such representations. This estimate assumes

provide any substituted compliance rights, and its applicability will be determined solely by the substituted compliance provisions of the substantive rulemakings. Accordingly, collection of information arising from substituted compliance requests, including associated control numbers, will be addressed in connection with any applicable substantive rulemakings that provide for substituted compliance.

[779] *See* Exchange Act rule 3a71–3(a)(3)(ii).

[780] *See* Exchange Act rule 3a71–3(a)(3)(i).

[781] *See* Cross-Border Proposing Release, 78 FR 31107.

[782] *See, e.g.,* 5 U.S.C. 552 (Exemption 4 of the Freedom of Information Act provides an exemption for ''trade secrets and commercial or financial information obtained from a person and privileged or confidential.'' 5 U.S.C. 552(b)(4). Exemption 8 of the Freedom of Information Act provides an exemption for matters that are ''contained in or related to examination, operating, or condition reports prepare by, or on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions.'' 5 U.S.C. 552(b)(8)).

[783] We have estimated that up to 50 entities may register with the Commission as security-based swap dealers, based on an analysis of 2012 data indicating that 27 entities had $3 billion or more in notional transactions that would be counted against the thresholds under the final rules, and further accounting for new entrants into the market. *See* note 444, *supra,* and accompanying text. Because six of those 27 entities are domiciled in the United States, we conservatively estimate that it is possible that new entrants may lead up to 15 registered dealers to be U.S. banks. Although not all U.S. banks engaged in security-based swap dealing activity currently operate foreign branches, we also conservatively estimate that all such dealers that are U.S. banks would do so.

In the Cross-Border Proposing Release, we preliminarily estimated that 50 entities may include a representation that a transaction constitutes a ''transaction conducted through a foreign branch.'' *See* Cross-Border Proposing Release, 78 FR 31108. This revised estimate reflects the fact that under the final rules such a representation would be relevant only if provided by a person that is registered with the Commission as a security-based swap dealer. In practice, however, based on our understanding of changes in the way major U.S. dealers engage with non-U.S. counterparties in the single-name CDS market following the issuance of the CFTC Cross-Border Guidance, we believe that few, if any, U.S. persons currently may participate in the single-name CDS market through their foreign branches. Also, as noted above, moreover, we recognize that other regulatory provisions may limit the ability of U.S. banks to conduct security-based swap activity. *See* note 366, *supra.*

[784] The Commission believes that because trading relationship documentation is established between two counterparties, the question of whether one of those counterparties, that is registered with the Commission as a security-based swap dealer, is able to represent that it is entering into a ''transaction conducted through a foreign branch'' would not change on a transaction-by-transaction basis and, therefore, such representations would generally be made in the schedule to a master agreement, rather than in individual confirmations.

little or no reliance on standardized disclosure language.

The Commission expects that the majority of the burden associated with the new disclosure requirements will be experienced during the first year as language is developed and trading documentation is amended. After the new representations are developed and incorporated into trading documentation, the Commission believes that the annual paperwork burden associated with this requirement would be no more than approximately 10 hours per counterparty for verifying representations with existing counterparties and onboarding new counterparties, for a maximum of approximately 150 hours across all applicable security-based swap counterparties.[785]

C. Reliance on Counterparty Representations Regarding Non-U.S. Person Status

1. Summary of Collection of Information

When determining whether its counterparty is a U.S. person for purposes of the application of the dealer and major participant analyses, a person may rely on its counterparty's representation that the counterparty does not meet the applicable criteria to be a U.S. person, unless the person knows or has reason to know that the representation is not accurate.[786]

2. Proposed Use of Information

Under the final rules, a non-U.S. person's dealer and major participant analysis require it to determine whether its security-based swap counterparties are U.S. persons because certain security-based swaps in which the counterparty is not a U.S. person will not have to be counted against the applicable thresholds.

The Commission recognizes that the ''U.S. person'' definition encompasses a number of distinct components, and that in some circumstances verifying whether a security-based swap counterparty is a ''U.S. person'' could require significant due diligence. As a result, the final rules have added a representation provision to that definition, to help mitigate the operational difficulties and costs that could arise in connection with investigating the status of a counterparty.

As with the representations associated with the ''transaction conducted through a foreign branch'' definition, these representations would be provided voluntarily by the counterparties to certain security-based swap transactions to other counterparties. The Commission would not typically receive confidential information as a result of this collection of information. However, to the extent that the Commission receives confidential information described in this representation provision through our examination and oversight program, an investigation, or some other means, such information would be kept confidential, subject to the provisions of applicable law.[787]

3. Respondents

Based on our understanding of the OTC derivatives markets, including the domiciles of counterparties that are active in the market, the Commission estimates that up to 2400 entities may provide representations that they do not meet the criteria necessary to be U.S. persons.[788]

4. Total Initial and Annual Reporting and Recordkeeping Burdens

The estimates in this section reflect the Commission's experience with burden estimates for similar requirements and discussions by our staff with market participants. Consistent with the discussion above related to the representation provision of the ''transaction conducted through a foreign branch'' definition, the Commission believes that in most cases the representations associated with the ''U.S. person'' definition would be made through amendments to the parties' existing trading documentation (*e.g.,* the schedule to a master agreement).[789] Here too, because these representations relate to new regulatory requirements, the Commission anticipates that counterparties may elect to develop and incorporate these representations in trading documentation soon after the effective date of the Commission's security-based swap regulations, rather than incorporating specific language on a transactional basis. The Commission believes that parties would be able to adopt, where appropriate, standardized language across all of their security-based swap trading relationships. This language may be developed by individual firms or through a combination of trade associations and industry working groups.

As above, the Commission estimates the maximum total paperwork burden associated with developing new representations would be, for each counterparty that may make such representations, no more than five hours and up to $2,000 for the services of outside professionals, for a maximum of approximately 12,000 hours and $4.8 million across all security-based swap counterparties that may make such representations. This estimate assumes little or no reliance on standardized disclosure language.

The Commission expects that the majority of the burden associated with the new disclosure requirements will be experienced during the first year as language is developed and trading documentation is amended. After the new representations are developed and incorporated into trading documentation, the Commission believes that the annual paperwork burden associated with this requirement would be no more than approximately 10 hours per counterparty for verifying representations with existing counterparties and onboarding new counterparties, for a maximum of approximately 24,000 hours across all applicable security-based swap counterparties.[790]

X. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act (''RFA'')[791] requires Federal agencies, in promulgating rules, to consider the impact of those rules on small entities. Section 603(a) of the Administrative Procedure Act,[792] as amended by the RFA, generally requires the Commission to undertake a regulatory flexibility analysis of all proposed rules, or proposed rule amendments, to determine the impact of such rulemaking on ''small entities.''[793]

[785] The Commission staff estimates that this burden would consist of 10 hours of in-house counsel time for each security-based swap market participant that may make such representations.

[786] *See* Exchange Act rule 3a71–3(a)(4)(iv).

[787] *See* note 782, *supra.*

[788] Data regarding activity from 2012 indicates that a total of 4452 accounts had positions in single-name CDS, with those activities conducted by a total 1030 transacting agents such as investment advisers. Of those 4452 accounts, 1199 are domiciled outside of the United States. Accounting for potential growth in the number of market participants domiciled outside of the United States—particularly in light of information suggesting there has been some shifting of derivatives activities to non-U.S. entities—leads to our estimate that such representations may be made on behalf of 2400 accounts. To the extent that one transacting agent such as an investment adviser conducts derivatives activities on behalf of multiple accounts, it is possible that a single representation by a transacting agent would address the U.S.-person status of multiple accounts.

[789] *See* section 0, *supra.*

[790] The Commission staff estimates that this burden would consist of 10 hours of in-house counsel time for each security-based swap market participant that may make such representations.

[791] 5 U.S.C. 601 *et seq.*

[792] 5 U.S.C. 603(a).

[793] Although section 601(b) of the RFA defines the term ''small entity,'' the statute permits agencies to formulate their own definitions. The Commission

Continued

Section 605(b) of the RFA [794] provides that this requirement shall not apply to any proposed rule or proposed rule amendment which, if adopted, would not have a significant economic impact on a substantial number of small entities.

For purposes of Commission rulemaking in connection with the RFA, a small entity includes: (1) When used with reference to an ''issuer'' or a ''person,'' other than an investment company, an ''issuer'' or ''person'' that, on the last day of its most recent fiscal year, had total assets of $5 million or less; [795] or (2) a broker-dealer with total capital (net worth plus subordinated liabilities) of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to Rule 17a–5(d) under the Exchange Act,[796] or, if not required to file such statements, a broker-dealer with total capital (net worth plus subordinated liabilities) of less than $500,000 on the last day of the preceding fiscal year (or in the time that it has been in business, if shorter); and is not affiliated with any person (other than a natural person) that is not a small business or small organization.[797] Under the standards adopted by the Small Business Administration, small entities in the finance and insurance industry include the following: (i) For entities engaged in credit intermediation and related activities, entities with $175 million or less in assets; [798] (ii) for entities engaged in non-depository credit intermediation and certain other activities, entities with $7 million or less in annual receipts; [799] (iii) for entities engaged in financial investments and related activities, entities with $7 million or less in annual receipts; [800] (iv) for insurance carriers and entities engaged in related activities, entities with $7 million or less in annual receipts; [801] and (v) for funds, trusts, and other financial vehicles, entities with $7 million or less in annual receipts.[802]

The Cross-Border Proposal stated that, based on feedback from industry participants and our own information about the security-based swap markets, we preliminarily believed that non-U.S. entities that would be required to register and be regulated as security-based swap dealers and major security-based swap participants exceed the thresholds defining ''small entities'' set out above. Thus, we noted that we preliminarily believed it is unlikely that the proposed rules regarding registration of security-based swap dealers and major security-based swap market participants would have a significant economic impact any small entity. As a result, we certified that the proposed rules would not have a significant economic impact on a substantial number of small entities for purposes of the RFA and requested written comments regarding this certification.[803]

While we received comment letters that addressed cost issues in connection with the proposed rules, we did not receive any comments that specifically addressed whether the rules applying the definitions of ''security-based swap dealer'' or ''major security-based swap participant'' to the cross-border context would have a significant economic impact on small entities.

We continue to believe that the types of entities that would engage in more than a *de minimis* amount of dealing activity involving security-based swaps—which generally would be major banks—would not be ''small entities'' for purposes of the RFA. Similarly, we believe that only the largest financial companies would be likely to develop security-based swap exposures of the size that would be required to cross the major security-based swap participant definition thresholds. Accordingly, the SEC certifies that the final rules applying the definitions of ''security-based swap dealer'' or ''major security-based swap participant'' to the cross-border context will not have a significant economic impact on a substantial number of small entities for purposes of the RFA.

XI. Effective Date and Implementation

These final rules will be effective 60 days following publication in the **Federal Register**.

If any provision of these rules, or the application thereof to any person or circumstance, is held to be invalid, such invalidity shall not affect other provisions or application of such provisions to other persons or circumstances that can be given effect without the invalid provision or application.

Because Exchange Act rules 3a67–10 and 3a71–3 through 3a71–5 address the application of the dealer and major participant definitions to cross-border security-based swap activities, those rules will not immediately impose requirements upon market participants even after the rules become effective. In the Intermediary Definitions Adopting Release, we noted that because the Commission has not yet promulgated final rules implementing the substantive requirements imposed on dealers and major participants by Title VII, persons determined to be dealers or major participants under the regulations adopted in that release need not register as such until the dates provided in the Commission's final rules regarding security-based swap dealer and major security-based swap participant registration requirements, and will not be subject to the requirements applicable to those dealers and major participants until the dates provided in the applicable final rules.[804] Those principles apply here too.

Although Exchange Act rule 0–13—regarding the procedures for the submission of substituted compliance requests—also will become effective at that time, we would not expect to receive any such requests until relevant substantive rulemakings have been completed. Those rulemakings are necessary to determine when substituted compliance may be available, and to promulgate the requirements against which we may assess comparability for purposes of making substituted compliance determinations.

Statutory Authority and Text of Final Rules

Pursuant to the Exchange Act, 15 U.S.C. 78a *et seq.,* and particularly, sections 3(b), 23(a)(1), and 30(c) thereof, sections 761(b), and 929P(b) of the Dodd-Frank Act, the SEC is adopting rules 0–13, 3a67–10, 3a71–3, 3a71–4, and 3a71–5 under the Exchange Act, and the SEC is adding Part 250 to chapter II of Title 17 of the Code of Federal Regulations.

has adopted definitions for the term ''small entity'' for the purposes of Commission rulemaking in accordance with the RFA. Those definitions, as relevant to this proposed rulemaking, are set forth in Rule 0–10 under the Exchange Act, 17 CFR 240.0–10. *See* Exchange Act Release No. 18451 (Jan, 28, 1982), 47 FR 5215 (Feb, 4, 1982) (File No. AS–305).

[794] 5 U.S.C. 605(b).

[795] *See* 17 CFR 240.0–10(a).

[796] 17 CFR 240.17a–5(d).

[797] *See* 17 CFR 240.0–10(c).

[798] *See* 13 CFR 121.201 (Subsector 522).

[799] *See id.* at Subsector 522.

[800] *See id.* at Subsector 523.

[801] *See id.* at Subsector 524.

[802] *See id.* at Subsector 525.

[803] *See* Cross-Border Proposing Release, 78 FR 31205.

[804] *See* Intermediary Definitions Adopting Release, 77 FR 30700. We also noted that an extended compliance period was available with regard to the applicable thresholds used in the *de minimis* exception to the dealer definition. *See id.; see also* section 0, *supra.*

List of Subjects

17 CFR Part 240

Brokers, Confidential business information, Fraud, Reporting and recordkeeping requirements, Securities.

17 CFR Parts 241 and 250

Securities.

Text of Final Rules

For the reasons stated in the preamble, the SEC is amending Title 17, Chapter II, of the Code of Federal Regulations as follows:

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

■ 1. The general authority citation for part 240 continues to read, and a sectional authority is added in numerical order to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c–3, 78c–5, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78l, 78m, 78n, 78n–1, 78o, 78o–4, 78o–10, 78p, 78q, 78q–1, 78s, 78u–5, 78w, 78x, 78ll, 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, 7201 et seq., and 8302; 7 U.S.C. 2(c)(2)(E); 12 U.S.C. 5221(e)(3); and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

Sections 240.3a67–10, 240.3a71–3, 240.3a71–4, and 240.3a71–5 are also issued under Pub. L. 111–203, section 761(b), 124 Stat. 1754 (2010), and 15 U.S.C. 78dd(c).

* * * * *

■ 2. Add § 240.0–13 to read as follows:

§ 240.0–13 Commission procedures for filing applications to request a substituted compliance order under the Exchange Act.

(a) The application shall be in writing in the form of a letter, must include any supporting documents necessary to make the application complete, and otherwise must comply with § 240.0–3. All applications must be submitted to the Office of the Secretary of the Commission, by a party that potentially would comply with requirements under the Exchange Act pursuant to a substituted compliance order, or by the relevant foreign financial regulatory authority or authorities. If an application is incomplete, the Commission may request that the application be withdrawn unless the applicant can justify, based on all the facts and circumstances, why supporting materials have not been submitted and undertakes to submit the omitted materials promptly.

(b) An applicant may submit a request electronically. The electronic mailbox to use for these applications is described on the Commission's Web site at *www.sec.gov* in the ''Exchange Act Substituted Compliance Applications'' section. In the event electronic mailboxes are revised in the future, applicants can find the appropriate mailbox by accessing the ''Electronic Mailboxes at the Commission'' section.

(c) All filings and submissions filed pursuant to this rule must be in the English language. If a filing or submission filed pursuant to this rule requires the inclusion of a document that is in a foreign language, a party must submit instead a fair and accurate English translation of the entire foreign language document. A party may submit a copy of the unabridged foreign language document when including an English translation of a foreign language document in a filing or submission filed pursuant to this rule. A party must provide a copy of any foreign language document upon the request of Commission staff.

(d) An applicant also may submit a request in paper format. Five copies of every paper application and every amendment to such an application must be submitted to the Office of the Secretary at 100 F Street NE., Washington, DC 20549–1090. Applications must be on white paper no larger than 8½ by 11 inches in size. The left margin of applications must be at least 1½ inches wide, and if the application is bound, it must be bound on the left side. All typewritten or printed material must be set forth in black ink so as to permit photocopying.

(e) Every application (electronic or paper) must contain the name, address, telephone number, and email address of each applicant and the name, address, telephone number, and email address of a person to whom any questions regarding the application should be directed. The Commission will not consider hypothetical or anonymous requests for a substituted compliance order. Each applicant shall provide the Commission with any supporting documentation it believes necessary for the Commission to make such determination, including information regarding applicable requirements established by the foreign financial regulatory authority or authorities, as well as the methods used by the foreign financial regulatory authority or authorities to monitor and enforce compliance with such rules. Applicants should also cite to and discuss applicable precedent.

(f) Amendments to the application should be prepared and submitted as set forth in these procedures and should be marked to show what changes have been made.

(g) After the filing is complete, the staff will review the application. Once all questions and issues have been answered to the satisfaction of the staff, the staff will make an appropriate recommendation to the Commission. After consideration of the recommendation and a vote by the Commission, the Commission's Office of the Secretary will issue an appropriate response and will notify the applicant.

(h) The Commission shall publish in the **Federal Register** a notice that a complete application has been submitted. The notice will provide that any person may, within the period specified therein, submit to the Commission any information that relates to the Commission action requested in the application. The notice also will indicate the earliest date on which the Commission would take final action on the application, but in no event would such action be taken earlier than 25 days following publication of the notice in the **Federal Register.**

(i) The Commission may, in its sole discretion, schedule a hearing on the matter addressed by the application.

■ 3. Add § 240.3a67–10 to read as follows:

§ 240.3a67–10 Foreign major security-based swap participants.

(a) *Definitions.* As used in this section, the following terms shall have the meanings indicated:

(1) *Conduit affiliate* has the meaning set forth in § 240.3a71–3(a)(1).

(2) *Foreign branch* has the meaning set forth in § 240.3a71–3(a)(2).

(3) *Transaction conducted through a foreign branch* has the meaning set forth in § 240.3a71–3(a)(3).

(4) *U.S. person* has the meaning set forth in § 240.3a71–3(a)(4).

(b) *Application of major security-based swap participant tests in the cross-border context.* For purposes of calculating a person's status as a major security-based swap participant as defined in section 3(a)(67) of the Act (15 U.S.C. 78c(a)(67)), and the rules and regulations thereunder, a person shall include the following security-based swap positions:

(1) If such person is a U.S. person, all security-based swap positions that are entered into by the person, including positions entered into through a foreign branch;

(2) If such person is a conduit affiliate, all security-based swap positions that are entered into by the person; and

(3) If such person is a non-U.S. person other than a conduit affiliate, all of the following types of security-based swap

positions that are entered into by the person:

(i) Security-based swap positions that are entered into with a U.S. person; provided, however, that this paragraph (b)(3)(i) shall not apply to:

(A) Positions with a U.S. person counterparty that arise from transactions conducted through a foreign branch of the counterparty, when the counterparty is a registered security-based swap dealer; and

(B) Positions with a U.S. person counterparty that arise from transactions conducted through a foreign branch of the counterparty, when the transaction is entered into prior to 60 days following the earliest date on which the registration of security-based swap dealers is first required pursuant to the applicable final rules and regulations; and

(ii) Security-based swap positions for which the non-U.S. person's counterparty to the security-based swap has rights of recourse against a U.S. person; for these purposes a counterparty has rights of recourse against the U.S. person if the counterparty has a conditional or unconditional legally enforceable right, in whole or in part, to receive payments from, or otherwise collect from, the U.S. person in connection with the security-based swap.

(c) *Attributed positions*—(1) *In general.* For purposes of calculating a person's status as a major security-based swap participant as defined in section 3(a)(67) of the Act (15 U.S.C. 78c(a)(67)), and the rules and regulations thereunder, a person also shall include the following security-based swap positions:

(i) If such person is a U.S. person, any security-based swap position of a non-U.S. person for which the non-U.S. person's counterparty to the security-based swap has rights of recourse against that U.S. person.

Note to paragraph (c)(1)(i). This paragraph describes attribution requirements for a U.S. person solely with respect to the guarantee of the obligations of a non-U.S. person under a security-based swap. The Commission and the Commodity Futures Trading Commission previously provided an interpretation about attribution to a U.S. parent, other affiliate, or guarantor to the extent that the counterparties to those positions have recourse against that parent, other affiliate, or guarantor in connection with the position. *See* Intermediary Definitions Adopting Release, *http://www.gpo.gov/fdsys/pkg/FR-2012-08-13/pdf/2012-18003.pdf.* The Commission explained that it intended to issue separate releases addressing the application of the major participant definition, and Title VII generally, to non-U.S. persons. *See id.* at note 1041.

(ii) If such person is a non-U.S. person:

(A) Any security-based swap position of a U.S. person for which that person's counterparty has rights of recourse against the non-U.S. person; and

(B) Any security-based swap position of another non-U.S. person entered into with a U.S. person counterparty who has rights of recourse against the first non-U.S. person, provided, however, that this paragraph (c)(1)(ii)(B) shall not apply to positions described in § 240.3a67–10(b)(3)(i)(A) and (B).

(2) *Exceptions.* Notwithstanding paragraph (c)(1) of this section, a person shall not include such security-based swap positions if the person whose performance is guaranteed in connection with the security-based swap is:

(i) Subject to capital regulation by the Commission or the Commodity Futures Trading Commission (including, but not limited to regulation as a swap dealer, major swap participant, security-based swap dealer, major security-based swap participant, futures commission merchant, broker, or dealer);

(ii) Regulated as a bank in the United States;

(iii) Subject to capital standards, adopted by the person's home country supervisor, that are consistent in all respects with the Capital Accord of the Basel Committee on Banking Supervision; or

(iv) Deemed not to be a major security-based swap participant pursuant to § 240.3a67–8(a).

■ 4. Add §§ 240.3a71–3, 240.3a71–4, and 240.3a71–5 to read as follows:

* * * * *

Sec.

240.3a71–3 Cross-border security-based swap dealing activity.

240.3a71–4 Exception from aggregation for affiliated groups with registered security-based swap dealers.

240.3a71–5 Substituted compliance for foreign security-based swap dealers.

* * * * *

§ 240.3a71–3 Cross-border security-based swap dealing activity.

(a) *Definitions.* As used in this section, the following terms shall have the meanings indicated:

(1) *Conduit affiliate*—(i) *Definition. Conduit affiliate* means a person, other than a U.S. person, that:

(A) Is directly or indirectly majority-owned by one or more U.S. persons; and

(B) In the regular course of business enters into security-based swaps with one or more other non-U.S. persons, or with foreign branches of U.S. banks that are registered as security-based swap dealers, for the purpose of hedging or mitigating risks faced by, or otherwise taking positions on behalf of, one or more U.S. persons (other than U.S. persons that are registered as security-based swap dealers or major security-based swap participants) who are controlling, controlled by, or under common control with the person, and enters into offsetting security-based swaps or other arrangements with such U.S. persons to transfer risks and benefits of those security-based swaps.

(ii) *Majority-ownership standard.* The majority-ownership standard in paragraph (a)(1)(i)(A) of this section is satisfied if one or more persons described in § 240.3a71–3(a)(4)(i)(B) directly or indirectly own a majority interest in the non-U.S. person, where ''majority interest'' is the right to vote or direct the vote of a majority of a class of voting securities of an entity, the power to sell or direct the sale of a majority of a class of voting securities of an entity, or the right to receive upon dissolution, or the contribution of, a majority of the capital of a partnership.

(2) *Foreign branch* means any branch of a U.S. bank if:

(i) The branch is located outside the United States;

(ii) The branch operates for valid business reasons; and

(iii) The branch is engaged in the business of banking and is subject to substantive banking regulation in the jurisdiction where located.

(3) *Transaction conducted through a foreign branch*—(i) *Definition. Transaction conducted through a foreign branch* means a security-based swap transaction that is arranged, negotiated, and executed by a U.S. person through a foreign branch of such U.S. person if:

(A) The foreign branch is the counterparty to such security-based swap transaction; and

(B) The security-based swap transaction is arranged, negotiated, and executed on behalf of the foreign branch solely by persons located outside the United States.

(ii) *Representations.* A person shall not be required to consider its counterparty's activity in connection with paragraph (a)(3)(i)(B) of this section in determining whether a security-based swap transaction is a transaction conducted through a foreign branch if such person receives a representation from its counterparty that the security-based swap transaction is arranged, negotiated, and executed on behalf of the foreign branch solely by persons located outside the United States, unless such person knows or has reason to know that the representation is not accurate; for the purposes of this

final rule a person would have reason to know the representation is not accurate if a reasonable person should know, under all of the facts of which the person is aware, that it is not accurate.

(4) *U.S. person.* (i) Except as provided in paragraph (a)(4)(iii) of this section, *U.S. person* means any person that is:

(A) A natural person resident in the United States;

(B) A partnership, corporation, trust, investment vehicle, or other legal person organized, incorporated, or established under the laws of the United States or having its principal place of business in the United States;

(C) An account (whether discretionary or non-discretionary) of a U.S. person; or

(D) An estate of a decedent who was a resident of the United States at the time of death.

(ii) For purposes of this section, *principal place of business* means the location from which the officers, partners, or managers of the legal person primarily direct, control, and coordinate the activities of the legal person. With respect to an externally managed investment vehicle, this location is the office from which the manager of the vehicle primarily directs, controls, and coordinates the investment activities of the vehicle.

(iii) The term *U.S. person* does not include the International Monetary Fund, the International Bank for Reconstruction and Development, the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the United Nations, and their agencies and pension plans, and any other similar international organizations, their agencies and pension plans.

(iv) A person shall not be required to consider its counterparty to a security-based swap to be a U.S. person if such person receives a representation from the counterparty that the counterparty does not satisfy the criteria set forth in paragraph (a)(4)(i) of this section, unless such person knows or has reason to know that the representation is not accurate; for the purposes of this final rule a person would have reason to know the representation is not accurate if a reasonable person should know, under all of the facts of which the person is aware, that it is not accurate.

(5) *United States* means the United States of America, its territories and possessions, any State of the United States, and the District of Columbia.

(b) *Application of de minimis exception to cross-border dealing activity.* For purposes of calculating the amount of security-based swap positions connected with dealing activity under § 240.3a71–2(a)(1), except as provided in § 240.3a71–5, a person shall include the following security-based swap transactions:

(1)(i) If such person is a U.S. person, all security-based swap transactions connected with the dealing activity in which such person engages, including transactions conducted through a foreign branch;

(ii) If such person is a conduit affiliate, all security-based swap transactions connected with the dealing activity in which such person engages; and

(iii) If such person is a non-U.S. person other than a conduit affiliate, all of the following types of transactions:

(A) Security-based swap transactions connected with the dealing activity in which such person engages that are entered into with a U.S. person; provided, however, that this paragraph (b)(1)(iii)(A) shall not apply to:

(*1*) Transactions with a U.S. person counterparty that constitute transactions conducted through a foreign branch of the counterparty, when the counterparty is a registered security-based swap dealer; and

(*2*) Transactions with a U.S. person counterparty that constitute transactions conducted through a foreign branch of the counterparty, when the transaction is entered into prior to 60 days following the earliest date on which the registration of security-based swap dealers is first required pursuant to the applicable final rules and regulations; and

(B) Security-based swap transactions connected with the dealing activity in which such person engages for which the counterparty to the security-based swap has rights of recourse against a U.S. person that is controlling, controlled by, or under common control with the non-U.S. person; for these purposes a counterparty has rights of recourse against the U.S. person if the counterparty has a conditional or unconditional legally enforceable right, in whole or in part, to receive payments from, or otherwise collect from, the U.S. person in connection with the security-based swap; and

(2) If such person engages in transactions described in paragraph (b)(1) of this section, except as provided in § 240.3a71–4, all of the following types of security-based swap transactions:

(i) Security-based swap transactions connected with the dealing activity in which any U.S. person controlling, controlled by, or under common control with such person engages, including transactions conducted through a foreign branch;

(ii) Security-based swap transactions connected with the dealing activity in which any conduit affiliate controlling, controlled by, or under common control with such person engages; and

(iii) Security-based swap transactions connected with the dealing activity of any non-U.S. person, other than a conduit affiliate, that is controlling, controlled by, or under common control with such person, that are described in paragraph (b)(1)(iii) of this section.

§ 240.3a71–4 Exception from aggregation for affiliated groups with registered security-based swap dealers.

Notwithstanding §§ 240.3a71–2(a)(1) and 240.3a71–3(b)(2), a person shall not include the security-based swap transactions of another person (an ''affiliate'') controlling, controlled by, or under common control with such person where such affiliate either is:

(a) Registered with the Commission as a security-based swap dealer; or

(b) Deemed not to be a security-based swap dealer pursuant to § 240.3a71–2(b).

§ 240.3a71–5 Exception for cleared transactions executed on a swap execution facility.

(a) For purposes of § 240.3a71–3(b)(1), a non-U.S. person, other than a conduit affiliate, shall not include its security-based swap transactions that are entered into anonymously on an execution facility or national securities exchange and are cleared through a clearing agency; and

(b) For purposes of § 240.3a71–3(b)(2), a person shall not include security-based swap transactions of an affiliated non-U.S. person, other than a conduit affiliate, when such transactions are entered into anonymously on an execution facility or national securities exchange and are cleared through a clearing agency.

PART 241—INTERPRETIVE RELEASES RELATING TO THE SECURITIES EXCHANGE ACT OF 1934 AND GENERAL RULES AND REGULATIONS THEREUNDER

■ 5. Part 241 is amended by adding Release No. 34–72472 to the list of interpretive releases as follows:

Subject	Release No.	Date	**Federal Register** Vol. and Page
Application of "Security-Based Swap Dealer" and "Major Security-Based Swap Participant" Definitions to Cross-Border Security-Based Swap Activities.	34–72472	June 25, 2014	79 FR [Insert FR Page Number].

■ 6. Part 250, consisting of § 250.1, is added to read as follows:

PART 250—CROSS-BORDER ANTIFRAUD LAW-ENFORCEMENT AUTHORITY

Authority: 15 U.S.C. 77s, 77v(c), 78w, 78aa(b), 80b–11, and 80b–14(b).

§ 250.1 Cross-border antifraud law-enforcement authority.

(a) Notwithstanding any other Commission rule or regulation, the antifraud provisions of the securities laws apply to:

(1) Conduct within the United States that constitutes significant steps in furtherance of the violation; or

(2) Conduct occurring outside the United States that has a foreseeable substantial effect within the United States.

(b) The antifraud provisions of the securities laws apply to conduct described in paragraph (a)(1) of this section even if:

(1) The violation relates to a securities transaction or securities transactions occurring outside the United States that involves only foreign investors; or

(2) The violation is committed by a foreign adviser and involves only foreign investors.

(c) Violations of the antifraud provisions of the securities laws described in this section may be pursued in judicial proceedings brought by the Commission or the United States.

By the Commission.

Date: June 25, 2014.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–15337 Filed 7–3–14; 8:45 am]

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Part III

Federal Communications Commission

47 CFR Parts 36, 54 and 69

Connect America Fund, ETC Annual Reports and Certifications, Establishing Just and Reasonable Rates for Local Exchange Carriers; Universal Service Reform—Mobility Fund; Developing an Unified Intercarrier Compensation Regime; Final Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 36, 54 and 69

[WC Docket Nos. 10–90, 14–58, 07–135; WT Docket No. 10–208; CC Docket No. 01–92; FCC 14–54]

Connect America Fund, ETC Annual Reports and Certifications, Establishing Just and Reasonable Rates for Local Exchange Carriers; Universal Service Reform—Mobility Fund; Developing an Unified Intercarrier Compensation Regime

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) takes significant steps to continue the implementation of the 2011 universal service reforms. This document takes into account lessons learned and new marketplace developments to further the Commission's statutory mission of ensuring that all consumers have access to advanced telecommunications and information services.

DATES: Effective August 8, 2014, except for § 54.310(e)(1) which contains new or modified information collection requirements that will not be effective until approved by the Office of Management and Budget. The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date for that paragraph.

FOR FURTHER INFORMATION CONTACT: Alexander Minard, Wireline Competition Bureau, (202) 418–0428 or TTY: (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, Declaratory Ruling, Order, Memorandum Opinion and Order and Seventh Order on Reconsideration in WC Docket Nos. 10–90, 14–58, 07–135; WT Docket No. 10–208; CC Docket No. 01–92; FCC 14–54, adopted on April 23, 2014 and released on June 10, 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 at the following Internet address: *http://transition.fcc.gov/Daily_Releases/Daily_Business/2014/db0610/FCC-14-54A1.pdf.* The Further Notice of Proposed Rulemaking (FNPRM) that was adopted concurrently with the Report and Order, Declaratory Ruling, Order, Memorandum Opinion and Order and Seventh Order on Reconsideration are published elsewhere in this issue of the **Federal Register.**

I. Introduction

1. With the Report and Order, Declaratory Ruling, Order, Memorandum Opinion and Order, Seventh Order on Reconsideration, and concurrently adopted Further Notice of Proposed Rulemaking (FNPRM), the Commission takes significant steps to continue the implementation of the landmark reforms unanimously adopted by the Commission in 2011 to modernize universal service for the 21st century. The Commission builds on the solid foundation created in 2011, taking into account what they have learned to date and new marketplace developments, to fulfill our statutory mission to ensure that all consumers ''have access to . . . advanced telecommunications and information services.''

2. A core component of the 2011 reforms was the creation of the Connect America Fund to preserve and advance voice and robust broadband services, both fixed and mobile, in high-cost areas of the nation that the marketplace would not otherwise serve. Today, the Commission adopts rules that build on the framework established by the Commission in the *USF/ICC Transformation Order,* 76 FR 73830, November 29, 2011, while proposing targeted adjustments that the Commission believes are necessary to ensure that they are best utilizing the funds that consumers and businesses pay into the universal service system. In particular, the Commission is mindful that technological innovation is occurring at a rapid pace, and the marketplace has continued to evolve in the intervening years. The Commission must ensure that the reforms it implements now are not predicated on outdated assumptions.

3. Meeting the infrastructure challenge of the 21st century will be a multi-year journey. It took the nation almost 50 years to bring electricity to 99 percent of rural farms; decades later, it took 35 years to complete the original portion of the interstate highway system. In just two years, the Commission's reforms have set the nation on a path that will bring new fixed broadband services to more than 1.6 million Americans, new mobile services to historically unserved Tribal lands, and improved mobile coverage along our nation's roads. Achieving universal access to broadband will not occur overnight. Today, the Commission takes further steps to bring broadband service to every corner of the country.

4. The Report and Order adopts several rules to establish the foundation for the award of support in price cap areas where the price cap carrier declines the offer of model-based support. Specifically, the Commission concludes that all areas where the average cost per location equals or exceeds a specified cost benchmark are eligible for Phase II support in the competitive bidding process. The Commission sets a support term of 10 years for support awarded through the competitive bidding process. The Commission permits price cap carriers that decline model-based support to participate in the competitive bidding process that it expects to be prepared to conduct by the end of 2015.

5. The Commission also addresses more generally provider eligibility for support through the competitive bidding process and the Remote Areas Fund. The Commission permits entities to seek designation as eligible telecommunications carriers (ETCs) after notification they are winning bidders for the offer of Phase II Connect America funding. The Commission concludes that recipients of support through the competitive bidding process or the Remote Areas Fund must certify as to their financial and technical capabilities to provide the required services within the specified timeframe in the geographic area for which they seek support.

6. The Commission issues a declaratory ruling to provide rate-of-return carriers greater clarity regarding their obligations to extend broadband service upon reasonable request.

7. In the Order, the Commission phases in support reductions associated with the 2014 rate floor of $20.46 over a multi-year period to provide time for incumbent carriers and state commissions to make any adjustments they deem necessary. In particular, the Commission defers any support reductions for lines that have rates of $14 or greater until January 2, 2015. Between January 2, 2015, and June 30, 2016, the Commission implements support reductions only to the extent rates are below $16; between July 1, 2016 and June 30, 2017, the Commission implements support reductions only for lines with rates under $18 or the rate floor established by the 2016 rate survey, whichever is lower; and between July 1, 2017 and June 30, 2018, the Commission implements support reductions only for lines with rates under $20 or the 2017 rate floor, whichever is lower. Thus, the

impact of this rule is phased in over a four-year period.

8. The Commission also reconsiders certain aspects of the *USF/ICC Transformation Order* in response to petitions from a variety of stakeholders. These modifications reflect our continuing commitment in the universal service reforms to efficiency and creating the appropriate incentives to invest and operate modern voice and broadband-capable networks. First, to provide a more measured transition for rate-of-return carriers that would have qualified under the prior rules for certain support known as Safety Net Additive (SNA) based on their significant network investment, the Commission permits such carriers to receive SNA for such investments made in 2010 and 2011. Second, the Commission eliminates the high-cost loop support (HCLS) benchmarking rule so that rate-of-return carriers' support will no longer be limited by benchmarks calculated using quantile regression analysis (QRA).

9. In addition, the Commission waives certain application fees that deter companies from rationalizing their service territory boundaries, deny a petition for reconsideration of the Commission's decision to impose broadband public interest obligations on recipients of high-cost support, while affirming that these conditions do not constitute common carrier regulation, and dismiss or deny two applications for review of the Wireline Competition Bureau's (Bureau) *Phase II Service Obligations Order,* 78 FR 70881, November 27, 2013.

II. Report and Order

A. Connect America Phase II Competitive Bidding Process

10. In the *USF/ICC Transformation Order,* the Commission decided that, in areas where the price cap ETC refuses model-based support, support will be provided through a competitive bidding process. It adopted general rules to govern competitive bidding processes to award universal service support, codified in Subpart AA of Part 1 of the Commission's rules. The Commission sought comment in the *USF/ICC Transformation FNPRM,* 76 FR 78384, December 16, 2011, on a number of issues related to the design of the competitive bidding process, including which areas should be eligible, the term of support, and whether price cap carriers that decline model-based support should be permitted to participate in the competitive bidding process.

1. Eligible Areas

11. *Discussion.* After reviewing the record before the Commission, and based on what it has learned over the last two years, it now concludes that it should provide more flexibility to parties in Phase II to design effective bids for areas where the average cost is equal to or above the Connect America Phase II funding benchmark. The work on the Connect America Cost Model has shown us that extremely high-cost areas are actually interspersed among high-cost areas. Indeed, many of the census tracts containing census blocks potentially eligible for the offer of model-based support (i.e., those census blocks where the average cost per location is equal to or exceeds the funding benchmark but is lower than the extremely high-cost threshold) also contain one or more census blocks where the average cost per location, as determined by the model, exceeds the extremely high-cost threshold. The Commission concludes that including both high-cost and extremely high-cost areas in the competitive bidding process will enable parties to build integrated networks that span both types of areas in adjacent census blocks as appropriate. In other words, this approach allows potential providers to decide how best to upgrade or extend networks to serve these areas rather than having the Commission artificially pre-determining which areas should be served through one mechanism and which should be served through a separate mechanism.

12. Moreover, the Commission recognizes that the actual cost for a provider to serve census blocks that are above the extremely high-cost threshold may, in fact, be less than is predicted by the cost model. Potential service providers that have done the appropriate due diligence are in a better position to know local conditions on the ground and thus determine whether the support potentially available will enable them to meet the associated obligations. The Commission believes it would be the most efficient use of Phase II funding to provide support to areas above the specified funding threshold and then target the discrete budget for the Remote Areas Fund to those areas that remain unserved after the competitive bidding process.

13. A price cap carrier that elects to make the state-level commitment is already free to deploy to locations that would be above the extremely high-cost threshold to satisfy a portion of its build out obligation. By making extremely high-cost areas eligible for support in the competitive bidding process, the Commission effectively provides participants in the competitive bidding process the same choice: They may elect or not elect to serve those areas that the model has determined to be extremely high-cost.

14. The Commission does not decide at this time whether to use census blocks, or aggregations of census blocks such as census tracts, as the minimum size geographic unit eligible in the Phase II competitive bidding process. The Commission concluded we would entertain proposals in the rural broadband experiments in price cap territories at the census tract level, and the Commission currently is reviewing the expressions of interest received to date. The lessons learned from our review of the expressions of interest in the rural broadband experiments will give us better data and allow us to make a more informed decision on this issue later this year.

2. Term of Support

15. *Discussion.* The Commission concludes that Connect America Phase II support awarded through the competitive bidding process should be available for ten years, subject to existing requirements and the availability of funds. In the recent *Tech Transitions Order,* 79 FR 11327, February 28, 2014 and 79 FR 11366, February 28, 2014, the Commission adopted a framework for rural broadband experiments and concluded that it would provide support for any approved experiments for periods of up to ten years. While acknowledging the marketplace may change over time, the Commission recognized that ''some entities may be unwilling to make the necessary long-term investments to build robust future-proof networks in areas that are uneconomic to serve absent continued support beyond a five-year term.'' The Commission similarly found that, for the competitive bidding process for Connect America Phase II, providing support for a period of ten years may stimulate greater interest in the competitive bidding process, especially given the increased investment participants may need to bring to the table to meet the higher speed benchmark we propose below. Increased participation in the competitive bidding process will help ensure that funding is targeted efficiently to expand broadband-capable infrastructure throughout the country.

16. The Commission does not find any compelling reason to limit the term of support awarded through a competitive bidding process to five years, as initially suggested by some commenters. Specifically, the

Commission is not persuaded by the American Cable Association's (ACA) arguments that the flexibility to re-evaluate the need for support after five years outweighs the benefits of a longer term that the Commission relies on above. While the Commission acknowledges that marketplace forces may bring new competitors to high-cost areas where Phase II support is provided, it makes the predictive judgment that such an outcome is unlikely to occur due to the high-cost nature of these areas; if those areas could be cost-effectively served without government support, it believes competitors would already be serving them. Nor is the Commission persuaded that the term of support should be the same for providers accepting Connect America Phase II support pursuant to the state-level commitment as for those subject to competitive bidding. As the Commission concluded in the *Tech Transitions Order,* there is no inherent reason why the terms associated with a competitive offer must be identical to the terms associated with the offer of model-based support. One reason why the Commission established a five-year term of support for areas subject to model-based support was to move to competitive bidding processes in a timely manner in those areas where support initially would be awarded through the acceptance of state-level commitments. As noted by Windstream, this reason for limiting the duration of the support term is inapplicable when support is awarded in the first instance through a competitive bidding process.

3. Eligibility of Price Cap Carriers To Participate in Phase II Competitive Bidding

17. The Commission concludes that a price cap carrier's decision not to accept model-based support should not preclude it from participating in the competitive bidding process. The Commission finds that maximizing the number of qualified eligible participants is likely to improve the quality of the competitive bids and the results of the process. Moreover, the Commission does not find persuasive the arguments made by several commenters that permitting price cap carriers to participate in the competitive bidding process would give them the ability to ''cherry pick'' the most desirable service areas. The Commission expects that a price cap carrier will determine whether to accept the offer of model-based support primarily based on its own analysis of whether the support offered for the state justifies undertaking the associated obligations. It is not unreasonable that a carrier might conclude that the total amount of state-level support would not meet the obligations in the carrier's specific circumstances, while also concluding that many or even all parts of the state are worth serving at some other support level. In addition, though a carrier could strategically decline the model-based support in the hope of favorably selecting only the most desirable service areas, that strategy would have risks. Indeed, the very desirability of certain service areas creates the possibility that the carrier might not be awarded those areas through the competitive bidding process or that the support amount for those areas will be bid down to a level that is less than what the model would have provided. In our predictive judgment, the costs of excluding price cap carriers that decline model-based support exceed the possible benefits. The Commission therefore declines to exclude price cap carriers from the competitive bidding process.

B. Provider Eligibility Requirements

18. In response to the proposals in the *USF/ICC Transformation FNRPM,* a number of parties raised concerns that requiring ETC designation before participating in the Phase II competitive bidding process was a barrier to participating in the auction, urging the Commission to allow providers to obtain ETC designation later in the process. Similarly, a number of parties urged the Commission to remove barriers to participation in the Remote Areas Fund.

19. *Discussion.* Under the statute, only ETCs designated pursuant to section 214(e) of the Communications Act of 1934, as amended (Act) ''shall be eligible to receive specific Federal universal service support.'' Section 214(e)(2) gives states the primary responsibility for ETC designation. However, section 214(e)(6) provides that this Commission is responsible for processing requests for ETC designation when the service provider is not subject to the jurisdiction of the state public utility commission. Support is disbursed only after the provider receives an ETC designation.

20. The Commission seeks to encourage as many different types of providers as possible to participate in the competitive bidding process that will award support to serve high-cost and extremely high-cost areas. Likewise, the Commission seeks to encourage participation in the Remote Areas Fund. Recognizing that there may be areas of the country that the incumbent price cap carriers do not wish to serve, it is time to take steps to establish a framework that will enable other providers to become ETCs.

21. The Commission reaffirms that entities selected to receive support from Connect America Phase II or the Remote Areas Fund must obtain ETC designation from either a state public utility commission pursuant to section 214(e)(2), or the Commission pursuant to section 214(e)(6), of the Act. The Commission declines at this time to adopt the suggestion of certain parties that it either forbear from ETC designation requirements, or that it preempt states from issuing ETC designations. Rather, to address concerns in the record and to encourage participation in the competitive process as well as the Remote Areas Fund, the Commission adopts a more liberal process for the timing of ETC designation.

22. After consideration of the record, the Commission concludes that potential applicants in the Phase II competitive bidding process need not be ETCs at the time they initially apply for funding at the Commission. Rather, the Commission is persuaded that it should permit entities to obtain ETC designation after the announcement of winning bidders for the offer of Phase II Connect America funding, which it believes will encourage greater participation in the competitive process by a wider range of entities. ETC status must be confirmed before funding awarded through the competitive process is disbursed. The Commission finds that maximizing the number of qualified participants in the competitive bidding process is likely to improve the overall quality of the process. Some qualified potential bidders may be hesitant to invest resources to apply for an ETC designation absent any sense of whether they are likely to be awarded Phase II support. Other potential bidders may have concerns about triggering obligations as an ETC pending the result of the competitive bidding process or for areas for which they are not ultimately awarded support. Moreover, unlike entities that are already ETCs, entities that do not yet have ETC designation would risk making public their bidding strategy if required to seek ETC designation in the states where they intend to bid. On balance, the Commission concludes that the benefits of encouraging greater participation in the Phase II competitive bidding process outweigh any potential risk that winning bidders do not meet the necessary requirements to be designated an ETC.

23. The Commission acknowledges that it declined to take that approach for the Mobility Fund Phase I and Tribal

Mobility Fund Phase I. There, the Commission adopted the general requirement for those auctions that parties obtain ETC designation prior to filing the short-form application in part to ensure that applicants filing to participate in the auction were serious bidders. Based on our experience with the Mobility Fund Phase I and our review of the record, however, the Commission now concludes that a different approach is warranted for the Connect America Phase II competitive bidding process. The Commission is not persuaded by arguments that the ETC designation must be received prior to the competitive bidding process in order to ensure that only financially and technically qualified providers participate in the competitive bidding process. While the Commission acknowledges the possibility that in some cases a winning bidder may not meet the requirements for designation as an ETC, it presumes that prospective bidders will have the appropriate incentives to undertake the necessary due diligence in advance of the competitive bidding process to understand the requirements for ETC designation from the relevant state, or this Commission, should the state lack jurisdiction. The Commission notes that if a winning bidder fails to receive an ETC designation, it will be ineligible to receive any payments of support and will be considered in default of its obligations, with the penalties that entails. This risk should be an adequate deterrent for prospective bidders to ensure, in advance of bidding, that they meet the necessary requirements and have sufficient resources to meet their obligations. Moreover, nothing the Commission decides today precludes any prospective bidder from filing an ETC application in advance of the competitive bidding process, should it choose to do so.

24. In the Mobility Fund Phase I, the Commission expressly permitted potential bidders to obtain conditional ETC designation prior to filing the short-form application. Given our decision to permit entities to seek ETC designation after public notice of the winning bidders for the offer of Phase II support, the Commission does not anticipate many parties would seek conditional ETC designation prior to applying for funding. To the extent a party chooses to do so, however, and a state or this Commission issues a conditional ETC designation prior to the auction, the Commission expects that the ETC designation in such situations will be finalized quickly as a pro forma matter after announcement of the winning bidders for Phase II support.

25. The Commission seeks comment in the concurrently adopted FNPRM on implementation issues relating to ETC designation, including the timeframe in which a winning bidder must seek ETC designation before being deemed in default.

26. *Financial and Technical Qualifications.* The Commission adopts the concurrently adopted FNPRM proposal that recipients of support through the Phase II competitive bidding process and the Remote Areas Fund certify as to their financial and technical capabilities to provide the required services within the specified timeframe in the geographic area for which they seek support. The Commission implemented such a requirement for Mobility Fund Phase I and Tribal Mobility Fund Phase I, and it concludes it is equally appropriate for recipients of support through the Phase II competitive bidding process and the Remote Areas Fund. It would not be administratively efficient to conduct a competitive bidding process with participation from entities that are not prepared to make such commitments. Likewise, while the Commission does not determine the details of the Remote Areas Fund at this time, it concludes that entities receiving support through that mechanism should similarly be financially and technically qualified to provide the required services.

C. Transition Into Phase II

27. In this section, the Commission addresses issues relating to the transition from existing support to Connect America Phase II.

1. Transition Where Model-Based Support Is Less Than Connect America Phase I Support

28. *Discussion.* The Commission concludes that, where a carrier chooses to accept model-based support that is less than its Connect America Phase I frozen support, the transition shall occur over a three-year period of time. Any carrier exercising its right to make a state-level commitment will effectively be making a decision that the model-based support is sufficient to meet its obligations in the areas for which it is making a commitment. However, the Commission generally prefers to avoid flash cuts in support that would dramatically affect consumers. According to our estimates, some carriers in some states will receive significantly less support than they receive today under Connect America Phase I. It appears that seven carriers would face reductions in their current support in 30 states if they accept the offer of model-based support. Because some states have more than one carrier with a reduction, there could be 52 discrete situations in which a carrier's frozen support in a particular state would be less than its Phase I frozen support if all price cap carriers accepted model-based support. Of these 52 situations, there are 12 situations where there would be reductions greater than $5 million per year. While the specific figures for individual carriers may change after completion of the Phase II challenge process, the Commission is persuaded of the need for an appropriate transition to lower support levels.

29. The Commission's desire to avoid flash cuts has led it to adopt transitions of varying lengths for various reforms adopted in the *USF/ICC Transformation Order,* including a four-year period for the phase-down of identical support for competitive ETCs and a three-year phase-down of support in rate-of-return areas where there is a 100 percent overlap with an unsubsidized competitor. Given that carriers accepting model-based support have made a business decision that such support is adequate to meet their obligations, the Commission does not agree that a transition comparable to the phase-down in support for competitive ETCs is required. To take that approach would effectively mean the price cap carrier would not be receiving model-based support until the last year of the five-year term. Rather, the Commission is persuaded that a transition occurring over three years for carriers accepting state-level Connect America Phase II support that is less than the frozen high-cost support is sufficient.

30. Accordingly, the Commission adopts the following transition: In all years, a carrier accepting state-level support pursuant to Connect America Phase II that is less than the Connect America Phase I frozen high-cost support will receive the full amount of Connect America Phase II support. Assuming the Commission adopts the proposal in the concurrently adopted FNPRM to make the funding term for Connect America Phase II coincide with calendar years, in 2015 the carrier would receive, in addition to its Phase II support, 75 percent of the difference between the annualized amount of Connect America Phase II support that it accepted and the amount of Connect America Phase I frozen high-cost support that it received in 2014. In 2016, it would receive 50 percent of the difference; in 2017, it would receive 25 percent of the difference; in 2018 and in 2019, it would receive only Connect

America Phase II state-level support. For administrative convenience, this phase-down will apply to all carriers accepting a lower amount of state-level support, even if the absolute or relative size of the reduction is small.

2. Transition Where Competitive Eligible Telecommunications Carrier Receives Support Based on Competitive Bidding Process

31. The Commission concludes that competitive ETCs awarded Connect America Phase II support through the competitive bidding process will cease to receive legacy phase-down support for those specific areas upon commencement of Connect America Phase II support. The Commission previously concluded that, with respect to any price cap carrier that declines the offer of model-based support, the carrier's Phase I support will terminate when support is provided to another provider for that area through the competitive bidding process. Similarly, the Commission also determined that a competitive ETC's legacy phase-down support would be terminated in any area for which it is awarded Mobility Fund Phase II support upon commencement of support. For similar reasons, the Commission finds that any competitive ETC that is authorized to receive Phase II support through a competitive bidding process will no longer receive frozen legacy support for the area in question. Given the carrier's explicit endorsement of the support amount in its bid, the Commission sees no need for additional support to ease the transition to Connect America Phase II.

D. Elimination of Support in Areas With 100 Percent Overlap

32. In the *USF/ICC Transformation Order,* the Commission adopted a rule to eliminate support in incumbent local exchange carrier (LEC) study areas where an unsubsidized competitor or combination of unsubsidized competitors offers voice and broadband that meet our service obligations throughout the service area. The Commission hereby codifies that rule and the three-year phase-down of support adopted therein.

33. The Commission sought comment on the methodology used for determining whether an incumbent LEC is 100 percent overlapped by an unsubsidized competitor, and it directed the Bureau ''to publish a finalized methodology for determining areas of overlap and a list of companies for which there is a 100 percent overlap.'' Now that the study area boundary data collection has been completed, the Commission expects the Bureau will implement that directive in the months ahead.

34. The Commission proposes in the concurrently adopted FNPRM that the Bureau should review the study area boundary data in conjunction with data collected on the FCC Form 477 and the National Broadband Map every other year to determine whether and where 100 percent overlaps exist. The Commission also proposes to adjust the baseline for support reductions to be the amount of support received in the year immediately preceding the determination of 100 percent overlap, rather than 2010 support amounts.

E. Rule Amendments

35. Sections 54.313 and 54.314 of the Commission's rules require that all reports and certifications filed pursuant to these sections be filed with the Commission's Office of the Secretary in WC Docket No. 10–90. The Commission takes this opportunity to amend the Code of Federal Regulations to direct all section 54.313 and 54.314 filers to file their reports and certifications with the Office of the Secretary in the newly-opened WC Docket No. 14–58.

36. The Commission also takes this opportunity to make several rule amendments. First, the Commission moves the rules regarding HCLS and safety net additive, which currently are located in subpart F of Part 36, into a new subpart M in Part 54 in order to consolidate all high-cost rules in Part 54, and make conforming changes throughout Part 54. In the course of moving those rules, the Commission also deletes those portions that are no longer applicable due to the passage of time and other changes previously implemented in the *USF/ICC Transformation Order.* The Commission notes that section 1.1105 of the Commission's rules requires a filing fee in connection with petitions for waiver of rules contained in Part 36. While consolidation of the high-cost rules into one part may constitute a substantive rule change requiring notice and comment because of the required filing fee, the Commission utilizes the good cause exemption for when notice and comment are ''impracticable, unnecessary, or contrary to the public interest.'' Previously, the Commission issued a blanket waiver of the filing fee for carriers seeking a waiver of the HCLS benchmark rule contained in Part 36, but did not do so for the remainder of the universal service rules in Part 36 because that issue was not before it. However, the Commission finds that parties seeking waiver of any of the universal service rules included in subpart F of Part 36 similarly should not be subject to a filing fee, because parties seeking a waiver of other high-cost universal service rules in Part 54 are not subject to any filing fee. In moving subpart F of Part 36 to Part 54, the Commission notes that parties seeking waiver of the moved rules will no longer be subject to a filing fee. The Commission finds that it is in the public interest to consolidate all high-cost universal service rules into one part and to maintain consistency regarding filing fees throughout all of Part 54 of the Commission's rules and, therefore, that it is unnecessary, under the circumstances, to seek comment on otherwise non-substantive change to the Commission's rules. Second, the Commission deletes other codified universal service rules that no longer are applicable because they govern time periods or support mechanisms that no longer are in existence.

III. Declaratory Ruling

37. In contrast, in the areas served by price cap carriers the Commission concluded it would target support to high-cost areas, and support would be disbursed through a combination of a forward-looking model and a competitive bidding mechanism. Price cap carriers accepting model-based support must deploy voice and broadband-capable networks to all supported locations that are deemed ''high-cost'' and not served by an unsubsidized competitor, but they are not required to extend broadband in extremely high-cost areas as determined by the forward-looking cost model.

38. The Commission expressly recognized that there are some areas of the country where it is cost prohibitive to extend broadband using terrestrial wireline technology and, that in some areas, satellite or fixed wireless technologies may be more cost-effective options to extend service. It established a Remote Areas Fund with a budget of at least $100 million annually to address those areas that are not served. It envisioned that this dedicated funding would not be available in those remote areas in rural America that already have broadband meeting the Commission's performance requirements that it sought comment on in the *USF/ICC Transformation FNPRM.* The Commission stated in the *USF/ICC Transformation FNRPM* that it intended ''to use a forward-looking cost model—once finalized—to identify a small number of extremely high-cost areas in both rate-of-return and price cap areas that should receive support from the Remote Areas Fund.'' It sought comment in the *USF/ICC*

Transformation FNPRM on various issues relating to the Remote Areas Fund, including performance requirements, eligibility standards, which areas would be eligible for support, and measures to combat waste and improve accountability. It noted that ''pending development of the record and resolution of these issues, rate-of-return carriers are simply required to extend broadband upon reasonable request.''

39. Since the issuance of the *USF/ICC Transformation Order,* a number of rate-of-return carriers have informally sought guidance from Commission staff as to what they are required to do under the ''reasonable request'' standard and what should be addressed in their five-year service improvement plans. Commenters recognize that it is not reasonable to extend service in extremely high-cost areas, but the question remains how that standard might be applied in particular situations. Some carriers have informally expressed concern that state commissions might conclude that high-cost support is not being used for its intended purpose, as required by section 54.7 of the Commission's rules, if a carrier fails to extend broadband service upon request in particular situations or fails to meet deployment targets contained in their five-year service improvement plans. Concerns also have been expressed that support could be withheld, or recovery of support previously disbursed could be sought, for failure to meet this standard. Moreover, certain state commissions have informally indicated to Commission staff that they feel they do not have jurisdiction over broadband services and thus cannot determine where or whether it is appropriate for a carrier to extend broadband service upon reasonable request.

40. *Discussion.* The Commission now concludes it would be appropriate to issue a declaratory ruling regarding which requests should be deemed unreasonable under our current rules and policies to provide greater clarity to all affected stakeholders.

41. The Commission acknowledges there is some ambiguity in the *USF/ICC Transformation Order* on this topic. The Commission suggested that to the extent states retain jurisdiction over voice service, they would have jurisdiction to monitor the responsiveness of rate-of-return carriers to requests for service over a broadband-capable voice network. The Commission did not address, however, what standards might apply in those states where the public service commission lacks jurisdiction to address such matters, nor did it provide any guidance as a matter of federal policy as to what factors might be relevant to the extent a state does have jurisdiction. Moreover, when the Commission stated its expectation that rate-of-return carriers would ''follow pre-existing state requirements, if any, regarding service line extensions in their highest-cost areas,'' it did not distinguish the situation in which a carrier is extending new facilities to serve a location in the first instance (such as extending a line to a newly built home in a high-cost area) from the situation in which the carrier has existing facilities in place to provide voice service (i.e., a copper line) to a particular location and the customer is requesting that line be upgraded to provide broadband service as well as voice service. The Commission therefore concludes that it would be beneficial to enunciate more clearly our requirements for the extension of broadband services where the rate-of-return carrier already has a facility in place to provide voice service.

42. Rate-of-return carriers evaluating a request to extend broadband service should consider whether it would be reasonable to make the necessary upgrades in light of anticipated end-user revenues from the retail provision of broadband service and other sources of revenues, including but not limited to federal or state universal service funding projected to be available under current rules. In considering end-user revenues, carriers should take into account the reasonable comparability benchmark for broadband services. If the incremental cost of undertaking the necessary upgrades to a particular location exceed the revenues that could be expected from that upgraded line, a request would not be reasonable.

43. A request to upgrade an existing voice line to provide broadband service would not be reasonable if it would require new investments that would cause total high-cost support, excluding CAF–ICC, to exceed $250 per line per month in a given study area. The Commission determined in the *USF/ICC Transformation Order* that ''support drawn from limited public funds in excess of $250 per-line monthly (not including any new CAF support resulting from ICC reform) should not be provided without further justification.'' The Commission subsequently determined in the *Third Order on Reconsideration,* 77 FR 30904, May 24, 2012, that ETCs may take into account backhaul costs or other unique circumstances that may make it cost-prohibitive to extend service to particular customers. Finally, in the *Fifth Order on Reconsideration,* 78 FR 3837, January 17, 2013, the Commission clarified that when reviewing petitions for waiver of the $250 per month cap, it would ''consider the impact of reforms not only on voice service alone, but also on continued operation of a broadband-capable network and the effect on consumer rates.'' In particular, the Commission stated that it envisioned ''granting relief to incumbent telephone companies only in those circumstances in which the petitioner can demonstrate that consumers served by such carriers face a significant risk of losing access to a broadband-capable network that provides both voice as well as broadband today, at reasonably comparable rates, in areas where there are no alternative providers of voice or broadband. To the extent carriers have already made the investment in such broadband-capable networks, reductions in support that would threaten their ability to continue to maintain and operate those existing networks offering service at reasonably comparable rates in areas where consumers have no alternatives would be a public policy concern.''

44. Thus, under these prior determinations, the Commission declares that a request is not reasonable if it would require a carrier to undertake new network upgrades to install new backhaul facilities or to replace existing copper lines to the home with fiber merely for the purpose of newly providing broadband service in study areas where total support already is subject to the $250 per line monthly cap. Moreover, the Commission declares that a request is not reasonable if it would require a carrier to undertake new network upgrades to newly provide broadband service to requesting customers if that would cause total monthly support that presently is under the $250 cap to exceed the cap, under our existing rules.

45. The Commission also declares that a rate-of-return carrier has no obligation to extend broadband-capable infrastructure in any census block that is served by an unsubsidized competitor that meets the Commission's current performance standards. Indeed, to do so would be inconsistent with the Commission's general policy—which is not limited to price cap territories—that ''all broadband build out obligations for fixed broadband are conditioned on not spending the funds to serve customers in areas already served by an 'unsubsidized competitor.' '' The Commission cannot and will not condone new investment subsidized by universal service funds to occur in areas that are already served by marketplace

forces, and thus interpret our broadband public interest obligation consistent with that policy.

46. For purposes of determining whether a census block is served by an unsubsidized competitor, the Commission provides flexibility to rate-of-return carriers to make that determination in one of several ways. They are free to, but not required to, rely upon the treatment of a particular census block in the forward-looking cost model recently adopted by the Wireline Competition Bureau for the offer of support to price cap carriers. They are free to, but not required to, rely upon published coverage maps or online tools provided by competitors to enable prospective customers to determine whether service is available at particular addresses. There may be other ways a rate-of-return carrier may determine whether a particular location already is served by another provider; the Commission does not intend to suggest these are the only means of making such a determination. The Commission proposes in the concurrently adopted FNPRM to preclude rate-of-return carriers going forward, as of a date certain, from including in cost studies used for the determination of HCLS and interstate common line support (ICLS) the costs associated with new investment in areas that are already served by a qualifying provider that provides voice and broadband meeting the Commission's Phase II performance requirements. The Commission seeks comment in the concurrently adopted FNPRM on a rule to preclude new investment from being recovered through HCLS and ICLS as of a date certain and instead to develop a new Connect America Fund that will support voice and broadband-capable networks in rural America within the existing Connect America Fund budget.

47. While the Commission does not decide now as a general matter whether and if so how a forward-looking cost model could be used to identify areas that would be eligible for funding from the Remote Areas Fund, it believes the Connect America Cost Model developed by the Bureau potentially could be a useful tool for rate-of-return carriers to consider where it might be reasonable to extend broadband-capable infrastructure and for other purposes. The Commission recognizes that some parties have suggested that further work would be required before the Connect America Cost Model could be used for any purpose in rate-of-return territories. At a minimum, the Commission concludes it should be updated to incorporate the new study area boundaries data that the Bureau recently collected before it can be used for regulatory purposes in rate-of-return territories. The Commission therefore directs the Bureau to undertake further work to update the Connect America Cost Model to incorporate study boundary data, and such other adjustments as may be appropriate.

48. In this regard, the Commission recognizes that a larger percentage of locations in rate-of-return areas lie above the likely extremely high-cost threshold identified by the Bureau in its recent order adopting inputs for the forward-looking cost model for the offer of support to price cap carriers. Commenters expressing concern about the use of the model for determining rate-of-return areas that would be served by the Remote Areas Fund appear to assume that such extremely high-cost areas would only be served by the Remote Areas Fund, and that existing support for those areas would be eliminated. The Commission emphasizes that it has made no decisions regarding how the Remote Areas Fund might be implemented in those areas of the country where the incumbent provider is a rate-of-return carrier. Classification of a rate-of-return area as extremely high-cost under the forward-looking model does not mean that support would only be available from the Remote Areas Fund.

49. Finally, the Commission notes that our decision today does not change support under the existing support mechanisms for rate-of-return carriers, nor does it impact existing broadband service in extremely high-cost areas. Rather, the Commission issues this declaratory ruling so that carriers can make efficient and prudent investments going forward in the near term, while the Commission considers the issues raised in the FNPRM. As parties have recognized, rate-of-return carriers are free today to deploy alternative technologies, or resell satellite service, in areas determined to be beyond a reasonable request for the extension of fiber, in order to meet customer demand.

IV. Order

A. Delayed Implementation of Section 54.318(b)

50. On March 20, 2014, the Bureau announced that the average local end-user rate plus state regulated fees of the surveyed incumbent LECs in urban areas is $20.46. In addition, the Bureau requested comment on a petition filed by the Eastern Rural Telecom Association (ERTA), Independent Telephone & Telecommunications Alliance (ITTA), NTCA, the National Exchange Carrier Association (NECA), the United States Telecom Association (USTelecom), and WTA—Advocates for Rural Broadband requesting that the deadline for compliance with the 2014 local service rate floor be extended from July 1, 2014 to January 2, 2015, and that subsequent adjustments to the rate floor should then be made annually on January 2.

51. Under section 54.313(h), the $20.46 rate floor goes into effect on July 1, 2014, and all incumbent ETCs are required to report their rates to the Universal Service Administrative Company (USAC) for the number of lines for which ''the sum of those rates and fees are below the rate floor.'' Pursuant to section 54.318(b), any incumbent ETC whose rate for local service plus state regulated fees is below the rate floor shall have its ''high-cost support reduced by an amount equal to the extent to which its rates for residential local service plus state regulated fees are below the local urban rate floor, multiplied by the number of lines for which it is receiving support.''

52. No parties opposed the Associations' Petition. On reply, commenters overwhelmingly supported an extension of the deadline to comply with the 2014 local service rate floor. In support of the extension, commenters note that there would be roughly sixty days for incumbent LECs currently at the $14 benchmark to take steps to adjust rates to be consistent with the 2014 local service rate floor, which may require a full local rate proceeding before state regulators. Commenters also suggest that carriers will need sufficient time to minimize the impact of the rate increase on consumers and complete other necessary modifications. In addition to overwhelmingly supporting a delay in the implementation of the rule, commenters suggest that a phase-in of the 2014 local service rate floor is appropriate and necessary to mitigate the risk of rate shock for consumers. While comments vary on the appropriate phase-in, two associations argued that an annual increase capped at roughly $2.00 would be acceptable. In addition, several commenters ask the Commission to re-evaluate the local service rate floor as a general matter, suggesting that capping the annual increase in the local rate service floor would not impact the high-cost budget adopted in the *USF/ICC Transformation Order* or affect the universal service fund contribution factor. The National Association of Regulatory Utility Commissioners (NARUC) filed a petition asking the Commission to (1) maintain the current benchmark ($14) pending release of information

regarding the data and methodology that produced the $20.46 rate, and (2) to seek comment on how to calculate the benchmark. Finally, the Maine Office of Public Advocate argues that ''a carrier should receive full universal service high cost support for each Lifeline customer served even if that customer's monthly rate is a rate that is below the Rate Floor.''

53. *Discussion.* Initially, the Commission notes that support under the federal high-cost program historically has been provided to high-cost areas to ensure reasonable comparability of rates between urban and rural areas without consideration of the relative income levels in such areas; the program has not been designed to provide differing amounts of high-cost support for areas with lower incomes. Rather, other Commission mechanisms—specifically, the Lifeline program—are the primary means by which the Commission seeks to ensure that rates are affordable for low-income households. The underlying purpose of the rate floor is one of fairness: ''The Commission does not believe it is equitable for consumers across the country to subsidize the cost of service for some consumers that pay local service rates that are significantly lower than the national urban average.'' As the Commission explained in adopting the rate floor in 2011, ''[i]t is inappropriate to provide federal high-cost support to subsidize local rates beyond what is necessary to ensure reasonable comparability. Doing so places an undue burden on the Fund and consumers that pay into it.'' The results of the urban rate survey show there is significant variation among the states in the local rates charged to residential consumers; nonetheless, in many states, residential consumers are paying $25 or more per month for local service. To the extent that individual states wish to maintain intrastate rates significantly lower than the national urban average, they are free to do so. This rule merely prevents them from doing so in a manner that would burden ratepayers nationwide.

54. In the *USF/ICC Transformation Order,* the Commission ''anticipate[d] that the rate floor for the third year will be set at a figure close to the sum of $15.62 plus state regulated fees.'' To mitigate the impact of the implementation of the rate floor and provide time to implement a new rate survey, the Commission concluded that the rate floor should be phased in over several years: $10 beginning July 1, 2012, $14 beginning July 1, 2013, and then the average urban rate, as determined from data in the Urban Rates Survey, beginning July 1, 2014. Its goal in adopting a multi-year transition was ''to avoid a flash cut that would dramatically affect either carriers or the consumers they serve.''

55. For 2014, the Bureau's survey determined that the average urban rate is $19.81 plus $0.65 in state fees (a total of $20.46). Because the survey average for flat-rate local service is more than four dollars higher than the Commission anticipated, the Commission agrees with commenters that a more gradual approach to the reductions to universal service support under section 54.318(b) is warranted, and waiver of this rule is appropriate.

56. Therefore, the Commission waives the application of section 54.318(b) for lines reported July 1, 2014, with a rate of $14 or above. Commencing January 2, 2015 (reflecting rates as of December 1, 2014), and thereafter, through June 30, 2016, the Commission waives section 54.318(b) to the extent reported lines are less than $16. For the period between July 1, 2016, and June 30, 2017, it waives section 54.318(b) to the extent reported rates are less than $18, or the 2016 rate floor, whichever is lower. For the period between July 1, 2017, and June 30, 2018, we waive section 54.318(b) to the extent reported rates are less than $20, or the 2017 rate floor, whichever is lower. The Commission believes that this four-year transition should provide sufficient time for carriers and state commissions to determine whether and how to make adjustments, without unreasonable effects on carriers and consumers. Further, because the Commission is extending implementation of the support reductions associated with the next rate floor until July 2016, it does not believe that it is necessary to change the annual date on which the annual rate floor goes into effect. Because ETCs otherwise are required to submit their annual reports on July 1 each year, the Commission thinks it will be easier to keep the rate floor effective date consistent with these other filings. The Commission leaves flexibility to the affected parties to determine whether and, if they seek to adjust their rates, how to do so over the next four years. The Commission emphasizes, however, that nothing in our rules requires carriers affected by the rate floor to adjust their local rates.

57. While the Commission understands some parties are concerned about significant rate hikes, it is not convinced based on the information before us that implementation of the approach adopted herein will lead to widespread rate hikes. Our experience with the implementation of the rule thus far suggests that not all carriers will raise rates to meet the rate floor. The $14 rate floor went into effect on July 1, 2013, and carriers have now had two opportunities to report the number of lines below that rate floor. The rate floor increased from $10 in 2012 to $14 in 2013, a 40 percent increase. When this occurred, interested parties were largely silent and voiced little opposition. The Commission notes that three-quarters of the lines subject to support reductions this year (based on the rates in effect on December 1, 2013) were price cap carrier lines, while one-quarter of the lines affected were reported by rate-of-return carriers. The fact that many carriers continue to report some lines with rates well below the $14 rate floor suggests that they may have made a business decision to grandfather the lower rates for those customers and accept the associated support reductions. Indeed, the Commission notes that more than two years after the Commission adopted the $14 rate floor to be implemented in 2013, carriers in 34 study areas in 16 states still are reporting a number of lines with residential local service charges of $5 or less, further reinforcing our view that individual carriers may choose not to raise rates in response to the current rate floor. The Commission therefore can predict that, although there could be increases in some rates, it is unlikely that there will be a significant number of dramatic increases.

58. In response to the NARUC petition, the Commission notes that the Bureau has posted on the Commission's Web site the data used to develop the rate floor with explanatory notes, effectively granting that aspect of NARUC's petition. Moreover, the Commission also notes that our action today to phase-in the effect of the rule over a four-year period effectively responds to NARUC's suggestion that ''at a minimum, delay and perhaps a phasing in of the new floor is warranted.'' NARUC also suggests that the Commission should seek comment on how to calculate the benchmark. In the *Rate Floor Order,* 78 FR 29063, May 17, 2013, the Bureau clearly explained that the sample would be drawn using FCC Form 477 data from fixed terrestrial providers in urban census tracts, and that the average urban rate would be calculated based on the non-promotional rate for stand-alone voice service. To the extent that NARUC is challenging that methodology, its request is an untimely petition for reconsideration of the *Rate Floor Order.* If the intent of NARUC's petition is to challenge the Bureau's decision to use

only incumbent LEC data in computing the average urban rate, we note that this decision resulted in a lower rate floor than would have resulted if the Bureau had used the data from all providers. Therefore, seeking comment on that aspect of the methodology would not advance NARUC's objective, and the Commission see no other reason to do so. The Commission therefore grants in part and deny in part NARUC's petition.

59. The Commission is not persuaded by arguments that it should artificially cap the 2014 rate floor to be a figure lower than what was calculated by the rate survey. The rate floor rule is separate from the rule requiring reductions in support for rates below the rate floor; there is no reason why it is necessary to ''cap'' the rate floor itself.

60. The Commission does not waive section 54.313(h) of our rules. The announced urban rate floor is $20.46; incumbent ETCs must report their rates to USAC to the extent that their rates plus state fees are below this amount. Having information regarding ETC rates below the urban rate floor will facilitate our ability over the next four years to monitor the impact of this rule on carriers and consumers. Effective July 1, 2016, the rate floor will be determined by the next urban rate survey. The Commission directs the Bureau to conduct the next survey in sufficient time to announce the results in early 2015 and to announce the 2016 rate floor no later than January 31, 2016.

61. The Commission agrees with the Maine Office of Public Advocate that a carrier should not be subject to universal service support reductions as a result of the rate floor for those lines provided to Lifeline customers. The Commission has consistently emphasized its commitment to ensuring that its reforms do not negatively impact Lifeline customers. The Commission therefore waives application of section 54.318(i) for lines provided to customers enrolled in the Lifeline program. The Commission concludes that allowing carriers to maintain rate plans that are priced below the rate floor for Lifeline subscribers strikes the appropriate balance between ensuring that consumers across America are not funding below-average rates for selected consumers, while providing targeted relief to ensure this rule does not negatively impact Lifeline subscribers. Therefore, the Commission waives section 54.318(i) and direct USAC to take steps to ensure there will be no reductions in high-cost support for lines provided to customers enrolled in the Lifeline program.

62. The Commission declines to reconsider the adoption of a rate floor. Such requests effectively are untimely petitions for reconsideration of the original decision in the *USF/ICC Transformation Order* to adopt the rate floor. The Commission denied petitions for reconsideration of the adoption of the rate floor in the *Third Order on Reconsideration.* Moreover, as noted above, the Commission adopted the rate floor as a matter of fairness to ensure that consumers throughout the country do not support consumers and states with very low rates. While parties may disagree with the particular operation of the current rule, that does not change the fact that consumers across the country otherwise would be continuing to subsidize, through federal universal service support, excessively low rates in some areas. As explained above, in no sense does this policy require carriers to raise their rates, nor does it preclude states from subsidizing low prices through their own universal-service mechanisms. The Commission thus continues to believe that the rate floor is necessary to maintain fairness in the universal service support mechanism and accordingly grant in part and deny in part the Associations' Petition to the extent described herein.

B. Waiver of Fees for Study Area Boundary Waivers

63. The Commission's rules require carriers filing petitions for waiver of the study area boundary freeze to submit a $7,990 application fee with their petitions. Historically, the Commission has imposed application fees to recoup a portion of the direct cost it incurs to provide specific services to individuals and companies. The $7,990 fee is a uniform fee that applies to all petitions for waiver of Part 32 accounting rules, Part 36 separations rules, Part 43 reporting requirements, Part 64 cost allocation rules, Part 65 rate of return rules, and Part 69 access charge rules.

64. *Discussion.* In response to informal inquiries from state commissions and others, the Commission now waives on our own motion the $7,990 application fee for carriers seeking a study area waiver to transfer lines below the exchange level. The Commission notes that the Bureau generally considers petitions seeking to transfer lines at the sub-exchange level as routine. This burden and cost has been reduced even further by the streamlined study area boundary freeze waiver process instituted in the *USF/ICC Transformation Order.* The administrative burden and cost associated with reviewing these petitions and issuing decisions, therefore, is relatively small, while the amount of the fee is a deterrent to transferring lines at the sub-exchange level. Accordingly, there is good cause to grant this limited waiver.

V. Memorandum Opinion and Order

65. In this section, the Commission addresses two applications for review of the Bureau's *Phase II Service Obligations Order* related to the requirements for a provider to be designated an unsubsidized competitor. Alaska Communications Systems (ACS) requests review of the Bureau's statement that it will consider challenges to a competitor's unsubsidized status even if that competitor is receiving high-cost support that is being phased out. The National Cable and Telecommunications Association (NCTA) requests review of the decision to use the same criteria for determining whether a provider is an unsubsidized competitor as are used in setting the obligations for Phase II funding recipients. For the reasons set forth below, the Commission denies ACS's application, and it dismisses NCTA's application. The Commission concludes that it is appropriate for the Bureau to commence the Phase II challenge process under the framework established in the *Phase II Service Obligations Order.*

66. In the *USF/ICC Transformation Order,* the Commission decided that all ETCs ''will be required to offer broadband service in their supported areas that meets certain basic performance requirements.'' In setting those performance requirements for Phase II model-based funding recipients, the Commission stated that those recipients must ''offer broadband at actual speeds of at least 4 Mbps downstream and 1 Mbps upstream, with latency suitable for real-time applications, such as VoIP, and with usage capacity reasonably comparable to that available in comparable offerings in urban areas,'' offered at rates that are reasonably comparable to the rates offered in urban areas. In determining the areas that will be eligible for Connect America Phase II support, the Commission stated that it will ''exclude areas where an unsubsidized competitor offers broadband service that meets the [above-mentioned] broadband performance requirements.'' The task of assigning quantifiable metrics to the Commission's general performance criteria, both for Phase II recipients and for unsubsidized competitors, was delegated to the Bureau.

67. In the *Phase II Service Obligations Order,* the Bureau implemented the Commission's direction that Connect America Phase II funding recipients

meet certain performance criteria. The Bureau specified the performance metrics that would be required of recipients of Phase II model-based support. The Bureau also specified how those criteria would be used in determining what areas would be considered served by an unsubsidized competitor, and therefore ineligible for support. The Bureau noted that, per the Commission's direction, ''an unsubsidized competitor must be offering broadband and voice service that would meet the Commission's requirements for price cap carriers receiving model-based support.'' Thus, in order to qualify as an unsubsidized competitor, a provider must offer broadband with speeds of 4 Mbps downstream and 1 Mbps upstream (4 Mbps/1 Mbps), roundtrip provider network latency of 100 ms or less, minimum usage allowances of at least 100 GB per month, and pricing that is reasonably comparable to that in urban areas.

A. ACS Application for Review

68. In the *Phase II Service Obligations Order*, the Bureau stated that it would ''presume that any recipient of high-cost support at the time the challenge process is conducted'' would not meet the definition of ''unsubsidized competitor,'' but it would ''entertain challenges to that presumption from any competitive [ETC] that otherwise meets or exceeds the performance standards established [for price cap carriers accepting model-based support] and whose high-cost support is scheduled to be eliminated during the five-year term of Phase II.'' It further stated that this would ''provide an opportunity for the Commission to consider whether to waive application of the 'unsubsidized' element of the unsubsidized competitor definition in situations that would result in Phase II support being used to overbuild an existing broadband-capable network.''

69. ACS requests that the Commission review and reverse the Bureau's decision. For the reasons discussed below, the Commission denies ACS's application.

70. The *USF/ICC Transformation Order* states, ''[i]n determining the areas eligible for support, [the Commission] will also exclude areas where an unsubsidized competitor offers broadband service that meets the broadband performance requirements described above, with those areas determined by the Wireline Competition Bureau as of a specified future date as close as possible to the completion of the model.'' ACS argues that allowing a provider to challenge its unsubsidized status even if it continues to receive support after the start of Phase II violates the requirement that the determination be made ''as close as possible to the completion of the model.''

71. The Commission concludes that the Bureau's action falls within its delegated authority to interpret and implement the requirements of the unsubsidized competitor rule. ACS's arguments fail for two reasons. First, while the Commission required that the list of eligible areas be determined as close as possible to the completion of the cost model, that does not necessarily translate to a requirement that the unsubsidized status of a provider be determined based on whether that provider is receiving funding at the time the cost model is completed. While the former is a decision made by the Commission, the latter is an interpretation of what it means to be ''unsubsidized,'' and the authority to make that interpretation is delegated to the Bureau.

72. Second, ACS's argument is not ripe for our consideration. The Bureau has not ruled that any and all providers receiving support after the start of Phase II qualify as unsubsidized. Quite the opposite: the Bureau presumes such providers are subsidized and requires that they come forward to present evidence if they wish to challenge that designation. In light of this, all the Bureau did was provide a procedural vehicle through which interested parties could—if they so choose—present certain evidence for consideration. Recognizing that the Commission delegated to the Bureau the implementation of the challenge process, the Commission is not persuaded that it was beyond the Bureau's delegated authority to invite parties to bring such evidence to the agency's attention.

73. Ultimately, the issue of the Bureau's delegated authority is moot, however, because the Commission agrees that the Phase II challenge process is the appropriate venue for parties to present evidence that they serve areas with a service that meets the standards established for Phase II, and that those areas should be excluded from the offer of support to price cap carriers. The Commission therefore affirms the Bureau's invitation to interested parties to present such evidence in the challenge process. ACS will suffer no substantial prejudice by the challenge process proceeding as the Bureau has outlined, as there will be time to make any final determinations on this topic based on a full record before the offer of support is extended. It is appropriate and timely for the Bureau to move forward with the Phase II challenge process now.

74. To provide all interested parties, including those outside Alaska, the opportunity to weigh in more broadly on how the Commission can use Connect America funding most efficiently, it seeks comment more generally on this topic in the concurrently adopted FNPRM. Specifically, the Commission proposes to exclude areas with competitors, whether or not subsidized, from Phase II eligibility in certain circumstances. Parties are free to raise substantive arguments in response to the concurrently adopted FNPRM as to whether this approach would harm universal service. As such, the Commission declines to address ACS's substantive policy arguments at this time, and it denies ACS's Application for Review.

B. NCTA Application for Review

75. NCTA challenges the Bureau's determination that the standards used for Phase II recipients' service obligations will also be used in assessing whether a provider qualifies as an unsubsidized competitor. The Commission concludes that the arguments advanced by NCTA are not appropriate for consideration in an application for review. The Commission therefore dismisses NCTA's Application for Review.

76. NCTA seeks review of the Bureau's determination that uniform standards will be used in assessing whether areas are served by unsubsidized competitors as well as setting the requirements that apply to recipients of Phase II model-based support. NCTA argues that using the same standards for both groups will result in wasteful and inefficient use of universal service funds; that the decision is tantamount to directly regulating broadband rates, terms, and conditions; and that unsubsidized competitors should not be held to the same performance standards as Phase II recipients, but rather should be evaluated based only on the speed of their offerings.

77. NCTA's arguments constitute an untimely petition for reconsideration of the decisions made in the *USF/ICC Transformation Order*, and, therefore, are not proper for an application for review. The decision for which NCTA seeks review is not an action taken by the Bureau on delegated authority; therefore, the matter is not properly addressed in an application for review. In the *USF/ICC Transformation Order,* the Commission affirmatively decided

that a uniform standard will apply in determining what areas are served by an unsubsidized competitor as well as in setting the performance obligations for recipients of Phase II model-based support. Rather than constituting a new decision made under delegated authority, the Bureau's *Phase II Service Obligations Order* simply implements the Commission's prior direction to use a uniform standard. Per the Commission's rules, a party may file an application for review if it is ''aggrieved by any action taken pursuant to delegated authority.'' But NCTA is not challenging a decision the Bureau made on delegated authority. Rather, NCTA challenges the Bureau's implementation of a prior Commission decision. An application for review of a Bureau decision implementing a Commission directive may not be used as a vehicle to seek reconsideration of the Commission's earlier decision. The proper method for challenging the Commission's decision on this point would have been for NCTA to seek reconsideration of the *USF/ICC Transformation Order.* However, the window for filing such a petition has passed. The Commission therefore dismisses NCTA's Application for Review of the *Phase II Service Obligations Order* as improper on the grounds that the application does not seek review of any Bureau action taken pursuant to delegated authority; to the extent the filing should be viewed as a petition for reconsideration of the Commission's decision in the *USF/ICC Transformation Order,* it dismisses it as untimely.

78. The Commission concludes that NCTA's application is procedurally defective. Therefore, the Commission dismisses NCTA's Application for Review.

VI. Seventh Order on Reconsideration

79. In this section, the Commission addresses several petitions for reconsideration of certain aspects of the *USF/ICC Transformation Order*, making adjustments where appropriate. First, to provide a more measured transition for rate-of-return carriers that would have qualified for SNA support based on their significant network investment, the Commission permits such carriers to receive SNA for such investments made in 2010 and 2011. Second, the Commission denies a petition challenging the imposition of broadband public interest conditions on recipients of high-cost support, concluding that does not constitute common carrier regulation. Third, the Commission eliminates the HCLS benchmarking rule so that carriers' HCLS will no longer be limited by benchmarks calculated using the QRA methodology.

A. Safety Net Additive

80. When the Commission adopted SNA, the number of access lines was growing. At that time, the Commission did not anticipate that incumbent telephone companies would lose access lines as they have over the past decade. Because incumbent LECs qualified for SNA support by realizing growth in TPIS on a per-line basis, decreasing access lines resulted in the majority of carriers receiving SNA support due to significant loss of lines, rather than significant increases in investment. For example, in 2009 and 2010, close to sixty percent of incumbent LECs that qualified for SNA did so because of line loss rather than increased investment.

81. In the 2011 *USF/ICC Transformation Order,* the Commission made the decision to eliminate and phase out SNA. The Commission found that the mechanism was not fulfilling its purpose of encouraging ''additional significant investment in telecommunications plant'' because the majority of incumbent carriers qualified for SNA due to line loss rather than network investment. The Commission decided that carriers that qualified for SNA support due to a 14 percent or greater increase in total TPIS over the prior year would continue to receive support for the full five-year period for which they were eligible. The Commission concluded that other carriers—i.e., those qualifying for SNA based on line loss—would have their SNA support phased down by 50 percent in 2012 and completely eliminated in 2013 because such support was not being paid on the basis of significant investment in telecommunications plant. Because the Commission eliminated SNA effective December 29, 2011, carriers that otherwise would have newly received SNA in 2012 or 2013 based on qualifying investments prior to the effective date of the Commission's action were no longer eligible for SNA.

82. Since the release of the *USF/ICC Transformation Order,* rate-of-return carriers have urged the Commission to reconsider its decision to eliminate SNA support. NECA, OPASTCO, and WTA (NECA et al.) also argue that, rather than eliminating SNA support, the Commission should revise the qualification requirements for SNA so that only those carriers that increase their total network investment from year-to-year—i.e., carriers that experience total year-over-year, rather than per-line, TPIS growth—would qualify for SNA support. Both NECA et al. and USTelecom urge the Commission to extend the SNA phase down schedule for carriers that qualified for SNA based on line loss. On December 20, 2012, North Central Telephone Cooperative, Inc. (North Central) filed a petition seeking waiver of the Commission's rules to enable it to receive SNA support for investments the company made in 2010. North Central alleges that the decrease in support as a result of the elimination of SNA has caused it to defer investments that would have resulted in lower annual operating costs and increased broadband availability and adoption in very rural areas.

83. *Discussion.* On reconsideration, the Commission concludes that a more measured transition for carriers that qualified for SNA based on investment is appropriate. Specifically, the Commission will allow carriers that would have qualified for SNA based on increased investment—an increase of at least 14 percent in their total TPIS in 2010 or 2011—to receive such support. This relief applies only to carriers that would have qualified for such support based on investment undertaken in 2010 or 2011 that led to a 14 percent or greater increase in total TPIS, not carriers that would have qualified due to line loss. The Commission concludes that providing SNA support for this limited group of carriers is consistent with our goal of increasing rural broadband deployment by promoting investment in modern networks. Moreover, providing SNA for this discrete group of carriers is consistent with the Commission's goal of ''phas[ing] in reform with measured but certain transitions, so companies affected by reform have time to adapt to changing circumstances.'' Because of the relief granted herein, the Commission dismisses North Central's petition as moot.

84. The Commission reiterates that carriers are not entitled to universal service support simply because they may have an expectation of such support. However, the Commission believes that providing a more measured transition for carriers is not only consistent with the original intent of the SNA mechanism, but also furthers the goals of the *USF/ICC Transformation Order,* which was intended to expand modern communications networks in rural communities throughout the country.

85. The Commission notes that our decision, by focusing only on those carriers who qualify for SNA based on significant network investments, will have a limited budgetary impact. In 2013, USAC disbursed approximately

$20 million in SNA support to eligible carriers. The Commission estimates that allowing SNA support for carriers qualifying for SNA based on investment in 2010 and 2011 will result in an increase of approximately $31.5 million in SNA support in 2014, $12 million annually in 2015 and 2016, and $4.5 million in 2017.

86. The Commission otherwise finds that parties have presented no new evidence or raised new arguments that convince us to delay or reverse the Commission's general decision to eliminate and phase out SNA. Accordingly, the Commission denies other requests to reconsider actions relating to SNA.

87. As the Commission explained in the *USF/ICC Transformation Order,* allowing qualification based on growth in total investment rather than per line investment, as petitioners suggest, ''would not address [the Commission's] overarching concern that [SNA] as a whole does not provide the right incentives for investment in modern communications networks.'' For example, the rule provided support for investment in terrestrial wireline networks in extremely high-cost areas where it may be more cost effective to deploy alternative technologies. The rule also provided SNA to carriers for investments in areas served by an unsubsidized competitor. Therefore, simply modifying the qualification requirement, rather than eliminating SNA altogether, would fail to provide sufficient assurance that carriers receiving support in the future would make reasonable or cost-efficient investments or target these investments to areas that would not otherwise be served, contrary to the goals of the *USF/ICC Transformation Order.*

88. The Commission also declines to alter the phase down of support for carriers that qualified for SNA due to line loss prior to or during 2009. The phase down adopted by the Commission was part of a total package of reforms designed to balance the Commission's objectives of advancing the availability of modern networks capable of supporting broadband and voice services at reasonably comparable rates and encouraging efficient investment while minimizing the burden on consumers and businesses. The Commission found that the SNA mechanism was not well designed to meet its intended purpose. Extending the phase down for two additional years would thwart the Commission's reform goals and reward inefficiency.

89. The Commission also is not persuaded by USTelecom's argument that it should extend the phase down of SNA support for incumbent rate-of-return carriers that qualified for SNA support due to line loss to provide treatment equivalent to that provided to competitive ETCs. In the *USF/ICC Transformation Order*, the Commission established a five-year transition period for competitive ETCs' existing high-cost universal service support in recognition of the fact that they were losing all support with the elimination of the identical support rule. The Commission adopted this phase down to eliminate legacy support entirely for competitive ETCs. Rate-of-return carriers remain eligible to receive support from existing high-cost support mechanisms as reformed by the *USF/ICC Transformation Order*, as well as CAF–ICC support. As such, the different approach for competitive ETCs makes sense in the context of the overall set of reforms.

B. Broadband Public Interest Conditions

90. For price cap carriers, the Commission began the process of transitioning high-cost support to the Connect America Fund. In Connect America Phase I, the Commission froze existing high-cost support for price cap carriers and their rate-of-return affiliates until Connect America Phase II is implemented. As a condition of receiving this frozen support, the Commission required price cap carriers to use a portion of that support ''to build and operate broadband-capable networks'' necessary ''to offer the provider's own retail broadband service in areas substantially unserved by an unsubsidized competitor.''

91. The *USF/ICC Transformation Order* also implemented a number of reforms for rate-of-return carriers. Relevant here, the Commission determined that rate-of-return carriers would continue to receive support under existing universal service support mechanisms (subject to some modifications to improve the efficiency and effectiveness of those mechanisms). As a condition on the continued receipt of high-cost loop support, interstate common line support, and support from the CAF–ICC recovery mechanism, the Commission required rate-of-return carriers to provide broadband service meeting the specified performance requirements upon reasonable request for service and within a reasonable amount of time.

92. In its petition for reconsideration, USTelecom claims that the Commission ''lacks authority'' to condition the receipt of ''legacy'' federal universal support on these broadband public interest conditions. It argues that these conditions constitute ''common-carrier regulation,'' and that because broadband is classified as a Title I information service, the Commission is precluded from imposing such conditions on support pursuant to section 3(51) of the Act. That section provides, in relevant part, that ''[a] telecommunications carrier shall be treated as a common carrier under this [Act] only to the extent that it is engaged in providing telecommunications services.''

93. *Discussion.* The broadband public interest conditions that the *USF/ICC Transformation Order* imposes on the receipt of federal universal service subsidies do not constitute a *per se* common carrier obligation. After the *USF/ICC Transformation Order,* as before, carriers or their affiliated Internet Service Providers are free to offer or decline to sell broadband Internet access service to any end user. Carriers need not hold themselves out to offer service indiscriminately to anyone. Instead, carriers only have to provide broadband service to a customer if the carrier seeks designation as an ETC from a state commission or the FCC and requests federal subsidies. As such, the *USF/ICC Transformation Order* imposes funding conditions, not ''regulation''—and certainly not a *per se* common carrier obligation. Indeed, as the United States Court of Appeals for the Tenth Circuit has explained, conditions placed on the receipt of federal universal service subsidies—even though they may be similar to the duties imposed on common carriers—do not amount to a *per se* common carrier obligation because carriers voluntarily assume the conditions in the first instance and ''retain[] the ability to opt out of them entirely by declining . . . federal universal service subsidies.'' USTelecom concedes that price cap carriers ''may decline [Connect America] Phase I incremental support if they 'cannot meet [the Commission's] broadband deployment requirement' and may decide not to accept [Connect America] Phase II support.'' The same holds true with respect to legacy support—price cap carriers have the option of declining legacy high-cost support if they do not want to comply with the broadband public interest conditions in the *USF/ICC Transformation Order.*

94. The Commission is not persuaded by the argument that the broadband public interest obligations are not a voluntarily assumed condition on the receipt of federal subsidies because incumbent LECs cannot recover the costs they incur fulfilling various other regulatory obligations in the absence of high-cost universal service support and, therefore, incumbent LECs have no

choice but to comply with the broadband public interest conditions. Implicit in this argument is the notion that incumbent LECs are entitled to universal service subsidies. The Commission considered and rejected a variation on this argument, which is analogous to a takings claim, in the *USF/ICC Transformation Order.* Indeed, consistent with our view, reviewing courts have uniformly rejected similar entitlement claims, recognizing that the ''purpose of universal service is to benefit the customer, not the carrier.''

95. Moreover, all incumbent LECs are subject to regulatory obligations as incumbents, irrespective of whether they receive high-cost universal service support. Thus, those obligations, which are distinct from the universal service objectives of section 254, do not entitle some subset of incumbent LECs to high-cost universal service support. Further, incumbent LECs recover the costs associated with many of those obligations from other sources. Accordingly, the Commission does not agree that incumbent LECs have no choice but to comply with the broadband public interest conditions because they will not be able to recover their costs in the absence of federal subsidies.

96. Likewise, the Commission does not share the view that support is not '' 'sufficient . . . to preserve and advance universal service.' '' The Commission explained, at length, the basis of its predictive judgment that federal universal service subsidies would be sufficient to support both voice and broadband in the *USF/ICC Transformation Order,* and nothing leads us to reconsider that determination. As the courts have held, consumers are the intended beneficiaries of universal service subsidies. Properly viewed from the customer's perspective, the evidence demonstrates that support is sufficient for purposes of section 254(b)(5).

97. Marketplace trends since the Commission adopted the *USF/ICC Transformation Order* support the Commission's conclusion that support is sufficient to meet the broadband public interest obligations. For example, there has been an increase in broadband deployment by incumbent LECs, both price-cap and rate-of-return carriers. Likewise, there have been increases in both broadband and telephone penetration rates since the adoption of the *USF/ICC Transformation Order.* If support was insufficient the Commission would expect those rates to stagnate or decline. The Commission also finds no evidence that the broadband public interest obligations have proved to be too onerous for incumbent LECs. To the contrary, since the Commission adopted the *USF/ICC Transformation Order* in 2011, only 14 out of the nation's approximately 740 rate-of-return carriers have sought waivers of universal service support reductions. Given the dearth of such waiver requests, the Commission finds no merit to the claim that it's providing incumbent LECs insufficient support to satisfy the broadband public interest conditions.

98. Even if the broadband public interest conditions amounted to regulation, which they do not, they fall far short of a *per se* common carrier obligation. The DC Circuit has held that a carrier is ''being relegated to common carrier status'' if that carrier ''is forced to offer service indiscriminately and on general terms.'' USTelecom's petition for reconsideration, which lacks any discussion of how the broadband public interest conditions are commensurate with a *per se* common carrier obligation under Title II of the Act, fails to demonstrate that those conditions impose such a duty on universal service support recipients. After the *USF/ICC Transformation Order,* as before, providers are free to set their own prices for broadband service and may charge different rates to different end-user customers. Indeed, the broadband public interest conditions only require ETCs to offer broadband service if they request federal subsidies, and then to do so at rates in rural areas that are ''reasonably comparable'' to those in urban areas. In other words, ETCs are free to offer their broadband services on terms they choose, and may offer different pricing structures to different areas of the country, subject only to the condition that the rates they offer in rural areas fall within a ''reasonable range of urban rates for reasonably comparable broadband service.''

99. If, for example, a customer such as a community anchor institution negotiated terms and pricing for broadband services with an ETC to address the unique needs of that institution, the *USF/ICC Transformation Order* does not then require the ETC to offer those same terms to any—let alone all—of the ETC's other customers. As such, the broadband public interest conditions ''leave[] substantial room for individualized bargaining and discrimination in terms,'' distinguishing them from common carriage.

C. Elimination of the Benchmarking Rule

100. In the February 2013 *Sixth Order on Reconsideration,* 78 FR 16808, March 19, 2013, the Commission reconsidered some aspects of the benchmarking rule. WTA, ERTA, and NECA (the Rural Associations) filed a petition for reconsideration of that Order. In their petition, the Rural Associations claim that the current benchmarking methodology results in unpredictable support and discourages investment in telecommunications and broadband infrastructure; they urge the Commission to reconsider its conclusion that the rule produces predictable support, or use at a minimum benchmarks solely as a trigger to determine if a carrier's costs require further examination.

101. Subsequently, the Bureau implemented a data collection to update study area boundaries used in developing the geographical variables in the regression analysis. In July 2013, the Bureau took several additional measures to provide greater clarity regarding the support amounts that rate-of-return carriers would receive in 2014.

102. *Discussion.* The Commission remains firmly committed to the goal of ensuring that universal service support is utilized efficiently to preserve voice and extend broadband-capable networks in high-cost areas in rural America. As discussed in the *USF/ICC Transformation Order,* the Commission has taken steps to reform the universal service mechanisms that support rate-of-return carriers ''to address the misaligned incentives'' of the previous regime ''by correcting program design flaws, extending successful safeguards, ensuring basic fiscal responsibility, and closing loopholes to ensure our rules reward only prudent and efficient investment in modern networks.''

103. The Commission now concludes, however, that the benchmarking rule is not effectively advancing those objectives. When the Commission adopted the benchmarking rule in the *USF/ICC Transformation Order,* it anticipated that the rule would encourage carriers to make fiscally responsible investments in their infrastructure and that the support redistributed by the rule would encourage new investment in voice and broadband-capable networks. Based on our further experience with the rule, however, the Commission concludes that it is not functioning as originally intended. Therefore, on reconsideration, the Commission eliminates the benchmarking rule.

104. The Commission now finds that the rule unintentionally has encouraged carriers that were not subject to the benchmarks to believe that they too needed to limit their investment in broadband-capable networks. This was due in part to the fact that the new rule

relied on a statistical methodology that was unfamiliar to many affected stakeholders.

105. The evidence before us does not permit us to draw a firm conclusion regarding the actual impact of the rule in question; much of the concern appears to be focused on potential other reforms that might be implemented in the future. A number of trade associations, carriers, and consultants have expressed to the Commission that the benchmarking rule has been discouraging investment. According to the Rural Associations, 69 percent of the NTCA members that responded to a survey stated that they were ''postponing or cancelling fixed network upgrades'' due to ''uncertainty surrounding'' the benchmarking rule and other reforms in the *USF/ICC Transformation Order.* On the other hand, the Bureau's *Universal Service Implementation Progress Report* noted that in the year following the April 2012 implementation of the benchmarking rule, there was a 10 percent increase in the number of census bocks reported by rate-of-return carriers in which service at speeds of at least 3 Mbps/768 kbps was available. Investment thus has continued to occur post-*USF/ICC Transformation Order,* and we would expect the steps we take today will lead to even greater investment in the deployment of next-generation broadband networks.

106. While the Bureau staff and affected stakeholders have proceeded in good faith to implement the directives of the Commission in the *Sixth Order on Reconsideration,* the Commission anticipates it still would take many months for the Bureau develop new regressions, seek public input on potential equations, and finalize the methodology to be used to calculate support in 2014 and beyond. No party has provided any concrete suggestions as to what standards should be applied to determine excessive costs if the benchmarking rule were used as a trigger for further examination of costs. Thus, the Commission declines to adopt the Rural Associations' suggestion that it use the QRA as a trigger to determine if a carrier's costs require further examination, although it is firmly committed to developing standards for what are reasonable and appropriate investments for rate-of-return carriers. The Commission now concludes that eliminating the benchmarking rule at this time is a prudent step that should enable rate-of-return carriers to evaluate realistically the impact of the reforms adopted in the *USF/ICC Transformation Order* on their business operations and extend broadband-capable infrastructure where economically appropriate. As a result of this decision, carriers' HCLS support will no longer be capped by benchmarks calculated using the QRA methodology. Instead, the Commission is leaving in place the HCLS mechanism that the Rural Associations themselves argue is predictable, while it continues to evaluate alternative ways to ensure that rate-of-return carriers have structural incentives to operate efficiently and make prudent expenditures with universal service support.

107. With the elimination of the benchmarking rule, carriers' HCLS support will be distributed as it previously had been prior to the *USF/ICC Transformation Order.* Nothing in today's decision disturbs the other rules governing eligibility for HCLS, such as the HCLS indexed cap, which limits the total amount of HCLS provided to rate-of-return carriers and has been in effect for decades. Likewise, the $250 monthly per-line cap on total high-cost federal universal service support and the corporate operations expense limitations for ICLS remain in place for all rate-of-return carriers.

108. The Commission continues to have significant concerns with the ''race to the top'' incentives that exist under the HCLS rule. Given the perception of and concerns with the benchmarking rule, however, the Commission concludes it is appropriate to eliminate it while it considers options to increase incentives for efficient investment of universal service funds. The Commission will press forward with efforts to ensure that these funds are disbursed efficiently and in the public interest. Such efforts are essential if the Commission is to remain within the budget framework established by a unanimous Commission in the *USF/ICC Transformation Order.* The Commission seeks comment in the concurrently adopted FNPRM on several specific reforms to the existing support mechanisms for rate-of-return carriers, while inviting additional proposals that will create an appropriate framework for network investment and expansion over the longer term.

109. *ASTAC and CVTC's Application for Review.* The Commission also takes this opportunity to dismiss ASTAC and CVTC's untimely filed application for review of the *Sixth Order on Reconsideration.* The *Sixth Order on Reconsideration* was not properly subject to an application for review, because it was adopted by the Commission and not by the Bureau on delegated authority. Moreover, even if the Commission were to treat the application as a petition for reconsideration, it dismisses the pleading pursuant to section 1.429(d) and (i) of the Commission's rules. Not only does the application address an issue that is wholly unrelated to and outside the scope of the *Sixth Order on Reconsideration* (the QRA's climate variable), but the application was also filed 30 days late—petitions for reconsideration must be filed within 30 days of public notice, and whereas the *Sixth Order on Reconsideration* was published in the **Federal Register** on March 19, 2013, the application for review was not filed until May 18, 2013.

VII. Procedural Matters

A. Paperwork Reduction Act Analysis

110. This document contains new information collection requirements subject to the PRA. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new information collection requirements contained in this proceeding. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, it previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees. The Commission describes impacts that might affect small businesses, which includes most businesses with fewer than 25 employees, in the Final Regulatory Flexibility Analysis (FRFA) in Appendix C, *infra.*

B. Final Regulatory Flexibility Analysis

111. As required by the Regulatory Flexibility Act of 1980 (RFA), as amended, an Initial Regulatory Flexibility Analyses (IRFA) was incorporated in the *Further Notice of Proposed Rule Making (USF/ICC Transformation FNRPM).* The Commission sought written public comment on the proposals in the *USF/ICC Transformation FNRPM,* including comment on the IRFA. The Commission did not receive any relevant comments on the *USF/ICC Transformation FNPRM* IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

1. Need for, and Objectives of, the Report and Order, Declaratory Ruling, and Order

112. The Report and Order adopts several rules to establish the foundation for the award of support in price cap areas where the price cap carrier declines the offer of model-based support. Specifically, the Commission

concludes that all areas where the average cost per location equals or exceeds a specified cost benchmark are eligible for Phase II support in the competitive bidding process. The Commission sets a support term of 10 years for support awarded through the competitive bidding process. Finally, the Commission permits price cap carriers that decline model-based support to participate in the competitive bidding process.

113. The Commission also addresses more generally provider eligibility for support through the competitive bidding process and the Remote Areas Fund. The Commission permits entities to seek designation as eligible telecommunications carriers (ETC) after notification they are winning bidders for the offer of Phase II Connect America funding. The Commission also concludes that recipients of support through the competitive bidding process or Remote Areas Fund must certify as to their financial and technical capabilities to provide the required services within the specified timeframe in the geographic area for which they seek support.

114. The Commission issues a declaratory ruling to provide rate-of-return carriers greater clarity regarding their obligations to extend broadband service upon reasonable request.

115. In the Order, the Commission phases in support reductions associated with the 2014 rate floor of $20.46 over a multi-year period to provide time for incumbent carriers and state commissions to make any adjustments they deem necessary. In particular, the Commission defers any support reductions for lines that have rates of $14 or greater until January 2, 2015. Between January 2, 2015, and June 30, 2016, the Commission implements support reductions only to the extent rates are below $16; between July 1, 2016 and June 30, 2017, it implements support reductions only for lines with rates under $18 or the rate floor established by the 2016 rate survey, whichever is lower; and between July 1, 2017 and June 30, 2018, the Commission implements support reductions only for lines with rates under $20 or the 2017 rate floor, whichever is lower. Thus, the impact of this rule is phased in over a four-year period. In addition, the Commission waives any support reductions associated with lines provided to customers enrolled in the Lifeline program. This will minimize the effect of rate-floor-related support reductions on small entities with Lifeline customers.

116. The Commission also reconsiders certain aspects of the *USF/ICC Transformation Order* in response to petitions from a variety of stakeholders. These modifications reflect our continuing commitment in the universal service reforms to efficiency and creating the appropriate incentives to invest and operate modern voice and broadband-capable networks. First, to provide a more measured transition for rate-of-return carriers that would have qualified under the prior rules for certain support known as Safety Net Additive (SNA) based on their significant network investment, the Commission permits such carriers to receive SNA for such investments made in 2010 and 2011. Second, the Commission eliminates the high-cost loop support (HCLS) benchmarking rule so that rate-of-return carriers' support will no longer be limited by benchmarks calculated using quantile regression analysis (QRA).

117. In addition, the Commission waives the application fees for carriers seeking a study area waiver to transfer lines below the sub-exchange level. Prior to this decision, study area waivers required an application fee of $7,990 regardless of the number of lines involved. Because the processing of sub-exchange level transfers is now routine, the burden and cost associated with reviewing these petitions has been reduced and the application fee, which is a deterrent to transferring lines, is no longer necessary. The Commission also denies a petition for reconsideration of the Commission's decision to impose broadband public interest obligations on recipients of high-cost support, and in the Memorandum Opinion and Order the Commission dismisses or denies two applications for review of the Wireline Competition Bureau's (Bureau) *Phase II Service Obligations Order.*

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

118. There were no relevant comments filed that specifically addressed the rules and policies proposed in the *USF/ICC Transformation FNPRM* IRFA.

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

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

120. *Small Businesses.* Nationwide, there are a total of approximately 27.5 million small businesses, according to the SBA.

121. *Wired Telecommunications Carriers.* The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees. According to Census Bureau data for 2007, there were 3,188 firms in this category, total, that operated for the entire year. Of this total, 3,144 firms had employment of 999 or fewer employees, and 44 firms had employment of 1,000 employees or more. Thus, under this size standard, the majority of firms can be considered small.

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

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

incumbent local exchange service are small businesses that may be affected by rules adopted pursuant to the Order.

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

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

126. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to interexchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of these 359 companies, an estimated 317 have 1,500 or fewer employees and 42 have more than 1,500 employees. Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by rules adopted pursuant to the Order.

127. *Prepaid Calling Card Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 193 carriers have reported that they are engaged in the provision of prepaid calling cards. Of these, an estimated all 193 have 1,500 or fewer employees and none have more than 1,500 employees. Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by rules adopted pursuant to the Order.

128. *Local Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 211 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by rules adopted pursuant to the Order.

129. *Toll Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 857 have 1,500 or fewer employees and 24 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by rules adopted pursuant to the Order.

130. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 284 companies reported that their primary telecommunications service activity was the provision of other toll carriage. Of these, an estimated 279 have 1,500 or fewer employees and five have more than 1,500 employees. Consequently, the Commission estimates that most Other Toll Carriers are small entities that may be affected by the rules and policies adopted pursuant to the Order.

131. *800 and 800-Like Service Subscribers.* Neither the Commission nor the SBA has developed a small business size standard specifically for 800 and 800-like service (toll free) subscribers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. The most reliable source of information regarding the number of these service subscribers appears to be data the Commission collects on the 800, 888, 877, and 866 numbers in use. According to our data, as of September 2009, the number of 800 numbers assigned was 7,860,000; the number of 888 numbers assigned was 5,588,687; the number of 877 numbers assigned was 4,721,866; and the number of 866 numbers assigned was 7,867,736. The Commission does not have data specifying the number of these subscribers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small businesses under the SBA size standard. Consequently, the Commission estimates that there are 7,860,000 or fewer small entity 800 subscribers; 5,588,687 or fewer small entity 888 subscribers; 4,721,866 or fewer small entity 877 subscribers; and 7,867,736 or fewer small entity 866 subscribers.

132. *Wireless Telecommunications Carriers (except Satellite).* Since 2007, the SBA has recognized wireless firms within this new, broad, economic census category. Prior to that time, such

firms were within the now-superseded categories of Paging and Cellular and Other Wireless Telecommunications. Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. For this category, census data for 2007 show that there were 1,383 firms that operated for the entire year. Of this total, 1,368 firms had employment of 999 or fewer employees and 15 had employment of 1000 employees or more. Similarly, according to Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) Telephony services. Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. Consequently, the Commission estimates that approximately half or more of these firms can be considered small. Thus, using available data, the Commission estimates that the majority of wireless firms can be considered small.

133. *Broadband Personal Communications Service.* The broadband personal communications service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined ''small entity'' for Blocks C and F as an entity that has average gross revenues of $40 million or less in the three previous calendar years. For Block F, an additional classification for ''very small business'' was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These standards defining ''small entity'' in the context of broadband PCS auctions have been approved by the SBA. No small businesses, within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. In 1999, the Commission re-auctioned 347 C, E, and F Block licenses. There were 48 small business winning bidders. In 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction 35. Of the 35 winning bidders in this auction, 29 qualified as ''small'' or ''very small'' businesses. Subsequent events, concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant. In 2005, the Commission completed an auction of 188 C block licenses and 21 F block licenses in Auction 58. There were 24 winning bidders for 217 licenses. Of the 24 winning bidders, 16 claimed small business status and won 156 licenses. In 2007, the Commission completed an auction of 33 licenses in the A, C, and F Blocks in Auction 71. Of the 14 winning bidders, six were designated entities. In 2008, the Commission completed an auction of 20 Broadband PCS licenses in the C, D, E and F block licenses in Auction 78.

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

135. *Narrowband Personal Communications Services.* In 1994, the Commission conducted an auction for Narrowband PCS licenses. A second auction was also conducted later in 1994. For purposes of the first two Narrowband PCS auctions, ''small businesses'' were entities with average gross revenues for the prior three calendar years of $40 million or less. Through these auctions, the Commission awarded a total of 41 licenses, 11 of which were obtained by four small businesses. To ensure meaningful participation by small business entities in future auctions, the Commission adopted a two-tiered small business size standard in the *Narrowband PCS Second Report and Order,* 65 FR 35843, June 6, 2000. A ''small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $40 million. A ''very small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million. The SBA has approved these small business size standards. A third auction was conducted in 2001. Here, five bidders won 317 (Metropolitan Trading Areas and nationwide) licenses. Three of these claimed status as a small or very small entity and won 311 licenses.

136. *Paging (Private and Common Carrier).* In the *Paging Third Report and Order,* 64 FR 33762, June 24, 1999, the Commission developed a small business size standard for ''small businesses'' and ''very small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A ''small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a ''very small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. The SBA has approved these small business size standards. According to Commission data, 291 carriers have reported that they are engaged in Paging or Messaging Service. Of these, an estimated 289 have 1,500 or fewer employees, and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of paging providers are small entities that may be affected by our action. An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 2,499 licenses auctioned, 985 were sold. Fifty-seven companies claiming small business status won 440 licenses. A subsequent auction of MEA and Economic Area (''EA'') licenses was held in the year 2001. Of the 15,514 licenses auctioned, 5,323 were sold. One hundred thirty-two companies claiming small business status purchased 3,724 licenses. A third auction, consisting of 8,874 licenses in each of 175 EAs and 1,328 licenses in all but three of the 51 MEAs, was held in 2003. Seventy-seven bidders claiming small or very small business status won

2,093 licenses. A fourth auction, consisting of 9,603 lower and upper paging band licenses was held in the year 2010. Twenty-nine bidders claiming small or very small business status won 3,016 licenses.

137. *220 MHz Radio Service—Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a small business size standard for small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, the Commission applies the small business size standard under the SBA rules applicable to Wireless Telecommunications Carriers (except Satellite). Under this category, the SBA deems a wireless business to be small if it has 1,500 or fewer employees. The Commission estimates that nearly all such licensees are small businesses under the SBA's small business size standard that may be affected by rules adopted pursuant to the Order.

138. *220 MHz Radio Service—Phase II Licensees.* The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service is subject to spectrum auctions. In the *220 MHz Third Report and Order,* 62 FR 15978, April 3, 1997, the Commission adopted a small business size standard for ''small'' and ''very small'' businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. This small business size standard indicates that a ''small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. A ''very small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed $3 million for the preceding three years. The SBA has approved these small business size standards. Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998. In the first auction, 908 licenses were auctioned in three different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Thirty-nine small businesses won licenses in the first 220 MHz auction. The second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.

139. *Specialized Mobile Radio.* The Commission awards small business bidding credits in auctions for Specialized Mobile Radio (''SMR'') geographic area licenses in the 800 MHz and 900 MHz bands to entities that had revenues of no more than $15 million in each of the three previous calendar years. The Commission awards very small business bidding credits to entities that had revenues of no more than $3 million in each of the three previous calendar years. The SBA has approved these small business size standards for the 800 MHz and 900 MHz SMR Services. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction was completed in 1996. Sixty bidders claiming that they qualified as small businesses under the $15 million size standard won 263 geographic area licenses in the 900 MHz SMR band. The 800 MHz SMR auction for the upper 200 channels was conducted in 1997. Ten bidders claiming that they qualified as small businesses under the $15 million size standard won 38 geographic area licenses for the upper 200 channels in the 800 MHz SMR band. A second auction for the 800 MHz band was conducted in 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses.

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

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

142. *Broadband Radio Service and Educational Broadband Service.* Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (''MDS'') and Multichannel Multipoint Distribution Service (''MMDS'') systems, and ''wireless cable,'' transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service (''BRS'') and Educational Broadband Service (''EBS'') (previously referred to as the Instructional Television Fixed Service (''ITFS'')). In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of no more than $40 million in the previous three calendar years. The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (''BTAs''). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, the Commission estimates that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent BRS licensees that are considered small entities. After adding the number of small business auction licensees to the number of incumbent licensees not already counted, the Commission finds that there are currently approximately 440 BRS licensees that are defined as small businesses under either the SBA or the Commission's rules. The Commission has adopted three levels of bidding credits for BRS: (i) A bidder with attributed average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years (small business) is eligible to receive a 15 percent discount on its winning bid; (ii) a bidder with attributed average annual gross revenues that exceed $3 million and do not exceed $15 million for the preceding three years (very small business) is eligible to receive a 25 percent discount on its winning bid; and (iii) a bidder with attributed average annual gross

revenues that do not exceed $3 million for the preceding three years (entrepreneur) is eligible to receive a 35 percent discount on its winning bid. In 2009, the Commission conducted Auction 86, which offered 78 BRS licenses. Auction 86 concluded with ten bidders winning 61 licenses. Of the ten, two bidders claimed small business status and won 4 licenses; one bidder claimed very small business status and won three licenses; and two bidders claimed entrepreneur status and won six licenses.

143. In addition, the SBA's Cable Television Distribution Services small business size standard is applicable to EBS. There are presently 2,032 EBS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities. Thus, the Commission estimates that at least 1,932 licensees are small businesses. Since 2007, Cable Television Distribution Services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.'' The SBA defines a small business size standard for this category as any such firms having 1,500 or fewer employees. The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. According to Census Bureau data for 2007, there were a total of 955 firms in this previous category that operated for the entire year. Of this total, 939 firms had employment of 999 or fewer employees, and 16 firms had employment of 1000 employees or more. Thus, under this size standard, the majority of firms can be considered small and may be affected by rules adopted pursuant to the Order.

144. *Lower 700 MHz Band Licenses.* The Commission previously adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits. The Commission defined a ''small business'' as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years. A ''very small business'' is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years. Additionally, the Lower 700 MHz Band had a third category of small business status for Metropolitan/Rural Service Area (''MSA/RSA'') licenses, identified as ''entrepreneur'' and defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. The SBA approved these small size standards. The Commission conducted an auction in 2002 of 740 Lower 700 MHz Band licenses (one license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings (EAGs)). Of the 740 licenses available for auction, 484 licenses were sold to 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won a total of 329 licenses. The Commission conducted a second Lower 700 MHz Band auction in 2003 that included 256 licenses: 5 EAG licenses and 476 Cellular Market Area licenses. Seventeen winning bidders claimed small or very small business status and won 60 licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses. In 2005, the Commission completed an auction of 5 licenses in the Lower 700 MHz Band, designated Auction 60. There were three winning bidders for five licenses. All three winning bidders claimed small business status.

145. In 2007, the Commission reexamined its rules governing the 700 MHz band in the *700 MHz Second Report and Order,* 72 FR 48814, August 24, 2007. The *700 MHz Second Report and Order* revised the band plan for the commercial (including Guard Band) and public safety spectrum, adopted services rules, including stringent build-out requirements, an open platform requirement on the C Block, and a requirement on the D Block licensee to construct and operate a nationwide, interoperable wireless broadband network for public safety users. An auction of A, B and E block licenses in the Lower 700 MHz band was held in 2008. Twenty winning bidders claimed small business status (those with attributable average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years). Thirty three winning bidders claimed very small business status (those with attributable average annual gross revenues that do not exceed $15 million for the preceding three years). In 2011, the Commission conducted Auction 92, which offered 16 Lower 700 MHz band licenses that had been made available in Auction 73 but either remained unsold or were licenses on which a winning bidder defaulted. Two of the seven winning bidders in Auction 92 claimed very small business status, winning a total of four licenses.

146. *Upper 700 MHz Band Licenses.* In the *700 MHz Second Report and Order,* the Commission revised its rules regarding Upper 700 MHz band licenses. In 2008, the Commission conducted Auction 73 in which C and D block licenses in the Upper 700 MHz band were available. Three winning bidders claimed very small business status (those with attributable average annual gross revenues that do not exceed $15 million for the preceding three years).

147. *700 MHz Guard Band Licensees.* In the *700 MHz Guard Band Order,* 65 FR 17594, April 4, 2000, the Commission adopted a small business size standard for ''small businesses'' and ''very small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A ''small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years. Additionally, a ''very small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years. An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000. Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001 and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.

148. *Cellular Radiotelephone Service.* Auction 77 was held to resolve one group of mutually exclusive applications for Cellular Radiotelephone Service licenses for unserved areas in New Mexico. Bidding credits for designated entities were not available in Auction 77. In 2008, the Commission completed the closed auction of one unserved service area in the Cellular Radiotelephone Service, designated as Auction 77. Auction 77 concluded with one provisionally winning bid for the unserved area totaling $25,002.

149. *Private Land Mobile Radio (''PLMR'').* PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories, and are often used in support of the licensee's primary (non-telecommunications) business operations. For the purpose of determining whether a licensee of a PLMR system is a small business as defined by the SBA, the Commission uses the broad census category, Wireless Telecommunications Carriers (except Satellite). This definition provides that a small entity is any such entity employing no more than 1,500 persons. The Commission does not require PLMR licensees to disclose information about number of employees, so the Commission does not have information that could be used to determine how many PLMR licensees constitute small entities under this definition. The Commission notes that PLMR licensees generally use the licensed facilities in support of other business activities, and therefore, it would also be helpful to assess PLMR licensees under the standards applied to the particular industry subsector to which the licensee belongs.

150. As of March 2010, there were 424,162 PLMR licensees operating 921,909 transmitters in the PLMR bands below 512 MHz. The Commission notes that any entity engaged in a commercial activity is eligible to hold a PLMR license, and that any revised rules in this context could therefore potentially impact small entities covering a great variety of industries.

151. *Rural Radiotelephone Service.* The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (BETRS). In the present context, the Commission will use the SBA's small business size standard applicable to Wireless Telecommunications Carriers (except Satellite), i.e., an entity employing no more than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies proposed herein.

152. *Air-Ground Radiotelephone Service.* The Commission has not adopted a small business size standard specific to the Air-Ground Radiotelephone Service. The Commission will use SBA's small business size standard applicable to Wireless Telecommunications Carriers (except Satellite), i.e., an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and the Commission estimates that almost all of them qualify as small under the SBA small business size standard and may be affected by rules adopted pursuant to the Order.

153. *Aviation and Marine Radio Services.* Small businesses in the aviation and marine radio services use a very high frequency (VHF) marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category Wireless Telecommunications Carriers (except Satellite), which is 1,500 or fewer employees. Census data for 2007, which supersede data contained in the 2002 Census, show that there were 1,383 firms that operated that year. Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of our evaluations in this analysis, the Commission estimates that there are up to approximately 712,000 licensees that are small businesses (or individuals) under the SBA standard. In addition, between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875–157.4500 MHz (ship transmit) and 161.775–162.0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a ''small'' business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $15 million dollars. In addition, a ''very small'' business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $3 million dollars. There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as ''small'' businesses under the above special small business size standards and may be affected by rules adopted pursuant to the Order.

154. *Fixed Microwave Services.* Fixed microwave services include common carrier, private operational-fixed, and broadcast auxiliary radio services. At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not created a size standard for a small business specifically with respect to fixed microwave services. For purposes of this analysis, the Commission uses the SBA small business size standard for Wireless Telecommunications Carriers (except Satellite), which is 1,500 or fewer employees. The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus is unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are up to 22,015 common carrier fixed licensees and up to 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies adopted herein. The Commission notes, however, that the common carrier microwave fixed licensee category includes some large entities.

155. *Offshore Radiotelephone Service.* This service operates on several UHF television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico. There are presently approximately 55 licensees in this service. The Commission is unable to estimate at this time the number of licensees that would qualify as small under the SBA's small business size standard for the category of Wireless Telecommunications Carriers (except Satellite). Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees. Census data for 2007, which supersede data contained in the 2002 Census, show that there were 1,383 firms that operated that year. Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus, under this category and the associated small business size standard, the majority of firms can be considered small.

156. *39 GHz Service.* The Commission created a special small business size

standard for 39 GHz licenses—an entity that has average gross revenues of $40 million or less in the three previous calendar years. An additional size standard for ''very small business'' is: An entity that, together with affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. The SBA has approved these small business size standards. The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses. Consequently, the Commission estimates that 18 or fewer 39 GHz licensees are small entities that may be affected by rules adopted pursuant to the Order.

157. *Local Multipoint Distribution Service.* Local Multipoint Distribution Service (LMDS) is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications. The auction of the 986 LMDS licenses began and closed in 1998. The Commission established a small business size standard for LMDS licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years. An additional small business size standard for ''very small business'' was added as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. The SBA has approved these small business size standards in the context of LMDS auctions. There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. In 1999, the Commission re-auctioned 161 licenses; there were 32 small and very small businesses winning that won 119 licenses.

158. *218–219 MHz Service.* The first auction of 218–219 MHz spectrum resulted in 170 entities winning licenses for 594 Metropolitan Statistical Area (MSA) licenses. Of the 594 licenses, 557 were won by entities qualifying as a small business. For that auction, the small business size standard was an entity that, together with its affiliates, has no more than a $6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than $2 million in annual profits each year for the previous two years. In the *218–219 MHz Report and Order and Memorandum Opinion and Order,* 64 FR 59656, November 3, 1999, the Commission established a small business size standard for a ''small business'' as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not to exceed $15 million for the preceding three years. A ''very small business'' is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not to exceed $3 million for the preceding three years. These size standards will be used in future auctions of 218–219 MHz spectrum.

159. *2.3 GHz Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined ''small business'' for the wireless communications services (''WCS'') auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a ''very small business'' as an entity with average gross revenues of $15 million for each of the three preceding years. The SBA has approved these definitions. The Commission auctioned geographic area licenses in the WCS service. In the auction, which was conducted in 1997, there were seven bidders that won 31 licenses that qualified as very small business entities, and one bidder that won one license that qualified as a small business entity.

160. *1670–1675 MHz Band.* An auction for one license in the 1670–1675 MHz band was conducted in 2003. The Commission defined a ''small business'' as an entity with attributable average annual gross revenues of not more than $40 million for the preceding three years and thus would be eligible for a 15 percent discount on its winning bid for the 1670–1675 MHz band license. Further, the Commission defined a ''very small business'' as an entity with attributable average annual gross revenues of not more than $15 million for the preceding three years and thus would be eligible to receive a 25 percent discount on its winning bid for the 1670–1675 MHz band license. One license was awarded. The winning bidder was not a small entity.

161. *3650–3700 MHz band.* In March 2005, the Commission released a *Report and Order and Memorandum Opinion and Order* that provides for nationwide, non-exclusive licensing of terrestrial operations, utilizing contention-based technologies, in the 3650 MHz band (i.e., 3650–3700 MHz). As of April 2010, more than 1270 licenses have been granted and more than 7,433 sites have been registered. The Commission has not developed a definition of small entities applicable to 3650–3700 MHz band nationwide, non-exclusive licensees. However, the Commission estimates that the majority of these licensees are Internet Access Service Providers (ISPs) and that most of those licensees are small businesses.

162. *24 GHz—Incumbent Licensees.* This analysis may affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. For this service, the Commission uses the SBA small business size standard for the category ''Wireless Telecommunications Carriers (except satellite),'' which is 1,500 or fewer employees. To gauge small business prevalence for these cable services we must, however, use the most current census data. Census data for 2007, which supersede data contained in the 2002 Census, show that there were 1,383 firms that operated that year. Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small. The Commission notes that the Census' use of the classifications ''firms'' does not track the number of ''licenses''. The Commission believes that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent and TRW, Inc. It is our understanding that Teligent and its related companies have less than 1,500 employees, though this may change in the future. TRW is not a small entity. Thus, only one incumbent licensee in the 24 GHz band is a small business entity.

163. *24 GHz—Future Licensees.* With respect to new applicants in the 24 GHz band, the size standard for ''small business'' is an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not in excess of $15 million. ''Very small business'' in the 24 GHz band is an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding $3 million for the preceding three years. The SBA has approved these small business size standards. These size standards will apply to a future 24 GHz license auction, if held.

164. *Satellite Telecommunications.* Since 2007, the SBA has recognized satellite firms within this revised category, with a small business size standard of $15 million. The most current Census Bureau data are from the economic census of 2007, and the Commission will use those figures to gauge the prevalence of small businesses in this category. Those size standards are for the two census

categories of ''Satellite Telecommunications'' and ''Other Telecommunications.'' Under the ''Satellite Telecommunications'' category, a business is considered small if it had $15 million or less in average annual receipts. Under the ''Other Telecommunications'' category, a business is considered small if it had $25 million or less in average annual receipts.

165. The first category of Satellite Telecommunications ''comprises establishments primarily engaged in providing point-to-point telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.'' For this category, Census Bureau data for 2007 show that there were a total of 512 firms that operated for the entire year. Of this total, 464 firms had annual receipts of under $10 million, and 18 firms had receipts of $10 million to $24,999,999. Consequently, the Commission estimates that the majority of Satellite Telecommunications firms are small entities that might be affected by rules adopted pursuant to the Order.

166. The second category of Other Telecommunications ''primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.'' For this category, Census Bureau data for 2007 show that there were a total of 2,383 firms that operated for the entire year. Of this total, 2,346 firms had annual receipts of under $25 million. Consequently, the Commission estimates that the majority of Other Telecommunications firms are small entities that might be affected by our action.

167. *Cable and Other Program Distribution.* Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.'' The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. According to Census Bureau data for 2007, there were a total of 955 firms in this previous category that operated for the entire year. Of this total, 939 firms had employment of 999 or fewer employees, and 16 firms had employment of 1000 employees or more. Thus, under this size standard, the majority of firms can be considered small and may be affected by rules adopted pursuant to the Order.

168. *Cable Companies and Systems.* The Commission has developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers, nationwide. Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard. In addition, under the Commission's rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers. Industry data indicate that, of 7,208 systems nationwide, 6,139 systems have under 10,000 subscribers, and an additional 379 systems have 10,000–19,999 subscribers. Thus, under this second size standard, most cable systems are small and may be affected by rules adopted pursuant to the Order.

169. *Cable System Operators.* The Act also contains a size standard for small cable system operators, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate. Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard. The Commission notes that it neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million, and therefore it is unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

170. *Open Video Services.* The open video system (''OVS'') framework was established in 1996, and is one of four statutorily recognized options for the provision of video programming services by local exchange carriers. The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services, OVS falls within the SBA small business size standard covering cable services, which is ''Wired Telecommunications Carriers.'' The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. According to Census Bureau data for 2007, there were a total of 955 firms in this previous category that operated for the entire year. Of this total, 939 firms had employment of 999 or fewer employees, and 16 firms had employment of 1000 employees or more. Thus, under this second size standard, most cable systems are small and may be affected by rules adopted pursuant to the Order. In addition, the Commission notes that it has certified some OVS operators, with some now providing service. Broadband service providers (''BSPs'') are currently the only significant holders of OVS certifications or local OVS franchises. The Commission does not have financial or employment information regarding the entities authorized to provide OVS, some of which may not yet be operational. Thus, again, at least some of the OVS operators may qualify as small entities.

171. *Internet Service Providers.* Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.'' The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. According to Census Bureau data for 2007, there were 3,188 firms in this category, total, that operated for the entire year. Of this total, 3,144 firms had employment of 999 or fewer employees, and 44 firms had employment of 1000 employees or more. Thus, under this

size standard, the majority of firms can be considered small. In addition, according to Census Bureau data for 2007, there were a total of 396 firms in the category Internet Service Providers (broadband) that operated for the entire year. Of this total, 394 firms had employment of 999 or fewer employees, and two firms had employment of 1000 employees or more. Consequently, the Commission estimates that the majority of these firms are small entities that may be affected by rules adopted pursuant to the Order.

172. *Internet Publishing and Broadcasting and Web Search Portals.* Our action may pertain to interconnected VoIP services, which could be provided by entities that provide other services such as email, online gaming, web browsing, video conferencing, instant messaging, and other, similar IP-enabled services. The Commission has not adopted a size standard for entities that create or provide these types of services or applications. However, the Census Bureau has identified firms that ''primarily engaged in (1) publishing and/or broadcasting content on the Internet exclusively or (2) operating Web sites that use a search engine to generate and maintain extensive databases of Internet addresses and content in an easily searchable format (and known as Web search portals).'' The SBA has developed a small business size standard for this category, which is: All such firms having 500 or fewer employees. According to Census Bureau data for 2007, there were 2,705 firms in this category that operated for the entire year. Of this total, 2,682 firms had employment of 499 or fewer employees, and 23 firms had employment of 500 employees or more. Consequently, the Commission estimates that the majority of these firms are small entities that may be affected by rules adopted pursuant to the Order.

173. *Data Processing, Hosting, and Related Services.* Entities in this category ''primarily . . . provid[e] infrastructure for hosting or data processing services.'' The SBA has developed a small business size standard for this category; that size standard is $25 million or less in average annual receipts. According to Census Bureau data for 2007, there were 8,060 firms in this category that operated for the entire year. Of these, 7,744 had annual receipts of under $24,999,999. Consequently, the Commission estimates that the majority of these firms are small entities that may be affected by rules adopted pursuant to the Order.

174. *All Other Information Services.* The Census Bureau defines this industry as including ''establishments primarily engaged in providing other information services (except news syndicates, libraries, archives, Internet publishing and broadcasting, and Web search portals).'' Our action pertains to interconnected VoIP services, which could be provided by entities that provide other services such as email, online gaming, web browsing, video conferencing, instant messaging, and other, similar IP-enabled services. The SBA has developed a small business size standard for this category; that size standard is $7.0 million or less in average annual receipts. According to Census Bureau data for 2007, there were 367 firms in this category that operated for the entire year. Of these, 334 had annual receipts of under $5.0 million, and an additional 11 firms had receipts of between $5 million and $9,999,999. Consequently, the Commission estimates that the majority of these firms are small entities that may be affected by our action.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

175. In the Report and Order, the Commission requires that entities participating in the Phase II competitive bidding process and the Remote Areas Fund certify as to their financial and technical capabilities to provide the required services within the specified timeframe in the geographic area for which they seek support.

176. The Commission also makes a procedural rule amendment to require all ETCs to file their section 54.313 and 54.314 reports and certifications in WC Docket No. 14–58.

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

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

178. The rules that the Commission adopts in the Report and Order, Declaratory Ruling, Order, Memorandum Opinion and Order, and Seventh Order on Reconsideration provide flexibility by streamlining certain processes for all carriers, including small entities. For example, the Commission permits entities that wish to participate in the Phase II competitive bidding process to seek ETC designation for the Phase II competitive bidding process and Remote Areas Fund after being notified they are winning bidders for the offer of the award of Phase II Connect America funding. The Commission recognized that some qualified bidders, including small entities, may be hesitant to invest resources to apply for an ETC designation prior to the competitive bidding process without any sense of whether they are likely to be awarded Phase II support.

179. In the Order, the Commission also removes a deterrent for all carriers, including small carriers, that wish to transfer or acquire parts of exchanges. The Commission waives on our own motion the $7,990 application fee for carriers filing petitions for waiver of the study area boundary freeze for transfers at the sub-exchange level. This change could be especially beneficial to small entities that may have found the application fee prohibitive. The Order also delays any support reductions associated with the rate floor rule over a multi-year period, giving carriers, including small carriers, more time to adjust to the requirement.

180. The rules that the Commission adopts for the Phase II competitive bidding process also provide flexibility for all participants, including small entities, to determine the most cost-effective way to serve areas where they are awarded support through the competitive bidding process. By permitting participants to select to bid on extremely high-cost areas, the Commission permits participants to build integrated networks that span both types of areas in adjacent census blocks as appropriate. And by providing a funding term of 10 years (subject to existing requirements and the availability of funds), the Commission seeks to stimulate greater interest in the competitive bidding process.

181. The Commission declines to adopt a transition period for competitive ETCs that receive support through the Phase II competitive bidding process because competitive ETCs, including small entities, have the ability to determine the level of support necessary to support an area through their bid, and thus a transition period is unnecessary.

182. The Commission also takes steps to provide greater certainty to rate-of-

return carriers, many of which are small entities. For example, in the Declaratory Ruling, the Commission clarifies its requirements for rate-of-return carriers relating to the extension of broadband services upon reasonable request. And in the Seventh Order on Reconsideration, the Commission eliminates the HCLS benchmarking rule after finding that the rule unintentionally has encouraged carriers that were not subject to the benchmarks to believe that they too needed to limit their investment in broadband-capable networks. In the Seventh Order on Reconsideration, the Commission also adopts a more measured transition for carriers that qualified for SNA based on investment. In the *USF/ICC Transformation Order,* the Commission made the decision to eliminate and phase out SNA effective December 29, 2011. Because there is a two year lag between when carriers qualify for SNA support and receive support, this decision precluded carriers that would have qualified for SNA support in 2010 and 2011, before the Commission's decision to eliminate SNA, from receiving SNA. The Commission reconsiders this decision and permit carriers that that would have qualified for SNA in 2010 or 2011 based on an increase in their investment (not due to line loss) to receive SNA.

6. Report to Congress

183. The Commission will send a copy of the Report and Order, Declaratory Ruling, Memorandum Opinion and Order, Seventh Order on Reconsideration, and concurrently adopted Further Notice of Proposed Rulemaking, including this FRFA, in a report to be sent to Congress and the Government Accountability Office pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. In addition, the Commission will send a copy of the Report and Order, Declaratory Ruling, Order, Memorandum Opinion and Order, Seventh Order on Reconsideration, and concurrently adopted Further Notice of Proposed Rulemaking, including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Report and Order, Declaratory Ruling, Memorandum Opinion and Order, Seventh Order on Reconsideration, and concurrently adopted Further Notice of Proposed Rulemaking (or summaries thereof) will also be published in the **Federal Register**

VIII. Ordering Clauses

184. Accordingly, *it is ordered,* pursuant to the authority contained in sections 1, 2, 4(i), 5, 201–206, 214, 218–220, 251, 252, 254, 256, 303(r), 332, 403, and 405 of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. 151, 152, 154(i), 155, 201–206, 214, 218–220, 251, 252, 254, 256, 303(r), 332, 403, 405, 1302, and sections 1.1, 1.2, 1.3, 1.115, 1.421, 1.427, and 1.429 of the Commission's rules, 47 CFR 1.1, 1.2, 1.3, 1.115, 1.421, 1.427, and 1.429, that this Report and Order, Declaratory Ruling, Order, Memorandum Opinion and Order, Seventh Order on Reconsideration, and the concurrently adopted Further Notice of Proposed Rulemaking IS ADOPTED, effective thirty (30) days after publication of the text or summary thereof in the **Federal Register**, except for (1) those rules and requirements involving Paperwork Reduction Act burdens, which shall become effective immediately upon announcement in the **Federal Register** of OMB approval, (2) the waiver of sections 1.1105, 54.318(b), and 54.318(i) of the Commission's rules to the extent described herein which shall become effective upon release pursuant to sections 1.4(b)(2) and 1.103 of the Commission's rules (47 CFR 1.4(b)(2), 1.103), and (3) the elimination of the benchmarking rule, which shall become effective as of the first month following publication of a summary of this order in the **Federal Register**. It is our intention in adopting these rules that if any of the rules that the Commission retain, modify, or adopt herein, or the application thereof to any person or circumstance, are held to be unlawful, the remaining portions of the rules not deemed unlawful, and the application of such rules to other persons or circumstances, shall remain in effect to the fullest extent permitted by law.

185. *It is further ordered* that Parts 36, 54, and 69 of the Commission's rules, 47 CFR Parts 36, 54, and 69, *are amended* as set forth in Appendix A, and such rule amendments *shall be effective* thirty (30) days after publication of the rules amendments in the **Federal Register**, except to the extent they contain information collections subject to PRA review. The rules that contain information collections subject to PRA review *shall become effective* immediately upon announcement in the **Federal Register** of OMB approval.

186. *It is further ordered* that, pursuant to the authority contained in sections 1, 2, and 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), and section 1.3 of the Commission's rules, 47 CFR 1.3, the Petition for Extension of Time filed by the Eastern Rural Telecom Association, the Independent Telephone & Telecommunications Alliance, the National Exchange Carrier Association, NTCA—The Rural Broadband Association, the United States Telecom Association, and WTA—Advocates for Rural Broadband on March 11, 2014, *is granted in part* and *is denied in part* to the extent described herein.

187. *It is further ordered* that, pursuant to the authority contained in section 5(c)(5) of the Communications Act of 1934, as amended, 47 U.S.C. 155(c)(5), and section 1.115(g) of the Commission's rules, 47 CFR 1.115(g), the Application for Review filed by Alaska Communication Systems on November 26, 2013, *is denied.*

188. *It is further ordered* that, pursuant to section 5(c)(5) of the Communications Act of 1934, as amended, 47 U.S.C. 155(c)(5), and section 1.115(g) of the Commission's rules, 47 CFR 1.115(g), the Application for Review filed by the National Cable and Telecommunications Association on December 23, 2013, *is dismissed.*

189. *It is further ordered* that, pursuant to the authority contained in section 405 of the Communications Act of 1934, as amended, 47 U.S.C. 405, and section 1.429 of the Commission's rules, 47 CFR 1.429, the Petition for Reconsideration and Clarification filed by the National Exchange Carrier Association, Inc., the Organization for the Promotion and Advancement of Small Telecommunications Companies, and the Western Telecommunications Alliance on December 29, 2011, *is granted in part and denied in part* to the extent described herein.

190. *It is further ordered* that, pursuant to the authority contained in section 405 of the Communications Act of 1934, as amended, 47 U.S.C. 405, and section 1.429 of the Commission's rules, 47 CFR 1.429, the Petition for Reconsideration filed by the United States Telecom Association on December 29, 2011, *is denied in part* to the extent described herein.

191. *It is further ordered* that the petition for waiver of section 36.605 of the Commission's rules, 47 CFR 36.605, eliminating eligibility of local exchange carriers to receive Safety Net Additive support with respect to qualifying investments made during the year 2010, filed by North Central Telephone Cooperative, Inc. on December 20, 2012, *is dismissed* as described herein.

192. *It is further ordered* that, pursuant to the authority contained in section 405 of the Communications Act of 1934, as amended, 47 U.S.C. 405, and section 1.429 of the Commission's rules, 47 CFR 1.429, the Petition for Reconsideration filed by the Western

Telecommunications Alliance, The Eastern Rural Telecom Association, and the National Exchange Carrier Association on April 18, 2013, is *granted* to the extent described herein.

193. *It is further ordered* that, pursuant to the authority contained in sections 5 and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 155(c), 405, and sections 1.115 and 1.429 of the Commission's rules, 47 CFR 1.115, 1.429, the Application for Review filed by Arctic Slope Telephone Association Cooperative, Inc. and Copper Valley Telephone Cooperative on May 20, 2013 and dated May 18, 2013, is *dismissed* as described herein.

194. *It is further ordered* that, pursuant to the authority contained in sections 1, 2, and 4(i), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 405, and sections 1.3 and 1.429 of the Commission's rules, 47 CFR 1.3, 1.429, the petition filed by the National Association of Regulatory Utility Commissioners on April 15, 2014 *is granted in part* and *denied in part* to the extent described herein.

195. *It is further ordered* that, pursuant to the authority contained in sections 1, 2, and 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), and sections 1.3,1.4(b)(2), and 1.103 of the Commission's rules, 47 CFR 1.3, 1.4(b)(2), 1.103 on our own motion, section 1.1105 of the Commission's rules, 47 CFR 1.1105 is *waived* to the extent described herein effective upon release.

196. *It is further ordered* that, pursuant to the authority contained in sections 1, 2, and 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), and sections 1.3, 1.4(b)(2), and 1.103 of the Commission's rules, 47 CFR 1.3, 1.4(b)(2), 1.103, sections 54.318(b) and 54.318(i) of the Commission's rules, 47 CFR 54.318(b), (i) are *waived* to the extent described herein effective upon release.

197. *It is further ordered* that the Commission *shall send* a copy of this Report and Order, Declaratory Ruling, Order, Memorandum Opinion and Order, Seventh Order on Reconsideration, and concurrently adopted Further Notice of Proposed Rulemaking to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

198. *It is further ordered,* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Report and Order, Declaratory Ruling, Order, Memorandum Opinion and Order, Seventh Order on Reconsideration, and concurrently adopted Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis and the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 36

Communications common carriers, Reporting and recordkeeping requirements, Telephone, Uniform System of Accounts.

47 CFR Part 54

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

47 CFR Part 69

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rule

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 36, 54, and 69 as follows:

PART 36—JURISDICTIONAL SEPARATIONS PROCEDURES; STANDARD PROCEDURES FOR SEPARATING TELECOMMUNICATIONS PROPERTY COSTS, REVENUES, EXPENSES, TAXES AND RESERVES FOR TELECOMMUNICATIONS COMPANIES

■ 1. The authority citation for part 36 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i) and (j), 205, 221(c), 254, 303(r), 403, 410, and 1302 unless otherwise noted.

Subpart F—[Removed and Reserved]

■ 2. Remove and reserve subpart F, consisting of §§ 36.601, 36.603 through 36.605, 36.611 through 36.613, 36.621, 36.622 and 36.631.

PART 54—UNIVERSAL SERVICE

■ 3. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 201, 205, 214, 219, 220, 254, 303(r), 403, and 1302 unless otherwise noted.

■ 4. Amend § 54.302 by revising paragraph (b) to read as follows:

§ 54.302 Monthly per-line limit on universal service support.

* * * * *

(b) For purposes of this section, universal service support is defined as the sum of the amounts calculated pursuant to §§ 54.1304 and 54.1310, and §§ 54.305, and 54.901 through 54.904. Line counts for purposes of this section shall be as of the most recent line counts reported pursuant to § 54.1306(i).

* * * * *

■ 5. Amend § 54.305 by revising paragraphs (d) and (e) to read as follows:

§ 54.305 Sale or transfer of exchanges.

* * * * *

(d) Transferred exchanges in study areas operated by rural telephone companies that are subject to the limitations on loop-related universal service support in paragraph (b) of this section may be eligible for a safety valve loop cost expense adjustment based on the difference between the rural incumbent local exchange carrier's index year expense adjustment and subsequent year loop cost expense adjustments for the acquired exchanges. Safety valve loop cost expense adjustments shall only be available to rural incumbent local exchange carriers that, in the absence of restrictions on high-cost loop support in paragraph (b) of this section, would qualify for high-cost loop support for the acquired exchanges under § 54.1310.

(1) For carriers that buy or acquire telephone exchanges on or after January 10, 2005, from an unaffiliated carrier, the index year expense adjustment for the acquiring carrier's first year of operation shall equal the selling carrier's loop-related expense adjustment for the transferred exchanges for the 12-month period prior to the transfer of the exchanges. At the acquiring carrier's option, the first year of operation for the transferred exchanges, for purposes of calculating safety valve support, shall commence at the beginning of either the first calendar year or the next calendar quarter following the transfer of exchanges. For the first year of operation, a loop cost expense adjustment, using the costs of the acquired exchanges submitted in accordance with §§ 54.1305 and 54.1306, shall be calculated pursuant to § 54.1310 and then compared to the index year expense adjustment. Safety valve support for the first period of operation will then be calculated pursuant to paragraph (d)(3) of this section. The index year expense adjustment for years after the first year of operation shall be determined using cost data for the first year of operation

of the transferred exchanges. Such cost data for the first year of operation shall be calculated in accordance with §§ 54.1305, 54.1306, and 54.1310. For each year, ending on the same calendar quarter as the first year of operation, a loop cost expense adjustment, using the loop costs of the acquired exchanges, shall be submitted and calculated pursuant to §§ 54.1305, 54.1306, and 54.1310 and will be compared to the index year expense adjustment. Safety valve support for the second year of operation and thereafter will then be calculated pursuant to paragraph (d)(3) of this section.

(2) For carriers that bought or acquired exchanges from an unaffiliated carrier before January 10, 2005, and are not subject to the exception in paragraph (c) of this section, the index year expense adjustment for acquired exchange(s) shall be equal to the rural incumbent local exchange carrier's high-cost loop expense adjustment for the acquired exchanges calculated for the carrier's first year of operation of the acquired exchange(s). At the carrier's option, the first year of operation of the transferred exchanges shall commence at the beginning of either the first calendar year or the next calendar quarter following the transfer of exchanges. The index year expense adjustment shall be determined using cost data for the acquired exchange(s) submitted in accordance with §§ 54.1305 and 54.1306 and shall be calculated in accordance with § 54.1310. The index year expense adjustment for rural telephone companies that have operated exchanges subject to this section for more than a full year on August 8, 2014 shall be based on loop cost data submitted in accordance with § 54.1306 for the year ending on the nearest calendar quarter following August 8, 2014. For each subsequent year, ending on the same calendar quarter as the index year, a loop cost expense adjustment, using the costs of the acquired exchanges, will be calculated pursuant to § 54.1310 and will be compared to the index year expense adjustment. Safety valve support is calculated pursuant to paragraph (d)(3) of this section.

(3) Up to fifty (50) percent of any positive difference between the transferred exchanges loop cost expense adjustment and the index year expense adjustment will be designated as the transferred exchange's safety valve loop cost expense adjustment and will be available in addition to the per-line loop-related support transferred from the selling carrier to the acquiring carrier pursuant to paragraph (b) of this section. In no event shall a study area's safety valve loop cost expense adjustment exceed the difference between the carrier's study area loop cost expense adjustment calculated pursuant to § 54.1310 and transferred support amounts available to the acquired exchange(s) under paragraph (b) of this section. Safety valve support shall not transfer with acquired exchanges.

(e) The sum of the safety valve loop cost expense adjustment for all eligible study areas operated by rural telephone companies shall not exceed five (5) percent of the total rural incumbent local exchange carrier portion of the annual nationwide loop cost expense adjustment calculated pursuant to § 54.1302. The five (5) percent cap on the safety valve mechanism shall be based on the lesser of the rural incumbent local exchange carrier portion of the annual nationwide loop cost expense adjustment calculated pursuant to § 54.1302 or the sum of rural incumbent local exchange carrier expense adjustments calculated pursuant to § 54.1310. The percentage multiplier used to derive study area safety valve loop cost expense adjustments for rural telephone companies shall be the lesser of fifty (50) percent or a percentage calculated to produce the maximum total safety valve loop cost expense adjustment for all eligible study areas pursuant to this paragraph. The safety valve loop cost expense adjustment of an individual rural incumbent local exchange carrier also may be further reduced as described in paragraph (d)(3) of this section.

* * * * *

■ 6. Amend § 54.310 by revising paragraphs (a) and (b) and adding paragraphs (e) and (f) to read as follows:

§ 54.310 Connect America Fund for Price Cap Territories—Phase II.

(a) *Geographic areas eligible for support.* Connect America Phase II support may be made available for census blocks or other areas identified as eligible by public notice, including locations identified by the forward-looking cost model as extremely high-cost. The number of supported locations will be identified for each area eligible for support will be identified by public notice.

(b) *Term of support.* Connect America Phase II model-based support shall be provided to price cap carriers that elect to make a state-wide commitment for five years. Connect America Phase II support awarded through a competitive bidding process shall be provided for ten years.

* * * * *

(e) *Provider eligibility.* Any eligible telecommunications carrier is eligible to receive Connect America Phase II support in eligible areas.

(1) An entity may obtain eligible telecommunications carrier designation after public notice of winning bidders in a competitive bidding process for the offer of Phase II Connect America support. An applicant in the competitive bidding process shall certify that it is financially and technically qualified to provide the services supported by Connect America Phase II in order to receive such support.

(2) To the extent an applicant in the competitive bidding process seeks eligible telecommunications carrier designation prior to public notice of winning bidders for Phase II Connect America support, its designation as an eligible telecommunications carrier may be conditional subject to the receipt of Phase II Connect America support.

(f) *Transition to model-based support.* Eligible telecommunications carriers electing model-based support in states where that support is less than their Phase I frozen support will transition to model-based support as follows: In addition to model-based support, in the first year of Phase II, they will receive 75% of the difference between Phase I frozen support and model-based support; in the second year of Phase II, they will receive 50% of the difference between Phase I frozen support and model-based support; and in the third year of Phase II, they will receive 25% of the difference between Phase I frozen support and model-based support.

■ 7. Amend § 54.313 by revising paragraphs (f)(1) introductory text and (i) to read as follows:

§ 54.313 Annual reporting requirements for high-cost recipients.

* * * * *

(f) * * *

(1) *Beginning July 1, 2015.* A progress report on its five-year service quality plan pursuant to § 54.202(a) that includes the following information:

* * * * *

(i) All reports pursuant to this section shall be filed with the Office of the Secretary of the Commission clearly referencing WC Docket No. 14–58, with the Administrator, and with the relevant state commissions or relevant authority in a U.S. Territory, or Tribal governments, as appropriate.

* * * * *

■ 8. Amend § 54.314 by revising paragraph (c) to read as follows:

§ 54.314 Certification of support for eligible telecommunications carriers.

* * * * *

(c) *Certification format.* (1) A certification pursuant to this section may be filed in the form of a letter from the appropriate regulatory authority for the State, and must be filed with both the Office of the Secretary of the Commission clearly referencing WC Docket No. 14–58, and with the Administrator of the high-cost support mechanism, on or before the deadlines set forth in paragraph (d) of this section. If provided by the appropriate regulatory authority for the State, the annual certification must identify which carriers in the State are eligible to receive federal support during the applicable 12-month period, and must certify that those carriers only used support during the preceding calendar year and will only use support in the coming calendar year for the provision, maintenance, and upgrading of facilities and services for which support is intended. A State may file a supplemental certification for carriers not subject to the State's annual certification. All certificates filed by a State pursuant to this section shall become part of the public record maintained by the Commission.

(2) An eligible telecommunications carrier not subject to the jurisdiction of a State shall file a sworn affidavit executed by a corporate officer attesting that the carrier only used support during the preceding calendar year and will only use support in the coming calendar year for the provision, maintenance, and upgrading of facilities and services for which support is intended. The affidavit must be filed with both the Office of the Secretary of the Commission clearly referencing WC Docket No. 14–58, and with the Administrator of the high-cost universal service support mechanism, on or before the deadlines set forth in paragraph (d) of this section. All affidavits filed pursuant to this section shall become part of the public record maintained by the Commission.

* * * * *

■ 9. Amend § 54.318 by revising paragraphs (d) and (g) to read as follows:

§ 54.318 High-cost support; limitations on high-cost support.

* * * * *

(d) For purposes of this section, high-cost support is defined as the support available pursuant to § 54.1310 and frozen high-cost support provided to price cap carriers to the extent it is based on support previously provided pursuant to § 54.1310 or former high-cost proxy model support.

* * * * *

(g) Any reductions in high-cost support under this section will not be redistributed to other carriers that receive support pursuant to § 54.1310.

* * * * *

■ 10. Add § 54.319 to subpart D to read as follows:

§ 54.319 Elimination of high-cost support in areas with 100 percent coverage by an unsubsidized competitor.

(a) Universal service support shall be eliminated in an incumbent local exchange carrier study area where an unsubsidized competitor, or combination of unsubsidized competitors, as defined in § 54.5, offers to 100 percent of residential and business locations in the study area voice and broadband service at speeds of at least 4 Mbps downstream/1 Mbps upstream, with latency suitable for real-time applications, including Voice over Internet Protocol, and usage capacity that is reasonably comparable to comparable offerings in urban areas, at rates that are reasonably comparable to rates for comparable offerings in urban areas.

(b) After a determination there is a 100 percent overlap, the incumbent local exchange carrier shall receive the following amount of high-cost support:

(1) In the first year, two-thirds of the lesser of the incumbent's total 2010 high-cost support or $3000 times the number of reported lines as of year-end 2010;

(2) In the second year, one-third of the lesser of the incumbent's total 2010 high-cost support or $3000 times the number of reported lines as of year-end 2010;

(3) In the third year and thereafter, no support shall be paid.

■ 11. Amend § 54.903 by revising paragraphs (a)(1) and (2) to read as follows:

§ 54.903 Obligations of rate-of-return carriers and the Administrator.

(a) * * *

(1) Beginning July 31, 2002, each rate-of-return carrier shall submit to the Administrator in accordance with the schedule in § 54.1306 the number of lines it serves, within each rate-of-return carrier study area showing residential and single-line business line counts and multi-line business line counts separately. For purposes of this report, and for purposes of computing support under this subpart, the residential and single-line business class lines reported include lines assessed the residential and single-line business End User Common Line charge pursuant to § 69.104 of this chapter, and the multi-line business class lines reported include lines assessed the multi-line business End User Common Line charge pursuant to § 69.104 of this chapter. For purposes of this report, and for purposes of computing support under this subpart, lines served using resale of the rate-of-return local exchange carrier's service pursuant to section 251(c)(4) of the Communications Act of 1934, as amended, shall be considered lines served by the rate-of-return carrier only and must be reported accordingly.

(2) A rate-of-return carrier may submit the information in paragraph (a) of this section in accordance with the schedule in § 54.1306, even if it is not required to do so. If a rate-of-return carrier makes a filing under this paragraph, it shall separately indicate any lines that it has acquired from another carrier that it has not previously reported pursuant to paragraph (a) of this section, identified by customer class and the carrier from which the lines were acquired.

* * * * *

■ 12. Add subpart M to part 54 to read as follows

Subpart M—High Cost Loop Support for Rate-of-Return Carriers

Sec.

54.1301 General.
54.1302 Calculation of incumbent local exchange carrier portion of nationwide loop cost expense adjustment for rate-of-return carriers.
54.1303 Calculation of the rural growth factor.
54.1304 Calculation of safety net additive.
54.1305 Submission of information to the National Exchange Carrier Association (NECA).
54.1306 Updating information submitted to the National Exchange Carrier Association.
54.1307 Submission of information by the National Exchange Carrier Association.
54.1308 Study area total unseparated loop cost.
54.1309 National and study area average unseparated loop costs.
54.1310 Expense adjustment.

Subpart M—High Cost Loop Support for Rate-of-Return Carriers

§ 54.1301 General.

(a) This subpart addresses support for loop-related costs included in § 54.1308. The expense adjustment calculated pursuant to this subpart M shall be added to interstate expenses and deducted from state expenses after expenses and taxes have been apportioned pursuant to subpart D of part 36 of this chapter. Beginning January 1, 2012, this subpart will only apply to incumbent local exchange

carriers that are rate-of-return carriers not affiliated, as ''affiliated companies'' are defined in § 32.9000 of this chapter, with price cap local exchange carriers. Rate-of-return carriers and price cap local exchange carriers are defined pursuant to § 54.5 and § 61.3(bb) of this chapter, respectively.

(b) The expense adjustment will be computed on the basis of data for a preceding calendar year which may be updated at the option of the carrier pursuant to § 54.1306(a).

§ 54.1302 Calculation of incumbent local exchange carrier portion of nationwide loop cost expense adjustment for rate-of-return carriers.

(a) Beginning January 1, 2013, and each calendar year thereafter, the total annual amount of the incumbent local exchange carrier portion of the nationwide loop cost expense adjustment shall not exceed the amount for the immediately preceding calendar year, multiplied times one plus the Rural Growth Factor calculated pursuant to § 54.1303.

(b) The annual rural incumbent local exchange carrier portion of the nationwide loop cost expense adjustment shall be reduced to reflect the transfer of rural incumbent local exchange carrier access lines that are eligible for expense adjustments pursuant to § 54.1310. The reduction shall equal the amount of the § 54.1310 expense adjustment available to the transferred access lines at the time of the transfer and shall be effective in the next calendar quarter after the access lines are transferred.

(c) Safety net additive support calculated pursuant to § 54.1304, and transferred high-cost support and safety valve support calculated pursuant to § 54.305 of this part shall not be included in the rural incumbent local exchange carrier portion of the annual nationwide loop cost expense adjustment.

§ 54.1303 Calculation of the rural growth factor.

(a) The Rural Growth Factor (RGF) is equal to the sum of the annual percentage change in the United States Department of Commerce's Gross Domestic Product—Chained Price Index (GPD–CPI) plus the percentage change in the total number of rural incumbent local exchange carrier working loops during the calendar year preceding the July 31st filing submitted pursuant to § 54.1305. The percentage change in total rural incumbent local exchange carrier working loops shall be based upon the difference between the total number of rural incumbent local exchange carrier working loops on December 31 of the calendar year preceding the July 31st filing and the total number of rural incumbent local exchange carrier working loops on December 31 of the second calendar year preceding that filing, both determined by the company's submissions pursuant to § 54.1305. Loops acquired by rural incumbent local exchange carriers shall not be included in the RGF calculation.

(b) Beginning July 31, 2012, pursuant to § 54.1301(a), the calculation of the Rural Growth Factor shall not include price cap carrier working loops and rate-of-return local exchange carrier working loops of companies that were affiliated with price cap carriers during the calendar year preceding the July 31st filing submitted pursuant to § 54.1305.

§ 54.1304 Calculation of safety net additive.

(a) *Safety net additive support.* Only those local exchange carriers that qualified for safety net additive based on 2011 or prior year costs shall be eligible to receive safety net additive pursuant to paragraph (c) of this section. A local exchange carrier shall not receive safety net additive unless the carrier's realized total growth in Telecommunications Plant in Service (TPIS) was more than 14 percent in 2011 or earlier, pursuant to paragraph (c) of this section.

(b) *Calculation of safety net additive support for companies that qualified based on 2011 or prior year costs.* Safety net additive support is equal to the amount of capped support calculated pursuant to this subpart M in the qualifying year minus the amount of support in the year prior to qualifying for support subtracted from the difference between the uncapped expense adjustment for the study area in the qualifying year minus the uncapped expense adjustment in the year prior to qualifying for support as shown in the following equation: Safety net additive support = (Uncapped support in the qualifying year – Uncapped support in the base year) – (Capped support in the qualifying year – Amount of support received in the base year).

(c) *Operation of safety net additive support for companies that qualified based on 2011 or prior year costs.* (1) In any year in which the total carrier loop cost expense adjustment is limited by the provisions of § 54.1302, a rate-of-return incumbent local exchange carrier shall receive safety net additive support as calculated in paragraph (b) of this section, if in any study area, the rural incumbent local exchange carrier realizes growth in end of period TPIS, as prescribed in § 32.2001, on a per loop basis, of at least 14 percent more than the study area's TPIS per loop investment at the end of the prior period.

(2) If paragraph (c)(1) of this section is met, the rural incumbent local exchange carrier must notify the Administrator; failure to properly notify the Administrator of eligibility shall result in disqualification of that study area for safety net additive, requiring the rural incumbent local exchange carrier to again meet the eligibility requirements in paragraph (c)(1) of this section for that study area in a subsequent period.

(3) Upon completion of verification by the Administrator that the study area meets the stated criterion in paragraphs (a), (b), or (c) of this section, the Administrator shall:

(i) Pay to any qualifying rural telephone company safety net additive support for the qualifying study area in accordance with the calculation set forth in paragraph (b) of this section; and

(ii) Continue to pay safety net additive support in any of the four succeeding years in which the total carrier loop expense adjustment is limited by the provisions of § 54.1302. Safety net additive support in the succeeding four years shall be the lesser of:

(A) The sum of capped support and the safety net additive support received in the qualifying year; or

(B) The rural telephone company's uncapped support.

§ 54.1305 Submission of information to the National Exchange Carrier Association (NECA)

(a) In order to allow determination of the study areas and wire centers that are entitled to an expense adjustment pursuant to § 54.1310, each incumbent local exchange carrier (LEC) must provide the National Exchange Carrier Association (NECA) (established pursuant to part 69 of this chapter) with the information listed for each study area in which such incumbent LEC operates, with the exception of the information listed in paragraph (h) of this section, which must be provided for each study area. This information is to be filed with NECA by July 31st of each year. The information provided pursuant to paragraph (i) of this section must be updated pursuant to § 54.1306. Rural telephone companies that acquired exchanges subsequent to May 7, 1997, and incorporated those acquired exchanges into existing study areas shall separately provide the information required by paragraphs (b)

through (i) of this section for both the acquired and existing exchanges.

(b) Unseparated, i.e., state and interstate, gross plant investment in Exchange Line Cable and Wire Facilities (C&WF) Subcategory 1.3 and Exchange Line Central Office (CO) Circuit Equipment Category 4.13. This amount shall be calculated as of December 31st of the calendar year preceding each July 31st filing.

(c) Unseparated accumulated depreciation and noncurrent deferred federal income taxes, attributable to Exchange Line C&WF Subcategory 1.3 investment, and Exchange Line CO Circuit Equipment Category 4.13 investment. These amounts shall be calculated as of December 31st of the calendar year preceding each July 31st filing, and shall be stated separately.

(d) Unseparated depreciation expense attributable to Exchange Line C&WF Subcategory 1.3 investment, and Exchange Line CO Circuit Equipment Category 4.13 investment. This amount shall be the actual depreciation expense for the calendar year preceding each July 31st filing.

(e) Unseparated maintenance expense attributable to Exchange Line C&WF Subcategory 1.3 investment and Exchange Line CO Circuit Equipment Category 4.113 investment. This amount shall be the actual repair expense for the calendar year preceding each July 31st filing.

(f) Unseparated corporate operations expenses, operating taxes, and the benefits and rent proportions of operating expenses. The amount for each of these categories of expense shall be the actual amount for that expense for the calendar year preceding each July 31st filing. The amount for each category of expense listed shall be stated separately.

(g) Unseparated gross telecommunications plant investment. This amount shall be calculated as of December 31st of the calendar year preceding each July 31st filing.

(h) Unseparated accumulated depreciation and noncurrent deferred federal income taxes attributable to local unseparated telecommunications plant investment. This amount shall be calculated as of December 31st of the calendar year preceding each July 31st filing.

(i) The number of working loops for each study area. For universal service support purposes, working loops are defined as the number of working Exchange Line C&WF loops used jointly for exchange and message telecommunications service, including C&WF subscriber lines associated with pay telephones in C&WF Category 1, but excluding WATS closed end access and TWX service. These figures shall be calculated as of December 31st of the calendar year preceding each July 31st filing.

§ 54.1306 Updating Information Submitted to the National Exchange Carrier Association.

(a) Any incumbent local exchange carrier subject to § 54.1301(a) may update the information submitted to the National Exchange Carrier Association (NECA) on July 31st pursuant to § 54.1305 one or more times annually on a rolling year basis according to the schedule.

(1) Submit data covering the last nine months of the previous calendar year and the first three months of the existing calendar year no later than September 30th of the existing year;

(2) Submit data covering the last six months of the previous calendar year and the first six months of the existing calendar year no later than December 30th of the existing year;

(3) Submit data covering the last three months of the second previous calendar year and the first nine months of the previous calendar year no later than March 30th of the existing year.

(b) [Reserved]

§ 54.1307 Submission of Information by the National Exchange Carrier Association.

(a) On October 1 of each year, the National Exchange Carrier Association (NECA) shall file with the Commission and Administrator the information listed below. Information filed with the Commission shall be compiled from information provided to NECA by telephone companies pursuant to § 54.1305.

(1) The unseparated loop cost for each study area and a nationwide-average unseparated loop cost.

(2) The annual amount of the high cost expense adjustment for each study area, and the total nationwide amount of the expense adjustment.

(3) The dollar amount and percentage of the increase in the nationwide average unseparated loop cost, as well as the dollar amount and percentage increase for each study area, for the previous 5 years, or the number of years NECA has been receiving this information, whichever is the shorter time period.

(b) [Reserved]

§ 54.1308 Study Area Total Unseparated Loop Cost.

(a) For the purpose of calculating the expense adjustment, the study area total unseparated loop cost equals the sum of the following:

(1) Return component for net unseparated Exchange Line C&WF subcategory 1.3 investment and Exchange Line CO Circuit Equipment Category 4.13 investment. This amount is calculated by deducting the accumulated depreciation and noncurrent deferred Federal income taxes attributable to C&WF Subcategory 1.3 investment and Exchange Line Category 4.13 circuit investment reported pursuant to § 54.1305(b) from the gross investment in Exchange Line C&WF Subcategory 1.3 and CO Category 4.13 reported pursuant to § 54.1305(a) to obtain the net unseparated C&WF Subcategory 1.3 investment, and CO Category 4.13 investment. The net unseparated C&WF Subcategory 1.3 investment and CO Category 4.13 investment is multiplied by the study area's authorized interstate rate of return.

(2) Depreciation expense attributable to C&WF Subcategory 1.3 investment, and CO Category 4.13 investment as reported in § 54.1305(c).

(3) Maintenance expense attributable to C&WF Subcategory 1.3 investment, and CO Category 4.13 investment as reported in § 54.1305(d).

(4) Corporate Operations Expenses, Operating Taxes and the benefits and rent portions of operating expenses, as reported in § 54.1305(e) attributable to investment in C&WF Category 1.3 and COE Category 4.13. This amount is calculated by multiplying the total amount of these expenses and taxes by the ratio of the unseparated gross exchange plant investment in C&WF Category 1.3 and COE Category 4.13, as reported in § 54.1305(a), to the unseparated gross telecommunications plant investment, as reported in § 54.1305(f). Total Corporate Operations Expense for purposes of calculating high-cost loop support payments beginning January 1, 2012 shall be limited to the lesser of § 54.1308(a)(4)(i) or (ii).

(i) The actual average monthly per-loop Corporate Operations Expense; or

(ii) A monthly per-loop amount computed according to paragraphs (a)(4)(ii)(A), (a)(4)(ii)(B), (a)(4)(ii)(C), and (a)(4)(ii)(D) of this section. To the extent that some carriers' corporate operations expenses are disallowed pursuant to these limitations, the national average unseparated cost per loop shall be adjusted accordingly.

(A) For study areas with 6,000 or fewer total working loops the amount monthly per working loop shall be $42.337 − (.00328 × the number of total working loops), or, $63,000/the number of total working loops, whichever is greater;

(B) For study areas with more than 6,000 but fewer than 17,887 total working loops, the monthly amount per working loop shall be $3.007 + (117,990/the number of total working loops); and

(C) For study areas with 17,887 or more total working loops, the monthly amount per working loop shall be $9.562.

(D) Beginning January 1, 2013, the monthly per-loop amount computed according to paragraphs (a)(4)(ii)(A), (a)(4)(ii)(B), and (a)(4)(ii)(C) of this section shall be adjusted each year to reflect the annual percentage change in the United States Department of Commerce's Gross Domestic Product-Chained Price Index (GDP–CPI).

(b) [Reserved]

§ 54.1309 National and study area average unseparated loop costs.

(a) *National average unseparated loop cost per working loop.* Except as provided in paragraph (c) of this section, this is equal to the sum of the Loop Costs for each study area in the country as calculated pursuant to § 54.1308(a) divided by the sum of the working loops reported in § 54.1305(h) for each study area in the country. The national average unseparated loop cost per working loop shall be calculated by the National Exchange Carrier Association. Beginning July 1, 2001, the national average unseparated loop cost for purposes of calculating expense adjustments for rural incumbent local exchange carriers, as that term is defined in § 54.5 of this part is frozen at $240.00.

(1) The national average unseparated loop cost per working loop shall be recalculated by the National Exchange Carrier Association to reflect the September, December, and March update filings.

(2) Each new nationwide average shall be used in determining the additional interstate expense allocation for companies which made filings by the most recent filing date.

(3) The calculation of a new national average to reflect the update filings shall not affect the amount of the additional interstate expense allocation for companies which did not make an update filing by the most recent filing date.

(b) *Study area average unseparated loop cost per working loop.* This is equal to the unseparated loop costs for the study area as calculated pursuant to § 54.1308(a) divided by the number of working loops reported in § 54.1305(i) for the study area.

(1) If a company elects to, or is required to, update the data which it has filed with the National Exchange Carrier Association as provided in § 54.1306(a), the study area average unseparated loop cost per working loop and the amount of its additional interstate expense allocation shall be recalculated to reflect the updated data.

(2) [Reserved]

(c) The national average inseparated loop Cost per working loop shall be the greater of:

(1) The amount calculated pursuant to the method described in paragraph (a) of this section; or

(2) Beginning July 1, 2001, for rural carriers, an amount calculated to produce the maximum rural incumbent local exchange carrier portion of nationwide loop cost expense adjustment allowable pursuant to § 54.1302(a).

§ 54.1310 Expense adjustment.

(a) [Reserved]

(b) [Reserved]

(c) Beginning January 1, 1988, for study areas reporting 200,000 or fewer working loops pursuant to § 54.1305(h), the expense adjustment (additional interstate expense allocation) is equal to the sum of paragraphs (c)(1) through (2) of this section.

(1) Sixty-five percent of the study area average unseparated loop cost per working loop as calculated pursuant to § 54.1309(b) in excess of 115 percent of the national average for this cost but not greater than 150 percent of the national average for this cost as calculated pursuant to § 54.1309(a) multiplied by the number of working loops reported in § 54.1305(h) for the study area; and

(2) Seventy-five percent of the study area average unseparated loop cost per working loop as calculated pursuant to § 54.1309(b) in excess of 150 percent of the national average for this cost as calculated pursuant to § 54.1309(a) multiplied by the number of working loops reported in § 54.1305(h) for the study area.

(d) Beginning April 1, 1989, the expense adjustment calculated pursuant to § 54.1310(c) shall be adjusted each year to reflect changes in the amount of high-cost loop support resulting from adjustments calculated pursuant to § 54.1306(a) made during the previous year. If the resulting amount exceeds the previous year's fund size, the difference will be added to the amount calculated pursuant to § 54.1310(c) for the following year. If the adjustments made during the previous year result in a decrease in the size of the funding requirement, the difference will be subtracted from the amount calculated pursuant to § 54.1310(c) for the following year.

PART 69—ACCESS CHARGES

■ 13. The authority citation for part 69 continues to read as follows:

Authority: 47 U.S.C. 154, 201, 202, 203, 205, 218, 220, 254, 403.

■ 14. Revise § 69.413 to read as follows:

§ 69.413 High cost loop support universal service fund expenses.

Beginning April 1, 1989, expenses allocated to the interstate jurisdiction pursuant to §§ 54.1310 and 36.641 of this chapter shall be assigned to the Universal Service Fund Element.

[FR Doc. 2014–15668 Filed 7–8–14; 8:45 am]

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Part IV

Federal Communications Commission

47 CFR Part 54

Connect America Fund, ETC Annual Reports and Certifications, Establishing Just and Reasonable Rates for Local Exchange Carriers; Universal Service Reform—Mobility Fund; Developing an Unified Intercarrier Compensation Regime; Proposed Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket Nos. 10–90, 14–58, 07–135; WT Docket No. 10–208; CC Docket No. 01–92; FCC 14–54]

Connect America Fund, ETC Annual Reports and Certifications, Establishing Just and Reasonable Rates for Local Exchange Carriers; Universal Service Reform—Mobility Fund; Developing an Unified Intercarrier Compensation Regime

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) proposes measures to update and further implement the framework adopted by the Commission in 2011. The Commission strives to adapt its universal service reforms to ensure those living in high-cost areas have access to services that are reasonably comparable to services offered in urban areas.

DATES: Comments are due on or before August 8, 2014 and reply comments are due on or before September 8, 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 document, you should advise the contact listed below as soon as possible.

ADDRESSES: You may submit comments, identified by either WC Docket No. 10–90, WC Docket No. 14–58, WC Docket No. 07–135, WT Docket No. 10–208, or CC Docket No. 01–92, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web site: http://fjallfoss.fcc.gov/ecfs2/.* Follow the instructions for submitting comments.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: (202) 418–0530 or TTY: (202) 418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Alexander Minard, Wireline Competition Bureau, or Suzanne Yelen, Wireline Competition Bureau, (202) 418–7400 or TTY: (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Further Notice of Proposed Rulemaking (FNPRM) in WC Docket Nos. 10–90, 14–58, 07–135, WT Docket No. 10–208, and CC Docket No. 01–92; FCC 14–54, adopted on April 23, 2014 and released on June 10, 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 St. SW., Washington, DC 20554 or at the following Internet address: *http://transition.fcc.gov/Daily_Releases/Daily_Business/2014/db0610/FCC-14-54A1.pdf.* The Report and Order, Declaratory Ruling, Order, Memorandum Opinion and Order and Seventh Order on Reconsideration that was adopted concurrently with the FNPRM are published elsewhere in this issue of the **Federal Register**.

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121, May 1, 1998.

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW., Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of *before* entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

I. Introduction

1. With this Further Notice of Proposed Rulemaking (FNPRM) and concurrently adopted Report and Order, Declaratory Ruling, Order, Memorandum Opinion and Order, and Seventh Order on Reconsideration, the Commission takes significant steps to continue the implementation of the landmark reforms unanimously adopted by the Commission in 2011 to modernize universal service for the 21st century. The Commission builds on the solid foundation created in 2011, taking into account what they have learned to date and new marketplace developments, to fulfill our statutory mission to ensure that all consumers ''have access to . . . advanced telecommunications and information services.''

2. A core component of the 2011 reforms was the creation of the Connect America Fund to preserve and advance voice and robust broadband services, both fixed and mobile, in high-cost areas of the nation that the marketplace would not otherwise serve. Today, the Commission adopts rules that build on the framework established by the Commission in the *USF/ICC Transformation Order*, 76 FR 73830, November 29, 2011, while proposing targeted adjustments that the Commission believes are necessary to ensure that it's best utilizing the funds that consumers and businesses pay into the universal service system. In particular, the Commission is mindful that technological innovation is occurring at a rapid pace, and the marketplace has continued to evolve in the intervening years. The Commission must ensure that the reforms it implements now are not predicated on outdated assumptions.

3. Meeting the infrastructure challenge of the 21st century will be a multi-year journey. It took the nation almost 50 years to bring electricity to 99 percent of rural farms; decades later, it took 35 years to complete the original portion of the interstate highway

system. In just two years, the Commission's reforms have set the nation on a path that will bring new fixed broadband services to more than 1.6 million Americans, new mobile services to historically unserved Tribal lands, and improved mobile coverage along our nation's roads. Achieving universal access to broadband will not occur overnight. Today, the Commission takes further steps to bring broadband service to every corner of the country.

4. In the FNPRM, the Commission proposes measures to update and implement further the framework adopted by the Commission in 2011. The Commission strives to adapt our universal service reforms to ensure those living in high-cost areas have access to services that are reasonably comparable to services offered in urban areas. Consistent with that goal, in the FNPRM the Commission proposes to revise our current broadband performance obligations to require minimum speeds of 10 Mbps downstream to ensure that the services delivered using Connect America funds are reasonably comparable to the services enjoyed by consumers in urban areas of the country. The FNPRM also proposes to apply uniformly the same performance obligations to all recipients of Phase II support and to rate-of-return carriers. In addition, the Commission seeks to further develop the record on the ability of Phase II recipients to satisfy their obligations using any technology or a combination thereof—whether wireline or wireless, fixed or mobile, terrestrial or satellite—that meets the performance standards for Phase II. The FNPRM also proposes to provide financial incentives for recipients of Phase II support to accelerate their network deployment.

5. To target our finite universal service funds most effectively, the FNPRM proposes to exclude from eligibility for Phase II support those areas that are served by *any* provider that offers voice and broadband services meeting the Commission's service obligations—whether those providers are subsidized or unsubsidized. The FNPRM seeks comment on the amount of frozen support to provide to incumbents that decline the offer of model-based support where no other provider wishes to serve, and on the obligations associated with such support. The FNPRM also proposes to define the public interest obligations that would apply to recipients of frozen support in the non-contiguous areas of the United States. The Commission also proposes several minor changes and clarifications regarding the implementation of the transition to model-based support to ease the administration of Connect America Phase II.

6. In addition, the FNPRM seeks comment on several proposals regarding eligible telecommunications carrier (ETC) designation. It proposes to require entities that are winning bidders for the offer of Phase II support in the competitive bidding process to apply for ETC designation within 30 days of public announcement of winning bidders. It also proposes to adopt a rebuttable presumption that a state commission lacks jurisdiction over an entity seeking ETC designation if it fails to initiate a proceeding within 60 days.

7. The FNPRM seeks comment on specific proposals for the design of the Phase II competitive bidding process that will occur in areas where price cap carriers decline model-based support. Through this public input, and what the Commission learns from the expressions of interest already submitted for rural broadband experiments, it should be prepared to make further decisions by the end of the year on the design of the competitive bidding process that will be used for Phase II in price cap territories where the price cap carrier declines the state-level commitment.

8. The FNPRM also addresses significant developments that have occurred since the adoption of the *USF/ICC Transformation Order* in the marketplace for mobile wireless services. Given the commercial deployment of 4G Long Term Evolution (LTE), the Commission proposes to retarget the focus of Mobility Fund Phase II. The Commission seeks comment on targeted measures that would address those areas of the country where LTE is not and, to the best of our knowledge, will not be available in the foreseeable future and would preserve existing mobile voice and broadband service where it would not otherwise exist without government support. The FNPRM also proposes to maintain existing support levels (i.e., 60 percent of baseline support) for wireless competitive ETCs for whom competitive ETC support exceeds one percent of their wireless revenues until a date certain after winning bidders are announced for the offer of Mobility Fund Phase II support, and to accelerate the phase-down for wireless competitive ETCs for whom high-cost support is one percent or less of their wireless revenues. The FNPRM seeks comment on whether to take a different approach for wireline competitive ETCs and asks whether their phase-down in support should be determined by the timing of the Phase II competitive bidding process. The FNPRM also proposes to freeze support for carriers serving remote areas in Alaska, as of December 31, 2014, and to begin their phase-down in support on a date certain after the Mobility Fund Phase II auction or Tribal Mobility Fund Phase II auction.

9. In the FNPRM, the Commission also focuses on developing and implementing a ''Connect America Fund'' for rate-of-return carriers. Specifically, they Commission seeks comment on reform proposals that would address a number of the identified shortcomings in the current support mechanisms that provide support to rate-of-return carriers. As a short term measure, the Commission proposes to apply the effect of the annual rebasing of the cap on support known as high-cost loop support (HCLS) equally on all recipients of HCLS, to address the problematic incentives of the current rule. As another near term reform, the Commission also proposes to prohibit recovery of new investment occurring on or after January 1, 2015, through either HCLS or interstate common line support (ICLS) in areas that are served by a qualifying competitor that offers voice and broadband service meeting the Commission's standards. As a longer term measure, the Commission seeks comment on limiting recovery of new investment through HCLS or ICLS as of a date certain, in conjunction with implementation of a Connect America Fund for rate-of-return carriers. The Commission proposes to adopt a stand-alone broadband support mechanism that meets defined parameters and seek to develop further the record on various industry proposals. Building on a proposal recently submitted by the Independent Telephone & Telecommunications Alliance (ITTA), the Commission proposes to provide rate-of-return carriers the option of participating in a two-step transition to Phase II model-based support and seek comment on alternative rate regulation measures and specific implementation issues. The Commission also seeks comment in the FNPRM on providing one-time funding for middle mile projects on Tribal lands in 2015. Such an approach could serve as a template for further implementation on a broader scale in subsequent years.

10. In today's decision, the Commission also revisits some fundamental assumptions regarding implementation of the Remote Areas Fund. Part of ensuring that the Commission use its universal service funding wisely is developing effective and targeted mechanisms to address the challenges of serving the most remote, high-cost areas. Rather than prejudging

which areas are appropriately served through the Remote Areas Fund, the Commission concludes that participants in the Phase II competitive bidding process should be permitted to bid on any area where the estimated cost is at or above the funding benchmark adopted for the offer of model-based support to price cap carriers in Phase II of the Connect America Fund. The Commission concludes it would be prudent to defer full implementation of the Remote Areas Fund until 2016, after completion of the Phase II competitive bidding process. Only then will the Commission be in a position to identify which specific areas are appropriately served by alternative technologies, potentially with relaxed performance standards.

11. Finally, the FNPRM proposes to codify a broadband certification requirement for recipients of funding that are subject to broadband performance obligations, seeks comment on specific levels of support reduction for non-compliance with service obligations, and proposes to modify our rules regarding reductions in support when parties miss filing deadlines in order to better calibrate the support reduction to coincide with the period of noncompliance.

12. With the actions the Commission takes today and those planned for later this year, it expects to move forward to implement the offer of Phase II model-based support by the end of the year, as they noted in January. The Commission also expects to take further action to implement the rural broadband experiments it adopted in their January *Tech Transitions Order,* 79 FR 11327, February 28, 2014 and 79 FR 11366, February 28, 2014. Through these coordinated actions, the Commission expects to create incentives for both existing and new providers to extend robust, scalable next-generation voice and broadband networks that provide high-quality performance, whether through fiber, wireless, or other technology, as deep into high-cost areas as is feasible given the existing Connect America budget.

II. Further Notice of Proposed Rulemaking

A. Public Interest Obligations

13. *Evolving Speed Obligations.* Consistent with the Commission's authority in section 254(e) of the Communications Act, the Commission supports the deployment of voice and broadband-capable networks in furtherance of the section 254(b) objective that residents in all parts of the country, including rural and high-cost areas, have access to advanced telecommunications and information services. In the *USF/ICC Transformation Order,* the Commission committed to initiating a proceeding no later than the end of 2014 to review the broadband service performance requirements established for the Connect America Fund. Today, the Commission initiates that proceeding. In particular, the Commission proposes to increase the minimum broadband speeds that it seeks to achieve with universal service funding to 10 Mbps downstream. The Commission seeks comment on this proposal, as well as the consequences and tradeoffs involved in raising the standard, including the ability to preserve and advance broadband service for consumers within the Connect America budget. The Commission also seeks comment on whether to increase the upstream speed requirement to something higher than 1 Mbps. The new speed standards would apply generally to all recipients of high-cost support that are subject to broadband public interest obligations: ETCs that elect model-based Phase II support, ETCs that receive Phase II support through the competitive bidding process, and rate-of-return ETCs that receive support through legacy mechanisms and CAF–ICC support.

14. In the *USF/ICC Transformation Order,* the Commission established a speed benchmark for broadband of 4 Mbps/1 Mbps, with speeds for the later years of an anticipated 2012–2017 timeframe increasing to 6 Mbps downstream and 1.5 Mbps upstream (6 Mbps/1.5 Mbps). The marketplace for broadband has continued to evolve since the adoption of the *USF/ICC Transformation Order.* At the time of the adoption of the *USF/ICC Transformation Order,* Phase II model-based support was expected to begin in 2013 and run until 2017. With model-based support now likely to be disbursed in the 2015–2019 timeframe, it is appropriate to reevaluate the speed benchmark in light of the most recent data.

15. The Commission proposes a new downstream speed standard of 10 Mbps to further the statutory goal of ensuring that consumers in rural parts of the country have access to advanced telecommunications and information services that are reasonably comparable to those services available in urban areas. The most recent round of State Broadband Initiative (SBI) data show that nearly all persons living in urban areas have access to fixed broadband with downstream speeds of at least 10 Mbps. SBI data as of June 2013 indicate that only two percent of the population residing in urban census blocks lack access to fixed broadband with speeds of 10 Mbps downstream/768 kbps upstream. In contrast, the SBI data indicate that 33 percent of the population residing in rural census blocks lack access to fixed broadband providing 10 Mbps/768 kbps speeds.

16. SBI data also show that urban users have greater access to higher upstream speeds than rural users. Given the statutory goal of reasonable comparability, should the Commission set an upstream speed requirement for universal service purposes at a level higher than 1 Mbps, such as 2 Mbps? The Commission specifically seeks comment on whether 1 Mbps upstream will provide sufficient bandwidth for residential consumers to take advantage of applications and services that advance critical public purposes such as education and healthcare. In the recent Rural Broadband Workshop, some parties suggested that upload speeds higher than 1 Mbps were necessary to support certain telehealth applications. To the extent commenters argue that the Commission should set a different upstream benchmark than 1 Mbps for universal service purposes, they should provide specific examples of the applications and services that require such upstream capability for residential consumers.

17. In proposing to increase the current broadband downstream speed benchmark, the Commission is primarily focusing on the minimum standard for *new* deployments of broadband-capable infrastructure. Our goal is to ensure that Connect America funding is used efficiently, going forward, to deploy networks that are capable of scaling to higher speeds over time, as consumer demand warrants. By proposing a new speed benchmark, the Commission does not intend to suggest that ETCs must deliver such speeds immediately upon adoption of a new rule. Rather, consistent with the approach the Commission adopted for the current speed benchmark, it is proposing a standard that ETCs, current and future, would be expected to achieve over a period of years, as they utilize high-cost support to extend and upgrade networks in high-cost areas.

18. In the *USF/ICC Transformation Order,* the Commission adopted a requirement that ETCs develop five-year service improvement plans and provide annual updates regarding those plans. Likewise, in the *USF/ICC Transformation Order,* the Commission established a five-year time frame for recipients of model-based support to meet the deployment milestones for Phase II. The Commission thus

recognized that broadband-capable infrastructure would not, and realistically could not, be ubiquitously deployed overnight, but rather that it would be deployed over a period of time. As such, the Commission emphasizes that there is no immediate consequence, and in particular no loss of universal service support, to the extent an existing ETC is not currently offering speeds that meet the current 4 Mbps/1 Mbps benchmark throughout its entire service territory, nor would an ETC be immediately non-compliant with our rules if in the future it were to revise the downstream speed standard to, for instance, 10 Mbps in response to this FNPRM. Rather, our intent in proposing to revisit this standard is to establish a new minimum standard that the Commission build toward over time, recognizing that consumers increasingly will utilize applications and services that require greater bandwidth than our current standard.

19. As discussed in the concurrently adopted Report and Order, under the framework adopted by the Commission in the *USF/ICC Transformation Order,* a rate-of-return carrier is required to deploy broadband-capable infrastructure to a customer upon reasonable request. If the Commission were to revise its broadband performance obligations to require higher speeds, such as 10 Mbps downstream, such new deployments would be required to meet the new benchmark. But a rate-of-return carrier would only be required to meet that higher speed if the request for service was *reasonable*. A reasonable request is one where the carrier could cost-effectively extend a voice and broadband-capable network to that location. In determining whether a particular upgrade is cost effective, the carrier should consider not only its anticipated end-user revenues from the services to be offered over that network, both voice and retail broadband internet access, but also other sources of support, such as federal and, where available, state universal service funding. Under our proposal to increase the minimum downstream speed threshold, the Commission thus would not expect a rate-of-return carrier immediately to upgrade its entire existing infrastructure to provide 10 Mbps downstream and 1 Mbps upstream (10 Mbps/1 Mbps) to all current customers. Rather, the Commission proposes that rate-of-return carriers would take into account any revised speed standards when considering whether and where to upgrade existing plant in the ordinary course of business and would report on progress toward this goal in preparing annual updates to their five-year service improvement plans. The Commission seeks comment on this proposal. To the extent commenters believe it would take longer than five years to upgrade networks to meet the proposed new standard, they should specify what time frame they believe is realistic.

20. In addition, if commenters believe that it would make more requests for service unreasonable, therefore requiring carriers to scale back their deployment plans, the Commission seeks comment on how to ensure that consumers in those areas receive service. For example, if a request for a higher speed service would be unreasonable but a request that meets our current standard would be reasonable, the Commission seeks comment on permitting the deployment at the lower speed standard. The Commission also seeks comment on whether carriers should be allowed to self-identify territories that they would not be able to serve (either alone or through a voluntary partnership) so that the Commission could extend broadband service to those consumers through a different mechanism.

21. The Commission seeks comment on the costs and benefits of increasing the speed benchmark. Will it help or hinder our efforts to reach unserved consumers? Will the benefits gained by consumers in having access to higher speeds outweigh the increased cost of deploying a more robust network? What impact would it have on participation in the Phase II competitive bidding process and our ability to preserve and advance universal service in areas where a price cap carrier declines model-based support? Is it reasonable to assume that the same number of residents would be served in Phase II at speeds of 10 Mbps/1 Mbps as would be served at 4 Mbps/1 Mbps? The Commission directs the Bureau to publish information within 15 days of release of this FNPRM regarding the number of locations that would be eligible for the offer of model-based support if the revised speed benchmark were used to determine the presence of an unsubsidized competitor and the number of locations that would be above the extremely high-cost threshold. The Commission encourages parties to address in their comments how changing the speed standard would affect the number of consumers that could be served.

22. The Commission intends to take action on this proposed revision to the speed benchmark prior to extending the offer of support to price cap carriers so that they have clarity as to what is expected of them over the five-year Phase II term if they make state-level commitments to accept model-based support. Under the existing rules, Phase II state-level commitment funding recipients must provide broadband with speeds of 4 Mbps/1 Mbps to all locations and speeds of 6 Mbps/1.5 Mbps to a subset of locations as specified by the Bureau. If the Commission adopts our proposal to raise the minimum speed benchmark to 10 Mbps downstream, it proposes that the Bureau would no longer be required to specify a number of locations that would receive 6 Mbps downstream or 1.5 Mbps upstream for recipients of model-based support. The Commission seeks comment on this proposal.

23. If the Commission adopts the proposal to extend broadband downstream speeds to 10 Mbps, it seeks comment regarding whether it should provide a longer term for Connect America Phase II model-based support than the five-year term it adopted in the *USF/ICC Transformation Order*. For instance, should carriers accepting a state-level commitment for five years have the ability to extend that term for additional two years, assuming verification of specified deployment milestones to deliver service with 10 Mbps downstream speed.

24. *Usage and Latency Standards*. The Commission proposes to apply the same usage allowances and latency benchmarks that the Bureau implemented for price cap carriers that will accept the offer of model-based support in the state-level commitment process to ETCs that will receive support through a competitive bidding process. Under this proposal, all Phase II recipients would be required to offer at least one plan with an initial minimum usage allowance of 100 GB, adjusted over time to take into account trends in consumer usage, at a price that is reasonably comparable to similar fixed wireline offerings in urban areas. The Commission also proposes to require recipients of support through the competitive bidding process to provide a roundtrip provider network latency of 100 ms or less. This latency is suitable to allow for existing real time applications, such as VoIP. The Commission seeks comment on these proposals.

25. Parties that argue that standards should be relaxed for the Phase II competitive bidding process that will occur in areas where the price cap carrier declines model-based support should identify with specificity which standard should be relaxed and to what extent, and explain why relaxation of such standards is consistent with

achievement of our universal service objectives. For instance, to the extent parties argue that a 100 ms or less standard for roundtrip provider network latency is too stringent, they should identify what numerical standard should be used for the Phase II competitive bidding process. Likewise, to the extent parties argue that recipients of support through a competitive bidding process should not be required to offer at least one plan with a minimum usage allowance of 100 GB at a price that is reasonably comparable to comparable fixed wireline offerings in urban areas, they should identify what usage level instead would fulfill the statutory principle that consumers in high-cost areas should have access to ''reasonably comparable services'' at ''reasonably comparable rates.''

26. In the *Phase II Service Obligations Order,* 78 FR 70881, November 27, 2013, the Bureau stated that recipients of model-based support are permitted to offer their customers services other than those meeting the stated performance criteria. The Commission proposes a similar approach for ETCs awarded support in the competitive bidding process, so they would be free to offer an array of services, including those not meeting the proposed performance requirements, so long as at least one offering met all the necessary metrics. The Commission seeks comment on this proposal.

27. The Commission also proposes to apply these usage allowance and latency standards to rate-of-return ETCs that are subject to broadband performance obligations. This would ensure that consumers have access to the same baseline level of broadband service regardless of whether they reside in a price cap or rate-of-return study area. Again, the Commission emphasizes that it does not expect that rate-of-return carriers would only provide broadband offerings to customers that meet these requirements. Rather, they would be free to offer an array of services of varying speeds, usage, and price to meet customer demand. If commenters argue that rate-of-return carriers should either be exempted from or be subject to relaxed usage allowance and latency standards, the Commission specifically seeks comment on how it can ensure that consumers in rate-of-return areas are not relegated to substantially less robust services than consumers living in price cap areas.

28. *Role of Alternative Technologies in Phase II.* In reforming the universal service fund, the Commission established the Connect America Fund, focused on terrestrial, fixed broadband deployment, and the Mobility Fund, focused on mobile broadband deployment. Connect America Fund Phase II recipients were required to deploy networks capable of providing ''broadband service that is reasonably comparable to terrestrial fixed broadband service in urban America.'' The Commission did not explicitly prohibit the use of mobile or satellite technology in meeting Phase II obligations, as long as it provided performance comparable to terrestrial, fixed broadband. Relatedly, in providing funding for the Connect America Fund, the Commission excluded Phase II support for areas that were served by unsubsidized competitors; it limited the definition of unsubsidized competitor to terrestrial, fixed providers. The Commission stated that it would revisit this definition as satellite and mobile technologies developed over time.

29. The Commission seeks to develop more fully the record on allowing Phase II recipients to satisfy their obligations using any technology or combination thereof—whether wireline or wireless, fixed or mobile, terrestrial or satellite—that meets the performance standards for Phase II. Specifically, any Phase II recipient satisfying its obligations would be required to meet the Phase II requirements for speed, latency, usage allowance, and pricing, as they exist today or may be modified in the future in response to this FNPRM. The Commission emphasizes that wireless providers are free, and indeed encouraged, to participate in Connect America Phase II, and fixed wireless already is an option for the delivery of service in Phase II under the framework established by the Commission in the *USF/ICC Transformation Order.* What is important from the consumer's perspective is the quality of the user experience and the price of the service offering, not the specific technology used to deliver service. Given that, the Commission seeks comment on whether, for purposes of Phase II implementation, it should allow the use of mobile or satellite technology that meets the Phase II requirements, while maintaining the service and pricing standards established by the Bureau for the offer of model-based support.

30. In a similar vein, for the Phase II competitive bidding process, should the Commission exclude from eligibility for funding any area that is served by a competitor that meets the Commission's current standards for the offer of model-based support to price cap carriers, again presuming that the same service and pricing standards are met, regardless of technology? The Commission welcomes input on the extent to which mobile or satellite providers today meet those standards.

31. The Commission seeks comment on how to ensure that the end-user experience is functionally equivalent whether the connection is provided through fixed or mobile means. Should the Commission require, for instance, that providers allow consumers subscribing to the service to attach or tether their mobile connections to other devices? This will allow consumers to use their mobile connections on traditionally fixed platforms, such as desktop computers, thus allowing access to the same applications and functionalities as consumers served through fixed connections. The Commission also seeks comment on the ability of a mobile connection to support multiple devices. Should the Commission adopt requirements that the mobile service allow users to be able to use multiple devices simultaneously? To the extent that additional devices or subscriptions are required to support multiple devices, should the Commission consider that in determining reasonable price comparability? The Commission additionally seeks comment on whether any other requirements should attach to Phase II support for mobile or satellite technologies to ensure they provide the end user with the same service qualities obtained when a fixed service is purchased. For example, mobile service can have a far greater variation in service quality as compared to fixed services, with service quality not only changing based on location within a tower's footprint, but also even whether the service is being used indoors rather than outdoors. How should the Commission address these issues to ensure that networks supported with universal service funds provide consumers with high-quality broadband access regardless of the technology deployed? How should the Commission ensure that consumers are still able to use services that generally rely on fixed networks, such as medical monitoring or security systems? What would be the impact on businesses and anchor institutions if the Commission were to exclude from eligibility for Phase II support those areas that are served by mobile or satellite providers that meet the Phase II standards?

32. *Evolving Standards.* In the concurrently adopted Report and Order, the Commission adopts a term of support of ten years for those ETCs that are awarded Phase II through a competitive bidding process. It is likely that the public's expectations for connectivity will evolve substantially over the next decade. Should the

Commission adjust the Phase II obligations for the later years of the ten-year term of support? To plan a network, recipients of support need to know ahead of time what will be expected of them. What is a reasonable requirement for entities receiving ten years of support? For example, would requiring Connect America Phase II recipient to deploy broadband at a higher speed tier for a discrete subset of locations ensure that the evolving expectations of consumers are met? Should the Commission require Connect America Phase II participants to provide 20 Mbps downstream service to 20 percent of locations by year eight? Should the Commission set a higher (or lower) speed threshold? Should the Commission require recipients to meet the higher speed threshold at more or fewer locations? Or should the Commission decline to establish an additional concrete service obligation on Connect America Phase II recipients?

33. Alternatively, should the Commission require recipients of such support to provide an evolving level of service over the funding period based on trends in consumer usage? For instance, should the Commission use FCC Form 477 and other Commission data, such as the Measuring Broadband America results, to monitor the service available in urban markets and create an index that would enable the Commission to modify service obligations (speed, usage allowance, latency, and price) based on trends in urban offerings and usage for all ETCs receiving support with a ten-year term? The Commission seeks comment on what, if any, other data sources it should rely on if it were to establish an evolving benchmark. Should the evolving standard be based on an average or median consumer's usage? Would use of this approach with an evolving standard affect the incentives for providers to accept support with a ten-year term and, ultimately, affect the deployment of broadband to consumers?

34. *Connections to Schools, Libraries, and Health Care Providers.* In the *USF/ICC Transformation Order,* the Commission indicated its expectation that ETCs would offer broadband at speeds greater than 4 Mbps/1 Mbps to community anchor institutions in rural and high-cost areas and that they would provide such offerings ''at rates that are reasonably comparable to comparable offerings to community anchor institutions in urban areas.'' The Commission did not have a record before it at the time to specify what specific speeds are appropriate for anchor institutions. The Commission seeks to develop the record more fully, and thus invite comment on how best to ensure that this expectation is fulfilled by ETCs, with specific reference to institutions and the charges, terms, and conditions of service provided to those institutions.

35. *Incentives for Faster Deployment.* In the concurrently adopted Report and Order, the Commission adopts a term of ten years for funding Phase II projects through the competitive bidding process. The Commission already established a five-year term for Phase II recipients that receive support through the state-level commitment process. Phase II recipients are required to complete deployment to 85 percent of supported locations within three years of notification of funding authorization, with completion to all locations required within five years.

36. The Commission proposes to provide financial incentives for recipients of Phase II support to accelerate their network deployment. Specifically, funds could be disbursed on an accelerated timetable if a recipient completed its deployment ahead of the required timeframe. For instance, for price cap carriers making a state-level commitment, all or some fraction of the remaining support for the five-year term that has not yet been disbursed after network completion is validated could be paid out over six months. How could a similar proposal be implemented for ETCs awarded support through a competitive bidding process? If the Commission adopts such a system, how should it structure the accelerated payout? The Commission proposes that if it were to adopt such a system, accelerated payment would not be made until the Universal Service Administrative Company (USAC) has validated the completion of network deployment. The Commission seeks comment on this proposal.

B. Flexibility in Meeting Deployment Obligations

37. In developing the Connect America Cost Model, the Bureau concluded that census blocks shown as served on the National Broadband Map would be treated as presumptively served, and it determined that, for purposes of the Phase II challenge process, partially served census blocks would be treated as fully served. It did so primarily for administrative reasons, due to concern that conducting a challenge process at the sub-census block level would be time consuming and burdensome for all affected parties.

38. In the concurrently adopted Report and Order, the Commission recognized the need to provide recipients of Phase II support flexibility to serve areas where the average cost is equal to or above the Connect America Phase II funding benchmark. The Commission concluded that allowing funding recipients in the competitive bidding process to deploy to locations that would be above the extremely high-cost threshold would enable them to build integrated networks in adjacent census blocks as appropriate.

39. For similar reasons, the Commission now seeks comment on two potential measures that would provide all recipients of Phase II funding, both in the state-level commitment process and competitive bidding process, greater flexibility to satisfy their deployment obligations.

40. First, the Commission seeks comment on to permitting Phase II recipients (both price cap carriers accepting the state-level commitment and winners in a competitive bidding process) to specify they are willing to deploy to less than 100 percent of locations in their funded areas, with associated support reductions to the extent they elect to deploy to less than 100 percent of funded locations. If the Commission were to adopt such a proposal, it proposes to establish a minimum percentage of locations that must be served by a Phase II recipient. Would 95 percent of funded locations be an appropriate minimum? To the extent parties argue that the required percentage should be lower than 95 percent, they should identify with specificity the particular number. Should the Commission require the Phase II recipient to specify the number of locations it intends to deploy to at the time funding is first authorized, or should it provide it with flexibility to adjust its deployment commitments for some period of time after making a state-level commitment or being authorized to receive support through a competitive bidding process?

41. The Commission seeks comment on how to adjust the support a Connect America Phase II recipient should receive if it were to adopt this proposal. One way to reduce support would be in direct proportion to the number of locations left unserved within a given state. Another way would reduce a provider's support based on the support the model attributed to serving each location. Is one methodology superior to the other? Is one method more administrable or does either create better incentives for deployment? Would the method that reduces support based on model-determined support be appropriate for Phase II recipients that are awarded support through a competitive bidding process? Are there other methodologies that would better

serve our universal service goals if the Commission were to adopt this proposal?

42. Second, the Commission seeks comment on allowing Phase II recipients to substitute some number of unserved locations within partially served census blocks for locations within funded census blocks. Phase II funding recipients thus would have the option to deploy to some number of unserved locations within partially served census blocks in lieu of deploying to a number of locations in otherwise eligible census blocks. This approach could enable more effective network deployment and bring service to unserved consumers in those partially served census blocks. If the Commission were to adopt such an approach, should it establish a limit on the number of locations that could be substituted to meet the deployment obligation? For instance, should a price cap carrier or recipient of support through a competitive bidding process be able to substitute no more than five percent of its funded locations with unserved locations in partially served census blocks?

43. The Commission seeks comment on whether the benefits of allowing the flexibility to serve in partially served census blocks outweigh the costs imposed on those that have invested private capital to deploy service nearby. The Commission seeks comment on how the substitution process would work given that Connect America Phase II recipients are most likely to substitute locations when the costs of serving the new locations is lower than the cost of serving the locations originally designated in funded census blocks. For example, the simplest substitution metric would require that the number of new locations equal or exceed the number of old locations (i.e., one-for-one swaps). A more complicated substitution metric would require the modelled support for serving the new locations equal or exceed the modelled support for serving old locations. Is one methodology superior to the other? Is either more administrable or does either create better incentives for deployment? Are there other methodologies that would better serve our universal service goals if the Commission were to adopt this proposal?

44. The Commission emphasizes that it is not proposing to overturn the Bureau's decision not to entertain sub-census block challenges in the Phase II challenge process. That was a reasonable decision given the anticipated number of challenges that may be filed regarding the list of census blocks potentially eligible for the offer of model-based support. Partially served census blocks will continue to be treated the same as fully served census blocks, and excluded from calculations of the offer of model-based support. Rather, the Commission is proposing to give funding recipients the flexibility to deploy to unserved locations that within census blocks that are deemed served, after they are awarded support either through the offer of model-based support or the competitive bidding process, subject to reasonable limitations to ensure that no overbuilding occurs.

45. The Commission seeks comment on measures to ensure that this flexibility does not result in the overbuilding of those locations within such census blocks that are in fact served. For example, should the Phase II funding recipient be required to announce publicly the locations in any partially served census block it plans to deploy to, with sufficient specificity that would enable other providers to determine whether they serve such areas? Would it be sufficient to require an identification of the roads or addresses intended for deployment, or should the Commission also requires an announcement of the latitude/longitude coordinates for specific locations?

46. To minimize the burden of monitoring intended deployment plans on other potentially impacted parties, the Commission proposes that the price cap carrier would be required to identify locations outside of its funded census blocks intended for potential deployment on an annual basis during the five-year term. This could occur, for instance, in conjunction with filing the annual FCC Form 481. After making such an announcement, the funding recipient would be required to wait a period of time before commencing construction to those locations. Is 90 days a sufficient period of time? The Commission seeks comment on whether a 90-day notice process would enable any existing providers to inform the Phase II funding recipient that it already serves the locations in question with voice and broadband service meeting the Commission's standards. If no statement of service is received within 90 days, the funding recipient would be permitted to deploy to the locations. The funding recipient could disregard statements received after the 90-day window. What process should occur if another provider contends that it serves the locations, but the Phase II funding recipient wants to contest such assertions?

47. If the Commission were to adopt such a rule, should it specify a format for the announcement of the planned deployment or the statement of service? Would it be sufficient that the announcement be posted to the Phase II funding recipient's Web site, or should the Commission require that the announcement be posted to ECFS? Should the Commission require that a copy of the announcement of intended deployment plans be sent to any existing voice and broadband provider shown as serving the area on the National Broadband Map? Should the Commission require that the statement of service be made under penalty of perjury? Should such statements be posted to ECFS in lieu of or in addition to submitting them to the funding recipient? What other requirements should the Commission consider that will meet our objectives of providing service to unserved consumers in high-cost areas, regardless of their location, while ensuring that the Commission does not inadvertently fund deployment to areas that are in fact served?

C. Eligibility of Areas for Phase II Support

48. *Discussion.* The Commission now proposes to revisit the requirement that a competitor be ''unsubsidized'' to exclude a service area from receiving high-cost support, including Connect America support. The Commission asks whether it is the most efficient use of the Connect America budget to provide support in geographic areas where there is another facilities-based terrestrial provider of fixed residential voice and broadband services that meets our current requirements—whether that competitor is subsidized or not. Every dollar that is spent in such areas is a dollar not available to extend broadband to areas that lack it. The Commission therefore proposes to exclude from the offer of model-based support any census block that is served by a facilities-based terrestrial competitor offering fixed residential voice and broadband services that meet the Commission's service requirements. If the Commission adopts our proposal to increase the downstream benchmark to 10 Mbps, it proposes to exclude from Connect America Phase II those census blocks where there is a facilities-based terrestrial competitor offering fixed residential voice and broadband services meeting that new speed standard. The Commission seeks comment on these proposals.

49. The Commission also seeks comment on excluding from the Phase II competitive bidding process any area that is served by a price cap carrier that offers fixed residential voice and broadband meeting the Commission's requirements. Consequently, if the

Commission adopts our proposal to establish a new downstream speed benchmark of 10 Mbps, Phase II funds would only be available in a competitive bidding process for any area lacking 10 Mbps/1 Mbps. The Commission asks whether it would make sense to include in the competitive bidding process those areas where a price cap carrier already offers voice and broadband service meeting the requisite standards, either the current standard or any new standards it may adopt in response to this FNPRM. If the Commission were to adopt such an approach, and a price cap carrier declined to elect a state-level commitment, another provider could receive Phase II support through the competitive bidding process to overbuild a price cap carrier's existing network. The Commission is skeptical that this is an efficient use of the budget for Phase II.

50. If the Commission were to allow Connect America support to be used to overbuild the broadband network of a provider, even one that is subsidized, it would mean those support dollars would not be available to deploy broadband-capable infrastructure in areas that truly lack broadband. On the other hand, the Commission recognizes that excluding areas that currently may have fixed residential voice and broadband services may make it more difficult for bidders in a competitive process to develop bids for a network that is cost-effective to build; it is possible that the amount of support provided for the unserved census blocks alone may be insufficient to build out to those census blocks on a stand-alone basis. The Commission seeks comment on this analysis and how best to ensure that it extends broadband-capable infrastructure to those lacking it today.

51. The Commission seeks comment on whether it should exclude from Phase II support only those areas where the current provider certifies that it is able and willing to continue providing terrestrial fixed residential voice and broadband services meeting the Commission's requirements for a specified period of time, such as five years. Some parties argue that a subsidized provider may cease to provide service once support is phased out, leaving consumers in such areas without service. Rather than assuming that existing providers will not exit those markets that they currently serve, regardless of whether they receive legacy support in such areas or not, requiring a certification could provide an additional assurance that consumers will receive the same level of service that they otherwise would have if the area were not receiving Phase II support. If the current provider is unwilling to make such a certification, then the area would not be precluded from receiving Phase II support.

52. Finally, the Commission also seeks comment on the broader question of whether universal service funds are ever efficiently used when spent to overbuild areas where another provider has already deployed service. In this section, the Commission proposes to exclude support for areas already served by an existing provider meeting the requisite voice and broadband requirements; whether a provider receives universal service support should not necessarily be the determining factor. The Commission proposes to define such a provider that meets the voice and broadband requirements as a ''qualifying competitor.'' Second, the Commission seeks comment on whether our other rules that reduce or eliminate support in areas with unsubsidized competitors should be reframed as reducing or eliminating support in areas with qualifying competitors, whether subsidized or not. For example, should the 100 percent overlap rule apply only where unsubsidized competitors overlap an incumbent or also where any qualifying competitor overlaps the incumbent?

D. ETC Designation

53. As noted in the concurrently adopted Report and Order, only ETCs designated pursuant to section 214(e) of the Act ''shall be eligible to receive specific Federal universal service support.'' Section 214(e)(2) gives states the primary responsibility for ETC designation. However, section 214(e)(6) provides that this Commission is responsible for processing requests for ETC designation when the service provider is not subject to the jurisdiction of the state public utility commission.

54. Streamlining the process of seeking federal designation when states may lack jurisdiction is necessary for the efficient implementation of the Connect America Fund, so that the Commission may provide support for access to services in high-cost areas, including the most remote and costly areas of the nation, in an efficient and timely manner. The Commission believes that this can be accomplished within the Act's framework for state and federal action. Although the Commission has previously stated that it would act on ETC designation applications ''only in those situations where the carrier can provide the Commission with an affirmative statement from the state commission or a court of competent jurisdiction that the carrier is not subject to the state commission's jurisdiction'' and that the technology used (e.g., satellite service) ''does not *per se* place the carrier outside the parameters of the state commission designation authority under section 214(e)(2),'' the Commission tentatively concludes that a different approach is warranted to ensure successful implementation of the Connect America Fund, including the Remote Areas Fund.

55. In the concurrently adopted Order, the Commission permits entities to seek ETC designation *after* being selected for the offer of Phase II Connect America funding. Here, the Commission proposes to adopt a requirement that a winning bidder must submit an application to become an ETC within 30 days of public notice that it is the winning bidder for the offer of support in those areas where it has not already been designated an ETC. The Commission also proposes that an applicant for Phase II support that fails to submit such an application within 30 days would be deemed in default and therefore subject to default payments. The Commission proposes to require winning bidders to submit proof to the Commission that they have filed the requisite ETC designation application within the required timeframe to the extent filed with a state commission. The Commission seeks comment on these proposals.

56. Second, the Commission proposes to adopt a rebuttable presumption that a state commission lacks jurisdiction over an ETC designation petition for purposes of Connect America Phase II competitive bidding or Remote Areas Fund if it fails to initiate a proceeding on that petition within 60 days of receiving it. The Commission seeks comment on whether it should adopt a similar rebuttable presumption if a state commission fails to decide a petition within a certain period of time, such as 90 days of initiating a proceeding on it. Under this proposal, a carrier may file for ETC designation with the Commission and point to the lack of state action within the prescribed time period as evidence that the petitioner is not subject to the jurisdiction of a state commission. In determining whether a state commission lacks jurisdiction over the applicant, Commission staff would weigh any statements that a state commission submits during the notice-and-comment period against the lack of action and the arguments of the applicants. The Commission seeks comment on this proposal.

57. The Commission notes that this streamlined framework would not preempt a state's designation authority under section 214(e)(2) but instead is intended to be consistent with the framework of the Communications Act, while ensuring that applications will not remain pending before state commissions for an undefined period of time while carriers wait for an affirmative statement that there is no state jurisdiction. Nor would this action make ETC designation ''nationwide,'' but instead would require approval by this agency on a case-by-case basis, based on reviewing the evidence of jurisdiction, as well as the fact that the individual state commission did not act within the requisite period. And the Commission recognizes that alternative technology service providers, such as satellite or fixed wireless service, have not traditionally been subject to state public utility commission regulations. If a state has a law expressly stating that it does not have jurisdiction over a relevant type of technology, Commission staff would consider such a statute relevant in its determination of Commission jurisdiction. To the extent states do assert jurisdiction over alternative technology service providers, given our shared commitment to expanding the availability of broadband to all Americans, the Commission expects that state commissions will act swiftly to conclude such proceedings in order to rule on the ETC application.

58. Third, the Commission seeks comment on sunsetting ETC designations tied to participation in the Connect America Phase II competitive bidding process or the Remote Areas Fund after the funding term has expired and the entity has fulfilled its build-out and public interest obligations. As WISPA has explained, ''imposing continuing obligations that extend beyond the funding term would discourage participation by qualified companies that desire to compete for funding under the subject CAF program.'' The Commission seeks comment on whether sunsetting those ETC designations is consistent with the Act. The Commission notes that a carrier may not discontinue voice service without receiving authorization pursuant to section 214 and that sunsetting an ETC designation for federal purposes would not impact state obligations such as carrier of last resort obligations to the extent applicable. The Commission seeks comment on this proposal. Under such a proposal, how would the Commission ensure that rates remain affordable for low-income consumers? Should those ETCs be required to maintain their ETC designation for purposes of the Lifeline program throughout the areas for which they receive support, subject to existing procedures for relinquishment?

59. At this time, the Commission does not propose to preempt state review of ETC designation applications or to deem applications granted after 30 days because there is nothing in the record before us that would warrant such a broad change from the existing framework. Rather, the Commission believes that the proposed changes to the current ETC process would be sufficient. The Commission seeks comment on this analysis.

E. Transitions to Phase II

60. In this section, the Commission seeks to develop further the record on several transition issues relating to implementation of Phase II in areas currently served by price cap carriers. First, the Commission seeks comment on the amount of support to be provided to the incumbent ETC in areas that no other provider wishes to serve, and the associated obligations that go with such funding. Second, the Commission seeks comment on performance obligations to be associated with frozen support elected by price cap carriers serving non-contiguous areas of the country. Third, the Commission proposes various minor changes and clarifications regarding the transition to Phase II.

1. Frozen Support in High-Cost Areas

61. *Discussion.* The Commission clarifies that its decision to eliminate frozen support when there is a winner of a competitive bidding process applies only with respect to the geographic area—however defined—where another provider is awarded Phase II support. The Commission needs a mechanism to determine the appropriate amount of frozen support to provide in those instances where a competitive ETC is awarded support to serve less than the entire area of the incumbent where the average cost exceeds the funding benchmark.

62. The Commission seeks comment on how to calculate the amount of frozen support that should be provided to the price cap carrier in situations where another ETC is awarded support through a competitive bidding process to serve a portion, but not all, of the area that is subject to the state-level commitment. The Commission also seeks comment on providing frozen support on an interim basis to price cap carriers, in those areas determined by the model to be extremely high-cost areas where there is no other voice provider, pending designation of other ETCs to serve such areas and further Commission proceedings.

63. The Commission proposes a simplified methodology to calculate the amount of support to provide at least on an interim basis in high-cost and extremely high-cost areas to the extent no other ETC is designated to serve such areas. In particular, the Commission proposes to use the Connect America Cost Model to develop a ratio of the cost of serving all blocks where the average cost per location is at or above the final funding benchmark adopted by the Bureau for determining the offer of model-based support to price cap carriers to the total cost of serving for the state. That ratio would then be multiplied by the total amount of Phase I frozen support for that carrier in the relevant state. Is this a reasonable interim methodology to use to calculate support to be provided for those areas that no other party wishes to serve? Are there other potential methodologies for providing a pro-rata amount of frozen high-cost support for such areas? What would be the budgetary impact of awarding such additional frozen support to incumbent providers in certain areas if the full Phase II budget is awarded through the combination of the offer of model-based support to price cap carriers and competitive bidding process?

64. The Commission proposes to eliminate or modify the current requirement that the price cap carrier certify that all of its frozen support in 2015 and thereafter ''was used to build and operate-broadband-capable networks used to offer the provider's own retail broadband services in areas substantially unserved by an unsubsidized competitor.'' The Commission seeks comment on whether, once the offer of model-based support is implemented, price cap carriers declining model-based support should instead be required to certify that they are using such support to continue to offer voice service in such high-cost and extremely high-cost areas that no other providers wish to serve. Should such frozen support be provided for a defined period of time, or until the occurrence of specific event, such as the designation of another ETC to serve the area in question? What would be an appropriate time frame to revisit both the nature of the obligations and the amount of frozen support to be provided to price cap carriers to serve such high-cost and extremely high-cost areas? In particular, should the Commission revisit these questions when it conducts further proceedings to determine next steps after the end of the term of Phase II support for those price cap carriers

that elect to receive model-based support?

65. Both landline and mobile voice services meet the definition of voice telephony and both have been supported through the federal high-cost and the Lifeline programs. In the *Tech Transitions Order,* the Commission noted that evolving technology transitions bring additional choices to consumers by supplementing the legacy copper circuit-switched voice services and consumers may choose to ''cut-the-cord'' by using wireless voice services. Information from the Tech Transition experiments will allow the Commission and the public to evaluate how customers are affected by the historic technology transitions that are transforming our nation's voice communications services. The Commission notes also that the Commission will begin collecting more data regarding mobile availability on FCC Form 477, although such data collection will not begin until June 30, 2014. The Commission does know that in some areas of the country these alternatives may not be available. The Commission is committed to preserving universal service, consistent with the statute.

66. The Commission asks commenters to provide specific data relating to the extent of mobile wireless coverage in the areas identified by the forward-looking cost model as high-cost or extremely high-cost. How would the Commission determine whether areas purportedly served by mobile voice providers are in fact served? What data sources should the Commission rely upon, if it were ultimately to conclude that interim frozen support is not necessary in areas where there is a mobile voice service provider? How should the Commission take into account the fact that mobile coverage may vary within a census block, with some customers receiving adequate coverage while other customers may not? Should the Commission refocus our vision for the Remote Areas Fund to preserve voice service for residential consumers in those price cap areas that do not have adequate signal strength for mobile service to be a reliable alternative?

2. Obligations of Incumbent LECs That No Longer Receive High-Cost Support

67. *Discussion.* The Commission seeks to further develop the record on how to apply this statutory framework to situations where an incumbent LEC ETC no longer receives high-cost universal service support for a given geographic area or where a non-incumbent carrier has been selected for support through the competitive bidding process. At the outset, the Commission notes that most incumbent LEC ETCs are receiving CAF–ICC support and will continue to do so for several years. And the Commission also notes that the obligations of being an ETC are distinct from the more general section 214 obligation to receive Commission approval before discontinuing voice service to a community.

68. The Commission seeks comment on whether ETCs should be deemed to only have a federal high-cost obligation for the geographic areas for which they receive support. Does such a reading comport with the statutory language in section 214—which specifies that ETCs ''shall, throughout the service area for which the designation is received—offer the services that are supported by Federal universal service support mechanisms under section 254(c)''? The Commission notes that under such a statutory interpretation, if an incumbent LEC ETC no longer were receiving any form of high-cost support, it would effectively become Lifeline-only ETCs throughout its service territory with the continuing obligation to provide service to Lifeline customers, subject to existing ETC relinquishment procedures.

69. What specific ETC obligations would an incumbent LEC be relieved of under such an interpretation of the statute? To the extent an incumbent LEC receives CAF–ICC support, how should the Commission determine the specific geographic areas that would be associated with that support?

3. Obligations of Carriers Serving Non-Contiguous Areas That Elect Frozen Support

70. *Discussion.* The Commission proposes specific service obligations for non-contiguous carriers electing to continue to receive frozen support amounts. In the course of the model development process, the Bureau sought to develop the record on several of these issues. The Commission now invites parties to comment on specific proposals. The Commission also seeks comment on how it can monitor for compliance with these obligations.

71. The Commission proposes that non-contiguous carriers electing to receive frozen support be subject to the same public interest service standards as those receiving model-based support, however modified in response to this FNPRM. In this FNPRM, the Commission seeks comment on whether it should increase the minimum broadband speed requirement for carriers that elect model-based Phase II support to 10 Mbps downstream. If the Commission adopts this new standard, it proposes it should also apply to non-contiguous carriers that elect to continue to receive frozen support. To the extent non-contiguous carriers contend that they should be held to a lesser speed standard, they should propose with specificity the number or percentage of locations in their funded areas that would receive lesser service.

72. Consistent with the *USF/ICC Transformation Order,* the Commission also proposes requiring non-contiguous carriers who continue receiving frozen support to offer both voice and broadband service at rates reasonably comparable to those services offered in urban areas. As with carriers accepting model-based support, the Commission proposes that non-contiguous carriers receiving frozen support would have two options for showing reasonable comparability: Reasonable comparability benchmarks as announced by the Wireline Competition Bureau based on the annual urban rate survey or a certification by the carrier that it is offering services meeting our voice and broadband requirements for the same or lower prices in rural areas as urban areas. The Commission seeks comment on whether there are any challenges unique to these non-contiguous carriers that they would face in meeting this obligation and how the Commission should account for those challenges and also fulfill its statutory obligation to ensure reasonably comparable rates.

73. In addition to speed and price obligations, the Commission proposes that non-contiguous carriers continuing to receive frozen support be subject to the same usage allowance specified by the Bureau for price cap carriers receiving model-based support. Specifically, the Commission proposes that these non-contiguous carriers must initially offer at least one service option that provides a minimum usage allowance of 100 GB per month at a rate that either meets the reasonable comparability benchmark announced by the Bureau or at a rate that is the same or lower than rates for its fixed wireline services in urban areas. The Commission also proposes that this minimum initial usage allowance should be adjusted over time to reflect trends in consumer usage over time. The Bureau permitted price cap carriers accepting model-based support to make this determination based on the usage level of 80 percent of all of its broadband subscribers, including those subscribers that live outside of Phase II-funded areas, while concluding that 100 GB would serve as a floor, even if 80 percent of the carrier's subscribers used less than 100 GB. The Commission

seeks comment on whether—in light of the potentially unique circumstances in non-contiguous areas—it would be appropriate to relax the 100 GB minimum usage allowance for non-contiguous carriers and instead allow them to meet their usage requirements based on a comparison to 80 percent of their entire subscriber base.

74. The Commission also proposes that non-contiguous carriers be required to meet a roundtrip provider network latency of 100 milliseconds or less. The Bureau noted in the *Phase II Service Obligations Order* that latency determinations for carriers serving non-contiguous areas could be affected by the use of undersea cable, depending upon the type and length of cable. Therefore, it allowed carriers in non-contiguous areas of the United States who receive model-based support to conduct their latency network testing from the customer location to a point at which traffic is consolidated for transport to an Internet exchange point in the continental United States. The Commission proposes allowing non-contiguous carriers that choose to continue to receive frozen support to fulfill their latency requirements using the same measurement. The Commission previously recognized that satellite backhaul may limit the performance of broadband networks as compared to terrestrial backhaul, and it exempted fixed broadband providers that must rely on satellite backhaul facilities from the usage allowance and latency requirements as a result. The Commission proposes exempting non-contiguous carriers that choose to continue to receive frozen support from these requirements as well, provided they rely exclusively on satellite backhaul and certify annually that no terrestrial backhaul options exist.

75. The Commission proposes that non-contiguous carriers receiving frozen support must not use such support in any areas where there is a terrestrial provider of fixed residential voice and broadband service that meets our Phase II performance requirements. To the extent a non-contiguous carrier is unable to meet this requirement, the Commission proposes that it relinquish whatever amount of frozen support it is unable to use for the intended purpose. The Commission seeks comment on these proposals.

76. The Commission seeks comment on the specific build out obligations that non-contiguous carriers receiving frozen support would have in those census blocks that do not currently have broadband service meeting the Commission's requirements. Specifically, should non-contiguous carriers receiving frozen support be required to deploy voice and broadband-capable networks and offer services meeting the above performance metrics to all locations in those funded areas, consistent with the state-level commitments required of carriers receiving model-based support? In the alternative, should these carriers be allowed to serve some subset of locations within their respective service areas where the average cost equals or exceeds the funding benchmark established by the Bureau? Should they also be required to extend broadband-capable networks to serve some specified number of locations in census blocks determined by the model to be above the extremely high-cost threshold?

77. The Commission seeks comment on how to monitor and enforce compliance by non-contiguous carriers receiving frozen support once it has determined their specific service obligations. Are there any measures that must be in place to ensure that the Commission has the ability to monitor compliance with these service obligations? Are there any considerations specific to non-contiguous areas that the Commission should account for when determining whether these carriers have complied with their service obligations? Below, the Commission proposes potential support reductions for price cap carriers receiving model-based support that fail to fulfill their service obligations. The Commission proposes that non-contiguous carriers receiving frozen support would be subject to similar reductions in support for failing to fulfill their service obligations. Should any adjustments to that framework be made?

78. Finally, the Commission seeks comment on whether to specify a five-year term for those non-contiguous carriers that elect to receive frozen support, and whether there is a need to modify the term of support for such non-contiguous carriers. Are there any specific extenuating circumstances in non-contiguous areas that would require extending the term of frozen support for longer than five years?

79. Recognizing there may be differing circumstances for each of the non-contiguous carriers, the Commission asks whether it should adopt tailored service obligations for each one that chooses to elect frozen support. To the extent non-contiguous carriers contend that they could not meet one or more of the public interest service standards set forth above, they should submit specific alternatives. However, the Commission notes that, for certain non-contiguous carriers, the amount of frozen support they would receive is greater than the amount of model-based support they would receive. The Commission expects, therefore, that any alternatives proposed by these carriers would reflect this level of support and would be consistent with the Commission's goal of ensuring universal availability of modern networks capable of providing voice and broadband service to homes, businesses, and community anchor institutions.

4. Other Issues Relating to the Phase II Transition

80. The Commission proposes several minor changes and clarifications regarding the implementation of the transition to model-based support to ease the administration of Connect America Phase II. First, the Commission proposes to align the five-year term for model-based support provided to price cap carriers that elect to make a state-level commitment with calendar years, specifically, 2015 through 2019. Second, the Commission proposes that a carrier accepting state-level support pursuant to Connect America Phase II should receive the full amount of Phase II support in the initial year, rather than the transitional amount of support adopted in the *USF/ICC Transformation Order.* Third, the Commission proposes to clarify that for purposes of calculating the baseline for carriers in states where model-based support will be less than Phase I support, the baseline only includes Connect America Phase I frozen high-cost support, and not Phase I incremental support.

a. Aligning Connect America Phase II Funding and Calendar Years

81. Under the recordkeeping and reporting rules established by the Commission, many accountability requirements operate on a calendar year basis. Aligning the funding years of Connect America Phase II with the reporting and recordkeeping years established in sections 54.313 and 54.314 of the Commission's rules could lessen administrative burdens, for the Fund Administrator, states, and recipients.

82. At this juncture, the Commission anticipates that while the offer of support may be extended before the end of 2014, the deadline for acceptance will be in 2015, 120 days later. The Commission proposes to disburse a lump sum amount to those carriers for whom model-based support in a given state will be greater than Connect America Phase I support, representing the additional amount of model-based support that would accrue for the

beginning months of the year while the offer of support is under consideration, so that in calendar year 2015 those carriers will receive the appropriate yearly amount. Should such support be disbursed in the month after the acceptance of model-based support, or some other date? The Commission seeks comment on these proposals.

b. Transition Where Model-Based Support Is Greater Than Connect America Phase I Support

83. In the *USF/ICC Transformation Order,* the Commission specified that price cap carriers electing the state-level commitment would receive five years of model-based support and established a process for transitioning support from Connect America Fund Phase I to Phase II in states where model-based support is greater than frozen support. Specifically, for a carrier accepting the state-level commitment, ''in the first year, the carrier will receive one-half the full amount the carrier will receive under CAF Phase II and one-half the amount the carrier received under CAF Phase I for the previous year (which would be the frozen amount if the carrier declines Phase I [incremental support] or the frozen amount plus the incremental amount if the carrier accepts Phase I [incremental support]); in the second year, each carrier accepting the state-wide commitment will receive the full CAF Phase II amount.'' In a Public Notice, the Bureau sought to develop further the record on various issues regarding implementation of this transition.

84. The Commission now proposes to eliminate the transition year and disburse the full amount of model-based support in the initial year to those carriers for whom the amount of model-based support is greater than frozen support. The Commission expects this will reduce administrative burden on the Fund Administrator, as it will only need to program its systems once to disburse the appropriate monthly amounts over the five-year period, rather than first implementing a transition year, and then switching to the full model-determined amounts the second year. In addition, the Commission expects that this would provide greater certainty for carriers accepting a state-level commitment than deferring disbursement of part of the initial year's support until certain milestones are met, as suggested in the *Additional Phase II Public Notice,* 78 FR 76789, December 19, 2013. Given that in all relevant circumstances, the carriers will be receiving a support level that is higher than their prior frozen support for that state, the Commission proposes that there is no need for a transition year, and the public interest and the purposes of section 254 of the Act will be served by disbursing the new, model-based level in the first year.

85. The Commission therefore proposes that, for a carrier accepting a state-level commitment, in the first year the carrier will receive 100 percent of the annualized amount the carrier will receive pursuant to Connect America Phase II, and no additional Connect America Phase I support. The Commission seeks comment on this proposal and our analysis.

c. Base Support Amount for Transition to Connect America Phase II

86. As described above, the Commission noted ''[t]o the extent a carrier will receive less money from CAF Phase I than it will receive under frozen high-cost support, there will be an appropriate multi-year transition to the lower amount.'' It is not clear from the language whether the Commission intended the reference to ''CAF Phase I'' to encompass Phase I incremental support.

87. The Commission proposes to clarify that for the purposes of transitioning from Connect America Phase I to Phase II, only Connect America Phase I frozen support is relevant. Specifically, the multi-year phase down in support that the Commission adopts in the concurrently adopted Report and Order would only apply to frozen support and would not include Phase I incremental support. Incremental support was provided to carriers on a one-time basis in exchange for specific build-out commitments, in contrast to the ongoing frozen support. The Commission is unaware of any policy justification for providing any fraction of the one-time support on a recurring basis under the guise of a transition to Connect America Phase II. The Commission seeks comment on this proposed clarification.

F. Interplay Between Rural Broadband Experiments and Offer of Model-Based Support

88. More than 1,000 expressions of interest in rural broadband experiments have been filed by a wide range of entities. Although the Commission has not yet established selection criteria or a budget for those experiments, it is likely that there will be a number of well-developed formal proposals. Such proposals provide strong evidence that at least some entities are prepared to extend robust broadband in a given high-cost area for an amount less than or equal to the amount of model-based support that would be provided to a price cap carrier through the state-level commitment process for that area. The Commission therefore seeks comment on whether such an indication of potential competitive entry through a formal proposal for an area should be grounds for removing that area from a carrier's state-level commitment (i.e., the carrier would not receive model-based support for that area and would have no obligation to meet the broadband performance obligations in that area).

89. The Commission seeks comment on what conditions a rural broadband experiment formal proposal would have to meet in order to remove a geographic area from a price cap carrier's state-level commitment. In particular, the Commission seeks comment on the broadband performance, amount of support requested, and other conditions a rural broadband formal proposal should meet before the area it covers would be removed from the price cap carrier's state-level commitment. For example, based on staff review thus far, it appears that the vast majority of the expressions of interest received to date are requesting one-time support, rather than recurring support. In order to remove a particular geographic area from the state-level commitment, should the amount of one-time support requested be annualized over a ten-year period, to provide an apples-to-apples basis for comparison to model-based support? Should the proposal be required to indicate a willingness to receive the amount of one-time support requested over a multi-year period, such as five or ten years? What other factors should the Commission consider before concluding a formal application is sufficiently meritorious to remove an area from a carrier's state-level commitment?

90. From an administrative perspective, how would the Commission implement the removal of an area from a carrier's state-level commitment? Should the Commission remove all areas that are covered by formal rural broadband experiment proposals that meet the conditions discussed above that the Commission does not fund through the rural broadband experiment? What other criteria could the Commission use to determine whether an area should be removed from a carrier's state level commitment? To the extent a formal rural broadband experiment proposal covers an area that is served in part by a rate-of-return carrier and in part by a price cap carrier, should the proposal be required to indicate that the applicant will proceed if only funded in the price cap portion of the proposed service area,

in order to be sufficient to remove an area from the price cap carrier state-level commitment?

91. If the Commission were to adopt such an approach, how would this affect the incentives of potential participants in the Phase II competitive bidding process to express their interest prior to the offer of support to price cap carriers? How would this affect the incentives of price cap carriers to accept or decline model-based support? How would it affect the timing and extent of the deployment of broadband-capable infrastructure in high-cost areas? Given that the vast majority of the expressions of interest proposing to extend fiber-based technologies propose to deploy fiber-to-the-premise, would removing such areas from the state-level commitment result in greater deployment of broadband to high-cost areas than would be the case under the current Connect America framework?

G. Phase II Competitive Bidding Process

92. In the concurrently adopted Report and Order, the Commission sets certain parameters for the Phase II competitive bidding process. In this section, the Commission seeks to develop further the record on additional issues relating to the competitive bidding process that will occur in Phase II.

93. In the *USF/ICC Transformation Order,* the Commission adopted rules to apply generally for competitive bidding to award universal service support, codified in Subpart AA of Part I. In the *USF/ICC Transformation FNPRM,* 76 FR 78384, December 16, 2011, it proposed to use a reverse auction to distribute support to providers of voice and broadband services in price cap areas where the price cap carrier declined support. The Commission proposed to use such a mechanism to determine where services meeting the specified performance requirements can be offered ''at the lowest cost per unit'' with the relevant unit being the number of residential and business locations in a given census block. The Commission also sought comment on relaxing performance obligations and allowing bidders to offer to provide service with different performance characteristics, with the Commission considering these service quality attributes when it evaluates bids.

94. The Commission recognizes the importance of specifying in advance objective, well-defined, and measurable criteria for selecting among entities that seek funding in a competitive bidding process. The record received in response to the *USF/ICC Transformation FNPRM* is not sufficiently well developed on this issue, however, for us to make final decisions at this time. But the Commission is nevertheless determined to finalize the details of the competitive bidding process so that it can occur shortly after the model-based elections take place. In the concurrently adopted Report and Order, the Commission adopts certain rules with respect to participation, the term of support, and the ETC designation process, and the Commission seeks further comment on other aspects of those rules elsewhere. Here, the Commission focuses on the mechanics of the competitive bidding process and seek comment on specific proposals.

95. *First,* the Commission proposes that it adopts reserve prices based on the Connect America Cost Model so that the reserve price for a given geographic area in the competitive bidding (i.e., census tract or census block) equals the amount of support the model would have calculated for that same geographic unit in the state-level election process. To the extent the Commission ultimately decides that census tracts will be the minimum geographic unit for competitive bidding, it proposes that the reserve price for a given census tract would be the support associated with the requisite number of locations in census blocks within that tract that are eligible for funding. That support could be used to serve locations within census blocks where the average cost per location exceeds the extremely high-cost threshold established by the model. To the extent parties argue that the model should not be used to determine reserve prices either generally or in specific areas, they should articulate what instead should be used for a reserve price.

96. *Second,* the Commission proposes bidders may bid for a package of geographic areas, either census blocks or census tracts. The Commission believes that such package bidding is likely necessary so that bidders may construct efficient networks and are not left to serve certain high-cost tracts without the scale to do so effectively.

97. *Third,* the Commission proposes that the total of all bids accepted nationwide be no greater than the total Connect America Phase II budget that remains after the state-level election process. The Commission notes that because bidders can compete both for areas subject to the state-level election process as well as areas that are deemed extremely high-cost, there could be insufficient funds to support all bidders even if there is only one bid in each area. As such, the competitive bidding process is likely to result in both intra-area and inter-area competition for funding.

98. *Fourth,* the Commission proposes that the competitive bidding process use a multi-round auction so that competitive bidders have the opportunity to reevaluate their bids in light of the actions of others. A multi-round process may be especially important here so that bidders can reevaluate their deployment objectives in light of the demonstrated willingness of other bidders to build out broadband in an area.

99. *Fifth,* the Commission proposes that the competitive bidding process be implemented in a way that first identifies those provisionally winning bids that propose service that substantially exceeds the Commission's service standards, for an amount per location equal to or less than the model-determined amount of support for the relevant geographic areas. To the extent funding remains available, the Commission proposes that the next round of bidding would identify those bids proposing to provide service that meets the Commission's service standards, for an amount of support per location equal to or less than the model-determined amount. To the extent funding still remains available after these two determinations, the Commission proposes that the competitive bidding process would then identify winning bidders that are willing to provide service using relaxed performance standards for an amount of support equal to, or less than, the model-determined reserve price. The Commission seeks comment on the specific characteristics of services that would be deemed to be ''substantially'' exceeding the Commission's standards. In order to qualify for such a preference, must a bidder commit to offering service that substantially exceeds our standards to 100 percent of all funded locations, or some lesser percentage? In addition, the Commission seeks comment on whether it should adopt any other limits on the priorities discussed above. For instance, should the auction be designed so that the Commission select all bids that substantially exceed the Commission's standards before selecting any bids for service that meets or falls below the Commission's standards? Should the Commission allocate funding in a way that provides geographic coverage across various states? The Commission also seeks comment on how it might incorporate into our auction design consideration of the expressed preferences of the affected community for service of a particular type or quality. What would be an appropriate form for such an indication?

100. Rather than the multi-step approach proposed above, should the Commission consider bidding credits to effectuate priorities that advance our objectives? The Commission seeks to refresh the record on the use of bidding credits, including bidding credits for service to Tribal lands, and also ask whether to provide bidding credits to bidders that propose to offer service that substantially exceeds the Commission's standards.

101. The Commission also seeks comments on concerns that a reverse auction will result in bidders competing to provide the minimally acceptable level of service. How can the Commission best ensure that any competitive bidding process it ultimately adopts will bring an evolving level of broadband service to consumers, businesses, and anchor institutions in rural America? The Commission now seeks to refresh the record and seek more focused comment on what objective metrics should be used when the Connect America Phase II competitive bidding process is implemented nationwide in price cap territories to the extent the offer of model-based support is declined. Specifically, what criteria should be adopted that will determine who is awarded support?

102. Additionally, the Commission seeks comment on what specific rules and requirements must be in place before it makes the offer of model-based support to price cap carriers. As noted above, the Commission has already adopted rules for the award of universal service support through a competitive bidding process, codified in Subpart AA of Part 1. Those rules specify, among other things, that the following will be specified by public notice prior to the commencement of competitive bidding: (1) The dates and procedures for submitting applications to participate in the competitive bidding process; (2) the details of and deadlines for posting a bond or depositing funds with the Commission to provide funds to draw upon in the event of defaulting bids; (3) procedures for competitive bidding, including but not limited to whether package bidding will be allowed and reserve prices; and (4) the amount of default payments, not to exceed 20 percent of the amount of the defaulted bid amount. Typically, these matters would be specified only after the Commission knows the inventory of areas that will be subject to auction. The Commission seeks comment on which, if any, of these matters should be specified by public notice before it makes the offer of model-based support to price cap carriers. Are there other rules and requirements that should be specified in advance of the commencement of the Connect America Phase II competitive bidding process?

H. Mobility Fund Phase II

103. Since the *USF/ICC Transformation Order* was adopted, there has been significant commercial deployment of mobile broadband services. According to some sources, nearly 99.5 percent of the U.S. population today (and the road miles associated with that population) is covered by some form of mobile broadband technology. Verizon asserts that its 4G LTE network currently is available to 95 percent of the U.S. population—more than 500 markets covering approximately 303 million people. Similarly, AT&T has stated that at present its LTE deployment covers all major metropolitan areas, totaling nearly 280 million people, and it expects to cover approximately 300 million people by the summer of 2014.

104. *Discussion.* Based on these marketplace developments, the Commission proposes to target the funds set aside to support mobile services in Mobility Fund Phase II on preserving and extending service in those areas that will not be served by the market without governmental support. The Commission emphasized in the *USF/ICC Transformation Order* that it did not intend to provide ongoing support for service to areas that are likely to be served absent support. Given marketplace developments over the last few years, the Commission seeks comment on how to ensure that Mobility Fund Phase II is focused on preserving service that otherwise would not exist and expanding access to 4G LTE in those areas that the market will not serve.

105. Section 254(b) of the Act requires the Commission to base policies on the ''preservation and advancement of universal service.'' In recognition of this statutory directive, the Commission in the *USF/ICC Transformation Order* adopted specific performance goals to preserve and advance the universal availability of voice service, including ensuring the universal availability of modern networks capable of providing advanced mobile voice and broadband services. The Commission reaffirms this commitment and therefore seek to target the Mobility Fund Phase II funding in a way that preserves mobile service where it only exists today due to support from the universal service fund and to extend service to areas unserved by 4G LTE.

106. Given the experiences with Mobility Fund Phase I and Tribal Mobility Fund Phase I where demand for universal service support far exceeded the supply of available funding, the Commission recognizes that there is a need and desire on the behalf of providers to extend mobile service, consistent with our universal service goals. The Commission therefore proposes to focus competitive bidding for Mobility Fund Phase II support on extending mobile 4G LTE to the remaining U.S. population that will not have it available from either Verizon or AT&T. Consistent with this objective, the Commission proposes to distribute those funds within a defined budget so as to maximize the population that can be served with 4G LTE. The Commission proposes to identify areas eligible for support, i.e., areas where neither Verizon nor AT&T provide 4G LTE, but also seek comment below on whether this standard will preserve existing service in those situations where the network of a mobile provider covers both eligible and ineligible areas. The Commission also proposes to identify eligible areas using the most recently available data for this purpose as reported on Form 477. Our FCC Form 477 data collection was revised in June 2013; the Commission expects to begin collecting more granular data regarding mobile broadband service and new data regarding mobile voice service availability in September 2014. The Commission seeks comment on these proposals.

107. Based on technological developments in the industry, our proposal would require that recipients of Mobility Fund Phase II support deploy 4G LTE. Is there another deployment standard the Commission should use? For example, in the *USF/ICC Transformation Order,* the Commission allowed winners of Mobility Fund Phase I support to elect to deploy 3G or 4G, with a shorter deployment deadline for those that elected 3G. The Commission originally proposed requiring 4G deployment for Mobility Fund Phase II. For those parties who argue that the Commission should employ a deployment standard other than 4G LTE, please explain how using that standard would help us address the other issues the Commission identifies in this section and help us meet our goals of preserving and extending service in those areas that will not be served by the market without governmental support. In identifying eligible areas under our proposed standard, if there are areas where a portion of a network overlaps in part with an area that has LTE coverage provided by AT&T and/or Verizon, how

should the Commission treat the eligibility of those areas so as to promote the preservation of service in the portion that does not overlap? Similar to the process used for Auctions 901 and 902, which awarded Mobility Fund Phase I support, the Commission expects that proposed eligible areas would be identified publicly prior to the commencement of bidding for Mobility Fund Phase II support and would be subjected to a challenge process to add or subtract areas from the original proposed eligible areas. What is the best way to verify in such a process that proposed ineligible areas are in fact served by LTE and that proposed eligible areas are indeed eligible because they lack LTE? In addition, the Commission asks commenters to describe whether and, if so how, it should modify other aspects of the original proposals for Mobility Fund Phase II competitive bidding to conform to this proposed new approach.

108. *Size of Retargeted Mobility Fund Phase II.* Given marketplace developments, the areas requiring support to preserve and advance mobile services appear to be less extensive than the Commission anticipated in 2011. The Commission therefore proposes to adjust downward the budget for a retargeted Mobility Fund II. Based on February 2014 disbursement figures, the Commission estimates that wireless competitive ETCs currently are collectively receiving about $590 million in support on an annualized basis, with about $185 million of that support going to two of the largest national providers that have announced the commercial roll-out of LTE. Thus, the Commission estimates that about $400 million is going to smaller and regional wireless providers. This funding is not well-targeted, however, as it is supporting multiple networks with overlapping coverage in some areas, and in some areas supporting a network that overlaps with the coverage provided by one of the four national wireless providers that is not relying on federal universal service support to offer mobile services in that area. To the extent the Commission eliminates unnecessary support in such areas, it could target that support to those areas that will not be served with 4G LTE through commercial deployments.

109. The Commission seeks to further develop the record on how much of that $400 million in competitive ETC support provided today to smaller and regional wireless providers is covering ongoing operating expenses, and how much of it is being used to extend service to unserved areas. To the extent commenters contend that the current funding is necessary to preserve existing service, they should identify with particularity those amounts and specify the extent to which such subsidized service overlaps with the coverage areas of one of the four national providers. To what extent is existing frozen support being provided to areas that are not expected to receive 4G LTE from either Verizon or AT&T?

110. In re-evaluating the appropriate size of the Mobility Fund Phase II, should the Commission preserve the existing amount of funding dedicated to Tribal lands? In 2011, the Commission concluded that up to $100 million of the Mobility Fund Phase II budget should be targeted at Tribal lands throughout the nation, including remote areas in Alaska. Recognizing the continuing connectivity challenges facing Tribal lands, should the Commission proceed to conduct an auction to award up to $100 million in ongoing support to mobile providers on Tribal lands throughout the nation? To what extent are Tribal lands in the geographic areas where AT&T and Verizon do not intend to extend 4G LTE? Should the Commission implement such an auction first, before determining how to proceed more generally with respect to Mobility Fund Phase II?

111. If the Commission adjusts downward the budget for Mobility Fund Phase II, it proposes to reallocate those funds to the Remote Areas Fund or the competitive bidding process for Connect America Phase II. The Commission seeks comment on this proposal. The Commission expects wireless providers that meet the requisite service standards will participate in both the Remote Areas Fund and Connect America Fund. Wireless technology may well be the appropriate solution to serve many areas lacking broadband today, and the Connect America Phase II competitive bidding process and Remote Areas Fund will be implemented in a technologically neutral manner to allow the participation of as many entities as possible. Would re-allocating a portion of the Mobility Fund Phase II budget to either of these mechanisms be consistent with our overall reform objectives?

112. The Commission specifically asks commenters whether, instead of maintaining the $500 million budget for Mobility Fund Phase II, it should use a portion of that budget, potentially including undisbursed funds remaining from Mobility Fund Phase I, to provide one-time support to those providers willing to extend mobile LTE to eligible unserved areas. If the Commission were to adopt such an approach, how much funding should it reserve for recurring annual support under a more narrowly focused Mobility Fund Phase II?

113. *Proposed Rules.* The *USF/ICC Transformation FNPRM* included proposed rules for Phase II of the Mobility Fund. The Commission now seeks comment on revised proposed rules for Mobility Fund Phase II in light of the above proposals and the Commission's experience with administering Phase I of the Mobility Fund. The Commission seeks comment on these proposed rules in Appendix B.

114. *Timing of ETC Designation.* As described in the concurrently adopted Order, the Commission adopts new rules to enable participants in the Connect America Phase II competitive bidding process to seek designation as an eligible telecommunications carrier *after* winning competitive bidding for Connect America Phase II support. The Commission seeks comment on whether to adopt this approach for Mobility Fund Phase II or to maintain the Commission's practice that parties must have ETC designations, subject to certain exceptions, *before* applying to participate in Mobility Fund competitive bidding. Participants in Mobility Fund competitive bidding have been able to obtain new designations prior to applying to participate in competitive bidding. There may, however, be benefits to permitting parties to participate in competitive bidding for Mobility Fund Phase II prior to seeking a designation, such as increased competition in the bidding. The Commission seeks comment on whether a greater number of qualified parties would participate in Mobility Fund Phase II if it only required that they seek designation after winning competitive bidding.

I. Phase-Down of Identical Support

115. The Commission proposes to amend our identical support phase-down rules in several ways. First, for each wireless competitive ETC for which competitive ETC funding exceeds 1 percent of its wireless revenues, the Commission proposes to maintain existing support levels until a specified date after the announcement of winning bidders for Mobility Fund Phase II ongoing support, with that date depending on whether it is a winning bidder of such support. While the Commission is not convinced that maintaining existing support levels for these providers is necessary to ensure that consumers continue to have access to mobile service, it lacks sufficient data at this time to adopt a more tailored approach. Second, the Commission proposes to accelerate the phase-down for those wireless carriers that it

presumes are not relying on such support to maintain existing service. In particular, the Commission proposes to adopt a rule that would eliminate competitive ETC frozen support for providers for whom such funding represents 1 percent or less of their wireless revenues. Finally, the Commission proposes to freeze support for wireless providers serving remote areas in Alaska as of December 31, 2014, and to maintain those frozen support levels until a specified date after winning bidders are announced for ongoing support under Tribal Mobility Fund Phase II or Mobility Fund Phase II, with that date depending on whether wireless providers become winning bidders of such support.

116. *Discussion.* The Commission reaffirms the decision to eliminate the identical support rule. As the Commission stated at that time, the rule did not encourage the efficient deployment of service to areas that would otherwise be unserved and was therefore an ineffective use of universal service funds. Moreover, as discussed above, AT&T and Verizon's recent and ongoing mobile LTE deployments will reach the areas where the vast majority of all Americans live. Nevertheless, the Commission is concerned that some areas of the country may lose service if competitive ETC funding is further phased down before the rules for Mobility Fund Phase II are adopted. Thus, given our proposal to retarget Mobility Fund Phase II funds, for each wireless competitive ETCs for which competitive ETC support is more than 1 percent of its wireless revenues, the Commission proposes to maintain existing support levels (i.e., 60 percent of baseline support) until (1) the first month after the month in which its Mobility Fund Phase II ongoing support is authorized in the case of a winning bidder of such Mobility Fund Phase II support, or (2) the first month after the month in which a public notice announces winning bidders for Mobility Fund Phase II ongoing support in the case of a competitive ETC that is not a winning bidder of such Mobility Fund Phase II support. Support levels would then be reduced to 40 percent of the baseline for the next year, and then 20 percent of the baseline for the subsequent year. The Commission seeks comment on this proposal and any alternatives. For instance, should the Commission resume the phase-down in support upon adoption of rules establishing the framework for Mobility Fund Phase II? Should the Commission resume the phase-down in support for all competitive ETCs the first month after any bidder is authorized to receive funding from Mobility Fund Phase II? Should the Commission resume the phase-down in support for all recipients of frozen support when 50 percent of Mobility Fund Phase II funding has been authorized, regardless of whether a particular competitive ETC is a winning bidder or not?

117. Regardless of what the Commission ultimately adopts regarding the phase-down in frozen support for competitive ETCs, the Commission proposes to accelerate the phase-down for any wireless competitive ETC for whom high-cost support represents one percent or less of its wireless revenues, eliminating such support on December 31, 2014 or the effective date of the rule, whichever is later. A number of competitive ETCs currently are receiving very small amounts of support. Is it reasonable to assume that if a carrier's competitive ETC support is a tiny fraction of its revenues, that carrier is not relying on such support to maintain existing service? The Commission proposes to determine the requisite percentage based on reported revenues as submitted by the high-cost recipient or its affiliated holding company on the most recent FCC Form 499–A. The Commission seeks comment on this proposal. For purposes of implementing such a proposal for wireless competitive ETCs, should the Commission focus solely on reported wireless revenues or on total revenues reported on the FCC Form 499? The Commission notes that if it were to adopt this proposal, any provider could seek a waiver of the accelerated phase-down if the elimination of support would result in consumers losing access to existing service.

118. The Commission seeks comment on whether to take a different approach for resumption of the phase-down in frozen support for wireline competitive ETCs. For instance, should the Commission maintain existing frozen support levels (i.e., 60 percent of baseline support) for wireline competitive ETCs until winning bidders are announced in the Phase II competitive bidding process? Or, should the Commission revise our rules and continue the phase down of support for these wireline competitive ETCs upon the effective date of a rule, unless they are the only provider of voice and broadband service meeting our current broadband performance obligations in an area?

119. Finally, the Commission notes that because the *USF/ICC Transformation Order* froze their support at the study area level, most competitive ETCs stopped reporting line counts. However, the Commission delayed the phase-down by two years for remote areas in Alaska until June 30, 2014, or the implementation of Mobility Fund Phase II and Tribal Mobility Fund Phase II, whichever is later, to ''preserve newly initiated service and facilitate additional investment in still unserved and underserved areas.''

120. The Commission now proposes to freeze the total amount provided to each competitive ETC serving remote areas in Alaska. This would simplify support calculations for the Administrator, while not disturbing existing support levels for existing competitive ETCs. Competitive ETCs would no longer be required to file line counts for remote areas of Alaska, thus alleviating the need for the Bureau to address on a case-by-case basis how competitive ETCs should report line counts in situations where the customer's billing address is either unavailable or does not accurately represent the location of where the service is actually provided. Under this proposal, the baseline for competitive ETC support in remote areas of Alaska would be set as of a date certain, such as December 31, 2014, or the effective date of the rule, whichever is later. The Commission seeks comment on this proposal.

121. Above, the Commission proposes to maintain existing support levels for wireless competitive ETCs until after it adopts rules for Mobility Fund Phase II. Consistent with the framework established by the Commission in 2011, the Commission proposes to maintain the baseline frozen support for each competitive ETC serving remote areas in Alaska until (1) the first month after the month in which its Mobility Fund Phase II or Tribal Mobility Fund Phase II ongoing support is authorized in the case of a winning bidder of such Mobility Fund Phase II support, or (2) the first month after the month in which a public notice announces winning bidders for ongoing support under Mobility Fund Phase II or the Tribal Mobility Fund Phase II, whichever is later, for a competitive ETCs that is not winning bidder of such Mobility Fund Phase II or Tribal Mobility Fund Phase II support. Upon that date certain, the phase-down in support would commence under the schedule originally adopted by the Commission: 80 percent of the baseline in the first year; 60 percent of the baseline in the second year; 40 percent of the baseline in the third year; and 20 percent of the baseline in the fourth year. The Commission seeks comment on this proposal. To the extent parties argue for a different approach, they should

specify when the phase-down in support in remote Alaska should begin. Should remote areas in Alaska or any other areas in the United States be subject to exceptions or other conditions with respect to the phase-down in frozen support?

J. Reforms in Rate-of-Return Study Areas

122. Rate-of-return carriers play a significant and vital role in the deployment of 21st century networks throughout the country. The Commission recognizes that telephone service would not exist today in many rural and remote areas of the country without the concerted efforts of local companies to serve their communities. As the Commission moves forward with the Connect America Fund Phase II for price-cap carriers, it remains cognizant of the fact that many of the same marketplace and technological forces that led to the development of the Connect America Fund for price cap carriers are also affecting rate-of-return carriers. Access lines are declining; residential customers increasingly are cutting the cord; and both consumers and businesses are demanding broadband. Rate-of-return carriers are not insulated from competitive pressures, and they must be prepared to shift their business models for a new era. In light of these realities, the Commission seeks here to renew a dialogue regarding the best way to encourage continued investment in broadband networks throughout rural America to ensure that all consumers have access to reasonably comparable services at reasonably comparable rates. In short, the Commission seeks to establish a ''Connect America Fund'' for rate-of-return carriers.

1. Near-Term Reforms for Rate-of-Return Carriers

123. The Commission continues to have significant concerns regarding the structure and incentives created under the existing high-cost mechanisms for rate-of-return carriers, such as the ''race to the top'' incentives that exist under HCLS and the ''cliff effect'' of the annual adjustment of the HCLS cap. The structure of the current HCLS mechanism creates problematic incentives: Some companies operating in high-cost areas receive all of their incremental additional investment through the federal support mechanism, while other companies operating in high-cost areas receive no support whatsoever from HCLS due to how support is reduced to fall within the overall HCLS cap.

124. Support for rate-of-return carriers has been subject to the HCLS cap, which is rebased annually through a rural growth factor, for more than a decade. In 2001, the Commission modified the distribution of HCLS by rebasing the fund for rural telephone companies and retaining an indexed cap. Specifically, the Commission concluded that the total cap on HCLS would be adjusted annually by a rural growth factor equal to the sum of the annual percentage changes in the gross domestic product-chain priced index and the total number of working loops. Given decreases in working loops in rate-of-return study areas in recent years, resulting in reductions of the indexed cap, HCLS has been reduced substantially for many rate-of-return carriers while others incur almost no reduction. The Commission also adopted a rule that ensures that rural carriers receive the total amount of capped HCLS, regardless of the extent to which individual carriers' costs exceed the actual national average cost per-loop (NACPL) by the requisite percentages. Neither of these features of the HCLS rule was altered in the *USF/ICC Transformation Order.*

125. As a near term measure that can be quickly implemented to mitigate both of these deficiencies, the Commission proposes to reduce support proportionally among all HCLS recipients by no longer adjusting the NACPL, but instead reducing the reimbursement percentages for all carriers. Under the proposed rule, reductions in support will be spread proportionally among all carriers, and carriers presently close to the NACPL will no longer run the risk of ''falling off the cliff'' in terms of their receipt of HCLS support. This rule could be implemented beginning January 1, 2015. The Commission seeks comment on this proposal and invite comment on other possible methods to address this issue.

126. The HCLS rules require adjusting the NACPL annually so that total HCLS support equals the indexed cap. Currently, HCLS rules reimburse 65 percent of the loop costs in excess of 115 percent, but less than 150 percent of the NACPL and 75 percent of loop costs in excess of 150 percent of the NACPL. Because the NACPL is adjusted each year, many carriers are precluded from receiving any HCLS, and those carriers with costs close to the NACPL that is used to determine HCLS experience large percentage reductions in support. This gives those carriers with the highest loop costs relative to the national average minimal incentive to reduce costs. To curtail this ''race to the top,'' the Commission proposes to freeze the NACPL that is used to determine support and instead to reduce HCLS proportionately among all HCLS recipients by reducing the 65 percent and 75 percent reimbursement percentages by equivalent amounts to maintain aggregate support at the indexed cap. This effectively would freeze the NACPL at the capped amount as of December 31, 2014, or the effective date of the rule, whichever is later. In conjunction with this ''freezing'' of the NACPL, the Commission also proposes to reduce the NACPL and continue to use the 65 percent and 75 percent reimbursement percentages whenever calculated support using the 65 and 75 percentages will not exceed the indexed cap for HCLS in the aggregate. Under the first part of the proposed rule, reductions in support would be spread proportionally among all recipients of HCLS, and carriers presently close to the now frozen NACPL would no longer run the risk of ''falling off the cliff'' in terms of their receipt of HCLS support. Under the second part of the proposed rule, if there are other changes that would otherwise result in a lowering of the NACPL, carriers will receive support based on the 65 and 75 percentage reimbursements.

127. The Commission proposes as another near-term measure to adopt a rule that no new investment after a date certain (i.e., December 31, 2014) may be recovered through HCLS and ICLS when such investment occurs in areas that are already served by a qualifying competitor. The Commission seeks comment on this proposal.

128. The Commission proposes measures to monitor and enforce compliance with such a rule. Price cap carriers today are precluded from using support in areas that are served by an unsubsidized competitor. Support may be used to serve geographic areas that are partially served by an unsubsidized competitor; however, price cap carriers must certify that, with respect to the support dollars subject to this obligation, a majority of the served locations are unserved by an unsubsidized competitor. For purposes of determining whether this requirement is met, price cap carriers must be prepared to provide asset records demonstrating the existence of facilities that serve locations in census blocks where there is no unsubsidized competitor. The Commission proposes to take a similar approach if it adopts a rule precluding recovery of new investment in areas served by competitors through our universal service support mechanisms.

129. In particular, to enforce a requirement that new investment recovered in whole or in part through

HCLS or ICLS not occur in areas where there is a competing provider, the Commission proposes that rate-of-return carriers be prepared to produce, in an audit or other inquiry, asset records and associated receipts to document that new investment for which recovery is sought through the federal support mechanisms, after a date certain, occurred only in census blocks that are not served by other providers. Recognizing concerns expressed in the record regarding the coverage indicated in the National Broadband Map, the Commission further proposes to create a safe harbor that would allow rate-of-return carriers to include new investment in cost studies used to determine HCLS or ICLS if they publicly post information on their Web site regarding deployment plans and wait a specified period of time, such as 90 days. If no competing provider notifies the rate-of-return carrier that it serves the areas in question, the rate-of-return carrier may presume no other provider is serving those locations, and new investment in such areas may be eligible for cost recovery, consistent with any applicable rules for existing or future support mechanisms. The Commission seeks comment on these proposals and any alternatives that would provide a mechanism to provide clarity as to which new investments would be applicable for cost recovery through universal service support mechanisms, without creating undue burden on either rate-of-return carriers or potential qualifying competitors in their service areas.

130. In the concurrently adopted Report and Order, the Commission codified the rules adopted by the Commission to eliminate support in study areas where there is a 100 percent overlap with an unsubsidized competitor. If the Commission adopts our proposal above to not provide support to areas with a ''qualifying competitor,'' should the Commission similarly modify the 100 percent overlap rule? The Commission also proposes to adopt a timeline for periodic determination of whether there is a 100 percent overlap, with the Bureau reviewing the study area boundary data in conjunction with data collected on the FCC Form 477 and the National Broadband Map every other year to determine whether and where 100 percent overlaps exist. The Commission also proposes to adjust the baseline for support reductions to be the amount of support received in the immediately preceding year before a determination is made that there is a 100 percent overlap, rather than 2010 support amounts. The Commission seeks comment on these proposals.

2. Longer-Term Reforms for Rate-of-Return Carriers

131. In the longer term, the Commission questions the continued viability of the HCLS and ICLS mechanisms in their current form and suggest that all affected stakeholders focus on creating a new Connect America Fund for cost recovery that will be consistent with the core principles for reform adopted by the Commission in 2011. For that reason, the Commission seeks comment on a rule under which no new investment would be included in cost studies used for the determination of HCLS and ICLS after a date certain, and HCLS and ICLS would become the mechanisms to recover only past investment occurring prior to that date certain. Over time, the amount recovered through HCLS and ICLS would diminish, and all new investment would be recovered through a new Connect America Fund for rate-of-return territories specifically designed to meet the Commission's overall objective to support voice and broadband-capable networks in areas that the marketplace would not otherwise serve and to ensure that consumers in rural, insular and high-cost areas have access to reasonably comparable services at reasonably comparable rates to consumers living in high-cost areas.

132. If the Commission were to adopt such a rule, it would not implement the limitation on recovery of new investment through the existing mechanisms until the new Connect America Fund was in place and operational. The Commission welcomes stakeholder proposals for the design of this Connect America Fund to make more efficient use of universal service funds and encourage the deployment of broadband-capable networks, working within the existing budget of $2 billion for rate-of-return territories. What timeline would be an appropriate target to set for the implementation of the Connect America Fund for rate-of-return territories and the limitation on recovery of investment in the old mechanisms? If the Commission were to wind down the existing HCLS and ICLS mechanisms and create a new Connect America Fund for use in rate-of-return territories, what action should the Commission then take in its pending rate represcription proceeding?

133. The Commission proposes to adopt a stand-alone broadband funding mechanism for rate-of-return carriers and provide specific guidance on the desired implementation of such an approach. The Commission proposes that such a mechanism be designed to (a) calculate support amounts that remain within the existing rate-of-return budget, (b) distribute support equitably and efficiently, so that all rate-of-return carriers have the opportunity to extend broadband service where it is cost-effective to do so, (c) distribute support based on forward-looking costs (rather than embedded costs), and (d) ensure that no double recovery occurs by removing the costs associated with the provision of broadband Internet access service from the regulated rate base. The Commission seek comments on how to implement such a proposal for rate-of-return carriers. The Commission specifically seeks comment on what rules or rule parts would need to change (e.g., how should Parts 32, 64 and/or 69 change to ensure that costs associated with the provision of broadband Internet access service are not included in the regulated rate base), and whether such a mechanism should be designed in a way that provides support based on locations or total network costs, rather than subscriber access lines. The Commission seeks comment on whether, for instance, it should modify our cost allocation rules to require that costs associated with multi-use facilities used to deliver broadband Internet access service be allocated between regulated and non-regulated activities based on an actual revenue allocator (or a potential revenues allocator), in such fashion that the amount removed from the regulated rate base would not exceed the amount of support received via a stand-alone broadband funding mechanism, or some other method. The Commission also seeks comment on whether such a mechanism should be designed to support lines where a consumer also subscribes to voice service, and whether the collected-but-not-yet-distributed support from the $2 billion annual budget for rate-of-return territories currently in the broadband reserve account should be used to kick start such a mechanism. The Commission believes that such a proposal is consistent with the Commission's stated policy goals, would create incentives for continued broadband deployment in rate-of-return territories, and would reduce incentives to skew customer purchasing decisions.

134. The Commission also seeks to develop further the record on other proposals. NTCA has presented its own stand-alone broadband proposal, which relies on complicated cost-calculations based on embedded costs. The proposal also does not appear to account for the fact that when a carrier's voice line is

lost, the following-year both its HCLS and ICLS will likely increase on a per-line basis because fixed costs are now recovered over a smaller number of lines. Further, the proposal states that stand-alone broadband support would be developed based on annual projected costs followed by a true-up to actual costs developed using the existing HCLS rules. However, HCLS payments, under the current rules, are based on costs incurred two years previously. How would NTCA's proposal avoid recovery of costs from both HCLS and a stand-alone broadband support mechanism, given this timing difference? Also, under NTCA's proposal, there would be no definitive way to determine how HCLS is affected by voice line migration to broadband-only lines until true-ups are reconciled two years later. What impact would that have on the size of the fund, and what incentives would that create for cost reporting?

135. The Commission also seeks to understand further the rationale for the assumed broadband subscriber line charge of $26 in NTCA's proposal. For the offer of model-based support in price cap territories, the Commission directed the Wireline Competition Bureau to set the funding threshold for model-based support taking into account ''where the cost of service is likely to be higher than can be supported through reasonable end-user rates alone.'' The Commission expects end user rates for broadband-only lines to be higher than $26. If the Commission were to provide support for stand-alone broadband offered by rate-of-return carriers, should it provide such support only for costs that exceed the $52.50 funding benchmark established for price cap territories? To the extent parties argue that a lower figure should be used in rate-of-return areas, they should provide a detailed analysis of what figures the Commission should assume are reasonable end user rates for retail broadband internet access.

136. The Commission also seeks comment on whether an approach that provides support for all costs over a pre-determined figure—whatever that dollar figure may be—would provide appropriate incentives for carriers to make efficient expenditures. By providing support for 100 percent of incremental costs to all study areas with costs above the proposed $26 per line per month threshold, what is the incentive on the part of recipients to be efficient as they make new investments in the future? Would a better approach be one that provides a set amount of Connect America support for voice and broadband-capable infrastructure in the study area, potentially with the amount per study area adjusted over time in a manner consistent with the growth in broadband-only subscription rates, rather than a per-line amount?

137. The Commission also seeks comment on how the proposal fits within the overall universal service support budget framework. Of the $4.5 billion budget for the Connect America Fund, the Commission concluded that ''up to $2 billion,'' including intercarrier compensation recovery would be available annually in rate-of-return territories. USAC's projected demand for rate-of-return carriers was at an annualized rate of $2.014 billion in 2013, with actual disbursements of $1.958 billion. According to NTCA's own projections, its stand-alone broadband proposal would result in support in excess of $2 billion flowing to rate-of-return carriers annually in 2015–2017 under a variety of assumptions.

138. Finally, the NTCA proposal does not appear to have a mechanism to ensure that universal service is not subsidizing new investment occurring in areas served by an unsubsidized competitor. The Commission therefore seeks further comment on this issue, and alternative proposals that would better meet our reform objectives.

139. In addition to its proposal concerning support for broadband-only lines, NTCA submitted a plan to establish an annual investment budget for individual rate-of-return carriers called the ''Capital Budget Mechanism.'' NTCA states that this mechanism is intended to promote fiscal responsibility while also providing more predictable and transparent planning for investment in rate-of-return carrier networks. It includes a four-step framework for determining a budget for high-cost supported future investment, as follows: (1) Determine current loop investment (i.e., total loop investment for each rate-of-return carrier study area), adjusted for inflation; (2) determine a ''future allowable loop investment'' for each rate-of-return carrier, based on the replacement of depreciated plant, precluding support to replace plant that is still used and useful; (3) use a trigger to identify alleged inefficiencies, which would enable prospective adjustment to a carrier's future allowable loop investment; and (4) establish an annual budget for each rate-of-return carrier by dividing each carrier's future allowable investment by a period of years to establish budget of supported additional investment each year. One critical shortcoming in the proposal as presented, however, is that there is no concrete plan for how the Commission would implement the trigger that ''identifies alleged inefficiencies.'' Absent specificity on this key point, the Commission is skeptical as to how the proposal could be put in place in the near term. The Commission therefore seeks to develop the record on this proposal and invite specific, actionable proposals for defining the relevant triggers. How would it work within the context of the Commission's current rules? How does this proposal fit within the budget for rate-of-return territories?

3. Voluntary Transition of Rate-of-Return Carriers to Incentive Regulation

140. The Commission proposes to adopt rules that would allow rate-of-return ETCs to elect to participate in a voluntary, two-phase transition to model-based universal service support, including participation in the Connect America Fund Phase II. The Commission also seeks comment on whether rate-of-return carriers should be allowed to transition on a voluntary basis to an alternative rate regulation approach. As an initial matter, the Commission asks parties to address whether the voluntary path to model-based support and the alternative rate regulation approach are linked, or whether they should be considered independent of each other. The Commission proposes to adopt a transition framework for voluntary participation in Connect America Phase II for rate-of-return carriers and seek comment on alternative rate regulation approaches and specific implementation details below.

141. The Commission previously has sought comment in this docket on potential reforms that would provide support to rate-of-return carriers under mechanisms other than the current legacy mechanisms. The Bureau sought further to develop the record on facilitating voluntary participation in Phase II of the Connect America Fund in the *May 2013 Public Notice,* 78 FR 34016, June 6, 2013.

142. ITTA has proposed the most comprehensive plan in the record for such a transition (ITTA Plan). The ITTA Plan calls for, among other things, a voluntary, two-phase transition to a model-based support framework for rate-of-return ETCs. ITTA argues that the plan is designed to provide a viable path for rate-of-return carriers to move to model-based support. Any rate-of-return carrier would be free to participate at any time during either of the two phases of the plan. A participating carrier would also have the discretion to opt-in to model-based support for all of its study areas, or for a subset of its study areas.

143. During the first phase of the ITTA Plan, an electing carrier's ICLS and HCLS would be frozen at current levels (i.e., as of December 31 of the year prior to that carrier's election). Existing service obligations for rate-of-return carriers, such as the requirement to offer broadband service meeting the Commission's current requirements, with actual speeds of at least 4 Mbps downstream and 1 Mbps upstream ''upon reasonable request'' would remain in effect.

144. The second phase of the ITTA Plan for universal service support would begin after a rate-of-return carrier-specific support model is defined and established. According to ITTA, rate-of-return carriers that accept support under this model would assume the same service and public interest obligations as price cap carriers receiving Connect America Phase II model-based support. Model-based support would be made available for ten years to participating rate-of-return carriers. For those rate-of-return carriers choosing to participate in the second phase after it becomes operational, model-based support would be made available to such carriers for the remainder of the ten-year timeframe left for carriers who elected to participate at the beginning of the second phase.

145. The ITTA Plan proposes that rate-of-return carriers that decline support for certain study areas would be relieved of ETC status and obligations in those study areas where support is declined. Those study areas would then be opened up to a competitive bidding process similar to that used in areas where price cap carriers decline Connect America Phase II support. To the extent that the Phase II funding made available for a study area in the second phase is lower than frozen support, ITTA proposes that support would be transitioned down to the level determined appropriate by the rate-of-return-specific model over a five-year period.

146. The ITTA Plan proposes an alternative rate regulation approach for rate-of-return carrier intercarrier compensation (ICC), special access, and broadband internet access services. Carriers could elect participation in the proposed alternative rate regulation plan at any time by study area. Electing carriers would continue to implement ICC rate reductions pursuant to the timeline adopted in the *USF/ICC Transformation Order* for rate-of-return carriers and, if eligible, would continue to charge an Access Recovery Charge and receive CAF–ICC support. Electing carriers choosing to participate in the NECA pool for special access services would move to an alternative rate regulation approach for special access cost determination employing principles taken from the average schedule process and settle with the pool based on the interstate special access revenue requirement established by the retention ratio. Electing carriers with company-specific special access tariffs would use their most recent tariff filing data to initialize their rates and be allowed to ''adjust their tariffs on a going-forward basis to take into account evolving circumstances.'' The ITTA Plan does not describe the alternative rate regulation that would govern non-pooled special access services beyond saying that it would be a ''price cap-like structure.'' ITTA also does not indicate how common line rates of electing carriers would be affected going forward and whether such services would be subject to rate-of-return or an alternative regulatory mechanism. Finally, electing carriers that offer the transmission component of their broadband Internet access service as a Title II of the Act regulated service would have the option to elect to have that transmission component deregulated upon electing to participate in the ITTA Plan.

147. *Discussion.* The Commission proposes to adopt a transition framework for a voluntary election by rate-of-return carriers to receive model-based support. The Commission tentatively concludes that such a framework could achieve important universal service benefits, creating a framework that creates incentives for deployment of voice and broadband-capable infrastructure. The Commission seeks comment on how to implement such a framework in a way that furthers these important public policy objectives, while ensuring that it also meets our statutory directives under sections 201(b) and 202. The Commission also asks commenters to address specifically how other proposals in this FNPRM, if adopted, would affect the ITTA Plan and incentives for rate-of-return carriers to voluntarily move to model-based support.

148. *Time Frame for Implementation.* The ITTA Plan does not appear on its face to contemplate a specific time frame in which rate-of-return carriers would elect to participate in the voluntary plan. Should the Commission allow rate-of-return carriers to transition in any year for the remaining years of the model-based support, or should it only open a window for such transitions, i.e., allowing carriers to elect to transition in 2015 only? Under either approach, the Commission specifically proposes that an electing carrier's ICLS and HCLS would be frozen at the amount received for a given study area as of December 31 of the year prior to the election. The Commission seeks comment on this proposal.

149. Should the Commission adopt a specific deadline for rate-of-return carriers to elect this voluntary path to receive model-based support? For instance, should carriers be required to elect this path within 120 days of the Bureau adopting revisions to the Connect America Cost Model for use in determining support for rate-of-return carriers electing to receive model-based support? Put another way, should the Commission prohibit carriers from voluntarily transitioning to model-based support if they do not do so within a Commission-defined window? To the extent parties argue a longer time period to make the election is necessary, they should specify what time frame would be appropriate.

150. *Impact on HCLS Cap.* Consistent with the approach taken when the Commission transitioned price cap carriers and their rate-of-return affiliates to Connect America Phase I, the Commission proposes to rebase the high-cost loop cap to deduct the HCLS that electing rate-of-return carriers would have received in the year after their election, had they not made the voluntary election to transition to the Connect America Fund. Specifically the Commission proposes to direct NECA to submit a revised 2015 HCLS cap within 30 days of any deadline for the election by a rate-of-return carrier to pursue this voluntary path to model-based support, and to make similar adjustments in subsequent years to the extent it permits carriers to make elections to pursue this voluntary path to model-based support after 2015. The Commission seeks comment on this proposal.

151. *State-level Election.* The ITTA Plan proposes to allow participating rate-of-return carriers to make an election on a study area-by-study area basis. The Commission proposes instead that participating carriers be required to make a state-level election to receive model-based support, comparable to what is required of price cap carriers. Such an approach would prevent rate-of-return carriers from cherry picking the most attractive areas in their study areas, potentially those areas where model-support is greater than legacy support, leaving the least desirable areas for a competitive process. The Commission seeks comment on this proposal. Would requiring a state-level commitment have a material impact on the incentives of rate-of-return carriers to participate in this voluntary plan? If

the Commission were to adopt an approach, as proposed above, that would provide greater flexibility to Phase II participants regarding how they may meet their deployment obligations in funded areas, would that create a greater incentive for rate-of-return carriers to voluntarily elect to receive model-based support?

152. *Transition to Model-Based Support.* The ITTA Plan proposes that carriers for whom frozen support is more than model-based support would transition to the lower model-based amount over a five-year period. In the concurrently adopted Report and Order, the Commission adopted a four-year transition for price cap carriers for whom model-based support is lower in a given state. The Commission proposes a similar approach for rate-of-return carriers that voluntarily elect to receive model-based support. In particular, in the first year, the carrier would receive, in addition to its Phase II support, 75 percent of the difference between the annualized amount of Connect America Phase II support that it accepted and the amount of its frozen high-cost support; in the second year, it would receive 50 percent of the difference; in third year, it would receive 25 percent of the difference; and then in the fourth year, it would receive model-based support. The Commission seeks comment on this proposal. Would adopting a four-year transition, rather than a five-year transition as proposed by ITTA, have a material impact on the incentives of rate-of-return carriers to participate in this voluntary plan?

153. *Impact on Budget.* In the *USF/ICC Transformation Order,* the Commission adopted a $1.8 billion budget for price cap territories, and a $2 billion budget for rate-of-return territories. How would implementation of a voluntary plan for rate-of-return carriers to elect to receive model-based support impact rate-of-return carriers that do not participate in the voluntary plan, given the overall high-cost fund budget and the budget for rate-of-return areas in particular? Specifically, to the extent there are incentives for rate-of-return carriers to opt voluntarily into this plan only if model-based support is the same or greater than their current support under legacy mechanisms, would the net effect be to squeeze the remaining budget for rate-of-return territories that are served by rate-of-return carriers that do not opt into the plan? Are there any adjustments to the ITTA Plan or the Commission's proposal that could reduce any such squeeze? How would implementation of this plan meet the overall statutory principle of providing predictable and sufficient support and other statutory criteria such as the framework of section 214(e)? How could the Commission maintain the overall budget within a voluntary framework, with no way to determine how many carriers may elect to participate? Would one option be to allocate some defined amount from the existing broadband reserve account to the extent the voluntary election of certain carriers in rate-of-return territories to receive model-based support results in the overall support level for rate-of-return territories exceeding the budgeted amount of $2 billion? Do commenters recommend any other adjustments to the ITTA Plan to minimize concerns about the budget or how it is allocated among rate-of-return carriers?

154. *Adjustments to the Model.* In the concurrently adopted Declaratory Ruling, the Commission directed the Bureau to incorporate the results of the study area boundary data collection in the Connect America Cost Model and to make such other adjustments as appropriate for use of that model in rate-of-return territories. Here, the Commission asks commenters to address what specific changes should be implemented in the model before using it to calculate the offer of model-based support for rate-of-return carriers that voluntarily elect to receive model-based support.

155. The ITTA Plan also suggests that a competitive bidding process be designed for rate-of-return areas where support is declined under the second phase of the proposal. What timeframe would be realistic to assume for further model development, and how would that affect the overall timing of implementation of the ITTA proposal? What are the advantages and disadvantages of holding the competitive bidding process for areas not elected by the rate-of-return carriers at a date subsequent to the Phase II competitive bidding process that will occur after the offer of model-based support to price cap carriers?

156. *Cost determination for special access services under the ITTA Plan.* Rate-of-return carriers determine their interstate revenue requirement by allocating the costs assigned to the interstate jurisdiction by the separations procedures contained in Part 36 of the Commission's rules among the various access categories, one of which is special access, in accordance with the investment and expense allocation rules contained in Part 69 of the Commission's rules. As noted above, under the ITTA Plan, a rate-of-return carrier filing its own special access tariff would use the preceding year's special access data to initialize its costs and/or rates for participating in an alternative rate regulation plan. Parties should explain the scope and nature of any adjustments that would be allowed to take into account ''evolving circumstances.'' While a retention ratio would produce a dollar amount reflective of the year for which the calculation was made, the ITTA Plan does not explain how the retention ratio would be used going forward. Would it be a fixed percentage, or would it be adjusted each year to reflect special access growth, special access rate changes, or other factors? Parties should address how this approach could be implemented going forward, as well as identifying other approaches that could be considered in an alternative regulatory framework for rate-of-return carriers. Parties should address how the proposed ITTA Plan would produce projections of costs and/or rates that would remain reasonable over time, and propose specific measures to ensure that it meets the Commission's overall objectives.

157. The ITTA Plan allows carriers to elect participation by study area and to choose when to enter an alternative rate regulation plan. With this flexibility, the sensitivity of the retention ratio, or other costing determinant, to year-to-year differences could create the ability for carriers to time their election to maximize their retention ratio, or their cost base, to their benefit. Above the Commission proposes to require electing carriers to make a state-level election to receive model-based support. Would that lessen the incentive of participants to time strategically their elections to maximize their retention ratios or their cost base? Parties should comment on the sensitivity of any alternative costing measure and on means by which any gaming opportunities can be minimized. Parties should also address the need for any special conditions to check the ability of affiliated carriers to shift costs between study areas electing an alternative regulation plan and those that do not.

158. *Pricing for special access services under the ITTA Plan.* The costs determined pursuant to an alternative rate regulation plan must be translated into special access rates. A single retention ratio produces overall special access costs, but does not address the allocation of those costs among special access services. Parties should address what rules or principles should govern the development of special access rates, whether individually or within the NECA pool, to ensure that they are just and reasonable and not unjustly discriminatory pursuant to sections

201(b) and 202 of the Act, respectively. In particular, parties should address the degree of flexibility to adjust rates carriers electing an alternative rate regulation plan should be allowed. Are there specific mechanisms that could or should be built into the cost determination process that could facilitate the development of special access rates? Parties should consider whether the proposed rules or principles would produce different incentives depending on whether the carrier participates in the NECA traffic-sensitive pool or tariffs its own special access rates.

159. *NECA pooling issues.* The ITTA Plan would allow electing carriers to participate in the NECA traffic-sensitive pool. In light of the questions asked concerning the costing and pricing of special access services, the Commission invites parties to address the feasibility of pooling both carriers electing an alternative regulation plan and those remaining under traditional rate-of-return regulation within a single pool. What changes, if any, would need to be made to the pooling procedures to ensure that both groups of carriers were treated equitably? Parties should address how earning variations within the pool should be handled, whether pool entry and exit rules would need to be modified, and if there would be any effect on the banding processes that NECA uses to establish special access rates. Any party proposing that a carrier electing an alternative rate regulation plan should have additional flexibility to adjust rates should explain how that would be handled in the pooling process.

160. *Broadband internet access service deregulation.* Rate-of-return carriers today offer the transmission component of their broadband Internet access service as a Title II regulated service. The ITTA Plan proposes that rate-of-return carriers would have the option to elect to offer the transmission component of their broadband Internet access service on a deregulated Title I basis upon electing to participate in the ITTA Plan. What impact would this aspect of the proposal have on achievement of the Commission's goals?

161. *Switched access services.* The ITTA Plan proposes to continue the switched access transition and associated recovery mechanism for rate-of-return carriers unchanged. The Commission asks parties to comment on whether there are changes that should be made to the switched access transition process or recovery mechanism if changes similar to those proposed for common line or special access in the ITTA Plan were to be adopted. For example, should the five percent annual reduction in Base Period Revenue be accelerated, or should the CAF–ICC recovery of rate-of-return carriers be subjected to a phase-out at some point similar to that applicable to price cap carriers? To the extent parties disagree, they should identify the public interest rationale and specify the timing and amount of any such changes that they believe should be implemented.

162. *Other ratemaking issues.* The Commission requests ITTA and other parties to clarify how an alternative rate regulation plan would adjust, if at all, the rates for common line rate elements going forward. The Commission also invites parties to comment on whether, if cost savings are achieved as a result of any changes adopted, a portion of such savings should be used to reduce access rates. Parties believing that such savings should be used to reduce access rates should identify the portion of any savings that should be used to reduce rates, as well as how the savings should be allocated among the various access services. The Commission also invites parties to comment on the regulatory treatment if an electing rate-of-return carrier in the future becomes affiliated with a price cap carrier. The Commission notes that the price cap rules require acquired entities to convert to price cap regulation within one year.

163. Finally, how would adoption of some variant of the ITTA Plan further the Commission's goals? In the *USF/ICC Transformation Order* the Commission adopted a framework to provide ongoing support to areas served by price cap and rate-of-return carriers in order to, among other things, ''ensure universal availability of modern networks capable of providing voice and broadband service . . . [and] minimize the universal service contribution burden on consumers and businesses.'' How could this proposal, or one similar to it, further these and other important Commission goals?

4. Support for Middle Mile for Rate-of-Return Carriers

164. In this section, the Commission seeks comment on potential measures to provide support for middle mile for rate-of-return carriers, recognizing that the cost of backhaul is an important component of the ability of such providers to offer broadband services to their customers at rates that are reasonably comparable to similar offerings in urban areas. The Commission proposes to focus initially on supporting middle mile infrastructure on Tribal lands. The Commission also invites longer term proposals for supporting middle mile connectivity in territories served by rate-of-return carriers.

165. *Discussion.* The Commission proposes measures to address the challenges of extending middle mile projects on Tribal lands, including remote areas in Alaska. The Commission seeks comment on the ARC proposal and seek data on the availability of middle mile infrastructure more generally on Tribal lands, as well as the benefits and the costs of providing support for these types of infrastructure projects. The Commission encourages commenters to provide factual information to support any projections placed in the record.

166. As an initial step, the Commission proposes to award $10 million in one-time support for new middle mile construction in 2015 on Tribal lands. Depending on lessons learned, this approach then could be expanded further in subsequent years to address middle mile challenges facing rate-of-return carriers more generally.

167. The Commission proposes to award the $10 million support for middle mile projects on Tribal lands pursuant to our existing rules for competitive bidding processes codified in Subpart AA of Part 1. Under such a competitive bidding process, the Commission would solicit proposals for middle mile projects designed to expand voice and broadband coverage to the greatest number of unserved locations on Tribal lands. The Commission proposes to award funds through a single round bidding process to those applicants proposing to bring new terrestrial broadband service to the greatest number of locations for a specified amount of funding. The Commission seeks comment on this proposal and alternatives.

168. The Commission encourages multi-stakeholder partnerships in the creation of competitive proposals. The Commission is particularly interested in proposals that would encourage contributions from state and Tribal governments or entities. Should the Commission award a bidding credit to the extent there is an explicit commitment of matching funds from state or Tribal government or related entities? The Commission could, for instance, provide a 50 percent bidding credit to the extent state or Tribal entities provided matching funds dollar for dollar. Should the same bidding credit be available to applicants that can leverage other sources of funding for the project, such as funding from other federal agencies?

169. The Commission seeks comment on whether support for the expansion of current middle mile construction

projects would be appropriate. The Commission proposes not to fund any terrestrial middle mile in areas that already have terrestrial middle mile, whether fiber or microwave-based. To prevent waste, fraud, and abuse, how does the Commission ensure that the funding proposed in this *FNPRM* is not used to overbuild existing middle mile facilities? What lessons can be learned from the BTOP to inform our decision regarding the award of funding for middle mile infrastructure?

170. The Commission seeks comment on ARC's suggestion that the Commission should adopt some mechanism to ensure that recipients of middle mile funding should be required, as a condition of that funding, to provide access to that middle mile connectivity at a reasonable rate. For example, while allowing recipients of funding to enter into individually negotiated arrangements with other providers, should they be required to charge rates for middle mile connectivity that are no higher than rates for comparable connectivity in urban areas of the state? Should they be precluded from charging rates that are higher than the discounted rates available to recipients of funding under the E-rate or rural health care programs?

171. To avoid waste, fraud, and abuse, the Commission seeks further comment on what reporting requirements it should require to ensure that middle mile infrastructure projects are financially viable and can be timely completed. The Commission proposes that any applicant certify to its financial and technical capability to build out such infrastructure. The Commission proposes the winning bidders be subject to a default payment in an amount equal to 20 percent of the defaulted bid, pursuant to section 1.21004 of our current competitive bidding rules. The Commission also seeks comment on oversight measures that will ensure that USAC has sufficient information to oversee project deployment and completion.

K. Accountability and Oversight

172. In the *USF/ICC Transformation Order,* the Commission adopted several reforms to harmonize and update annual ETC requirements by establishing a ''uniform national framework for accountability'' that replaced the various data and certification filing deadlines that carriers were required to meet previously. The Commission concluded that such an accountability framework is ''critical to ensure appropriate use of high-cost support and to allow the Commission to determine whether it is achieving its goals efficiently and effectively.'' Among other things, the new framework incorporates annual unified reporting and certification procedures.

173. Here, the Commission seeks comment on issues related to this framework that are applicable to all Connect America Fund recipients that are required to offer broadband service as a condition of receiving high-cost support. These recipients include price cap carriers accepting the state-level commitment in exchange for model-based support, recipients of the Phase II competitive bidding process, and rate-of-return carriers that receive high-cost loop support, interstate common line support, or CAF–ICC support. The Commission first seeks comment on codifying a broadband reasonable comparability certification requirement for all ETCs receiving Connect America support. The Commission also seeks comment on modifying the reduction in support for late-filed section 54.313 and 54.314 reports and certifications. Finally, the Commission seeks comment on the consequences it should impose if ETCs do not meet the Commission's service obligations for voice or broadband service.

1. Reasonably Comparable Rates Certification for Broadband

174. *Discussion.* The Commission proposes to codify a broadband reasonable comparability certification requirement that will apply generally to all ETCs that are required to offer broadband service as a condition of receiving ongoing high-cost Connect America Fund support in areas served by price cap and rate-of-return carriers. The Commission proposes to amend section 54.313(a) to include a new section 12 requiring recipients to submit in their annual section 54.313 report (FCC Form 481):

> A letter certifying that the pricing of the company's broadband services is no more than the applicable benchmark as specified in a public notice issued by the Wireline Competition Bureau, or is no more than the non-promotional prices charged for comparable fixed wireline services in urban areas.

175. Recognizing that ETCs receiving Connect America Fund support are free to offer a variety of broadband service offerings, for purposes of this certification the Commission proposes that they would only need to certify that one plan meets the reasonable comparability benchmark specified annually by the Wireline Competition Bureau in a Public Notice in order to make the requisite certification.

176. The Commission seeks comment on when it should begin to require Connect America recipients to submit their broadband reasonable comparability certification. Carriers that accept the state-level commitment are required to certify that they are providing broadband service that meets the required public service obligations to 85 percent of their supported locations by the end of the third year of support. However, throughout the five-year term as they increasingly deploy broadband to supported locations and connect customers, the Commission expects that they will offer broadband service that at least meets the Commission's requirements. Similarly, the Commission expects that while the Commission will impose build-out requirements for Phase II competitive bidding recipients, recipients will offer broadband service that at least meets the Commission's requirements throughout their support term. Thus, the Commission proposes requiring price cap carriers that accept the state-level commitment and recipients of the Phase II competitive bidding process to submit their first certification with the first annual report they are required to submit after accepting support, and then each year with their annual report thereafter. Under the proposed timeline for the offer of model-based support to price cap carriers, this would mean that price cap carriers accepting model-based support would be required to make their first such certification in the annual report filed on July 1, 2016. The Commission also proposes that rate-of-return carriers, which are currently required to provide broadband that meets the Commission's public service obligations upon reasonable request, should submit such a certification. Because rate-of-return carriers are already required to be providing broadband service upon reasonable request as a condition of their support, the Commission proposes that they begin to submit such a certification with the first annual report after the requirement has received Paperwork Reduction Act (PRA) approval from the Office of Management and Budget, and then each year with their annual report thereafter.

177. The Commission seeks comment on this proposal and whether any adjustments need to be made to either certification requirement to account for differences between price cap carriers and rate-of-return carriers and other potential recipients of funding awarded through the Phase II competitive bidding process.

2. Reduction in Support for Late Filing

178. *Discussion.* In general, deadlines set in Commission rules are strictly enforced, and the new framework adopted in the *USF/ICC Transformation Order* was intended to ensure that the consequences of non-compliance are appropriate rather than unduly harsh. On further consideration, however, the Commission has concerns that the rules adopted may not be appropriately calibrated to meet our objectives. The Commission continues to recognize the importance of ensuring compliance with the reporting deadlines adopted in the *USF/ICC Transformation Order.* USAC, which processes a large amount of data, requires that the data be timely filed so that it can calculate support amounts. But the Commission must also balance these concerns with ensuring that the support reduction it imposes on carriers is a proportionate response to their failure to meet deadlines and not unduly punitive given the nature of the non-compliance. The Commission therefore proposes to modify the reduction in support for late-filed section 54.313 and 54.314 reports and certifications to better calibrate the reduction of support with the length in delay of the filing.

179. Under the current rules, a carrier that misses a section 54.313 and 54.314 filing deadline by only a few days loses an entire quarter of support. The Commission proposes to adopt a rule that would impose a minimum support reduction for any late filing, which would be applied even in those instances when the filing is only a few days late. In particular, the Commission proposes that deadlines for filing reports shall be strictly enforced, with a minimum reduction of support in an amount equivalent to seven days of support, and to the extent the deadline is missed by more than seven days, support would be reduced on a pro-rata daily basis equivalent to the period of non-compliance. If the Commission were to adopt these proposed rule changes, a carrier that files a report or certification within 14 days of the deadline would lose 14 days of support, a carrier that files a report or certification two months after a deadline would lose two months of support, and so on. The Commission thus proposes to modify section 54.313(j) to read as follows:

(1) In order for a recipient of high-cost support to continue to receive support for the following calendar year, or retain its eligible telecommunications carrier designation, it must submit the annual reporting information required by this section annually by July 1 of each year. Eligible telecommunications carriers that file their reports after the July 1 deadline shall receive a reduction in support pursuant to the following schedule: (a) Eligible telecommunications carriers that file after the July 1 deadline, but by July 8, will have their support reduced in an amount equivalent to seven days in support; (b) Eligible telecommunications carriers that file on or after July 9 will have their support reduced on a pro-rata daily basis equivalent to the period of non-compliance.

180. The Commission also proposes to modify the rule regarding certifications for use of support, section 54.314(d), to read as follows:

(1) In order for an eligible telecommunications carrier to receive federal high-cost support, the State or the eligible telecommunications carrier, if not subject to the jurisdiction of a State, must file an annual certification, as described in paragraph (c) of this section, with both the Administrator and the Commission by October 1 of each year. If states or eligible telecommunications carriers file the annual certification after the October 1 deadline, the carriers subject to the certification shall receive a reduction in support pursuant to the following schedule: (a) Eligible telecommunications carriers subject to certifications filed after the October 1 deadline, but by October 8 will have their support reduced in an amount equivalent to seven days in support; (b) Eligible telecommunications carriers subject to certifications filed on or after October 9 will have their support reduced on a pro-rata daily basis equivalent to the period of non-compliance.

181. Recognizing that some ETCs quickly rectify their failure to meet a filing deadline, thereby minimizing the negative impact on the administration of the Connect America Fund, should the Commission also provide a one-time grace period for ETCs that miss the filing deadline by only a few days? The Commission proposes that any ETC that misses the deadline but files within three days after the deadline would not receive a reduction in support. But if the ETC filed on the fourth day after the deadline, it would be subject to the seven day minimum support reduction, and then after seven days, its support would be reduced on a pro-rata daily basis equivalent to the period of non-compliance, as described in the prior paragraph. If the Commission were to adopt this proposed one-time grace period, an ETC that files a report or certification within two days of the deadline would not lose support, an ETC that files a report or certification within five days of the deadline would lose seven days of support, and an ETC that files a report or certification within 14 days of the deadline would lose 14 days of support, and so on. The Commission proposes only providing this grace period once for a given holding company, regardless of the number of affiliated operating companies that may individually be designated as an ETC. If an ETC misses the deadline a subsequent year, the seven day minimum support reduction would apply even if it files within three days of the deadline. The Commission also proposes to apply the grace period at the holding company level, so that a grace period would not be available to another operating company of that holding company that holds the ETC designation to serve a different study area.

Finally, the Commission proposes that if an ETC (or another ETC with the same holding company) misses the deadline for a second time, it will be responsible for the reduction in support that would have occurred the first year that the deadline was missed if there had been no grace period. For example, if an ETC missed the deadline by two days the first year, it would not lose support due to the grace period. But, if another ETC within the same holding company (or the same ETC) misses the deadline again a subsequent year by eight days, it would be subject to a loss of support for eight days, plus the seven day minimum reduction of support that would have applied to its affiliate ETC the prior year if there had been no grace period, for a reduction in support that totals 15 days.

182. The proposed rule would amend the rule for annual reporting by recipients of high-cost support, section 54.313(j) to add a new subsection (2):

(2) Grace period. An eligible telecommunications carrier that submits the annual reporting information required by this section after July 1 but before July 5 will not receive a reduction in support if the eligible telecommunications carrier and all other eligible telecommunications carriers owned by the same holding company as the eligible telecommunications carrier have not missed the July 1 deadline in any prior year. The next time that either the eligible telecommunications carrier that had previously benefitted from the grace period or an eligible telecommunications carrier owned by the same holding company misses the July 1 deadline, that eligible telecommunications carrier will be subject to a reduction of seven days in support in addition to the reduction of support it will receive pursuant to (j)(1) of this section.

183. The proposed rule also would amend the rule for certification regarding use of support, section 54.314(d), to add a new subsection (2):

(2) Grace period. If an eligible telecommunications carrier or state submits the annual certification required by this section after October 1 but before October 5, the eligible telecommunications carrier subject to the certification will not receive a reduction in support if the eligible

telecommunications carrier and all other eligible telecommunications carriers owned by the same holding company as the subject eligible telecommunications carrier have not missed the October 1 deadline in any prior year. The next time that either the eligible telecommunications carrier that had previously benefitted from the grace period or an eligible telecommunications carrier owned by the same holding company misses the October 1 deadline, that eligible telecommunications carrier will be subject to a reduction of seven days in support in addition to the reduction of support it will receive pursuant to (d)(1) of this section.

184. The Commission also proposes to cease the practice of providing waivers to parties that commit to implement improved internal controls to ensure compliance in the future as it has done previously. As a practical matter, parties invariably seek waivers of the filing requirements when they miss the deadline and addressing such waiver requests diverts staff from other Commission priorities. While waivers may have been justified in the past when the consequence for failure to meet a deadline was the loss of entire year of support, going forward the Commission does not believe it serves the public interest to absolve an ETC of any consequence when it fails to meet a Commission-mandated requirement merely due to administrative or clerical oversight. All ETCs should have policies and procedures in place to ensure compliance with Commission reporting requirements, and promising to do better in the future should not become a routine basis for grant of a waiver of a filing deadline. The Commission thus seeks comment on whether it should revisit our prior findings that good cause for waiver is present when parties commit to implement improved internal controls to ensure compliance in the future. More generally, the Commission seeks comment on these proposals to modify our rules and practices regarding filing deadlines and alternatives identified by commenters.

185. The Commission also seeks comment on whether it should apply our proposals described above to reduce support for late-filed section 54.313 and 54.314 reports and certifications to recipients of Mobility Fund Phase II support, and if so, whether any of the specific proposals it makes today for Mobility Fund Phase II warrant a modification of our approach to reductions of support.

3. Support Reductions for Non-Compliance With Service Obligations

186. *Discussion.* Providers should face predictable consequences for performance noncompliance. Under existing Commission rules, eligible telecommunications carriers lose a quarter of support in the following calendar year for each quarter they are late in filing their annual reports, while the Commission proposes above to adjust the support reduction for late filing to be proportionate to the degree a filing is late. Similarly, here the Commission proposes that recipients of high-cost support should face a proportional loss of support, depending on the degree of non-compliance with established standards.

187. One alternative would be to give providers an opportunity to improve performance prior to withholding support in certain circumstances. For example, if there were an audit finding or other determination that a provider failed to meet performance measurements for a certain number of months consecutively (such as two months) or a certain number of months during a one-year period (such as three months), the provider could be required to submit a plan to USAC describing how it will come into compliance within a certain period (such as six months). If a provider does not meet its performance standards during the requisite period, it would then lose a certain percentage of funding (such as five percent) for each *month* until performance improves. Monitoring would continue throughout this process until the provider had demonstrated compliance with the performance measures for four consecutive months or five months out of a six month period. If performance did not improve within one year, an additional five percent of funding would be lost for each month until the provider consistently meets performance requirements or is no longer receiving high-cost funding. The Commission seeks comment on this proposal and alternative options for the mechanics of how it could operate.

188. Another alternative would be to adopt quickly-increasing support reductions to heighten provider incentives to meet performance standards. For example, if there were an audit finding or other determination that a provider failed to meet performance measurements for a certain number of months consecutively (such as two months) or a certain number of months during a one-year period (such as three months), the provider could lose five percent of its funding for each of the next six months. If performance levels were not being met after six months, the provider would lose 25 percent of its funding for each of the next six months.

189. The Commission also seeks to develop more fully the record on consequences for failing to meet the Commission's reasonable comparability benchmarks. Under longstanding precedent, the Commission presumes that a voice rate is within a reasonable range if it falls within two standard deviations of the national average. In the *USF/ICC Transformation Order,* the Commission concluded it would ''consider rural rates for broadband services to be 'reasonably comparable' to urban rates under section 254(b)(3) if rural rates fall within a reasonable range of urban rates for reasonably comparable broadband service.'' What should be the appropriate remedy if a recipient of high-cost support is unable to certify that either its voice or broadband services meet the Commission's reasonable comparability benchmarks, or if there is an audit finding or other determination that the provider in fact failed to offer at least one plan meeting the reasonable comparability benchmark? Given that the Commission has concluded that the reasonable comparability benchmark for voice is a presumption, not an absolute mandate, what should be the process for an ETC to rebut that presumption? If the ETC is unable to rebut the presumption, should it face a reduction of support, such as five percent of monthly funding, until the situation is remedied? Should the Commission take other action if ETCs fail to offer service at reasonably comparable rates? Would other support reductions for noncompliance be more effective?

190. The Commission also seeks comment on whether it should apply any of our proposals described above for reducing support for non-compliance with service obligations to recipients of Mobility Fund Phase II support, and whether any of the specific proposals it makes today for Mobility Fund Phase II would warrant a modification of our approach to such reductions of support.

III. Procedural Matters

A. Paperwork Reduction Act Analysis

191. The FNPRM contains proposed new information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and OMB to comment on the proposed information collection requirements contained in this document, as required by the PRA. In addition, pursuant to the Small Business Paperwork Relief Act, the Commission seeks specific comment on how it might further reduce the information collection burden for small business concerns with fewer than 25 employees.

B. Congressional Review Act

192. The Commission will send a copy of this Further Notice of Proposed Rulemaking to Congress and the Government Accountability Office pursuant to the Congressional Review Act.

C. Initial Regulatory Flexibility Act Analysis

193. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this Further Notice of Proposed Rulemaking (FNPRM). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the FNPRM provided on the first page of this document. The Commission will send a copy of the FNPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the FNPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

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

194. In the FNPRM, the Commission proposes measures to update and implement further the framework adopted by the Commission in 2011. The Commission strives to adapt our universal service reforms to ensure those living in high-cost areas have access to services that are reasonably comparable to services offered in urban areas. Consistent with that goal, in the FNPRM the Commission proposes to revise our current broadband performance obligations to require minimum speeds of 10 Mbps downstream to ensure that the services delivered using Connect America funds are reasonably comparable to the services enjoyed by consumers in urban areas of the country and seek comment on whether to increase the upstream speed requirement to something higher than 1 Mbps. The FNPRM also proposes to apply uniformly the same performance obligations to all recipients of Phase II support and to rate-of-return carriers. In addition, the Commission seeks to further develop the record on the ability of Phase II recipients to satisfy their obligations using any technology or a combination thereof—whether wireline or wireless, fixed or mobile, terrestrial or satellite—that meets the performance standards for Phase II. The FNPRM also proposes to provide financial incentives for recipients of Phase II support to accelerate their network deployment.

195. The Commission proposes to apply the same usage allowances and latency benchmarks that the Bureau implemented for price cap carriers that will accept the offer of model-based support in the state-level commitment process to ETCs that will receive support through a competitive bidding process.

196. To target our finite universal service funds most effectively, the FNPRM proposes to exclude from eligibility for Phase II support those areas that are served by *any* provider that offers voice and broadband services meeting the Commission's service obligations—whether those providers are subsidized or unsubsidized.

197. The FNPRM seeks comment on several proposals regarding ETC designation. It proposes to require entities that are winning bidders for the offer of Phase II support in the competitive bidding process to apply for ETC designation within 30 days of public announcement of winning bidders. It also proposes to adopt a rebuttable presumption that a state commission lacks jurisdiction over an entity seeking ETC designation if it fails to initiate a proceeding within 60 days.

198. The FNPRM seeks comment on the amount of frozen support to provide to incumbents that decline the offer of model-based support where no other provider wishes to serve, and on the obligations associated with such support. It proposes to eliminate or modify the requirement that a price cap carrier certify that all of its frozen support is used to build and operate a broadband-capable network used to offer the provider's own retail broadband service in areas substantially unserved by an unsubsidized competitor. The FNPRM also proposes to define the public interest obligations that would apply to recipients of frozen support in the non-contiguous areas of the United States. The Commission also proposes several minor changes and clarifications regarding the implementation of the transition to model-based support to ease the administration of Connect America Phase II.

199. The FNPRM seeks comment on specific proposals for the design of the Phase II competitive bidding process that will occur in areas where price cap carriers decline model-based support.

200. The FNPRM also addresses significant developments that have occurred since the adoption of the *USF/ICC Transformation Order* in the marketplace for mobile wireless services. Given commercial deployment of 4G Long Term Evolution (LTE), the Commission proposes to retarget the focus of Mobility Fund Phase II to extend 4G LTE to those areas of the country where it is not and, to the best of our knowledge, will not be available in the foreseeable future and would preserve existing mobile voice and broadband service where it would not otherwise exist without government support. The FNPRM also proposes to maintain existing support levels (i.e., 60 percent of baseline support) for wireless competitive ETCs for whom competitive ETC support exceeds one percent of their wireless revenues until a date certain after the auction for Mobility Fund Phase II support, and to eliminate support for wireless competitive ETCs for whom high-cost support is one percent or less of their wireless revenues. The FNPRM seeks comment on whether to take a different approach for wireline competitive ETCs and asks whether their phase-down in support should be determined by the timing of the Phase II competitive bidding process. The FNPRM also proposes to freeze support for carriers serving remote areas in Alaska, many of which are small entities, as of December 31, 2014, and to begin their phase-down in support on a date certain after the Mobility Fund Phase II auction or Tribal Mobility Fund Phase II auction.

201. In the FNPRM, the Commission also focuses on developing and implementing a ''Connect America Fund'' for rate-of-return carriers. As a short term measure, the Commission proposes to apply the effect of the annual rebasing of the cap on support known as high-cost loops support (HCLS) equally on all recipients of HCLS. As another near term reform, the Commission also proposes to prohibit recovery of new investment occurring on or after January 1, 2015, through either HCLS or interstate common line support (ICLS) in areas that are served by a qualifying competitor that offers voice and broadband service meeting the Commission's standards. The Commission proposes that such rate-of-return carriers, many of which are small entities, document their compliance with this requirement in the course of an audit or other inquiry, and to create a safe harbor that an area is presumed unserved if the rate-of-return carrier announces an intention to make new investment and no other provider notifies the rate-of-return carrier that it serves the area.

202. As a longer term measure, the Commission is seeking comment on limiting recovery of new investment

through HCLS or ICLS as of a date certain, in conjunction with implementation of a Connect America Fund for rate-of-return carriers. The Commission proposes to adopt a stand-alone broadband support mechanism that meets defined parameters and seek to develop further the record on various industry proposals. Building on a proposal recently submitted by ITTA, the Commission proposes to provide rate-of-return carriers the option of participating in a two-step transition to Phase II model-based support and seek comment on alternative rate regulation measures and specific implementation issues. The Commission also seeks comment in the FNPRM on providing one-time funding for middle mile projects on Tribal lands in 2015.

203. Finally, the FNPRM proposes to codify a broadband certification requirement for recipients of funding that are subject to broadband performance obligations, seeks comment on specific levels of support reduction for non-compliance with service obligations, and proposes to modify our rules regarding reductions in support when parties miss filing deadlines in order to better calibrate the support reduction to coincide with the period of noncompliance.

2. Legal Basis

204. The legal basis for any action that may be taken pursuant to the FNPRM is contained in sections 1, 2, 4(i), 5, 201–206, 214, 218–220, 251, 252, 254, 256, 303(r), 332, 403, and 405 of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. §§ 151, 152, 154(i), 155, 201–206, 214, 218–220, 251, 252, 254, 256, 303(r), 332, 403, 405, 1302, and sections 1.1, 1.2, 1.3, 1.115, 1.421, 1.427, and 1.429 of the Commission's rules, 47 CFR 1.1, 1.2, 1.3, 1.115, 1.421, 1.427, and 1.429.

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

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

206. *Small Businesses.* Nationwide, there are a total of approximately 27.5 million small businesses, according to the SBA.

207. *Wired Telecommunications Carriers.* The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees. According to Census Bureau data for 2007, there were 3,188 firms in this category, total, that operated for the entire year. Of this total, 3144 firms had employment of 999 or fewer employees, and 44 firms had employment of 1000 employees or more. Thus, under this size standard, the majority of firms can be considered small.

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

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

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

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

212. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to interexchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of these 359 companies, an estimated 317 have 1,500 or fewer employees and

42 have more than 1,500 employees. Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by rules adopted pursuant to the FNPRM.

213. *Prepaid Calling Card Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 193 carriers have reported that they are engaged in the provision of prepaid calling cards. Of these, an estimated all 193 have 1,500 or fewer employees and none have more than 1,500 employees. Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by rules adopted pursuant to the FNPRM.

214. *Local Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 211 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by rules adopted pursuant to the FNPRM.

215. *Toll Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 857 have 1,500 or fewer employees and 24 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by rules adopted pursuant to the FNPRM.

216. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 284 companies reported that their primary telecommunications service activity was the provision of other toll carriage. Of these, an estimated 279 have 1,500 or fewer employees and five have more than 1,500 employees. Consequently, the Commission estimates that most Other Toll Carriers are small entities that may be affected by the rules and policies adopted pursuant to the FNPRM.

217. *800 and 800-Like Service Subscribers.* Neither the Commission nor the SBA has developed a small business size standard specifically for 800 and 800-like service (toll free) subscribers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. The most reliable source of information regarding the number of these service subscribers appears to be data the Commission collects on the 800, 888, 877, and 866 numbers in use. According to our data, as of September 2009, the number of 800 numbers assigned was 7,860,000; the number of 888 numbers assigned was 5,588,687; the number of 877 numbers assigned was 4,721,866; and the number of 866 numbers assigned was 7,867,736. The Commission does not have data specifying the number of these subscribers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small businesses under the SBA size standard. Consequently, the Commission estimates that there are 7,860,000 or fewer small entity 800 subscribers; 5,588,687 or fewer small entity 888 subscribers; 4,721,866 or fewer small entity 877 subscribers; and 7,867,736 or fewer small entity 866 subscribers.

218. *Wireless Telecommunications Carriers (except Satellite).* Since 2007, the SBA has recognized wireless firms within this new, broad, economic census category. Prior to that time, such firms were within the now-superseded categories of Paging and Cellular and Other Wireless Telecommunications. Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. For this category, census data for 2007 show that there were 1,383 firms that operated for the entire year. Of this total, 1,368 firms had employment of 999 or fewer employees and 15 had employment of 1,000 employees or more. Similarly, according to Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) Telephony services. Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. Consequently, the Commission estimates that approximately half or more of these firms can be considered small. Thus, using available data, the Commission estimates that the majority of wireless firms can be considered small.

219. *Broadband Personal Communications Service.* The broadband personal communications service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined ''small entity'' for Blocks C and F as an entity that has average gross revenues of $40 million or less in the three previous calendar years. For Block F, an additional classification for ''very small business'' was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These standards defining ''small entity'' in the context of broadband PCS auctions have been approved by the SBA. No small businesses, within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. In 1999, the Commission re-auctioned 347 C, E, and F Block licenses. There were 48 small business winning bidders. In 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction 35. Of the 35 winning bidders in this auction, 29 qualified as ''small'' or ''very small'' businesses. Subsequent events, concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant. In 2005, the Commission completed an auction of 188 C block licenses and 21 F block licenses in Auction 58. There were 24 winning bidders for 217

licenses. Of the 24 winning bidders, 16 claimed small business status and won 156 licenses. In 2007, the Commission completed an auction of 33 licenses in the A, C, and F Blocks in Auction 71. Of the 14 winning bidders, six were designated entities. In 2008, the Commission completed an auction of 20 Broadband PCS licenses in the C, D, E and F block licenses in Auction 78.

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

221. *Narrowband Personal Communications Services.* In 1994, the Commission conducted an auction for Narrowband PCS licenses. A second auction was also conducted later in 1994. For purposes of the first two Narrowband PCS auctions, ''small businesses'' were entities with average gross revenues for the prior three calendar years of $40 million or less. Through these auctions, the Commission awarded a total of 41 licenses, 11 of which were obtained by four small businesses. To ensure meaningful participation by small business entities in future auctions, the Commission adopted a two-tiered small business size standard in the *Narrowband PCS Second Report and Order,* 65 FR 35843, June 6, 2000. A ''small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $40 million. A ''very small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million. The SBA has approved these small business size standards. A third auction was conducted in 2001. Here, five bidders won 317 (Metropolitan Trading Areas and nationwide) licenses. Three of these claimed status as a small or very small entity and won 311 licenses.

222. *Paging (Private and Common Carrier).* In the *Paging Third Report and Order,* 64 FR 33762, June 24, 1999, the Commission developed a small business size standard for ''small businesses'' and ''very small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A ''small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a ''very small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. The SBA has approved these small business size standards. According to Commission data, 291 carriers have reported that they are engaged in Paging or Messaging Service. Of these, an estimated 289 have 1,500 or fewer employees, and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of paging providers are small entities that may be affected by our action. An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 2,499 licenses auctioned, 985 were sold. Fifty-seven companies claiming small business status won 440 licenses. A subsequent auction of MEA and Economic Area (''EA'') licenses was held in the year 2001. Of the 15,514 licenses auctioned, 5,323 were sold. One hundred thirty-two companies claiming small business status purchased 3,724 licenses. A third auction, consisting of 8,874 licenses in each of 175 EAs and 1,328 licenses in all but three of the 51 MEAs, was held in 2003. Seventy-seven bidders claiming small or very small business status won 2,093 licenses. A fourth auction of 9,603 lower and upper band paging licenses was held in the year 2010. Twenty-nine bidders claiming small or very small business status won 3,016 licenses.

223. *220 MHz Radio Service—Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a small business size standard for small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, the Commission applies the small business size standard under the SBA rules applicable to Wireless Telecommunications Carriers (except Satellite). Under this category, the SBA deems a wireless business to be small if it has 1,500 or fewer employees. The Commission estimates that nearly all such licensees are small businesses under the SBA's small business size standard that may be affected by rules adopted pursuant to the FNPRM.

224. *220 MHz Radio Service—Phase II Licensees.* The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service is subject to spectrum auctions. In the *220 MHz Third Report and Order,* 62 FR 15978, April 3, 1997, the Commission adopted a small business size standard for ''small'' and ''very small'' businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. This small business size standard indicates that a ''small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. A ''very small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed $3 million for the preceding three years. The SBA has approved these small business size standards. Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998. In the first auction, 908 licenses were auctioned in three different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Thirty-nine small businesses won licenses in the first 220 MHz auction. The second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.

225. *Specialized Mobile Radio.* The Commission awards small business bidding credits in auctions for Specialized Mobile Radio (''SMR'') geographic area licenses in the 800 MHz and 900 MHz bands to entities that had revenues of no more than $15 million in each of the three previous calendar

years. The Commission awards very small business bidding credits to entities that had revenues of no more than $3 million in each of the three previous calendar years. The SBA has approved these small business size standards for the 800 MHz and 900 MHz SMR Services. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction was completed in 1996. Sixty bidders claiming that they qualified as small businesses under the $15 million size standard won 263 geographic area licenses in the 900 MHz SMR band. The 800 MHz SMR auction for the upper 200 channels was conducted in 1997. Ten bidders claiming that they qualified as small businesses under the $15 million size standard won 38 geographic area licenses for the upper 200 channels in the 800 MHz SMR band. A second auction for the 800 MHz band was conducted in 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses.

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

227. In addition, there are numerous incumbent site-by-site SMR licensees and licensees with extended implementation authorizations in the 800 and 900 MHz bands. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. In addition, the Commission does not know how many of these firms have 1500 or fewer employees. The Commission assumes, for purposes of this analysis, that all of the remaining existing extended implementation authorizations are held by small entities, as that small business size standard is approved by the SBA.

228. *Broadband Radio Service and Educational Broadband Service.* Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (''MDS'') and Multichannel Multipoint Distribution Service (''MMDS'') systems, and ''wireless cable,'' transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service (''BRS'') and Educational Broadband Service (''EBS'') (previously referred to as the Instructional Television Fixed Service (''ITFS'')). In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of no more than $40 million in the previous three calendar years. The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (''BTAs''). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, the Commission estimates that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent BRS licensees that are considered small entities. After adding the number of small business auction licensees to the number of incumbent licensees not already counted, the Commission finds that there are currently approximately 440 BRS licensees that are defined as small businesses under either the SBA or the Commission's rules. The Commission has adopted three levels of bidding credits for BRS: (i) A bidder with attributed average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years (small business) is eligible to receive a 15 percent discount on its winning bid; (ii) a bidder with attributed average annual gross revenues that exceed $3 million and do not exceed $15 million for the preceding three years (very small business) is eligible to receive a 25 percent discount on its winning bid; and (iii) a bidder with attributed average annual gross revenues that do not exceed $3 million for the preceding three years (entrepreneur) is eligible to receive a 35 percent discount on its winning bid. In 2009, the Commission conducted Auction 86, which offered 78 BRS licenses. Auction 86 concluded with ten bidders winning 61 licenses. Of the ten, two bidders claimed small business status and won 4 licenses; one bidder claimed very small business status and won three licenses; and two bidders claimed entrepreneur status and won six licenses.

229. In addition, the SBA's Cable Television Distribution Services small business size standard is applicable to EBS. There are presently 2,032 EBS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities. Thus, the Commission estimates that at least 1,932 licensees are small businesses. Since 2007, Cable Television Distribution Services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.'' The SBA defines a small business size standard for this category as any such firms having 1,500 or fewer employees. The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. According to Census Bureau data for 2007, there were a total of 955 firms in this previous category that operated for the entire year. Of this total, 939 firms had employment of 999 or fewer employees, and 16 firms had employment of 1000 employees or more. Thus, under this size standard, the majority of firms can be considered small and may be affected by rules adopted pursuant to the FNPRM.

230. *Lower 700 MHz Band Licenses.* The Commission previously adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits. The Commission defined a ''small business'' as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years. A ''very small business'' is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years. Additionally, the Lower 700 MHz Band had a third category of small business status for Metropolitan/Rural Service Area (''MSA/RSA'') licenses, identified as ''entrepreneur'' and

defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. The SBA approved these small size standards. The Commission conducted an auction in 2002 of 740 Lower 700 MHz Band licenses (one license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings (EAGs)). Of the 740 licenses available for auction, 484 licenses were sold to 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won a total of 329 licenses. The Commission conducted a second Lower 700 MHz Band auction in 2003 that included 256 licenses: 5 EAG licenses and 476 Cellular Market Area licenses. Seventeen winning bidders claimed small or very small business status and won 60 licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses. In 2005, the Commission completed an auction of 5 licenses in the Lower 700 MHz Band, designated Auction 60. There were three winning bidders for five licenses. All three winning bidders claimed small business status.

231. In 2007, the Commission reexamined its rules governing the 700 MHz band in the *700 MHz Second Report and Order,* 72 FR 48814, August 24, 2007. The *700 MHz Second Report and Order* revised the band plan for the commercial (including Guard Band) and public safety spectrum, adopted services rules, including stringent build-out requirements, an open platform requirement on the C Block, and a requirement on the D Block licensee to construct and operate a nationwide, interoperable wireless broadband network for public safety users. An auction of A, B and E block licenses in the Lower 700 MHz band was held in 2008. Twenty winning bidders claimed small business status (those with attributable average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years). Thirty three winning bidders claimed very small business status (those with attributable average annual gross revenues that do not exceed $15 million for the preceding three years). In 2011, the Commission conducted Auction 92, which offered 16 Lower 700 MHz band licenses that had been made available in Auction 73 but either remained unsold or were licenses on which a winning bidder defaulted. Two of the seven winning bidders in Auction 92 claimed very small business status, winning a total of four licenses.

232. *Upper 700 MHz Band Licenses.* In the *700 MHz Second Report and Order,* the Commission revised its rules regarding Upper 700 MHz band licenses. In 2008, the Commission conducted Auction 73 in which C and D block licenses in the Upper 700 MHz band were available. Three winning bidders claimed very small business status (those with attributable average annual gross revenues that do not exceed $15 million for the preceding three years).

233. *700 MHz Guard Band Licensees.* In the *700 MHz Guard Band Order,* 65 FR 17594, April 4, 2000, the Commission adopted a small business size standard for ''small businesses'' and ''very small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A ''small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years. Additionally, a ''very small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years. An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000. Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001 and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.

234. *Cellular Radiotelephone Service.* Auction 77 was held to resolve one group of mutually exclusive applications for Cellular Radiotelephone Service licenses for unserved areas in New Mexico. Bidding credits for designated entities were not available in Auction 77. In 2008, the Commission completed the closed auction of one unserved service area in the Cellular Radiotelephone Service, designated as Auction 77. Auction 77 concluded with one provisionally winning bid for the unserved area totaling $25,002.

235. *Private Land Mobile Radio (''PLMR'').* PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories, and are often used in support of the licensee's primary (non-telecommunications) business operations. For the purpose of determining whether a licensee of a PLMR system is a small business as defined by the SBA, the Commission uses the broad census category, Wireless Telecommunications Carriers (except Satellite). This definition provides that a small entity is any such entity employing no more than 1,500 persons. The Commission does not require PLMR licensees to disclose information about number of employees, so the Commission does not have information that could be used to determine how many PLMR licensees constitute small entities under this definition. The Commission notes that PLMR licensees generally use the licensed facilities in support of other business activities, and therefore, it would also be helpful to assess PLMR licensees under the standards applied to the particular industry subsector to which the licensee belongs.

236. As of March 2010, there were 424,162 PLMR licensees operating 921,909 transmitters in the PLMR bands below 512 MHz. The Commission notes that any entity engaged in a commercial activity is eligible to hold a PLMR license, and that any revised rules in this context could therefore potentially impact small entities covering a great variety of industries.

237. *Rural Radiotelephone Service.* The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (BETRS). In the present context, the Commission will use the SBA's small business size standard applicable to Wireless Telecommunications Carriers (except Satellite), i.e., an entity employing no more than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies proposed herein.

238. *Air-Ground Radiotelephone Service.* The Commission has not adopted a small business size standard specific to the Air-Ground Radiotelephone Service. The Commission will use SBA's small business size standard applicable to Wireless Telecommunications Carriers (except Satellite), i.e., an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and the Commission estimates that almost all of them qualify as small under the SBA small business size

standard and may be affected by rules adopted pursuant to the FNPRM.

239. *Aviation and Marine Radio Services.* Small businesses in the aviation and marine radio services use a very high frequency (VHF) marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category Wireless Telecommunications Carriers (except Satellite), which is 1,500 or fewer employees. Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of our evaluations in this analysis, the Commission estimates that there are up to approximately 712,000 licensees that are small businesses (or individuals) under the SBA standard. In addition, between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875–157.4500 MHz (ship transmit) and 161.775–162.0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a ''small'' business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $15 million dollars. In addition, a ''very small'' business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $3 million dollars. There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as ''small'' businesses under the above special small business size standards and may be affected by rules adopted pursuant to the FNPRM.

240. *Fixed Microwave Services.* Fixed microwave services include common carrier, private operational-fixed, and broadcast auxiliary radio services. At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not created a size standard for a small business specifically with respect to fixed microwave services. For purposes of this analysis, the Commission uses the SBA small business size standard for Wireless Telecommunications Carriers (except Satellite), which is 1,500 or fewer employees. The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus is unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are up to 22,015 common carrier fixed licensees and up to 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies adopted herein. The Commission notes, however, that the common carrier microwave fixed licensee category includes some large entities.

241. *Offshore Radiotelephone Service.* This service operates on several UHF television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico. There are approximately 55 licensees in this service. The Commission is unable to estimate at this time the number of licensees that would qualify as small under the SBA's small business size standard for Cellular and Other Wireless Telecommunications services. Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.

242. *39 GHz Service.* The Commission created a special small business size standard for 39 GHz licenses—an entity that has average gross revenues of $40 million or less in the three previous calendar years. An additional size standard for ''very small business'' is: An entity that, together with affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. The SBA has approved these small business size standards. The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses. Consequently, the Commission estimates that 18 or fewer 39 GHz licensees are small entities that may be affected by rules adopted pursuant to the FNPRM.

243. *Local Multipoint Distribution Service.* Local Multipoint Distribution Service (LMDS) is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications. The auction of the 986 LMDS licenses began and closed in 1998. The Commission established a small business size standard for LMDS licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years. An additional small business size standard for ''very small business'' was added as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. The SBA has approved these small business size standards in the context of LMDS auctions. There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. In 1999, the Commission re-auctioned 161 licenses; there were 32 small and very small businesses winning that won 119 licenses.

244. *218–219 MHz Service.* The first auction of 218–219 MHz spectrum resulted in 170 entities winning licenses for 594 Metropolitan Statistical Area (MSA) licenses. Of the 594 licenses, 557 were won by entities qualifying as a small business. For that auction, the small business size standard was an entity that, together with its affiliates, has no more than a $6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than $2 million in annual profits each year for the previous two years. In the *218–219 MHz Report and Order and Memorandum Opinion and Order,* 64 FR 59656, November 3, 1999, the Commission established a small business size standard for a ''small business'' as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not to exceed $15 million for the preceding three years. A ''very small business'' is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not to exceed $3 million for the preceding three years. These size standards will be used in future auctions of 218–219 MHz spectrum.

245. *2.3 GHz Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined ''small business'' for the wireless communications services (''WCS'') auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a ''very small business'' as an entity with average gross revenues of $15 million for each of the three preceding years. The SBA has approved

these definitions. The Commission auctioned geographic area licenses in the WCS service. In the auction, which was conducted in 1997, there were seven bidders that won 31 licenses that qualified as very small business entities, and one bidder that won one license that qualified as a small business entity.

246. *1670–1675 MHz Band.* An auction for one license in the 1670–1675 MHz band was conducted in 2003. The Commission defined a ''small business'' as an entity with attributable average annual gross revenues of not more than $40 million for the preceding three years and thus would be eligible for a 15 percent discount on its winning bid for the 1670–1675 MHz band license. Further, the Commission defined a ''very small business'' as an entity with attributable average annual gross revenues of not more than $15 million for the preceding three years and thus would be eligible to receive a 25 percent discount on its winning bid for the 1670–1675 MHz band license. One license was awarded. The winning bidder was not a small entity.

247. *3650–3700 MHz band.* In March 2005, the Commission released a *Report and Order and Memorandum Opinion and Order* that provides for nationwide, non-exclusive licensing of terrestrial operations, utilizing contention-based technologies, in the 3650 MHz band (i.e., 3650–3700 MHz). As of April 2010, more than 1,270 licenses have been granted and more than 7,433 sites have been registered. The Commission has not developed a definition of small entities applicable to 3650–3700 MHz band nationwide, non-exclusive licensees. However, the Commission estimates that the majority of these licensees are Internet Access Service Providers (ISPs) and that most of those licensees are small businesses.

248. *24 GHz—Incumbent Licensees.* This analysis may affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. The applicable SBA small business size standard is that of ''Cellular and Other Wireless Telecommunications'' companies. This category provides that such a company is small if it employs no more than 1,500 persons. The Commission believes that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent and TRW, Inc. It is our understanding that Teligent and its related companies have less than 1,500 employees, though this may change in the future. TRW is not a small entity. Thus, only one incumbent licensee in the 24 GHz band is a small business entity.

249. *24 GHz—Future Licensees.* With respect to new applicants in the 24 GHz band, the size standard for ''small business'' is an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not in excess of $15 million. ''Very small business'' in the 24 GHz band is an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding $3 million for the preceding three years. The SBA has approved these small business size standards. These size standards will apply to a future 24 GHz license auction, if held.

250. *Satellite Telecommunications.* Since 2007, the SBA has recognized satellite firms within this revised category, with a small business size standard of $15 million. The most current Census Bureau data are from the economic census of 2007, and the Commission will use those figures to gauge the prevalence of small businesses in this category. Those size standards are for the two census categories of ''Satellite Telecommunications'' and ''Other Telecommunications.'' Under the ''Satellite Telecommunications'' category, a business is considered small if it had $15 million or less in average annual receipts. Under the ''Other Telecommunications'' category, a business is considered small if it had $25 million or less in average annual receipts.

251. The first category of Satellite Telecommunications ''comprises establishments primarily engaged in providing point-to-point telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.'' For this category, Census Bureau data for 2007 show that there were a total of 512 firms that operated for the entire year. Of this total, 464 firms had annual receipts of under $10 million, and 18 firms had receipts of $10 million to $24,999,999. Consequently, the Commission estimates that the majority of Satellite Telecommunications firms are small entities that might be affected by rules adopted pursuant to the FNPRM.

252. The second category of Other Telecommunications ''primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.'' For this category, Census Bureau data for 2007 show that there were a total of 2,383 firms that operated for the entire year. Of this total, 2,346 firms had annual receipts of under $25 million. Consequently, the Commission estimates that the majority of Other Telecommunications firms are small entities that might be affected by our action.

253. *Cable and Other Program Distribution.* Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.'' The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. According to Census Bureau data for 2007, there were a total of 955 firms in this previous category that operated for the entire year. Of this total, 939 firms had employment of 999 or fewer employees, and 16 firms had employment of 1000 employees or more. Thus, under this size standard, the majority of firms can be considered small and may be affected by rules adopted pursuant to the FNPRM.

254. *Cable Companies and Systems.* The Commission has developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers, nationwide. Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard. In addition, under the Commission's rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers. Industry data indicate that, of 7,208 systems nationwide, 6,139 systems have under 10,000 subscribers, and an additional 379 systems have 10,000–19,999 subscribers. Thus, under this second size standard, most cable systems are small and may be affected

by rules adopted pursuant to the FNPRM.

255. *Cable System Operators.* The Act also contains a size standard for small cable system operators, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate. Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard. The Commission notes that it neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million, and therefore it is unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

256. *Open Video Services.* The open video system (''OVS'') framework was established in 1996, and is one of four statutorily recognized options for the provision of video programming services by local exchange carriers. The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services, OVS falls within the SBA small business size standard covering cable services, which is ''Wired Telecommunications Carriers.'' The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. According to Census Bureau data for 2007, there were a total of 955 firms in this previous category that operated for the entire year. Of this total, 939 firms had employment of 999 or fewer employees, and 16 firms had employment of 1000 employees or more. Thus, under this second size standard, most cable systems are small and may be affected by rules adopted pursuant to the Notice. In addition, the Commission notes that it has certified some OVS operators, with some now providing service. Broadband service providers (''BSPs'') are currently the only significant holders of OVS certifications or local OVS franchises. The Commission does not have financial or employment information regarding the entities authorized to provide OVS, some of which may not yet be operational. Thus, again, at least some of the OVS operators may qualify as small entities.

257. *Internet Service Providers.* Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.'' The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. According to Census Bureau data for 2007, there were 3,188 firms in this category, total, that operated for the entire year. Of this total, 3144 firms had employment of 999 or fewer employees, and 44 firms had employment of 1000 employees or more. Thus, under this size standard, the majority of firms can be considered small. In addition, according to Census Bureau data for 2007, there were a total of 396 firms in the category Internet Service Providers (broadband) that operated for the entire year. Of this total, 394 firms had employment of 999 or fewer employees, and two firms had employment of 1000 employees or more. Consequently, the Commission estimates that the majority of these firms are small entities that may be affected by rules adopted pursuant to the FNPRM.

258. *Internet Publishing and Broadcasting and Web Search Portals.* Our action may pertain to interconnected VoIP services, which could be provided by entities that provide other services such as email, online gaming, web browsing, video conferencing, instant messaging, and other, similar IP-enabled services. The Commission has not adopted a size standard for entities that create or provide these types of services or applications. However, the Census Bureau has identified firms that ''primarily engaged in (1) publishing and/or broadcasting content on the Internet exclusively or (2) operating Web sites that use a search engine to generate and maintain extensive databases of Internet addresses and content in an easily searchable format (and known as Web search portals).'' The SBA has developed a small business size standard for this category, which is: All such firms having 500 or fewer employees. According to Census Bureau data for 2007, there were 2,705 firms in this category that operated for the entire year. Of this total, 2,682 firms had employment of 499 or fewer employees, and 23 firms had employment of 500 employees or more. Consequently, the Commission estimates that the majority of these firms are small entities that may be affected by rules adopted pursuant to the FNPRM.

259. *Data Processing, Hosting, and Related Services.* Entities in this category ''primarily . . . provid[e] infrastructure for hosting or data processing services.'' The SBA has developed a small business size standard for this category; that size standard is $25 million or less in average annual receipts. According to Census Bureau data for 2007, there were 8,060 firms in this category that operated for the entire year. Of these, 7,744 had annual receipts of under $24,999,999. Consequently, the Commission estimates that the majority of these firms are small entities that may be affected by rules adopted pursuant to the FNPRM.

260. *All Other Information Services.* The Census Bureau defines this industry as including ''establishments primarily engaged in providing other information services (except news syndicates, libraries, archives, Internet publishing and broadcasting, and Web search portals).'' Our action pertains to interconnected VoIP services, which could be provided by entities that provide other services such as email, online gaming, web browsing, video conferencing, instant messaging, and other, similar IP-enabled services. The SBA has developed a small business size standard for this category; that size standard is $7.0 million or less in average annual receipts. According to Census Bureau data for 2007, there were 367 firms in this category that operated for the entire year. Of these, 334 had annual receipts of under $5.0 million, and an additional 11 firms had receipts of between $5 million and $9,999,999. Consequently, the Commission estimates that the majority of these firms are small entities that may be affected by our action.

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

261. In this FNPRM, the Commission seeks public comment on additional steps for its comprehensive universal service reform. The transition to the reforms could affect all carriers including small entities, and may include new administrative processes. In proposing these reforms, the Commission seeks comment on various

reporting and other compliance requirements that may apply to all carriers, including small entities. The Commission seeks comment on any costs and burdens on small entities associated with the proposed rules, including data quantifying the extent of those costs or burdens.

262. For example, in the FNPRM, the Commission seeks further comment on the design of the Phase II competitive bidding process in which small entities may participate. It is likely that the rules the Commission ultimately adopts for the competitive bidding process will impose obligations on small entities deciding to participate.

263. In defining the areas eligible for Phase II support, the Commission seeks comment on excluding from eligibility areas served by any provider that offers voice and broadband meeting the Commission's requirements—regardless of whether the provider is subsidized or unsubsidized. The Commission seeks comment on requiring competitors (including small entities) that wish to contest the eligibility of an area to certify to the Commission that they are able and willing to continue providing voice and broadband service meeting the Commission's requirements for a period of time, such as five years.

264. The Commission seeks comment on methods of providing funding recipients with increased flexibility in making their deployments. First, the Commission seeks comment on permitting Phase II recipients to specify that they are willing to deploy to less than 100 percent of locations in exchange for some lesser amount of funding. In such a process, the recipients may be required to state the percent or number of locations that they are willing to serve. Second, the Commission seeks comment on requiring Connect America funding recipients to make a statement announcing their intent to deploy to unserved locations in partially served census blocks. Such recipients may potentially also be required to send a copy of that statement to any provider currently shown on the National Broadband Map as serving that census block.

265. Moreover, the Commission seeks comment on near term measures for reforms to rate-of-return carriers' support mechanism. As a part of this short-term reform, the Commission proposes adopting a rule that no new investment may be recovered through HCLS or ICLS as of a date certain when such investment occurs in areas that are already served by a competing provider of voice and broadband services meeting our requirements. In the FNPRM, the Commission proposes to require rate-of-return carriers, many of which are small entities, to be prepared to document with asset records and associated receipts that new investment for which recovery is sought through federal support mechanisms is occurring only in census blocks that are not served by other providers. It also proposes that rate-of-return carriers be required to announce an intention to make new investment and wait 90 days before such investment may properly be eligible for cost recovery through the universal service support mechanisms. The FNPRM also proposes a transition framework for rate-of-return carriers to elect to receive support based on a forward looking cost model.

266. The Commission anticipates that rate-of-return carriers are likely to be subject to other accountability measures depending on which reforms the Commission ultimately adopts. The Commission also seeks comment on setting aside $10 million of support for the construction of middle mile networks on Tribal lands. If such a program is implemented and small entities choose to participate, they would be subject to the trial's rules, including any accountability obligations the Commission chooses to adopt after considering comments submitted in response to the FNPRM.

267. The Commission also seeks comment on requiring entities participating in the Phase II competitive bidding process to submit an application to become an ETC within 30 days of notification that they are the winning bidders for those areas where they have not already been designated as ETCs. This proposal is intended to facilitate the ability of non-incumbent carriers, many of which are small entities, to participate in the Connect America Fund and the Remote Areas Fund. The Commission also proposes to adopt a rebuttable presumption that if a state commission fails to initiate an ETC designation proceeding within 60 days, the entity may file for ETC designation with the Commission and point to the lack of state action within the prescribed time period as evidence that the petitioner is not subject to the jurisdiction of a state commission. The Commission also proposes to require winning bidders to submit proof to the Commission that they have filed the requisite ETC designation application within the required timeframe to the extent filed with a state commission.

268. The Commission also seeks comment on several proposals related to the ''uniform national framework for accountability'' that was established in the *USF/ICC Transformation Order.* The Commission proposes to codify a certification requirement for ETCs that are required to provide broadband service as a condition of receiving ongoing high-cost support in areas served by price cap and rate-of-return carriers. ETCs would be required to certify that the pricing of one of their broadband service plans is no more than the applicable benchmark specified by the Wireline Competition Bureau, or is no more than the non-promotional prices charged for comparable fixed wireline service in urban areas. The Bureau also proposes a revised framework for reductions in support that ETCs will receive for failing to file their section 54.313 and 54.314 filings on time and seeks comment on what penalties it should impose for ETCs that do not meet the Commission's public service obligations.

269. The Commission seeks comment on proposals for specific service obligations for carriers serving non-contiguous areas electing to continue to receive frozen support amounts. The Commission seeks comment on how it can monitor for compliance with these obligations.

270. The Commission also proposes rules for Mobility Fund II, in which small entities might choose to participate. The proposed rules would impose a number of obligations including the requirement that participating entities secure a letter of credit, the requirements for the contents of the applications to participate and for winning bidders, and various certifications and reporting requirements.

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

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

272. The FNPRM seeks comment from all interested parties. The Commission is aware that some of the proposals under consideration may affect small

entities. Small entities are encouraged to bring to the Commission's attention any specific concerns they may have with the proposals outlined in the FNPRM.

273. The Commission expects to consider the economic impact on small entities, as identified in comments filed in response to the FNPRM, in reaching its final conclusions and taking action in this proceeding. The reporting, recordkeeping, and other compliance requirements in the FNPRM could have an impact on both small and large entities. The Commission believes that any impact of such requirements is outweighed by the accompanying public benefits. Further, these requirements are necessary to ensure that the statutory goals of section 254 of the Act are met without waste, fraud, or abuse.

274. The Commission has made an effort to anticipate the challenges faced by small entities in complying with its rules. For example, when proposing new speed obligations, the Commission recognizes that ETCs, including small entities, may not be able to meet revised speed standards immediately. Noting that rate-of-return carriers, which are often small entities, are required to deploy broadband upon reasonable request, the Commission emphasizes that rate-of-return carriers would only be required to meet the higher speed if the request for service is reasonable—meaning that the carrier could cost effectively extend voice and broadband-capable network to that location, given its anticipated end-user revenues and other sources of support. The Commission also seeks comment on the timeframe for rate-of-return carriers to upgrade their networks to a faster speed benchmark. Related to the other performance standards the Commission proposes to impose—particularly usage and latency standards—the Commission also requests that parties identify whether the requirements are too stringent and offer alternative proposals.

275. The Commission also seeks comment on how the obligations for carriers serving non-contiguous areas should be adjusted when determining support obligations for those that select frozen support in lieu of model-based support.

276. The Commission proposes to allow Phase II recipients to meet their deployment obligations using any technology that meets the performance requirements. If adopted, this would give participants, including small entities, additional flexibility in satisfying their obligations. The Commission also seeks comment on two potential measures that would provide all recipients of Phase II funding, both in the state-level commitment process and competitive bidding process, greater flexibility to satisfy their deployment obligations. These include proposing to permit Phase II recipients to specify that they are willing to deploy to less than 100 percent of locations in their funded areas, with associated support reductions, and to allow Phase II recipients to substitute some number of unserved locations within partially served census blocks for locations within funded census blocks.

277. The Commission also proposes to retarget the focus of Mobility Fund Phase II to the U.S. population that will not have 4G LTE through commercial deployments and those areas where support is needed to preserve existing mobile voice and broadband service that would not otherwise exist without governmental support. The FNPRM proposes adjusting downward the budget for a retargeted Mobility Fund II. While this could affect small mobile providers, the Commission notes that if Mobility Fund Phase II is retargeted as proposed, support could be available for small entities that are the only providers serving populations in portions of the country.

278. The Commission proposes targeted measures to maintain competitive ETC funding until after the Mobility Fund Phase II auction. Thus, the Commission proposes to maintain 60 percent competitive ETC baseline support for those wireless ETCs whose competitive ETC support exceeds one percent of their wireless revenues, until a specified date after the Mobility Fund Phase II ongoing support. While the Commission proposes to eliminate competitive ETC support for wireless ETCs for whom high-cost support represents less than one percent of their wireless revenues, it notes that such carriers can take advantage of the waiver process if the elimination of support would result in consumers losing access to existing mobile voice or broadband service. The FNRPM also proposes to freeze competitive ETC support for competitive ETCs serving remote areas of Alaska, many of which are small entities, which would provide greater certainty to individual carriers regarding their support amounts. The FNRPM also proposes a delayed time table for phasing down that frozen support compared to other competitive ETCs.

279. The FNPRM proposes to exclude from eligibility for Phase II support those areas served by a provider that offers voice and broadband services meeting the Commission's requirements regardless of whether the competitor is subsidized or unsubsidized. The Commission also seeks comment on excluding from eligibility providers that are offering qualifying service regardless of what technology is used to deliver that service. If adopted, these proposals could limit the overbuilding of areas served by other providers, some of which may be small entities.

280. For rate-of-return carriers, the Commission seeks comment on short-term and long-term reforms to ensure that funds provided to rate-of-return carriers are disbursed efficiently and in the public interest. Recognizing the need to eliminate the inefficiencies of the universal service support mechanisms for rate-of-return carriers, the FNPRM proposes to modify the current HCLS mechanism by reducing the reimbursement percentages for all carriers and to limit the ability of rate-of-return carriers to recover new investment through HCLS in areas where other providers are offering voice and broadband. The Commission also proposes a funding mechanism that would provide support for rate-of-return carriers' broadband-only lines and seeks comment on various industry proposals for longer term reforms. The Commission anticipates taking into account the unique challenges faced by rate-of-return carriers when determining which reforms to adopt.

281. In the FNPRM, the Commission seeks comment on specific proposals for the design of the Phase II competitive bidding process and the rules for a retargeted Mobility Phase II. The Commission asks a variety of questions about how these mechanisms should be designed, and proposes rules for Mobility Fund Phase II. The Commission anticipates that small entities will comment and provide data on the challenges they face and proposals for how to design the mechanisms to accommodate small entities. The Commission anticipates taking these comments and any alternatives proposed into consideration when making final decisions on how the mechanisms will be designed and what rules it will adopt for entities receiving support from these mechanisms.

282. The Commission proposes a broadband reasonably comparable rate certification on all ETCs that receive ongoing high-cost support in areas served by price cap carriers and rate-of-return carriers, but it also seeks comment on modifying the reduction in support for late filing. Although the Commission notes that filing deadlines will be strictly enforced, it proposes to adjust the reduction of support for all ETCs, including small entities, and provide a grace period to ensure it is not unduly punitive given the nature of non-compliance. The Commission also seeks comment on support reductions it

should impose for failure to meet its service obligations and considers alternatives that would give all ETCs, including small entities, an opportunity for cure before support reductions are imposed.

6. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

283. None.

D. Ex Parte Presentations

284. *Permit-But-Disclose.* The proceeding this Further Notice of Proposed Rulemaking and concurrently adopted Report and Order, Declaratory Ruling, Order, Memorandum Opinion and Order and Seventh Order on Reconsideration, initiates shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's ex parte rules. Persons making ex parte presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex parte presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's ex parte rules.

E. Filing Requirements

285. *Comments and Replies.* Pursuant to sections 1.415 and 1.419 of the Commission's rules, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/.*
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. Because more than one docket number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket number.
- Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
  - All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW., Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of *before* entering the building.
  - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
  - U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington, DC 20554.

286. *People with Disabilities.* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

287. *Availability of Documents.* Comments, reply comments, and ex parte submissions will be publically available online via ECFS. These documents will also be available for public inspection during regular business hours in the FCC Reference Information Center, which is located in Room CY–A257 at FCC Headquarters, 445 12th Street SW., Washington, DC 20554. The Reference Information Center is open to the public Monday through Thursday from 8:00 a.m. to 4:30 p.m. and Friday from 8:00 a.m. to 11:30 a.m.

288. *Additional Information.* For additional information on this proceeding, contact Alexander Minard of the Wireline Competition Bureau, Telecommunications Access Policy Division, *Alexander.Minard@fcc.gov,* (202) 418–7400, or Suzanne Yelen of the Wireline Competition Bureau, Industry Analysis and Technology Division, *Suzanne.Yelen@fcc.gov,* (202) 418–7400.

IV. Ordering Clauses

289. Accordingly, *it is ordered,* pursuant to the authority contained in sections 1, 2, 4(i), 5, 201–206, 214, 218–220, 251, 252, 254, 256, 303(r), 332, 403, and 405 of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. 151, 152, 154(i), 155, 201–206, 214, 218–220, 251, 252, 254, 256, 303(r), 332, 403, 405, 1302, and sections 1.1, 1.2, 1.3, 1.115, 1.421, 1.427, and 1.429 of the Commission's rules, 47 CFR 1.1, 1.2, 1.3, 1.115, 1.421, 1.427, and 1.429, that this Further Notice of Proposed Rulemaking and concurrently adopted Report and Order, Declaratory Ruling, Order, Memorandum Opinion and Order and Seventh Order on Reconsideration IS ADOPTED, effective thirty (30) days after publication of the text or summary thereof in the **Federal Register**, except for (1) those rules and requirements involving Paperwork Reduction Act burdens, which shall become effective immediately upon announcement in the **Federal Register** of OMB approval, (2) the waiver of sections 1.1105, 54.318(b), and 54.318(i) of the Commission's rules to the extent described herein which shall become effective upon release pursuant to sections 1.4(b)(2) and 1.103 of the Commission's rules (47 CFR 1.4(b)(2), 1.103), and (3) the elimination of the benchmarking rule, which shall become effective as of the first month following publication of a summary of this order in the **Federal Register**. It is our intention in adopting these rules that if any of the rules that we retain, modify, or adopt herein, or the application thereof to any person or circumstance, are held to be unlawful, the remaining portions of the rules not deemed unlawful, and the application of such rules to other persons or circumstances, shall remain in effect to the fullest extent permitted by law.

290. *It is further ordered* that, pursuant to the authority contained in

sections 1, 2, 4(i), 5, 201–206, 214, 218–220, 251, 252, 254, 256, 303(r), 332, and 403 of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. 151, 152, 154(i), 155, 201–206, 214, 218–220, 251, 252, 254, 256, 303(r), 332, 403, 1302, and sections 1.1, 1.2, 1.3, 1.115, 1.421, 1.427, and 1.429 of the Commission's rules, 47 CFR 1.1, 1.2, 1.3, 1.115, 1.421, 1.427, 1.429, *notice is hereby given* of the proposals and tentative conclusions described in this Further Notice of Proposed Rulemaking.

291. *It is further ordered* that the Commission *shall send* a copy of this Further Notice of Proposed Rulemaking and concurrently adopted Report and Order, Declaratory Ruling, Order, Memorandum Opinion and Order and Seventh Order on Reconsideration to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

292. *It is further ordered,* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Further Notice of Proposed Rulemaking and concurrently adopted Report and Order, Declaratory Ruling, Order, Memorandum Opinion and Order and Seventh Order on Reconsideration, including the Initial Regulatory Flexibility Analysis and the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 54

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

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 54 as follows:

PART 54—UNIVERSAL SERVICE

■ 1. The authority citation for part 54 continues to read as follows:

Authority: Sections 1, 4(i), 5, 201, 205, 214, 219, 220, 254, 303(r), and 403 of the Communications Act of 1934, as amended, and section 706 of the Communications Act of 1996, as amended; 47 U.S.C. 151, 154(i), 155, 201, 205, 214, 219, 220, 254, 303(r), 403, and 1302 unless otherwise noted.

■ 2. Amend § 54.5 by removing the definition ''Unsubsidized competitor'' and adding the definition ''Qualifying competitor'' in alphabetical order to read as follows:

§ 54.5 Terms and definitions.

* * * * *

Qualifying competitor. A ''qualifying competitor'' is a facilities-based provider of residential terrestrial fixed voice and broadband service. The broadband service provided must satisfy the specifications set forth in § 54.309.

* * * * *

■ 3. Amend § 54.202 by adding paragraph (d) to read as follows:

§ 54.202 Additional requirements for Commission designation of eligible telecommunications carriers.

* * * * *

(d) If a state fails to initiate a proceeding on an entity's application for eligible telecommunications carrier designation within 60 calendar days from the date the application is filed, that applicant may presume the state lacks jurisdiction and may file an application for eligible telecommunications carrier designation with the Commission pursuant to section 214(a)(6).

■ 4. Revise § 54.307 to read as follows:

§ 54.307 Support to a competitive eligible telecommunications carrier.

(a) Competitive eligible telecommunications carriers will, beginning January 1, 2012, receive support as described in this paragraph.

(1) *Baseline support amount.* Each competitive eligible telecommunication carrier will have a ''baseline support amount'' equal to its total 2011 support in a given study area, or an amount equal to $3,000 times the number of reported lines for 2011, whichever is lower. Each competitive eligible telecommunications carrier will have a ''monthly baseline support amount'' equal to its baseline support amount divided by twelve.

(i) ''Total 2011 support'' is the amount of support disbursed to a competitive eligible telecommunication carrier for 2011, without regard to prior period adjustments related to years other than 2011 and as determined by the Administrator on January 31, 2012.

(ii) For the purpose of calculating the $3,000 per line limit, the average of lines reported by a competitive eligible telecommunication carrier pursuant to line count filings required for December 31, 2010, and December 31, 2011, shall be used. The $3,000 per line limit shall be applied to support amounts determined for each incumbent study area served by the competitive eligible telecommunications carrier.

(2) *Monthly support amounts.* Competitive eligible telecommunications carriers shall receive the following support amounts, except as provided in paragraphs (b)(3), (c), and (d) of this section.

(i) From January 1, 2012, to June 30, 2012, each competitive eligible telecommunications carrier shall receive its monthly baseline support amount each month.

(ii) From July 1, 2012 to June 30, 2013, each competitive eligible telecommunications carrier shall receive 80 percent of its monthly baseline support amount each month.

(iii) Beginning July 1, 2013, until a date specified by public notice, each competitive eligible telecommunications carrier shall receive 60 percent of its monthly baseline support amount each month.

(iv) Each competitive eligible telecommunications carrier that is not a winning bidder for Mobility Fund Phase II support shall receive 40 percent of its monthly baseline support amount each month for twelve months, beginning the first month after the month in which a public notice announces winning bidders for Mobility Fund Phase II support, and then 20 percent of its monthly baseline support amount each month for the subsequent twelve months. Thereafter, it shall not receive universal service support pursuant to this section.

(v) If a competitive eligible telecommunications carrier becomes eligible to receive high-cost support pursuant to the Mobility Fund Phase II, it will cease to be eligible for phase-down support in the first month after the month in which its Mobility Fund Phase II support is authorized.

(b) *Delayed phase down for remote areas in Alaska.* Certain competitive eligible telecommunications carriers serving remote areas in Alaska shall have their support phased down on a later schedule than that described in paragraph (a)(2) of this section.

(1) *Remote areas in Alaska.* For the purpose of this paragraph, ''remote areas in Alaska'' includes all of Alaska except;

(i) The ACS-Anchorage incumbent study area;

(ii) The ACS-Juneau incumbent study area;

(iii) The Fairbanks zone 1 disaggregation zone in the ACS-Fairbanks incumbent study area; and

(iv) The Chugiak 1 and 2 and Eagle River 1 and 2 disaggregation zones of the Matanuska Telephone Association incumbent study area.

(2) *Carriers subject to delayed phase down.* A competitive eligible telecommunications carrier shall be subject to the delayed phase down to the extent that it serves remote areas in

Alaska, and it certified that it served covered locations in its September 30, 2011, filing of line counts with the Administrator.

(3) *Interim support for remote areas in Alaska.* From January 1, 2012, until December 31, 2014, competitive eligible telecommunications carriers subject to the delayed phase down for remote areas in Alaska shall continue to receive the support, as calculated by the Administrator, that each competitive telecommunications carrier would have received under the frozen per-line support amount as of December 31, 2011, capped at $3,000 per year, provided that the total amount of support for all such competitive eligible telecommunications carriers shall be capped pursuant to paragraph (b)(3)(i) of this section.

(i) *Cap amount.* The total amount of support available on an annual basis for competitive eligible telecommunications carriers subject to the delayed phase down for remote areas in Alaska shall be equal to the sum of ''total 2011 support,'' as defined in paragraph (a)(1)(i) of this section, received by all competitive eligible telecommunications carriers subject to the delayed phase down for serving remote areas in Alaska.

(ii) *Reduction factor.* To effectuate the cap, the Administrator shall apply a reduction factor as necessary to the support that would otherwise be received by all competitive eligible telecommunications carriers serving remote areas in Alaska subject to the delayed phase down. The reduction factor will be calculated by dividing the total amount of support available amount by the total support amount calculated for those carriers in the absence of the cap.

(4) *Baseline for delayed phase down.* Beginning January 1, 2015, each competitive eligible telecommunications carrier subject to the delayed phase down shall receive the annualized monthly support amount it received for December 2014. Competitive eligible telecommunications carriers subject to the delayed phase down described in paragraph (b) of this section shall no longer be required to file line counts beginning January 1, 2015.

(5) *Monthly support amounts for carriers subject to delayed phase down.* Competitive eligible carriers subject to the delayed phase down for remote areas in Alaska shall receive the following support amounts, except as provided in paragraphs (c) and (d) of this section.

(i) Commencing in the first month after the month in which a public notice announces winning bidders for ongoing support from Mobility Fund Phase II or Tribal Mobility Fund Phase II, each competitive eligible telecommunications carrier subject to delayed phase down that is not a winning bidder in Mobility Fund Phase II or Tribal Mobility Fund Phase II shall receive 80 percent of its monthly baseline support amount each month for twelve months; 60 percent of its monthly support for the next 12 months; 40 percent of its monthly support for the next twelve months; and 20 percent of its monthly support for the next twelve months. Thereafter, it shall not receive universal service support pursuant to this section.

(ii) If a competitive eligible carrier subject to delayed phase down is a winning bidding for Mobility Fund Phase I or Tribal Mobility Fund Phase II support, it will cease to be eligible for phase-down support in the first month after the month in which its Mobility Fund Phase II or Tribal Mobility Fund Phase II support is authorized.

(c) *Further reductions.* If a competitive eligible telecommunications carrier ceases to provide services to high-cost areas it had previously served, the Commission may reduce its baseline support amount.

(d) *Accelerated phase down.* Any wireless competitive eligible telecommunications carrier shall cease receiving competitive eligible telecommunications carrier support effective January 1, 2015, to the extent its annualized support in 2014 represented 1 percent or less of its wireless revenues for 2014 as reported on FCC Form 499–A.

■ 5. Revise § 54.309 to read as follows:

§ 54.309 Connect America Fund Phase II Public Interest Obligations.

Recipients of Connect America Phase II support (whether awarded through the offer of model-based support to price cap carriers or through a competitive bidding process) are required to offer broadband service at actual speeds of at least 10 Mbps downstream/1 Mbps upstream, with latency suitable for real-time applications, including Voice over Internet Protocol, and usage capacity that is reasonably comparable to comparable offerings in urban areas, at rates that are reasonable comparable to rates for comparable offerings in urban areas. For purposes of determining reasonable comparability of rates, recipients are presumed to meet this requirement if they offer rates at or below the benchmarks to be announced annually by public notice issued by the Wireline Competition Bureau.

■ 6. Amend § 54.310 by revising paragraphs (c) and (e) to read as follows:

§ 54.310 Connect America Fund for Price Cap Territories—Phase II.

* * * * *

(c) Deployment Obligation. Recipients of Connect America Phase II support must complete deployment to 85 percent of supported locations within three years of notification of Phase II support authorization and up to 100 percent of supported locations within five years of notification of Phase II support authorization. For purposes of meeting the obligation to deploy to the requisite number of supported locations, recipients may serve unserved locations in census blocks with costs above the extremely high-cost threshold instead of locations in eligible census blocks, provided that they meet the public interest obligations set forth in § 54.309 for those locations and provided that the total number of locations covered is greater than or equal to the number of the eligible census blocks for which funding is authorized.

* * * * *

(e) *Provider eligibility.* Any eligible telecommunications carrier is eligible to receive Connect America Phase II support in eligible areas. An entity may obtain eligible telecommunications carrier designation after public notice of winning bidders in a competitive bidding process for the offer of Phase II Connect America support. An applicant in the competitive bidding process shall certify that it is financially and technically qualified to provide the services supported by Connect America Phase II in order to receive such support. An entity that is a winning bidder must submit an application to become an eligible telecommunications carrier no later than 30 calendar days following the public announcement of the winning bidders for the offer of Phase II Connect America support. To the extent an applicant in the competitive bidding process seeks eligible telecommunications carrier designation prior to notification of winning bidders for Phase II Connect America support, its designation as an eligible telecommunications carrier may be conditional subject to the receipt of Phase II Connect America support.

■ 7. Add § 54.311 to subpart D to read as follows:

§ 54.311 Voluntary election by rate-of-return carriers to receive model-based support.

(a) *Frozen high-cost support.* Rate-of-return carriers may voluntarily elect to have their support frozen as the first step to a voluntary transition to receive

Phase II model-based support. Each carrier making such an election will have a ''baseline support amount'' equal to its support in the immediately prior year in a given study area, or an amount equal to $3,000 times the number of reported lines for the prior calendar year, whichever is lower. Each such carrier will have a ''monthly baseline support amount'' equal to its baseline support amount divided by twelve. Upon election to receive frozen support, on a monthly basis, eligible carriers will receive their monthly baseline support amount.

(1) The ''baseline support amount'' is the amount of support disbursed to a rate-of-return carrier in the prior calendar year, without regard to prior period adjustments related to years other than that calendar year and as determined by USAC in the month following election of frozen support.

(2) For the purpose of calculating the $3,000 per line limit, the average of lines reported by the rate-of-return carrier pursuant to line count filings required for two immediately preceding years shall be used.

(3) A carrier receiving frozen high cost support under this rule shall be deemed to be receiving Interstate Common Line Support equal to the amount of support that the carrier was eligible for under that mechanism in the preceding year.

(b) Connect America Phase II support may be made available in rate-of-return territories for census blocks identified as eligible by public notice. The number of supported locations will be identified for each area eligible for support by public notice. Rate-of-return carriers that voluntarily elect to transition to Phase II model-based support shall elect to make a state-level commitment to receive such support. Such electing carriers will be subject to the public interest obligations set forth in § 54.309.

(c) Upon electing to receive model-based support, rate-of-return carriers will be subject to the transition specified in § 54.310(f) to the extent frozen support is less than Phase II model-based support for a given state.

■ 8. Amend § 54.313 by revising paragraph (a) introductory text, adding paragraph (a)(12), and revising paragraphs (c), (f)(1) introductory text, (f)(1)(i), and (j) to read as follows:

§ 54.313 Annual reporting requirements for high-cost recipients.

(a) Any recipient of high cost support shall provide:

* * * * *

(12) A letter certifying that the pricing of the company's broadband services is no more than the applicable benchmark as specified in a public notice issued by the Wireline Competition Bureau, or is no more than the non-promotional prices charged for comparable fixed wireline services in urban areas.

* * * * *

(c) In addition to the information and certification in paragraph (a) of this section, price cap carriers that receive frozen support pursuant to § 54.312(a) shall provide by July 1, 2016 and thereafter a certification that all frozen high-cost support the company received in the previous year was used to build and operate broadband-capable networks used to offer the provider's own retail broadband service in areas substantially unserved by a qualifying competitor as defined in § 54.5.

* * * * *

(f) * * *

(1) Beginning July 1, 2016. A progress report on its five-year service quality plan pursuant to § 54.202(a) that includes the following information:

(i) A letter certifying that it is taking reasonable steps to provide upon reasonable request broadband services at actual speeds of at least 10 Mbps downstream/1 Mbps upstream, with latency suitable for real-time applications, including Voice over Internet Protocol, and usage capacity that is reasonably comparable to comparable offerings in urban areas, at rates that are reasonable comparable to rates for comparable offerings in urban areas, and that requests for such service are met within a reasonable amount of time; and

* * * * *

(j) *Filing deadlines*—(1) *Annual reporting information deadline.* In order for a recipient of high-cost support to continue to receive support for the following calendar year, or retain its eligible telecommunications carrier designation, it must submit the annual reporting information required by this section annually by July 1 of each year. Eligible telecommunications carriers that file their reports after the July 1 deadline shall receive a reduction in support pursuant to the following schedule:

(i) Eligible telecommunications carriers that file after the July 1 deadline, but by July 8, will have their support reduced in an amount equivalent to seven days in support;

(ii) Eligible telecommunications carriers that file on or after July 9 will have their support reduced on a pro-rata daily basis equivalent to the period of non-compliance.

(2) *Grace period.* An eligible telecommunications carrier that submits the annual reporting information required by this section after July 1 but before July 5 will not receive a reduction in support if the eligible telecommunications carrier and all other eligible telecommunications carriers owned by the same holding company as the eligible telecommunications carrier have not missed the July 1 deadline in any prior year. The next time that either the eligible telecommunications carrier that had previously benefitted from the grace period or an eligible telecommunications carrier owned by the same holding company misses the July 1 deadline, that eligible telecommunications carrier will be subject to a reduction of seven days in support in addition to the reduction of support it will receive pursuant to (j)(1) of this section.

* * * * *

■ 9. Amend § 54.314 by revising paragraph (d) to read as follows:

§ 54.314 Certification of support for eligible telecommunications carriers.

* * * * *

(d) *Filing deadlines*—(1) *Certification of support deadline.* In order for an eligible telecommunications carrier to receive federal high-cost support, the state or the eligible telecommunications carrier, if not subject to the jurisdiction of a state, must file an annual certification, as described in paragraph (c) of this section, with both the Administrator and the Commission by October 1 of each year. If states or eligible telecommunications carriers file the annual certification after the October 1 deadline, the carriers subject to the certification shall receive a reduction in support pursuant to the following schedule:

(i) Eligible telecommunications carriers subject to certifications filed after the October 1 deadline, but by October 8, will have their support reduced in an amount equivalent to seven days in support;

(ii) Eligible telecommunications carriers subject to certifications filed on or after October 9 will have their support reduced on a pro-rata daily basis equivalent to the period of non-compliance.

(2) *Grace period.* If an eligible telecommunications carrier or state submits the annual certification required by this section after October 1 but before October 5, the eligible telecommunications carrier subject to the certification will not receive a reduction in support if the eligible telecommunications carrier and all other eligible telecommunications carriers owned by the same holding company as the subject eligible telecommunications carrier have not

missed the October 1 deadline in any prior year. The next time that either the eligible telecommunications carrier that had previously benefitted from the grace period or an eligible telecommunications carrier owned by the same holding company misses the October 1 deadline, that eligible telecommunications carrier will be subject to a reduction of seven days in support in addition to the reduction of support it will receive pursuant to paragraph (d)(1) of this section.

(3) *Newly designated eligible telecommunications carriers.* Notwithstanding the deadlines in paragraph (d) of this section, a carrier shall be eligible to receive support as of the effective date of its designation as an eligible telecommunications carrier under section 214(e)(2) or (e)(6) of the Act, provided that it files the certification described in paragraph (b) of this section or the state commission files the certification described in paragraph (a) of this section within 60 days of the effective date of the carrier's designation as an eligible telecommunications carrier. Thereafter, the certification required by paragraphs (a) or (b) of this section must be submitted pursuant to the schedule in paragraph (d) of this section.

■ 10. Add § 54.319 to read as follows:

§ 54.319 Elimination of high-cost support in areas with 100 percent coverage by a qualifying competitor.

(a) Universal service support shall be eliminated in an incumbent local exchange carrier study area where a qualifying competitor, or combination of qualifying competitors, as defined in § 54.5, offers to 100 percent of residential and business locations in the study area voice and broadband service at speeds of at least 10 Mbps downstream/1 Mbps upstream, with latency suitable for real-time applications, including Voice over Internet Protocol, and usage capacity that is reasonably comparable to comparable offerings in urban areas, at rates that are reasonably comparable to rates for comparable offerings in urban areas.

(b) After a determination there is a 100 percent overlap, the incumbent local exchange carrier shall receive the following amount of high-cost support:

(1) In the first year, two-thirds of the lesser of the incumbent's total high-cost support in the immediately preceding calendar year or $3,000 times the number of reported lines as of year-end for the immediately preceding calendar year;

(2) In the second year, one-third of the lesser of the incumbent's total high-cost support in the immediately preceding calendar year or $3,000 times the number of reported lines as of year-end for the immediately preceding calendar year;

(3) In the third year and thereafter, no support shall be paid.

(c) The Wireline Competition Bureau shall update its analysis of where there is a 100 percent overlap on a biennial basis.

■ 11. Add § 54.905 to subpart K to read as follows:

§ 54.905 Prohibition on recovery of new investment through interstate common line support in areas served by a qualifying competitor.

(a) Effective January 1, 2015, no new investment shall be recovered through interstate common line support in areas served by a qualifying competitor as defined in § 54.5.

(b) An incumbent local exchange carrier may presume that an area is unserved by a qualifying competitor after publicly posting, for 90 days, information on its Web site regarding its intent to make new investment in the area in question, if it does not receive notification from a qualifying provider that it serves locations within the area where new investment is proposed.

■ 12. Add §§ 54.1011, 54.1012, 54.1013, 54.1014, 54.1015, 54.1016, 54.1017, 54.1018, 54.1019, and 54.1020 to subpart L to read as follows:

Subpart L—Mobility Fund

Sec.

* * * * *

54.1011 Mobility Fund—Phase II.
54.1012 Geographic areas eligible for support.
54.1013 Provider eligibility.
54.1014 Service to Tribal lands.
54.1015 Application process.
54.1016 Public interest obligations.
54.1017 Letter of credit.
54.1018 Mobility Fund Phase II disbursements.
54.1019 Annual reports.
54.1020 Record retention for Mobility Fund Phase II.

§ 54.1011 Mobility Fund—Phase II.

The Commission will use competitive bidding, as provided in part 1, subpart AA of this chapter, to determine the recipients of support available through Phase II of the Mobility Fund and the amount(s) of support that they may receive for specific geographic areas, subject to applicable post-auction procedures.

§ 54.1012 Geographic areas eligible for support.

(a) Mobility Fund Phase II support may be made available for census blocks or other areas identified as eligible by public notice.

(b) Coverage units for purposes of conducting competitive bidding and disbursing support based on designated population will be identified by public notice for each area eligible for support.

§ 54.1013 Provider eligibility.

(a) Except as provided in § 54.1014, an applicant shall be an Eligible Telecommunications Carrier in an area in order to receive Mobility Fund Phase II support for that area. The applicant's designation as an Eligible Telecommunications Carrier may be conditional subject to the receipt of Mobility Fund support.

(b) An applicant shall have access to spectrum in an area that enables it to satisfy the applicable performance requirements in order to receive Mobility Fund Phase II support for that area. The applicant shall certify, in a form acceptable to the Commission, that it has such access at the time it applies to participate in competitive bidding and at the time that it applies for support and that it will retain such access for ten (10) years after the date on which it is authorized to receive support.

(c) An applicant shall certify that it is financially and technically qualified to provide the services supported by Mobility Fund Phase II in order to receive such support.

§ 54.1014 Service to Tribal lands.

(a) A Tribally-owned or –controlled entity that has pending an application to be designated an Eligible Telecommunications Carrier may participate in an auction by bidding for support in areas located within the boundaries of the Tribal lands associated with the Tribe that owns or controls the entity. To bid on this basis, an entity shall certify that it is a Tribally-owned or –controlled entity and identify the applicable Tribe and Tribal lands in its application to participate in the competitive bidding. A Tribally-owned or -controlled entity shall receive any Mobility Fund Phase II support only after it has become an Eligible Telecommunications Carrier.

(b) Tribally-owned or –controlled entities may receive a bidding credit with respect to bids for support within the boundaries of associated Tribal lands. To qualify for a bidding credit, an applicant shall certify that it is a Tribally-owned or –controlled entity and identify the applicable Tribe and Tribal lands in its application to participate in the competitive bidding. An applicant that qualifies shall have its bid(s) for support in areas within the

boundaries of Tribal land associated with the Tribe that owns or controls the applicant reduced by 25 percent or purposes of determining winning bidders without any reduction in the amount of support available.

(c) A winning bidder for support in Tribal lands shall notify and engage the Tribal governments responsible for the areas supported.

(1) A winning bidder's engagement with the applicable Tribal government shall consist, at a minimum, of a discussion regarding:

(i) A needs assessment and deployment planning with a focus on Tribal community anchor institutions;

(ii) Feasibility and sustainability planning;

(iii) Marketing services in a culturally sensitive manner;

(iv) Rights of way processes, land use permitting, facilities siting, environmental and cultural preservation review processes; and

(v) Compliance with Tribal business and licensing requirements.

(2) A winning bidder shall notify the appropriate Tribal government of its winning bid no later than five business days after being identified by public notice as a winning bidder.

(3) A winning bidder shall certify in its application for support that it has substantively engaged appropriate Tribal officials regarding the issues specified in paragraph(d)(1) of this section, at a minimum, as well as any other issues specified by the Commission, and provide a summary of the results of such engagement. A copy of the certification and summary shall be sent to the appropriate Tribal officials when it is sent to the Commission.

(4) A winning bidder for support in Tribal lands shall certify in its annual report, pursuant to § 54.1019(a)(5), and prior to disbursement of support, pursuant to § 54.1018, that it has substantively engaged appropriate Tribal officials regarding the issues specified in paragraph(d)(1) of this section, at a minimum, as well as any other issues specified by the Commission, and provide a summary of the results of such engagement. A copy of the certification and summary shall be sent to the appropriate Tribal officials when it is sent to the Commission.

§ 54.1015 Application process.

(a) *Application to participate in competitive bidding for Mobility Fund Phase II Support.* In addition to providing information specified in § 1.21001(b) of this chapter and any other information required by the Commission, an applicant to participate in competitive bidding for Mobility Fund Phase II support shall:

(1) Provide ownership information as set forth in § 1.2112(a) of this chapter;

(2) Certify that the applicant is financially and technically capable of meeting the public interest obligations of § 54.1016 in each area for which it seeks support;

(3) Disclose its status as an Eligible Telecommunications Carrier in any area for which it will seek support or as a Tribal entity with a pending application to become an Eligible Telecommunications Carrier in any such area, and certify that the disclosure is accurate;

(4) Describe the spectrum access that the applicant plans to use to meet obligations in areas for which it will bid for support, including whether the applicant currently holds a license for or leases the spectrum, and certify that the description is accurate and that the applicant will retain such access for at least 10 years after the date on which it is authorized to receive support;

(5) Make any applicable certifications required in § 54.1014.

(b) *Application by winning bidders for Mobility Fund Phase II Support*—(1) *Deadline.* Unless otherwise provided by public notice, winning bidders for Mobility Fund Phase II support shall file an application for Mobility Fund Phase II support no later than 10 business days after the public notice identifying them as winning bidders.

(2) *Application contents.* An application for Mobility Fund Phase II support must contain:

(i) Identification of the party seeking the support, including ownership information as set forth in § 1.2112(a) of this chapter;

(ii) Certification that the applicant is financially and technically capable of meeting the public interest obligations of § 54.1016 in the geographic areas for which it seeks support;

(iii) Proof of the applicant's status as an Eligible Telecommunications or as a Tribal entity with a pending application to become an Eligible Telecommunications Carrier in any area for which it seeks support and certification that the proof is accurate;

(iv) A description of the spectrum access that the applicant plans to use to meet obligations in areas for which it is winning bidder for support, including whether the applicant currently holds a license for or leases the spectrum, and certification that the description is accurate and that the applicant will retain such access for at least 10 years after the date on which it is authorized to receive support;

(v) A detailed project description that describes the network, identifies the proposed technology, demonstrates that the project is technically feasible, discloses the budget and describes each specific phase of the project, e.g., network design, construction, deployment and maintenance;

(vi) Certifications that the applicant has available funds for all project costs that exceed the amount of support to be received from Mobility Fund Phase II and that the applicant will comply with all program requirements;

(vii) Any guarantee of performance that the Commission may require by public notice or other proceedings, including but not limited to the letters of credit required in § 54.1017, or a written commitment from an acceptable bank, as defined in § 54.1017(a)(1), to issue such a letter of credit;

(viii) Certification that the applicant will offer service in supported areas at rates that are within a reasonable range of rates for similar service plans offered by mobile wireless providers in urban areas for a period during the term of the support the applicant seeks;

(ix) Any applicable certifications and showings required in § 54.1014; and

(x) Certification that the party submitting the application is authorized to do so on behalf of the applicant.

(xi) Such additional information as the Commission may require.

(3) *Application processing.* (i) No application will be considered unless it has been submitted in an acceptable form during the period specified by public notice. No applications submitted or demonstrations made at any other time shall be accepted or considered.

(ii) Any application that, as of the submission deadline, either does not identify the applicant seeking support as specified in the public notice announcing application procedures or does not include required certifications shall be denied.

(iii) An applicant may be afforded an opportunity to make minor modifications to amend its application or correct defects noted by the applicant, the Commission, the Administrator, or other parties. Minor modifications include correcting typographical errors in the application and supplying non-material information that was inadvertently omitted or was not available at the time the application was submitted.

(iv) Applications to which major modifications are made after the deadline for submitting applications shall be denied. Major modifications include, but are not limited to, any changes in the ownership of the

applicant that constitute an assignment or change of control, or the identity of the applicant, or the certifications required in the application.

(v) After receipt and review of the applications, a public notice shall identify each winning bidder that may be authorized to receive Mobility Fund Phase II support, after the winning bidder submits a Letter of Credit and an accompanying opinion letter as required by § 54.1016, in a form acceptable to the Commission, and any final designation as an Eligible Telecommunications Carrier that any Tribally-owned or –controlled applicant may still require. Each such winning bidder shall submit a Letter of Credit and an accompanying opinion letter as required by § 54.1016, in a form acceptable to the Commission, and any required final designation as an Eligible Telecommunications Carrier no later than 10 business days following the release of the public notice.

(vi) After receipt of all necessary information, a public notice will identify each winning bidder that is authorized to receive Mobility Fund Phase II support.

§ 54.1016 Public interest obligations.

(a) *Deadline for construction.* A winning bidder authorized to receive Mobility Fund Phase II support shall, no later than three years after the date on which it was authorized to receive support, submit data covering the area for which support was received demonstrating mobile transmissions supporting voice and data to and from the network covering 75 percent of the designated population in the area deemed uncovered, or an applicable higher percentage established by public notice prior to the competitive bidding, and meeting or exceeding the following:

(1) Outdoor minimum data transmission rates of 800 kbps uplink and 2000 kbps downlink;

(2) Transmission latency low enough to enable the use of real time applications, such as VoIP.

(b) *Coverage test data.* Coverage data submitted in compliance with a recipient's public interest obligations shall demonstrate coverage of the population designated in the public notice detailing the procedures for the competitive bidding that is the basis of the recipient's support. Any drive tests or scattered site tests submitted in compliance with a recipient's public interest obligations shall be in compliance with standards set forth in the public notice detailing the procedures for the competitive bidding that is the basis of the recipient's authorized support. Any drive tests shall demonstrate required transmission rates at vehicle speeds appropriate for the roads covered by the tests.

(c) *Collocation obligations.* During the period when a recipient shall file annual reports pursuant to § 54.1019, the recipient shall allow for reasonable collocation by other providers of services that would meet the technological requirements of Mobility Fund Phase II on newly constructed towers that the recipient owns or manages in the area for which it receives support. In addition, during this period, the recipient may not enter into facilities access arrangements that restrict any party to the arrangement from allowing others to collocate on the facilities.

(d) *Voice and data roaming obligations.* During the period when a recipient shall file annual reports pursuant to § 54.1019, the recipient shall comply with the Commission's voice and data roaming requirements that were in effect as of October 27, 2011, on networks that are built through Mobility Fund Phase II support.

(e) *Liability for failing to satisfy public interest obligations.* A winning bidder authorized to receive Mobility Fund Phase II support that fails to comply with the public interest obligations in this paragraph or any other terms and conditions of the Mobility Fund Phase II support will be subject to repayment of the support disbursed together with an additional performance default payment. Such a winning bidder may be disqualified from receiving any further Mobility Fund Phase II support or other USF support. The additional performance default amount will be a percentage of the Mobility Fund Phase II support that the applicant has been and is eligible to request be disbursed to it pursuant to § 54.1018. The percentage will be determined as specified in the public notice detailing competitive bidding procedures prior to the commencement of competitive bidding. The percentage will not exceed twenty percent.

§ 54.1017 Letter of credit.

(a) Before being authorized to receive Mobility Fund Phase II support, a winning bidder shall obtain an irrevocable standby letter of credit which shall be acceptable in all respects to the Commission. Each winning bidder authorized to receive Mobility Fund Phase II support shall maintain the standby letter of credit or multiple standby letters of credit in an amount equal to the amount of Mobility Fund Phase II support that the winning bidder has been and is eligible to request be disbursed to it pursuant to § 54.1018 plus the additional performance default amount described in § 54.1016(e), until at least 120 days after the winning bidder receives its final distribution of support pursuant to this section.

(1) The bank issuing the letter of credit shall be acceptable to the Commission. A bank that is acceptable to the Commission is:

(i) Any United States Bank;

(A) That is among the 50 largest United States banks, determined on the basis of total assets as of the end of the calendar year immediately preceding the issuance of the letter of credit,

(B) Whose deposits are insured by the Federal Deposit Insurance Corporation, and

(C) That has a long-term unsecured credit rating issued by Standard & Poor's of A− or better (or an equivalent rating from another nationally recognized credit rating agency); or

(ii) An agricultural credit bank in the United States that serves rural utilities and is a member of the United States Farm Credit System;

(A) That has total assets equal to or exceeding the total assets of any of the 50 largest United States banks, determined on the basis of total assets as of the end of the calendar year immediately preceding the issuance of the letter of credit,

(B) Whose deposits are insured by the Farm Credit System Insurance Corporation, and

(C) That has a long-term unsecured credit rating issued by Standard & Poor's of A− or better (or an equivalent rating from another nationally recognized credit rating agency); or

(iii) Any non-U.S. bank that;

(A) Is among the 50 largest non-U.S. banks in the world, determined on the basis of total assets as of the end of the calendar year immediately preceding the issuance of the letter of credit (determined on a U.S. dollar equivalent basis as of such date),

(B) Has a branch office in the District of Columbia or such other branch office agreed to by the Commission,

(C) Has a long-term unsecured credit rating issued by a widely-recognized credit rating agency that is equivalent to an A− or better rating by Standard & Poor's, and

(D) Issues the letter of credit payable in United States dollars.

(2) [Reserved]

(b) A winning bidder for Mobility Fund Phase II support shall provide with its Letter of Credit an opinion letter from its legal counsel clearly stating, subject only to customary assumptions, limitations, and qualifications, that in a proceeding under Title 11 of the United States Code, 11 U.S.C. 101 et seq. (the ''Bankruptcy Code''), the bankruptcy

court would not treat the letter of credit or proceeds of the letter of credit as property of the winning bidder's bankruptcy estate under section 541 of the Bankruptcy Code.

(c) Authorization to receive Mobility Fund Phase II support is conditioned upon full and timely performance of all of the requirements set forth in § 54.1016, and any additional terms and conditions upon which the support was granted.

(1) Failure by a winning bidder authorized to receive Mobility Fund Phase II support to comply with any of the requirements set forth in § 54.1015 or any other term or conditions upon which support was granted, or its loss of eligibility for any reason for Mobility Fund Phase II support will be deemed an automatic performance default, will entitle the Commission to draw the entire amount of the letter of credit, and may disqualify the winning bidder from the receipt of Mobility Fund Phase II support or additional USF support.

(2) A performance default will be evidenced by a letter issued by the Chief of either the Wireless Bureau or Wireline Bureau or their respective designees, which letter, attached to a standby letter of credit draw certificate, and shall be sufficient for a draw on the standby letter of credit for the entire amount of the standby letter of credit.

§ 54.1018 Mobility Fund Phase II disbursements.

(a) A winning bidder for Mobility Fund Phase II support will be advised by public notice whether it has been authorized to receive support. The public notice will detail how disbursement will be made available.

(b) Mobility Fund Phase II support will be available for disbursement to a winning bidder authorized to receive support for 10 years following the date on which it is authorized.

(c) Prior to each disbursement request, a winning bidder for support in a Tribal land will be required to certify that it has substantively engaged appropriate Tribal officials regarding the issues specified in § 54.1014(d)(1), at a minimum, as well as any other issues specified by the Commission and to provide a summary of the results of such engagement.

(d) Prior to each disbursement request, a winning bidder will be required to certify that it is in compliance with all requirements for receipt of Mobility Fund Phase II support at the time that it requests the disbursement.

§ 54.1019 Annual reports.

(a) A winning bidder authorized to receive Mobility Fund Phase II support shall submit an annual report no later than July 1 in each year for the ten years after it was so authorized. In addition to the information required by § 54.313, each annual report shall include the following, or reference the inclusion of the following in other reports filed with the Commission for the applicable year:

(1) Electronic shapefiles of the outdoor minimum data transmission rates requirement coverage polygons illustrating the area newly reached by mobile services at a minimum resolution of 100 meters;

(2) A list of relevant census blocks previously deemed unserved, with total resident population and resident population residing in areas newly reached by mobile services (based on Census Bureau data and estimates);

(3) If any such testing has been conducted, data received or used from drive tests, or scattered site testing, analyzing network coverage for mobile services in the area for which support was received;

(4) Certification that the winning bidder offers service in supported areas at rates that are within a reasonable range of rates for similar service plans offered by mobile wireless providers in urban areas;

(5) Any applicable certifications and showings required in § 54.1014; and

(6) Updates to the information provided in § 54.1015(b)(2)(v).

(b) The party submitting the annual report must certify that they have been authorized to do so by the winning bidder.

(c) Each annual report shall be submitted to the Office of the Secretary of the Commission, clearly referencing WT Docket No. 10–208; the Administrator; and the relevant state commissions, relevant authority in a U.S. Territory, or Tribal governments, as appropriate.

§ 54.1020 Record retention for Mobility Fund Phase II.

A winning bidder authorized to receive Mobility Fund Phase II support and its agents are required to retain any documentation prepared for, or in connection with, the award of Mobility Fund Phase II support for a period of not less than 10 years after the date on which the winning bidder receives its final disbursement of Mobility Fund Phase II support.

■ 13. Amend § 54.1309, as added elsewhere in this issue of the **Federal Register**, effective August 8, 2014, by revising paragraph (a) and adding paragraph (d) to read as follows:

§ 54.1309 National and study area average unseparated loop costs.

(a) Until December 31, 2014, the national average unseparated loop cost per working loop, except as provided in paragraph (c) of this section, is equal to the sum of the Loop Costs for each study area in the country as calculated pursuant to § 54.1308(a) divided by the sum of the working loops reported in § 54.1305(h) for each study area in the country. The national average unseparated loop cost per working loop shall be calculated by the National Exchange Carrier Association.

* * * * *

(d) Effective January 1, 2015, the national average unseparated loop cost per working loop shall be frozen at the amount in effect as of December 31, 2014, or lowered to the extent the expense adjustment (additional interstate expense allocation) calculated by the sum of paragraphs (d)(1) and (2) of this section does not exceed the maximum allowable support calculated pursuant to section 54.1302(a) of this subpart.

(1) Sixty-five percent of the study area average unseparated loop cost per working loop as calculated pursuant to § 54.1309(b) in excess of 115 percent of the national average for this cost but not greater than 150 percent of the national average for this cost pursuant to § 54.1309(d) multiplied by the number of working loops reported in § 54.1305(h) for all study areas with less than 200,000 working loops.; and

(2) Seventy-five percent of the study area average unseparated loop cost per working loop as calculated pursuant to § 54.1309(b) in excess of 150 percent of the national average for this cost pursuant to § 54.1309(d) multiplied by the number of working loops reported in § 54.1305(h) for all study areas with less than 200,000 working loops.

■ 14. Revise § 54.1310, as added elsewhere in this issue of the **Federal Register**, effective August 8, 2014, to read as follows:

§ 54.1310 Calculation of Expense Adjustment—Additional Interstate Expense Allocation.

(a) Beginning January 1, 2015, for study areas reporting 200,000 or fewer working loops pursuant to § 54.1305(h), the expense adjustment (additional interstate expense allocation) is equal to the sum of paragraphs (b)(1) and (2) of this section multiplied by the ratio of the maximum allowable support calculated pursuant to section 54.1302(a) to the aggregate sum of paragraphs (b)(1) and (2) of this section for all study areas reporting 200,000 or

fewer working loops pursuant to § 54.1305(h).

(b) Until December 31, 2014, for study areas reporting 200,000 or fewer working loops pursuant to § 54.1305(h), the expense adjustment (additional interstate expense allocation) is equal to the sum of paragraphs (b)(1) through (2) of this section.

(1) Sixty-five percent of the study area average unseparated loop cost per working loop as calculated pursuant to § 54.1309(b) in excess of 115 percent of the national average for this cost but not greater than 150 percent of the national average for this cost as calculated pursuant to § 54.1309 multiplied by the number of working loops reported in § 54.1305(h) for the study area; and

(2) Seventy-five percent of the study area average unseparated loop cost per working loop as calculated pursuant to § 54.1309(b) in excess of 150 percent of the national average for this cost as calculated pursuant to § 54.1309 multiplied by the number of working loops reported in § 54.1305(h) for the study area.

(c) Beginning January 1, 2015, the expense adjustment shall be adjusted each year to reflect changes in the amount of high-cost loop support resulting from adjustments calculated pursuant to § 54.1306(a) made during the previous year. If the resulting amount exceeds the previous year's fund size, the difference will be added to the amount calculated pursuant to § 54.1310(a). If the adjustments made during the previous year result in a decrease in the size of the funding requirement, the difference will be subtracted from the amount calculated pursuant to § 54.1310(a) for the following year.

■ 15. Add § 54.1311 to Subpart M, as added elsewhere in this issue of the **Federal Register**, effective August 8, 2014, to read as follows:

§ 54.1311 Prohibition on recovery of new investment through high-cost loop support in areas served by a qualifying competitor.

(a) Effective January 1, 2015, no new investment shall be recovered through high-cost loop support in areas served by a qualifying competitor as defined in section 54.5.

(b) An incumbent local exchange carrier may presume that an area is unserved by a qualifying competitor after publicly posting, for 90 days, information on its Web site regarding its intent to make new investment in the area in question, if it does not receive notification from a qualifying provider that it serves locations within the area where new investment is proposed.

[FR Doc. 2014–15667 Filed 7–8–14; 8:45 am]

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Part V

Environmental Protection Agency

40 CFR Part 60

Standards of Performance for Grain Elevators; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[EPA–HQ–OAR–2010–0706; FRL–9912–76–OAR]

RIN 2060–AP06

Standards of Performance for Grain Elevators

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing amendments to the Standards of Performance for Grain Elevators as a result of the 8-year review of the new source performance standards required by the Clean Air Act. We are proposing to clarify certain provisions in the existing subpart DD. The EPA is also proposing a new subpart DDa for grain elevators, which would apply to affected facilities that commence construction, modification or reconstruction after July 9, 2014 and includes the proposed clarifications for subpart DD and several new provisions. In response to Executive Order 13563, Improving Regulation and Regulatory Review, the EPA conducted an analysis of subpart DD. In considering the directives of the Executive Order, the EPA conducted several analyses to determine the effectiveness of subpart DD, to determine whether subpart DD is still relevant, and to determine whether subpart DD is excessively burdensome. Based on the results of these analyses, the EPA concluded that subpart DD is still effective, relevant and not excessively burdensome.

DATES: *Comments.* Comments must be received on or before October 7, 2014. Under the Paperwork Reduction Act, comments on the information collection provisions are best assured of having full effect if the Office of Management and Budget receives a copy of your comments on or before August 8, 2014.

Public Hearing. The EPA will hold a public hearing on this proposed rule if requested. Requests for a hearing must be made by July 24, 2014. Contact Ms. Virginia Hunt via email (*hunt.virginia@epa.gov*) or phone (919–541–0832) by July 24, 2014 to request a public hearing. If a hearing is requested, the EPA will announce the details, including specific dates, times, addresses and contact information for the hearing, in a separate **Federal Register** notice.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–HQ–OAR–2010–0706, by one of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov: Follow the online instructions for submitting comments.

Email: A-and-R-Docket@epa.gov, Include docket ID Number EPA–HQ–OAR–2010–0706 in the subject line of the message.

Fax: (202) 566–9744, Attention Docket ID Number EPA–HQ–OAR–2010–0706.

Mail: Environmental Protection Agency, EPA Docket Center (EPA/DC), Mail Code 28221T, Attention Docket ID Number EPA–HQ–OAR–2010–0706, 1200 Pennsylvania Avenue NW., Washington, DC 20460. Please include a total of two copies. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th Street NW., Washington, DC 20503.

Hand/Courier Delivery: EPA Docket Center, Room 3334, EPA WJC West Building, 1301 Constitution Ave. NW., Washington, DC 20004, Attention Docket ID Number EPA–HQ–OAR–2010–0706. Such deliveries are only accepted during the Docket's normal hours of operation and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID Number EPA–HQ–OAR–2010–0706. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be confidential business information (CBI) or other information whose disclosure is restricted by statute.

Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email. Send or deliver information identified as CBI to only the mail or hand/courier delivery address listed above, attention: Docket ID Number EPA–HQ–OAR–2010–0706. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means the 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 the EPA without going through *http://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, the 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 the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the 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 the EPA's public docket, visit the EPA Docket Center homepage at: *http://www.epa.gov/dockets.*

Docket. The docket number for the proposed amendments to the grain elevator new source performance standards (40 CFR part 60, subparts DD and DDa) is Docket ID Number EPA–HQ–OAR–2010–0706. All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA docket facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: For information concerning the proposed amendments, contact Mr. Bill Schrock, Natural Resources Group, Sector Policies and Programs Division (E143–03), Research Triangle Park, North Carolina 27711; telephone number (919) 541–5032; fax number (919) 541–3470; email address: *schrock.bill@epa.gov.*

SUPPLEMENTARY INFORMATION:

World Wide Web. In addition to being available in the docket, an electronic copy of the proposed amendments is available on the Technology Transfer Network (TTN) Web site. Following signature, the EPA will post a copy of the amendments at *http://www.epa.gov/ttn/atw/eparules.html.* The TTN provides information and technology exchange in various areas of air pollution control.

Acronyms and Abbreviations. The following acronyms and abbreviations are used in this document:

ANSI American National Standards Institute
ASTM American Society for Testing and Materials
BACT Best available control technology
BDT Best demonstrated technology
BLDS Bag leak detection systems
BSER Best system of emission reduction
CAA Clean Air Act
CBI Confidential business information
CEDRI Compliance and Emissions Data Reporting Interface
CFR Code of Federal Regulation
CDX Central Data Exchange
EJ Environmental justice
ERT Electronic Reporting Tool
FSA Farm Service Agency
g/dscm Grams per dry standard cubic meter
gr/dscf Grains per dry standard cubic foot
gr/dscfm Grains per dry standard cubic foot per minute
HAP Hazardous air pollutants
ICR Information Collection Request
kg Kilogram
LAER Lowest achievable emission rate
mg Milligram
mm Millimeter
NAICS North American Industry Classification System
NSPS New source performance standard
NTTAA National Technology Transfer and Advancement Act
OECA Office of Enforcement and Compliance Assurance
OMB Office of Management and Budget
PM Particulate matter
RACT Reasonably available control technology
RBLC RACT/BACT/LAER Clearinghouse
RFA Regulatory Flexibility Act
SBA Small Business Administration
SBREFA Small Business Regulatory Enforcement Fairness Act
SISNOSE Significant Economic Impact on a Substantial Number of Small Entities
SSM Startup, shutdown and malfunction
TSF Temporary storage facility
tpy Tons per year
TTN Technology Transfer Network
UMRA Unfunded Mandates Reform Act
USDA United States Department of Agriculture
VCS Voluntary consensus standards

Organization of This Document. The following outline is provided to aid in locating information in this preamble.

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

A redline version of the regulatory language that incorporates the proposed changes in this action is available in the docket for this action (Docket ID No. EPA–HQ–OAR–2010–0706)

I. Executive Summary

A. Purpose of Regulatory Action

New source performance standards implement CAA section 111(b) and are issued for categories of sources that EPA has listed because they cause, or contribute significantly to, air pollution, that may reasonably be anticipated to endanger public health or welfare. The primary purpose of the NSPS is to attain and maintain ambient air quality by ensuring application of the best system of emission reduction (BSER) that has been adequately demonstrated, taking into consideration the cost of achieving such emission reductions, and any non-air quality health and environmental impact and energy requirements. Section 111(b)(1)(B) of the CAA requires the EPA to review and, if appropriate, revise existing NSPS at least every 8 years. The NSPS for grain elevators (40 CFR part 60, subpart DD) were promulgated in 1978 and last reviewed in 1984. As part of the review, the EPA is required to consider what degree of emission limitation is achievable through the application of the BSER, which (taking into account the cost of achieving such reduction and any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated. The EPA also considers the emission limitations and reductions that have been achieved in practice.

In addition to conducting the NSPS review, the EPA is evaluating the start-up, shutdown and malfunction (SSM) provisions in the rule in light of the D.C. Circuit Court of Appeals decision in *Sierra Club* v. *EPA,* 551 F.3d 1019 (D.C. Cir. 2008), which held that the SSM exemption in the General Provisions in 40 CFR part 63 violated the CAA's requirement that some standards apply continuously. In the *Sierra Club* case, the D.C. Circuit vacated the SSM exemption provisions in the General Provisions of 40 CFR part 63 for non-opacity and opacity standards. The court explained that under section 302(k) of the CAA, emissions standards or limitations must be continuous in nature. The court then held that the SSM exemption violates the CAA's requirement that some section 112 standards apply continuously. In light of the court's reasoning, all rule provisions must be carefully examined to determine whether they provide for periods when no emission standard applies. The EPA believes that even though the Court in *Sierra Club* v. *EPA* was considering a challenge to a section 112 NESHAP standard, the Court's reasoning applies equally to CAA section 111 (NSPS) and section 129 rules. The EPA's general approach to SSM periods has been used consistently in CAA section 111, section 112 and section 129 rulemaking actions, since the D.C. Circuit's decision in *Sierra Club.* See, e.g., *New Source Performance Standards Review for Nitric Acid Plants, Final Rule,* 77 FR 48433 (August 14, 2012); *New Source Performance Standards for New Stationary Sources and Emission Guidelines for Existing Sources; Commercial and Industrial Solid Waste Incineration Units, Final rule,* 76 FR 15704 (March 21, 2011); *Oil and Natural Gas Sector: New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants Reviews; Final rules,* 77 FR 49490 (August 16, 2012).

To address the NSPS review, SSM exemptions and other changes, the EPA

is proposing a new subpart DDa for grain elevators, which would apply to affected facilities that commence construction, modification or reconstruction after July 9, 2014. The affected facilities at grain elevators under the existing subpart DD and the proposed subpart DDa are each new, modified or reconstructed truck unloading station, truck loading station, barge and ship unloading station, barge and ship loading station, railcar loading station, railcar unloading station, grain dryer and all grain handling operations. The EPA is also proposing amendments to subpart DD that will apply to facilities subject to DD to clarify certain definitions and provisions. The EPA is also proposing testing, monitoring, recordkeeping and reporting requirements for subpart DDa that are in some ways different from what is required under subpart DD. Where feasible, the EPA considered ways to reduce the testing, monitoring, recordkeeping, and reporting burden, while making the proposed requirements less ambiguous and more straightforward for determining compliance. The proposed subpart DDa requirements reflect what well-controlled sources are doing within the grain elevator industry since the last review in 1984.

This rulemaking also responds to Executive Order 13563, Improving Regulation and Regulatory Review, which directs federal agencies to ''. . . review existing rules that may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.'' It also responds to a petition submitted by a coalition representing the grain elevator industry that, citing the Executive Order, requests the EPA to review and repeal subpart DD. In considering the directives of the Executive Order, the EPA conducted several analyses aimed at determining the effectiveness of subpart DD, determining whether subpart DD is still relevant and determining whether subpart DD is excessively burdensome. Based on the results of these analyses, the EPA concluded that subpart DD is still effective, relevant and not excessively burdensome but we are proposing some amendments to clarify certain provisions.

B. Summary of Major Amendments

Based on the results of the NSPS review, the EPA is proposing the following:

1. Proposed Clarifications to Subpart DD

We are proposing amendments to subpart DD to clarify the definition of grain unloading station and grain loading station, and to clarify enclosure requirements for barge or ship unloading operations.

2. Proposed New Requirements Contained in Subpart DDa

We are proposing a new subpart DDa that will include the standards of performance and other provisions in subpart DD, as clarified in this proposal which reflect current industry operations, as well as the following additional new standards and provisions based on our review of available information:

- An additional method for determining applicability that includes the storage capacity of temporary storage facilities (TSFs).
- Ten percent opacity standards for barge or ship unloading stations not using an unloading leg and for column dryers using a wire screen.
- Particulate Matter (PM) and opacity standards for affected facilities associated with TSFs consistent with those associated with permanent storage units.
- Particulate Matter performance tests conducted every 60 months, opacity tests conducted annually, and weekly visual inspections for affected facilities, and visual inspections of fabric filters every 6 months.
- Records for the new applicability calculation method, excess emissions events, fabric filter inspections, opacity tests, weekly visual inspections and PM tests, and the type of grain processed during performance tests.
- Requirement to submit electronic copies of performance tests reports to the EPA using the EPA's electronic reporting tool (ERT).
- New definitions for ''permanent storage capacity,'' ''temporary storage facility,'' ''wire screen column dryer,'' and ''en-masse drag conveyor.''

We are also proposing that the PM standards are applicable at all times.

C. Summary of Costs and Benefits

Table 1 summarizes the costs and benefits of this action. See section VI of this preamble for further discussion.

TABLE 1—SUMMARY OF THE COSTS AND BENEFITS OF THE PROPOSED SUBPART DDA FOR NEW, MODIFIED AND RECONSTRUCTED AFFECTED SOURCES AT GRAIN ELEVATORS

Requirement	Capital cost ($ thousand)	Annual cost ($ thousand/yr) [a]	Emission reductions (tons PM_{10}/yr)	Net benefit
PM control	1,087	350	31	N/A [b]
Emissions testing and monitoring/reporting and recordkeeping	0	849	0	N/A [b]
Total nationwide	1,087	1,199	31	N/A [b]

[a] Reporting and recordkeeping costs are in the third year following promulgation. PM control, testing and monitoring costs are in the fifth year after promulgation. For the third year after promulgation, the associated PM capital cost is $888,000, and annual cost (including annualized PM control cost and emissions testing and monitoring) is $757,000.

[b] Under Executive Order 12866, this rulemaking is not an ''economically significant regulatory action'' because it is not likely to have an annual effect on the economy of $100 million or more. Therefore, we have not conducted a Regulatory Impact Analysis (RIA) for this rulemaking or a benefits analysis. The proposed requirements of the New Source Performance Standards (NSPS) for Grain Elevators (Subpart DDa) are anticipated to reduce emissions by 31 tons of PM_{10} each year starting in 2018. While we expect that these PM_{10} emissions reductions will result in improvements in air quality and reduce health effects associated with exposure to air pollution resulting from these emissions, we have not quantified or monetized the benefits of reducing these emissions for this rulemaking. This does not imply that there are no benefits associated with these emission reductions.

II. General Information

A. Does this action apply to me?

Categories and entities potentially regulated by this proposed rule include those listed in Table 2 of this preamble.

TABLE 2—EXAMPLES OF AFFECTED ENTITIES BY CATEGORY

Category	NAICS [a] code	Examples of potentially regulated entities
Industry	49313	Grain elevators (storage).
Industry	424510	Grain elevators (merchants, wholesalers).

[a] North American Industry Classification System.

This table is not intended to be exhaustive but rather provides a guide for readers regarding entities likely to be regulated by the proposed amendments. To determine whether your facility would be regulated by the proposed amendments, you should carefully examine the applicability criteria in 40 CFR 60.300 and 40 CFR 60.300a. If you have any questions regarding the applicability of the proposed amendments to a particular entity, contact the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

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

Submitting CBI. Do not submit information containing CBI to the EPA through *http://www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on a disk or CD–ROM that you mail to the EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comments that includes information claimed as CBI, you must submit a copy of the comments that does not contain the information claimed as CBI for inclusion in the public docket. If you submit a CD–ROM or disk that does not contain CBI, mark the outside of the disk or CD–ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and the EPA's electronic public docket without prior notice. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 Code of Federal Regulations (CFR) part 2. Send or deliver information identified as CBI only to the following address: Roberto Morales, OAQPS Document Control Officer (C404–02), OAQPS, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Attention Docket ID Number EPA–HQ–OAR–2010–0706.

If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

III. Background Information

A. What is the statutory authority for these proposed revisions?

NSPS implement CAA section 111, which requires that each NSPS reflect the degree of emission limitation achievable through the application of the BSER which (taking into consideration the cost of achieving such emission reductions, any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated. This level of control is referred to as BSER and has been referred to in the past as ''best demonstrated technology'' or BDT. In assessing whether a standard is achievable, the EPA must account for routine operating variability associated with performance of the system on whose performance the standard is based. See *National Lime Ass'n* v. *EPA,* 627 F. 2d 416, 431–33 (D.C. Cir. 1980).

We are also proposing in this rulemaking that existing affected facilities that are modified or reconstructed would be subject to this proposed rule. Under CAA section 111(a)(4), ''modification'' means any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted. Changes to an existing facility that do not result in an increase in the emission rate are not considered modifications (40 CFR 60.14).

Rebuilt emission units would become subject to the proposed standards under the reconstruction provisions, regardless of changes in emission rate. Reconstruction means the replacement of components of an existing facility such that: (1) the fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable entirely new facility; and (2) it is technologically and economically feasible to meet the applicable standards (40 CFR 60.15).

Section 111(b)(1)(B) of the CAA requires the EPA to periodically review and revise the standards of performance, as necessary, to reflect improvements in methods for reducing emissions. The NSPS are directly enforceable federal regulations issued for categories of sources which cause, or contribute significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare. Since 1970, the NSPS have been successful in achieving long-term emissions reductions in numerous industries by assuring that cost-effective controls are installed on new, reconstructed or modified sources.

B. What is the regulatory history for grain elevators?

In 1978, the EPA promulgated ''Standards of Performance for Grain Elevators'' (40 CFR part 60, subpart DD) (August 3, 1978, 43 FR 34347). Since then, we have conducted one review of the standards, which promulgated minor revisions to clarify certain provisions (March 27, 1984, 49 FR 11750).

The current subpart DD applies to affected facilities at any grain storage elevators or grain terminal elevators storing corn, wheat, sorghum, rice, rye, oats, barley and soybeans which are constructed, reconstructed or modified after August 3, 1978. On August 7, 1977 Congress amended the Clean Air Act with a provision that exempts country grain elevators with less than 2.5 million bushels of grain storage capacity from standards developed under section 111 of the Act. A ''grain storage elevator'' means any grain elevator

located at any wheat flour mill, wet corn mill, dry corn mill (human consumption), rice mill or soybean oil extraction plant with permanent storage capacity of at least one million bushels. 40 CFR 60.301(f). A ''grain terminal elevator'' means any grain elevator with permanent storage capacity over 2.5 million bushels, except those located at animal food manufacturers, pet food manufacturers, cereal manufacturers, breweries and livestock feedlots. 40 CFR 60.301(c). A ''grain elevator'' means any plant or installation at which grain is unloaded, handled, cleaned, dried, stored or loaded. 40 CFR 60.301(b). ''Permanent storage capacity'' means grain storage capacity which is inside a building, bin or silo. 40 CFR 60.301(d).

The affected facilities at grain elevators are each truck unloading station, truck loading station, barge and ship unloading station, barge and ship loading station, railcar loading station, railcar unloading station, grain dryer and all grain handling operations. 40 CFR 60.300.

The current NSPS, as amended under the 1984 review, include the following emission limits and work practice standards:

Type of emissions	Affected facility	Type of standard	Requirement (40 CFR 60.302)
Process emissions	Truck unloading station, truck loading station, barge and ship unloading station, barge and ship loading station, railcar loading station, railcar unloading station, and all grain handling operations.	PM limit	0.01 gr/dscf.
		Opacity limit	0%.
	Grain dryer	Opacity limit and equipment specification.	0% opacity for column dryers equipped with column plate perforations exceeding 0.094 inches, and rack dryers equipped with screen filter coarser than 50 mesh.
Fugitive	Truck loading	Opacity limit	10%
	Truck unloading, railcar loading, railcar unloading.	Opacity limit	5%.
	Barge/ship loading	Opacity limit	20%.
	Barge/ship unloading	Equipment specification	Marine leg enclosed from top to bottom of leg, w/ventilation flow rate of both leg and receiving hopper of 40 ft^3 per bushel of grain unloaded.

Initial compliance with the PM and opacity emission limits in the current NSPS (subpart DD) is demonstrated by conducting initial performance tests. Subpart DD does not contain any continuous compliance requirements.

IV. Summary of Proposed Amendments

A. What source category is being regulated?

Today's proposed standards would apply to affected facilities at any grain storage elevators or grain terminal elevators storing corn, wheat, sorghum, rice, rye, oats, barley and soybeans which are constructed, reconstructed or modified after July 9, 2014. We are also proposing clarifications that would apply to affected facilities at any grain storage elevator or grain terminal elevator storing corn, wheat, sorghum, rice, rye, oats, barley and soybeans which are constructed, reconstructed or modified after August 3, 1978. The affected facilities at grain elevators are each truck unloading station, truck loading station, barge and ship unloading station, barge and ship loading station, railcar loading station, railcar unloading station, grain dryer and all grain handling operations. Neither the proposed standards nor the clarifications to the existing standards are changing the rules for currently affected facilities, however the proposed standards will cover a new type of barge unloader and column dryer not contemplated by the existing standards.

B. What pollutants are emitted from these sources?

The primary pollutant emitted and the only pollutant regulated by the grain elevator NSPS is PM. Particle pollution can cause serious health problems. The size of particles is directly linked to their potential for causing health problems. EPA's national and regional rules to reduce emissions of pollutants that form particle pollution will help state and local governments meet the Agency's national air quality standards. Particulate matter is emitted from grain as it is conveyed from one affected facility to another, unloaded or loaded onto transport vessels and during the drying process. Opacity is regulated to ensure proper operation and maintenance of the PM controls and to control fugitive emissions.

The PM concentration limits are based on filterable PM measured by EPA Method 5. Filterable PM consists of those particles directly emitted by a source as a solid or liquid at the stack (or similar release conditions) and captured on the filter of a stack test train. A fraction of the PM emitted from grain elevator affected facilities is PM with an aerodynamic diameter less than or equal to 2.5 micrometers ($PM_{2.5}$). The EPA is not proposing separate standards for $PM_{2.5}$ in this action because the available emissions test data for $PM_{2.5}$ are limited and not adequate for setting standards.

The PM concentration limits in today's proposed NSPS review are based on filterable PM measured by EPA Method 5 because the majority of PM emissions data available are Method 5 data. Emissions of condensable PM, which is PM that is not directly emitted but is formed in the atmosphere, are measured using EPA Method 202. These emissions can be added as the ''back half'' to a Method 5 sampling train. However, the EPA is not proposing separate standards for condensable PM because available emissions test data for condensable PM are limited and not adequate for setting standards.

C. What are the proposed standards?

The EPA is proposing the following actions regarding the NSPS for grain elevators. As summarized in section IV.C.1 of this preamble, we are proposing clarifications to specific

requirements in subpart DD. As summarized in section IV.C.2 of this preamble, we are also proposing a new subpart DDa which would only be applicable to affected facilities that commence construction, modification or reconstruction after July 9, 2014.

1. Clarifications to Subpart DD

We are proposing clarifications to three provisions in subpart DD. These proposed clarifications are summarized in Table 3 of this preamble, which presents both the current provision in subpart DD and a description of the proposed clarifications. EPA's rationale for these proposed changes is provided in section V.D. of this preamble. These proposed revisions are intended to keep the meaning and intent of the definitions as originally promulgated while making sure the definitions encompass the changes in the industry since the last review of subpart DD in 1984.

TABLE 3—SUMMARY OF PROPOSED AMENDMENTS TO SUBPART DD FOR AFFECTED FACILITIES THAT HAVE COMMENCED CONSTRUCTION, MODIFICATION, OR RECONSTRUCTION AFTER AUGUST 3, 1978

Current subpart DD provision (subpart DD citation)	Proposed revision to subpart DD for affected facilities that have commenced construction, modification, or reconstruction after August 3, 1978
"Grain unloading station" is defined to be that portion of a grain elevator where the grain is transferred from a truck, railcar, barge or ship to a receiving hopper (§ 60.301(j)).	"Grain unloading station" is that portion of a grain elevator where the grain is transferred from a truck, railcar, barge or ship to a receiving hopper or to the grain handling equipment that connects the unloading station to the rest of the grain elevator, including all of the equipment, support structures and associated dust control equipment and aspiration systems connected to or required to operate the grain unloading station.
"Grain loading station" is defined to mean that portion of a grain elevator where the grain is transferred from the elevator to a truck, railcar, barge or ship.(§ 60.301(k)).	"Grain loading station" is that portion of a grain elevator where the grain is transferred from the elevator to a truck, railcar, barge or ship, including all of the equipment, support structures and associated dust control equipment and aspiration systems connected to or required to operate the grain loading station.
For affected barge or ship unloading stations, the unloading leg is required to be enclosed from the top (including the receiving hopper) to the center line of the bottom pulley and ventilation to a control device is required to be maintained on both sides of the leg and the grain receiving hopper. (§ 60.302 (d)(1)).	For affected barge or ship unloading stations, the requirements in § 60.302 (d)(1) remain the same except that a new provision is proposed to be added to clarify that where aspiration of the casing provides dust control at the boot of the conveyor and a receiving hopper is not used, the unloading leg is required to be enclosed from the top to the center line of the bottom pulley, and ventilation to a control device is required to be maintained on both sides of the leg.

The proposed clarifications are applicable to all affected facilities that commenced construction, modification or reconstruction after August 3, 1978.

2. Proposal of Subpart DDa

We are proposing a new subpart DDa for affected facilities that commence construction, modification, or reconstruction after July 9, 2014. Subpart DDa includes the standards in subpart DD, including the clarifications discussed in Table 3 of this preamble for subpart DD, and new requirements for affected facilities. The proposed new requirements are summarized below. EPA's rationale for these proposed changes is provided in sections V.A through V.D. of this preamble. The new requirements include a new definition of permanent storage capacity that accounts for storage capacity from TSFs; other new definitions; emission standards for two new subcategories; and testing, monitoring, reporting and recordkeeping requirements. We are also proposing a requirement in subpart DDa that all emission standards in subpart DDa apply at all times, including periods of SSM.

Definitions

We are proposing the following definitions:

"Permanent storage capacity" is proposed to be the grain storage capacity calculated using proposed Equations 1 or 2, as applicable. This proposed definition revises the method used to determine applicability by providing a new method to calculate "permanent storage capacity" using TSF capacity and the grain storage capacity of buildings, other types of bins and silos. Equation 1 is proposed for grain elevators where the grain storage capacity and historical grain throughput for all their grain storage buildings, bins and silos are known.

$$C_{tp} = C_p + \left(\frac{C_p}{T_p} * C_t\right) \quad \text{(Eq. 1)}$$

Where:

C_{tp} = Total permanent storage capacity of all buildings, bins (including TSFs) and silos used to store grain (bushels).

C_p = Total storage capacity of all buildings, bins (excluding TSFs) and silos used to store grain (bushels).

T_p = Maximum annual throughput of grain for all buildings, bins (excluding TSFs) and silos used to store grain (bushels per year) over the previous 5 years.

C_t = Total storage capacity of all TSFs used to store grain (bushels).

Equation 2 is proposed for grain elevators where the grain storage capacity and historical grain throughput for all grain storage buildings, bins or silos are not known. Equation 2 would be used at grain elevators that had at least one storage building, bin, or silo that did not exist prior to the date of construction, modification or reconstruction of the affected facility.

$$C_{tp} = C_p + (0.34 * C_t) \quad \text{(Eq. 2)}$$

Where:

C_{tp} = Total permanent storage capacity of all buildings, bins (including TSFs) and silos used to store grain (bushels).

C_p = Total storage capacity of all buildings, bins (excluding TSFs) and silos used to store grain (bushels).

C_t = Total storage capacity of all TSFs used to store grain (bushels).

0.34 = Default ratio of permanent grain storage capacity to annual throughput

"Grain unloading station" is proposed as specified in Table 3 of this preamble.

"Grain loading station" is proposed as specified in Table 3 of this preamble.

"Temporary storage facility" or "TSF" is proposed to be defined as any grain storage bin that: (1) Uses an asphalt, concrete or other improved base material; (2) uses rigid, self-supporting

sidewalls; (3) provides aeration; and (4) provides a covering or tarp.

''Wire screen column dryer'' is proposed to be defined to be any equipment used to reduce the moisture content of grain in which the grain flows from the top to the bottom in one or more continuous packed columns between two woven wire screens or between a combination of perforated metal sheets and wire screens.

''En-masse drag conveyor'' is proposed to mean a device that uses paddles or flights mounted on a chain to remove grain from a barge or ship.

''Portable equipment'' is proposed to mean equipment that includes (but is not limited to) portable augers, portable conveyors and front-end loaders that are not fixed at any one spot and can be moved around the site.

PM Standards

We are proposing the following actions regarding the PM standards:

- Maintain the subpart DD standards for ''rack dryers'' and ''column dryers'' and add a provision that ''wire screen column dryers'' are prohibited from discharging into the atmosphere any gases that exhibit greater than 10-percent opacity.
- Clarify the requirements for barge and ship unloading stations using an unloading leg as specified in Table 3 of this preamble.
- Add an opacity limit of 10 percent for all affected facilities at barge and ship unloading stations that unload grain using en-masse drag conveyors.
- Require that requests for an equivalency determination for alternative controls for barge unloading stations apply only to barge unloading stations that do not use an unloading leg or en-masse drag conveyor.
- Add a requirement that unloading facilities and grain handling operations at TSFs meet the subpart DD requirements for PM (0.01 gr/dscf) and opacity (5 percent for truck unloading and 0 percent for grain handling) if portable equipment is not used.
- Add a requirement that the standards of subpart DDa apply at all times including periods of SSM.

Test Methods and Procedures

We are proposing the following actions to test methods and procedures:

- Annual opacity testing be conducted for each applicable opacity limit for each affected facility (using Method 9).
- PM testing be conducted every 60 months for each applicable PM limit for each affected facility (using Method 5 or 17).

Reporting Requirements

We are proposing that, within 60 days of each performance test, the results of the performance test be submitted electronically to the EPA using the Compliance and Emissions Data Reporting Interface (CEDRI) that is accessed through the EPA's CDX (*https://cdx.epa.gov/*). Performance test data would be required to be submitted in the file format generated through use of the EPA's ERT (see *http://www.epa.gov/ttn/chief/ert/index.html*). This requirement only applies to the EPA test methods that are ERT-compatible. These methods are listed on the ERT Web site.

Startup, Shutdown and Malfunction Requirements

The General Provisions in 40 CFR part 60 provide that emissions in excess of the level of the applicable emission limit during periods of SSM shall not be considered a violation of the applicable emission limit unless otherwise specified in the applicable standard. See 40 CFR 60.8(c). The General Provisions, however, may be amended for individual subparts. Here, the EPA is proposing standards in subpart DDa that apply at all times as specified in the proposed § 60.302a(e). This is discussed further in section V.C.3, and with respect to specific standards in various sections below.

Monitoring Requirements

We are proposing the following new monitoring requirements:

- Fabric filter/baghouse inspections every 6 months.
- Weekly visible emissions checks of affected facilities.

Recordkeeping Requirements

We are proposing the following new records:

- Total storage capacity (bushels) for each building, bin (excluding TSFs), and silo used to store grain.
- Storage capacity for each TSF.
- Calculations documenting the emissions quantification for excess emission events.
- Results of fabric filter/baghouse inspections and any corrective action taken maintained on-site.
- Results of weekly visible emission checks, including any corrective action taken. Records maintained on site for a minimum of 36 months.
- Results of the annual opacity tests.
- The type of grain processed during performance tests at the affected facility.

V. Rationale for Proposed Amendments

CAA section 111(a)(1) requires that standards of performance for new sources reflect the ''. . . degree of emission limitation achievable through the application of the best system of emission reduction which (taking into account the cost of achieving such reduction, and any nonair quality health and environmental impacts and energy requirements) the Administrator determines has been adequately demonstrated.''

Section 111(b)(1)(B) of the CAA requires the EPA to review and revise, if appropriate, NSPS standards. Accordingly, we conducted the following evaluations as part of our review of subpart DD:

- We conducted a BSER analysis for the grain elevator source category.
- We evaluated the method for determining applicability under subpart DD.
- We evaluated whether any changes are needed to the subpart DD compliance requirements.
- We evaluated subpart DD for any provisions that need clarification.

We are proposing minor revisions to subpart DD that would apply retrospectively to all facilities that currently are subject to subpart DD. We are also proposing a new subpart DDa that would apply to affected facilities that commence construction, modification or reconstruction after July 9, 2014. The proposed requirements in subpart DDa include the clarifications we are proposing to subpart DD as well as some substantive new requirements. Our decision to propose revisions to subpart DD and propose a new subpart DDa is explained in detail in sections V.A through D of this preamble.

A. How did the EPA conduct the BSER analysis?

A performance standard reflects the degree of emission limitation achievable through the application of the BSER that the EPA determines has been adequately demonstrated, taking into consideration costs, nonair quality health and environmental impacts and energy requirements.

We conducted the BSER review by first assessing changes that have occurred to the grain elevator source category since the last review of the NSPS in 1984. We then identified currently used, new and emerging control systems and assessed whether they represent advances in emission reduction techniques compared to the control techniques used to comply with the existing NSPS. For each new or emerging control option identified, we then evaluated emission reductions, costs, energy requirements and non-air quality impacts. The results of these considerations are presented in section V.A.1 of this preamble.

1. Evaluation of Grain Elevator Source Category for Significant Changes to Emission Sources

The EPA gathered information from various sources to identify significant changes that have occurred to the grain elevator source category since the last NSPS review. We reviewed several sources of information, including responses from an industry survey, information in the RACT/BACT/LAER Clearinghouse (RBLC), requirements in state rules and additional information collected from the grain elevator industry. Sections V.A.1.a through V.A.1.d of this preamble describe our review of each source of information and section V.A.1.e of this preamble presents the results of the EPA's evaluation of these sources including any significant changes identified.

a. CAA Section 114 Information Collection Request

To characterize the current state of emissions, practices, operations and controls in the industry, we conducted a CAA section 114 ICR in 2009 for grain elevator operations. The survey was addressed to facilities with any grain elevator that would constitute a ''grain terminal elevator'' or a ''grain storage elevator'' (as defined in 40 CFR 60.301). To gather general background information about the industry, respondents were required to submit information for facilities based on storage type, grain(s) handled and the EPA region. Survey responses were collected from 121 grain elevators. The survey responses provided information on grain elevator capacity, grain elevator throughputs for three successive years, the use of temporary storage facilities, barge unloading operations, dryer design, general information on facility characteristics and control devices and work practices used to reduce PM emissions from various sources. The survey responses and database developed from the response information are in the grain elevator docket at EPA–HQ–OAR–2010–0706.

b. Review of the RACT/BACT/LAER Clearinghouse

The EPA established the RBLC as a repository of information on air pollution control technologies required by state air pollution control programs (including past RACT, BACT and LAER decisions). Reasonably Available Control Technology is required on existing sources in areas that are not meeting national ambient air quality standards (i.e., non-attainment areas). Under the New Source Review (NSR) program, BACT is required on new or modified major sources in attainment areas and LAER is required on new or modified major sources in non-attainment areas. We reviewed the RBLC to identify any new control technologies that have been used at grain elevators since the last review of the rule. Results of the RBLC review are discussed in the memorandum, ''Evaluation of the Revisions to Grain Elevator Emission Standards'' in the grain elevator docket at EPA–HQ–OAR–2010–0706.

c. Review of State Regulations

In order to assess whether state regulations provide more stringent emission limits or additional controls than subpart DD, we conducted a review of the regulations from the 12 states with the most grain storage capacity and the largest number of grain elevators in operation. The 12 states are: Iowa, Illinois, Minnesota, Nebraska, Kansas, Indiana, North Dakota, South Dakota, Ohio, Texas, Missouri and Wisconsin. We reviewed each state's grain elevator standards and evaluated other state regulations controlling PM, opacity and fugitive dust emissions that may be applicable to grain elevators. The review of state rules is presented in the memorandum, ''Evaluation of Grain Elevator Emission Standards in Response to Executive Order 13563'' in the grain elevator docket at EPA–HQ–OAR–2010–0706.

d. Other Data Gathering Activities

The EPA conducted several meetings with a coalition representing grain elevators owners and operators. Members of the coalition provided information on current practices and provided technical presentations to the EPA. The technical presentations and coalition submittals are contained in the grain elevator docket at EPA–HQ–OAR–2010–0706.

e. Results of Evaluations

Based on our review of the state rules, we identified no requirements more stringent than those in subpart DD. Our review of the RBLC did not identify any control techniques that are different from the control techniques used by grain elevators to comply with the subpart DD standards. Our review of the survey responses and information gathered at meetings resulted in identifying: (1) Emissions test reports and one control technique that we determined not to be BSER for affected facilities as explained below, and (2) several new emission sources since subpart DD was last reviewed in 1984. Section V.A.e.2 discusses our evaluation of new information collected for existing affected facilities. Section V.A.e.3 discusses our evaluation of the new emission sources. Both evaluations are documented in the memorandum, ''Evaluation of the Revisions to Grain Elevator Emission Standards'' in the grain elevator docket at EPA–HQ–OAR–2010–0706.

2. BSER Evaluation for Subpart DD Affected Facilities

Subpart DD regulates the following affected facilities: grain dryers, grain handling, grain loading stations (trucks, railcars and barges/ships) and grain unloading stations (trucks, railcars and barges/ships). Subpart DD requires affected facilities, except grain dryers, to meet a PM emission limit of 0.01 gr/dscfm for process emissions (i.e., non-fugitive emissions). All affected facilities are also required to meet opacity limits, specific to each affected facility, to control fugitive dust emissions. As discussed earlier, we did not identify any more stringent state requirements or more advanced emission control technology from the RBLC for these affected facilities.

Some of the grain elevators responding to the 2009 CAA section 114 survey also provided emissions test reports and permit information. We evaluated the PM emissions test reports to determine whether the PM emission limits in subpart DD were reflective of emissions from well-controlled facilities. The survey responses, permit information and information collected from a literature search provided information on application of mineral oil as a dust suppression technique to reduce fugitive PM emissions. We conducted a BSER analysis for fugitive emissions considering the application of mineral oil to grain.

The results of the BSER analysis showed that for fugitive sources, the limited information available did not indicate any advances in emission control techniques that support changing the current NSPS requirements, including the application of mineral oil. An emission limit developed using the emissions data collected with the survey responses resulted in an achievable limit that is the same as the limit in subpart DD. Our detailed review is discussed in V.A.2.a and V.A.2.b of this preamble.

No other emission control technologies or work practices have been identified for reducing emissions from affected facilities at grain storage or grain terminal elevators. Based on these results, consistent with our obligations under CAA section 111(b), we propose that the control techniques and resultant emission reductions on

which the current NSPS is based still represent BSER.

a. Review of PM Emission Limit

We conducted a BSER analysis to determine if we should propose a different PM emission limit for newly constructed, modified, and reconstructed affected facilities at grain elevators. Subpart DD requires process emissions from affected facilities (e.g., truck unloading stations, grain handling operations, etc., but excluding grain dryers) to meet a PM emission limit of 0.01 grains per dry standard cubic foot (gr/dscf). Grain elevators typically meet the standard using fabric filters.

The EPA estimates between 340 and 920 grain elevators could be subject to Subpart DD. In 2009, EPA sent CAA section 114 surveys to 120 grain elevators to characterize the industry and obtain data on PM emission control techniques and associated emissions. Respondents to the survey provided PM emission test reports from 15 grain elevators, which represent only approximately 1.6 percent to 4 percent of the grain elevators potentially subject to subpart DD. We first evaluated the test reports to determine whether sufficient information existed to propose revisions to the PM emission limit. The 15 grain elevators who submitted test reports for PM emissions controlled with fabric filters submitted those reports for the following affected facilities: (1) 7 railcar unloading stations; (2) 4 truck unloading stations; (3) 3 grain handling operations; and (4) 2 barge unloading stations. The survey results indicated that a typical grain elevator has on average 2 truck unloading stations, 4 grain handling operations, 1 barge unloading station, and 1 railcar unloading station. Information provided in the survey responses also indicated that approximately 75 percent of railcar unloading stations, truck unloading stations, barge unloading stations, and grain handling operations are subject to subpart DD. Applying the typical counts to the estimated range of grain elevators that could be subject to subpart DD, and accounting for the fraction that could be subject to subpart DD, the number of affected facilities potentially subject to subpart DD is between 2,200 and 6,200. Comparing these numbers to the number of tests reports collected, we estimated that the facilities submitting PM emission test reports account for only approximately 0.3 percent to 0.7 percent of the population of railcar unloading stations, truck unloading stations, grain handling operations, and barge unloading stations at grain elevators that could be subject to subpart DD. Additionally, the test reports do not include any tests conducted at barge/ship loading stations, railcar loading stations, or truck loading stations.

We further evaluated the PM emission levels from the available test reports, measured as an average of three test runs, which ranged from 0.01 to 0.00002 gr/dscf. It appears the wide variation in PM emissions is due to the different affected facilities that were tested, other operational considerations (i.e., speed of the process) and grain characteristics. EPA had previously concluded that the amount of dust emitted during processing of grain in the various affected facilities depends on the type of grain being handled, the quality of the grain, and the moisture content of the grain.[1] The emission test information gathered for the 1978 subpart DD proposal[2] indicates that the type of grain processed affects the PM emissions, with one to two orders of magnitude difference in PM emissions between affected facilities processing soybeans and corn (higher emissions) than those processing wheat and milo. The PM emission limit in the grain elevator NSPS covers eight different grains. However, it does not appear that the emission tests for the 15 grain elevators cover all the 8 grains. Many of the test reports do not indicate the grain type being processed during the test.

In considering the limited data and the limitations of the data, we concluded that the PM emission test reports do not sufficiently characterize the performance of fabric filters controlling PM from the full range of affected facilities subject to subpart DD. Accordingly, we have determined that there is insufficient available information to support proposed revisions to the PM emission limits. We are therefore proposing to maintain the PM limit at 0.01 gr/dscf.

We believe the limited number of test reports submitted is due to the current subpart DD only requiring one initial emission test of an affected facility. As discussed in Section V.C.1 of this preamble, EPA believes that additional testing is needed to ensure compliance with the emission limit. We are therefore proposing, in subpart DDa, to require repeat testing of affected facilities every five years. Not only will these tests help the sources determine compliance with the standards, they will provide a more robust set of information for when this rule is next reviewed. We estimate that by the next 8 year review of subpart DDa, initial PM emission tests may be conducted on as many as 300 affected facilities and repeat testing may be conducted on as many as 120 affected facilities, providing approximately 420 PM emission tests to evaluate for determining whether to revise the PM limit. We are also proposing that the emission tests be conducted while processing the highest PM emitting grains to establish PM emissions for all operating scenarios that are expected to occur. We are also proposing to require records of the grain type processed during the testing.

b. Application of Mineral Oil

A few permits submitted with responses to the CAA section 114 surveys indicate that some grain elevators use mineral oil as a fugitive dust suppression technique. Mineral oil application is primarily used to reduce the possibility of a grain elevator explosion caused by dust.

The EPA has previously studied the application of mineral oil at grain elevators, noting that there were several potential benefits, such as reduced dust disposal cost, less grain weight loss, as well as improved safety in the working environment.[3] However, compared to currently used technology for controlling process emissions, i.e., fabric filters, the study indicated that oil application systems were not as effective as fabric filters in reducing PM. The EPA also concluded that the emission tests conducted were inadequate for the purpose of determining emissions and developing emission factors because they were pilot studies or controlled tests. Therefore, mineral oil application as a replacement for existing controls has not been demonstrated to be a feasible control option. We do not have information on the appropriateness or effectiveness of using mineral oil in combination with existing technologies, such as fabric filters.

The subpart DD fugitive emission standards require meeting a 0 percent opacity limit for grain handling operations and require opacities ranging from 5 to 20 percent for loading and unloading stations. We do not have information on how mineral oil application would affect the fugitive opacity limits, e.g., whether the opacity levels would decrease to 0 percent, stay the same or result in another limit. Additionally, portable grain handling equipment, such as portable augers,

[1] Compilation of Air Pollution Emission Factors. Chapter 9.9.1 Grain Elevators and Processes.

[2] 1978 BID, Chapter 5.

[3] Oil Suppression of Particulate Matter at Grain Elevators. U.S. Environmental Protection Agency. EPA–453/R–94–049. July 1994.

portable conveyors and front-end loaders are often used at grain elevators. We do not have information on whether mineral oil application is feasible or would reduce emissions at facilities that use portable grain loading equipment to reduce fugitive emissions. The size and design of these systems may affect both their ability and the time necessary to mix mineral oil thoroughly with grain to be an effective dust suppression technique.

The EPA mineral oil study also noted that there are concerns regarding the effect the oil has on grain quality, and consequently, its price. The EPA study indicates that mills and distilleries are concerned about the long-term effects of oil on grain. For some grains, the use of mineral oil may be more problematic, such as for wheat in the milling process. In addition, grain exported to other countries may be required to meet hydrocarbon levels and grain not meeting those levels may be considered contaminated. For example, the European Union's code of practices states that any detection of a level of mineral oil above 300 mg/kg is considered to be contaminated by mineral oil. Therefore, mineral oil application might not be economically feasible for all grains and may result in product quality and contamination concerns.

EPA has only limited information on the effectiveness and cost of mineral oil application, and no test information. We have concluded that mineral oil application as a dust suppression technique for limiting emissions from fugitive sources has not been demonstrated. Therefore, we are not proposing a requirement to use mineral oil. We are requesting additional information on the effectiveness of mineral oil in combination with existing controls and when applied at fugitive sources regulated by the NSPS, particularly those associated with portable grain handling equipment. We are also soliciting information on the capital and operating cost of mineral oil application systems and any problems in grain quality associated with using mineral oil.

3. BSER Evaluation for New or Significantly Changed Emission Sources

Our review of the survey responses and presentations by representatives of the grain elevator industry identified the following three significant changes that have occurred to grain elevators since the last review of subpart DD in 1984:

- Use of new barge unloading technologies (e.g., en-masse drag conveyors).
- Use of wire screen column dryers.
- Use of TSFs.

We evaluated each of the changes to determine if they result in new emission sources, and, if so, whether existing subpart DD requirements represent BSER. To assess BSER, we: (1) Identified available control measures applicable to each emission source; and (2) evaluated these measures to determine emission reductions achieved, associated costs, nonair environmental impacts, energy impacts and any limitations to their application. The evaluation is presented in sections V.A.3.a through V.A.3.c of this preamble. The BSER analysis is documented in the memorandum, ''Evaluation of the Revisions to Grain Elevator Emission Standards'' in the grain elevator docket at EPA–HQ–OAR–2010–0706.

a. New Unloading Operation Emission Sources at Barges—En-Masse Drag Conveyors

Barge unloading stations are an affected facility regulated by subpart DD. Subpart DD standards for barge and ship unloading were established for a specific type of unloading mechanism, referred to as either a marine leg or bucket elevator. Under subpart DD, process emissions caused by unloading using a marine leg/bucket elevator must be controlled by enclosing the marine leg/bucket elevator from the top to the bottom of the leg. Emissions must be vented to a control device using a ventilation flow rate of 40 ft^3 per bushel of grain unloaded for both the marine leg/bucket elevator and receiving hopper. Subpart DD also provides for an equivalency determination in situations where it is not possible to meet the design standards. Since the EPA's last review of subpart DD, several new barge unloading mechanisms have been developed and used, at least one of which does not utilize a bucket elevator or marine leg, and, as such, cannot use the design standards.

Some barge unloading stations currently use en-masse drag conveyors, which were not in use the last time we reviewed subpart DD. En-masse drag conveyors operate under a different principle than bucket elevators or marine legs. En-masse drag conveyors are plug-flow drag conveyors that are designed to operate vertically. The conveyor uses paddles or flights mounted on a chain to move grain. The side of the conveyor where the grain is being transferred is filled with grain. This type of unloader is significantly different than a bucket unloading leg which has open space between each bucket and can therefore be enclosed and ventilated to a control device. Therefore, dust aspiration to meet the design ventilation requirement of 40 ft^3 per bushel of grain is not feasible for en-masse drag conveyors because there is no headspace for air passage to the grain inlet at the base of the conveyor. Additionally, the normal mode of operation is to bury the conveyor inlet into the grain being unloaded, which eliminates the need for dust aspiration at this point. These types of unloaders are becoming more common as they are more efficient than the bucket unloaders—both in the movement of more grain in less time and also requiring fewer personnel for the operation. Particulate emissions are controlled by the design of the unloader (burying inlet in grain) without an add-on emission control system. This newer unloading system was developed for a variety of reasons, including faster unloading rates, higher capacity unloading, cost savings and other site-specific reasons.

Section 111 of the CAA makes an allowance for the EPA to subcategorize source categories based on differences in size, type and class. An en-masse drag conveyor is a different type of barge unloading system than the marine leg or bucket elevator due to the differences in the unloading mechanism. As such, en-masse drag conveyors constitute a new subcategory of barge unloading system. All emissions from barge unloading using an en-masse drag conveyor are fugitive in nature because they cannot be captured and ventilated to a control device. Some barges have a small opening where the en-masse drag conveyor enters and those openings can be covered around the en-masse loader, thereby limiting fugitive emissions. Other barges have a large opening where a bulldozer is lowered into the barge to move grain toward the unloader. This type of application of the en-masse drag conveyor does not allow openings to be covered, due to safety requirements. No other technologies or techniques have been identified to control fugitive emissions from barge unloading.

The EPA collected test results from two one-hour method 9 tests for opacity conducted at one en-masse system (loading into the barges with larger openings) to demonstrate equivalency with the current standards, per the requirements in 60.302(d)(3) of subpart DD. Method 9 requires that opacity readings be recorded to the nearest 5 percent at 15-second intervals. Opacity is determined as an average of 24 consecutive observations, i.e., a set of observations. The average opacity levels during the highest set of observations of each test were 8.75 and 9.79 percent. Because method 9 opacity

measurements are taken in increments of 5 percent, a limit based on the opacity tests must be rounded to the nearest multiple of five. For the tests reviewed, the resulting emission limit is 10 percent opacity. The EPA did not receive any information regarding whether there would be any cost associated with meeting the limit (other than testing and recordkeeping and reporting), or receive any information regarding whether there would be any emission reductions. However, a comparison between the opacity limit calculated and the data collected from the en-masse conveyor show that the 10 percent opacity limit can be met by affected facilities using the en-masse conveyor system to unload barges without additional control, resulting in no cost or emission impacts for meeting the opacity limit. Additionally, we do not expect there to be any non-air quality health and environmental impacts associated with the limit, nor any changes in energy usage or emissions of any other pollutant.

Based on our evaluation, we are proposing a new subcategory for barge unloading stations—barge unloading stations with an en-masse drag conveyor. Based on these results, consistent with our obligations under CAA section 111(b), we are proposing that the 10 percent opacity limit represents BSER for en-masse drag conveyors used to unload grain from barges. We are also proposing that such systems be required to meet an opacity limit of 10 percent at all times.

We expect that en-masse drag conveyor systems that have a small opening could achieve a lower level of opacity if the opening was covered; however, we do not have sufficient data to establish a different opacity limit for these systems. We do not have information on the effectiveness of the cover, costs of the cover, procedures for using the cover or if there are operational or health issues that may occur if the opening is covered. We are requesting additional information to evaluate this control option.

Subpart DD contains provisions that allow for alternative methods of control for barge unloading stations instead of meeting the requirements for unloading legs. We are also proposing similar provisions for subpart DDa. We are proposing that affected barge unloading stations not using an unloading leg or an en-masse drag conveyor may use other methods of emission control that are demonstrated to the Administrator's satisfaction to reduce emissions of PM to the same level or less than the standards for barge unloaders using marine legs or en-mass drag conveyors.

The EPA requests comment on all aspects of the BSER determination for barge unloading using an en-masse drag conveyor. We also request comment on whether there are other types of barge unloading systems that should be considered for subcategorization. If so, the EPA requests information on control technologies that may be used on the unloading system, costs, emission reductions associated with the control and emissions test information for them. The EPA also requests information on technologies or practices that may be used to control emissions from barge unloading using an en-masse conveyor system and additional opacity tests conducted at en-masse conveyor systems.

b. New Wire Screen Column Dryers

Grain dryers are an affected facility under subpart DD. The subpart DD emission limits for dryers were established for two types of grain dryers used at grain elevators: rack dryers and column dryers. Grain column dryers are defined as equipment used for drying the grain in which the grain flows by gravity from the top of the dryer to the bottom in one or more packed columns between two perforated metal sheets. Subpart DD requires that PM emissions from grain dryers be reduced by meeting an opacity limit of 0 percent if a column dryer uses column plate perforations exceeding 0.094 inches, or if a rack dryer passes exhaust gases through a screen filter coarser than 50 mesh.

In its review of the grain elevator industry, the EPA found that an additional type of column grain dryer not addressed in subpart DD is now being used. Most rice dryers currently use column dryers with woven wire mesh screens in place of, or in addition to, perforated plates because perforated plates damage the rice kernel, are less efficient for rice drying and are not durable. All the wire mesh column dryers reported in response to the ICR except one are used for drying rice. The wire screens also allow for air transport from the dryer while entrapping PM from the rice. Information provided by one company drying rice shows that of the 126 dryers they operate, 115 are column dryers; 115 of all the dryers (column and rack) use a wire screen of 24 mesh size, and 9 use a 50 mesh size for controlling PM emissions (50 mesh is a smaller screen size than 24 mesh). The 50 mesh screens are being replaced over time because of maintenance and plugging problems.

After an evaluation of the differences in size, type and class of column dryers, per CAA section 111, the EPA is proposing that wire screen column dryers constitute a new subcategory of grain dryers because they are a different type of dryer to which subpart DD does not apply.

Emissions from grain dryers are fugitive in nature. It is not possible to fully enclose grain dryers and vent PM emissions to a control device because of the large size of the dryer, the way that PM is emitted (through the side walls of the dryer rather than from a stack or vent), and because the dryer needs sufficient air flow to work properly and an enclosure would restrict the airflow. Therefore, there are no add-on controls that can be applied to control PM emissions from these dryers. The PM emitted is a function of the size of the openings on the dryer sidewalls. Larger openings emit more PM. The current industry practice is to use wire screens of 24 mesh size to reduce the size of the openings, resulting in reducing PM emissions.

The BSER for rice dryers is to use a wire screen size of 24 mesh, as it reduces PM emissions and also allows proper operation of the dryer. We identified no regulatory options that are more stringent and are technically viable. Higher mesh sizes (e.g., 50, 100) are available that would have smaller openings, resulting in even more emissions reductions. However, information from one rice facility indicates that the 50 mesh screens cause plugging problems and choke the airflow of the dryers and require substantial maintenance to clean. The EPA also determined, during the development of subpart DD in 1978, that the higher sizes, such as 100 mesh screens, would restrict air flow and result in more plugging of the openings such that there would be an unreasonable cost impact due to the need to clean the screens frequently, reduced drying performance and additional energy requirements. Those determinations are still true today.

The EPA collected opacity information for four column dryers with 24 mesh wire screens for drying rice. The opacity data for these dryers consist of one run of 30 minutes of observation for each dryer. The average opacities for the four dryers ranged from 1.13 to 8.38 percent, with the average opacities for the highest period of observation ranging from 5 to 10 percent. After rounding to the nearest increment of 5 percent, the corresponding opacity limit based on the data from the four rice dryers is 10 percent. Based on the information collected, this level is achievable by all wire screen column dryers using 24 mesh.

Because this limit is achievable by the wire screen column dryers that

provided information, and these dryers would be similar or the same as future dryers constructed (i.e., wire screen column dryers using 24 mesh), we estimated there to be no cost or emission impacts from meeting a 10 percent opacity limit (other than testing, recordkeeping and reporting costs). The addition of wire screen of 24 mesh to column dryers is an equipment design feature that reduces PM instead of a separate add-on control device where emissions are vented. The wire screens would not generate secondary pollutant emissions or result in increased energy use. Therefore, the EPA estimated no nonair quality health and environmental impacts associated with the limit nor any changes in energy usage or emissions of any other pollutant.

Based on this evaluation, we are proposing a new subcategory of wire screen column dryers in subpart DDa with an opacity limit of 10 percent for this subcategory. Based on these results, consistent with our obligations under CAA section 111(b), we propose that an opacity limit of 10 percent represents BSER for wire screen column dryers and are proposing standards for wire screen column dryers in subpart DDa.

We have information from one Method 9 test conducted during filling and emptying operations for one wire screen column dryer drying rice. The average opacity for one run of 30 minutes was 15.6 percent, with the average opacity for the highest period of observation during the run at 28.75 percent. We are soliciting additional emissions test information and descriptions for emptying and filling activities to fully understand this process and set, if appropriate, a standard of performance.

We request comment on all aspects of the BSER analysis for wire screen column dryers. We also request additional emission test information for this subcategory of grain dryer.

c. Temporary Storage Facilities

Subpart DD does not regulate grain storage units (buildings, bins, silos). Instead, subpart DD regulates each affected facility (e.g., loading and unloading stations, grain dryers, grain handling operations) at any grain terminal elevator or any grain storage elevator. Under subpart DD, grain terminal elevators and grain storage elevators are defined in part by their permanent grain storage capacity. ''Grain terminal elevator'' means any grain elevator that has a permanent storage capacity of more than 2.5 million bushels (excluding elevators located at animal food manufacturers, pet food manufacturers, cereal manufacturers, breweries and livestock feedlots). ''Grain storage elevator'' means any grain elevator located at any wheat flour mill, wet corn mill, dry corn mill used for human consumption, rice mill or soybean extraction plant that has a permanent grain storage capacity of 1 million bushels.

Temporary storage facilities have been used by the grain elevator industry since the early 1990s. They are intended for bulk storage of grain on a temporary basis, i.e., they are intended to handle intermittent surges and surpluses and are not used necessarily every year. Under the U.S. Warehouse Act, TSFs are licensed and are defined by the following criteria:

- Use of asphalt, concrete or other approved base material.
- Use of rigid self-supporting sidewalls.
- Use of aeration.
- Use of an acceptable covering (e.g., tarp).

In 2007, the EPA received a letter from the National Grain and Feed Association requesting clarification about whether a TSF would constitute ''permanent storage capacity'' as defined in subpart DD for the purpose of determining applicability under subpart DD. On November 21, 2007, the EPA issued a letter indicating that TSFs should be included in ''permanent storage capacity'' when determining the applicability of subpart DD. The EPA conducted additional reviews of TSFs and decided that changes to the definition of ''permanent storage capacity'' were more appropriately made as part of this NSPS review. Consequently, the EPA issued letters in July 2014 to the National Grain and Feed Association and the National Oilseed Processors Association, rescinding the November 21, 2007, letter. These letters can be found at Docket ID Number EPA–HQ–OAR–2010–0706.

Information collected in responses to surveys the EPA sent to grain elevators, gathered at site visits, and at industry meetings indicate that while grain stored in TSFs is kept on a temporary basis, the TSF structures are generally in place on a long-term basis and not dismantled, and may be used for multiple crops. Considering the length of time the structure is in place, the TSF structure then serves the same purpose as a permanent structure, even though the materials of construction and storage times are different. Therefore, we are proposing that the definition of ''permanent storage capacity'' include TSF capacity. However, we recognize that emissions from TSFs are significantly different than emissions from permanent structures due to the differences in grain throughputs. Therefore, we are also proposing a methodology to prorate the TSF storage capacity for the applicability determination. Our discussion of this methodology is provided in section V.B of this preamble.

We also evaluated BSER for affected facilities associated with TSFs. Information from site visits and survey responses indicate that only truck unloading and loading stations and grain handling operations are used at TSFs. Based on the survey responses and information provided by the industry, we determined that there are two types of grain handling and loading/unloading operations associated with TSFs: (1) Those associated with portable grain handling and loading/unloading equipment; and (2) those associated with fixed grain handling and loading/unloading equipment.

Portable grain handling/loading/unloading equipment include (but are not limited to) portable augers, portable conveyors and front-end loaders that are not fixed at any one spot and can be moved around the site. These pieces of equipment are typically not enclosed due to potential fine dust explosion risk and are therefore not vented to a control device. This explosion risk, combined with the portable nature of the equipment and associated emissions does not permit the capture and routing of the emissions through a stack for control. As such, their emissions are fugitive in nature. The EPA does not have any emission test information on portable grain handling, unloading stations and loading stations. We also have identified no technically viable emission control options for portable equipment. We considered application of mineral oil for dust suppression, but determined in section A.2.b of this preamble that application of mineral oil was not an appropriate emission control technique. Consequently, we propose to determine that BSER for portable grain handling, loading and unloading equipment associated with TSFs is no control. We request comment on our proposed determination. We are also soliciting emissions test data for these sources, as well as information on the types of emission controls that are feasible and the cost of the controls.

Fixed grain handling and loading/unloading equipment are constructed to be stationary and directly connected to the storage facilities for ease of transferring grain. Fixed equipment can also be enclosed and emissions can be vented to a control device. Fixed equipment at TSFs are similar to those associated with permanent storage

units. To control emissions from affected facilities associated with TSFs, we identified one regulatory option to be equal to the subpart DD requirements for affected facilities for permanent storage units. These requirements include: (1) Meeting a PM emission limit of 0.023 g/dscm and an opacity limit of 0 percent for process emissions; and (2) meeting fugitive emission standards of a 5 percent opacity limit for truck unloading stations, and 0 percent opacity for grain handling operations. Loading operations from TSFs are typically done with portable equipment, which we propose the BSER to be no control. No other regulatory options were identified that are more stringent than the subpart DD requirements. As discussed in section A.2.b of this preamble, we evaluated test information submitted with the grain elevator survey responses and determined that the emission limit that has been demonstrated to be achievable is the same as the current subpart DD standards. Controls used at grain elevators are well-operated fabric filters and no controls more effective than fabric filters were identified.

We conducted a BSER analysis for meeting the subpart DD requirements by evaluating the costs and emission reductions over a 5 year period to be consistent with the economic impacts analysis. We identified three scenarios at grain elevators that would be affected by adding TSFs: (1) A greenfield facility that exceeds the subpart DDa applicability criteria due to the capacity of TSFs; (2) an existing facility that is below the subpart DDa applicability criteria, but then adds a TSF and exceeds the criteria; and (3) an existing facility already subject to subpart DD (because it exceeds the subpart DD applicability criteria) that then adds a TSF. The additional costs associated with these scenarios include a shed to limit fugitives from unloading stations to meet the applicable opacity standard, and in certain situations, new fabric filters to meet PM limits. In other situations, the EPA concluded that PM emissions from the affected facility could be vented to an existing fabric filter at the grain elevator. Emission reductions were estimated based on routing PM emissions from grain sent to the TSF (and using truck unloading and grain handling affected facilities) to a fabric filter.

We estimated the capital costs to be $1.09 million and the total annual cost (including testing and monitoring costs) to be $0.616 million. The emission reductions were estimated to be 31 tons of PM_{10} per year. Our analysis of BSER is documented in the memorandum ''Evaluation of Revisions to Grain Elevator Emission Standards.'' We determined that these costs and emission reductions were reasonable and BSER is compliant with the proposed subpart DDa PM and opacity limits for fixed equipment. We request comment on our determination and additional cost and emissions information on these systems specific to TSFs.

B. How did the EPA evaluate changes to the methodology for determining applicability of the grain elevator NSPS?

Information collected in responses to surveys the EPA sent to grain elevators shows that TSFs are intended for bulk storage of grain on a temporary basis, i.e., they are intended to handle intermittent surges and surpluses and are not used necessarily every year, even though the structure may be in place for several years. The survey responses show that, on average, TSFs have one turnover per year. Specifically, they are filled one time in a year and emptied once each year. Other types of storage facilities (buildings, bins (not including TSFs) and silos) have, on average, nine turnovers a year, and throughput a significantly higher amount of grain in a year than TSFs. The same amount of grain stored in TSFs could be stored in smaller-sized permanent storage facilities that are turned over more frequently. Due to the uncertainties in crop forecasts and fluctuations in crop yields and economics, TSFs are used rather than constructing other types of structures that are more costly and may not be warranted in the future.

Emissions from affected facilities at grain elevators are proportional to the amount of grain throughput. Consequently, affected facilities associated with TSFs have significantly less emissions than affected facilities associated with other types of storage.

Based on the information collected in the surveys and the EPA's understanding of the different uses between TSFs and other types of storage facilities, the EPA has concluded that the capacity of TSFs, as an indicator of emissions, is not a one-to-one equivalency to the capacity of other types of grain storage units. As a result, the EPA analyzed the survey information and developed a method for calculating an adjusted TSF storage capacity that would be equivalent to the storage capacity of other types of grain storage units (i.e., buildings, silos and bins). This adjusted storage capacity for TSFs would then be used to calculate ''permanent storage capacity'' by summing the adjusted TSF capacity with the capacity for all other types of structures.

For subpart DDa, the EPA is proposing a method for determining the adjusted TSF storage capacity for a given grain elevator by: (1) Establishing the ratio of total annual storage capacity of all other types of storage facilities (excluding TSFs) to the total grain throughput for those storage facilities; and (2) applying that ratio to the total TSF capacity, thereby factoring down the TSF capacity.

For example, consider a grain elevator has 2,000,000 bushels of storage capacity in silos and an average annual throughput of 16,000,000 bushels through the silos. The ratio of permanent storage capacity to throughput is 0.125. If a TSF is constructed with a storage capacity of 1,000,000 bushels, the TSF capacity would be multiplied by the 0.125 ratio resulting in an equivalent permanent capacity of 125,000 bushels. The total permanent capacity of the grain elevator would be 2,125,000 bushels.

The EPA is proposing that grain elevators with new affected facilities use this method to calculate ''permanent storage capacity'' for determining applicability of subpart DDa. The EPA is proposing that, when historical throughput data are available for all storage facilities, grain elevators would be required to use the historical data to calculate a site-specific adjusted TSF storage capacity, and use the following equation to calculate ''permanent storage capacity:''

$$C_{tp} = C_p + \left(\frac{C_p}{T_p} * C_t\right)$$

Where:

C_{tp} = Total permanent storage capacity of all buildings, bins (including TSFs) and silos used to store grain (bushels).

C_p = Total storage capacity of all buildings, bins (excluding TSFs) and silos used to store grain (bushels).

T_p = Maximum annual throughput of grain for all buildings, bins (excluding TSFs) and silos used to store grain (bushels per year) over the previous 5 years.

C_t = Total storage capacity of all TSFs used to store grain (bushels).

For situations where at least one grain storage building, bin or silo did not exist prior to the date that construction, modification or reconstruction of the affected facility commenced (i.e., the grain elevator does not have historical throughput data for the storage facilities), the EPA is proposing that grain elevators use a default factor to calculate the adjusted TSF capacity. The following equation would be used to then calculate the ''permanent storage capacity'':

$$C_{tp} = C_p + (0.34 * C_t)$$

Where:

C_{tp} = Total permanent storage capacity of all buildings, bins (including TSFs) and silos used to store grain (bushels).

C_p = Total storage capacity of all buildings, bins (excluding TSFs) and silos used to store grain (bushels).

C_t = Total storage capacity of all TSFs used to store grain (bushels).

0.34 = Default ratio of permanent grain storage capacity to annual throughput

We request comment on this proposed approach. Refer to the memorandum, ''Determination of Permanent Storage Capacity Equivalents for Temporary Storage Facilities'' in the grain elevator docket at EPA–HQ–OAR–2010–0706 for further details.

C. How did the EPA evaluate the compliance requirements in the grain elevator NSPS?

In subpart DDa, we are proposing new monitoring, reporting and recordkeeping requirements and new provisions for startup, shutdown and malfunctions.

1. Testing and Monitoring Requirements

The EPA evaluated the monitoring requirements currently required in subpart DD to determine if they are adequate for determining compliance. Currently under subpart DD, grain elevators are required to conduct an initial PM and opacity performance test but are not required to perform follow-on testing to demonstrate continuous compliance. In light of our understanding that equipment need to be periodically maintained and checked for operational performance to ensure compliance with the emission standards, the EPA concluded that additional compliance requirements are needed in the proposed subpart DDa rule. In subpart DDa, the EPA is proposing to require periodic compliance testing for affected facilities. We are proposing that PM performance tests using EPA Method 5 or Method 17 be conducted every 60 months and opacity tests using Method 9 be conducted annually. We are proposing that operators perform weekly visual emissions checks on affected facilities and maintain records of these checks, including any corrective action taken as a result of visible emissions. The proposed requirements are expected to ensure that emission control systems are properly maintained over time, ensure continuous compliance with standards and improve data accessibility. For fabric filter and baghouse control devices, we are proposing that affected facilities perform periodic visual inspections of the inside of the baghouse or fabric filter at intervals of 6 months. Corrective action must be taken if the baghouse is in need of repair or replacement.

We are requesting comment on whether to require bag leak detection systems (BLDS) at affected facilities controlled with fabric filters and baghouses. Bag leak detectors are one method that has been used in other source categories for ensuring proper performance of fabric filter and baghouses. The EPA has estimated the capital cost of BLDS to be $24,000 per application. We are soliciting comments on whether BLDS can be used for affected facilities in this source category, problems that may occur specific to their use in this source category and the reasonableness of the cost for this source category.

2. Recordkeeping and Reporting Requirements

In subpart DDa, we are proposing that the following records be maintained:

- The total storage capacity (bushels) for each building, bin (excluding TSFs) and silo used to store grain.
- The storage capacity of each TSF.
- Records quantifying emissions over the applicable standards for excess emissions events.
- Results of 6 month baghouse and fabric filter inspections, including any corrective action.
- Weekly visual emissions checks and any corrective action taken as a result of positive visual emissions checks.
- Results of annual opacity tests.
- The type of grain processed during the performance test at the affected facility.

In subpart DDa, we are proposing that the following records be reported:

- Results of performance tests, including Method 5, 17 and 9.
- Reports required to be submitted by part 60 general provisions.

The storage capacities of the various storage units are inputs to the calculation of equivalent permanent storage capacity, which is an input to the calculation of equivalent permanent storage capacity for TSFs. They are necessary to verify compliance with the applicability of the standard. Records quantifying the emissions for excess emission events provide the EPA information on the magnitude of the emissions release.

As discussed in section V.C.1 of this preamble, we are proposing that grain elevators conduct PM compliance testing every 60 months and opacity testing annually and conduct weekly visual inspections of affected facilities. We are proposing that the Method 5 (or Method 17) and the Method 9 test results be reported to the EPA. Results of the visual inspections are proposed to be maintained on site. The type of grain processed during performance tests allows EPA to better characterize the emissions measured.

Electronic Reporting Tool

Through this proposal, the EPA is describing a process to increase the ease and efficiency of performance test data submittal and improve data accessibility. Specifically, the EPA is proposing that owners and operators of grain elevators submit electronic copies of required performance test reports to the EPA's WebFIRE database. Data will be entered through an electronic emissions test report structure called the ERT. The ERT will generate an electronic report which will be submitted using the CEDRI. The submitted report will be stored in both EPA's CDX and in the WebFIRE database making access to data very straightforward and easy. A description of the ERT can be found at *http://www.epa.gov/ttn/chief/ert/index.html* and CEDRI can be accessed through the CDX Web site (*www.epa.gov/cdx*). A description of the WebFIRE database is available at: *http://cfpub.epa.gov/oarweb/index.cfm?action=fire.main*.

The proposal to submit performance test data electronically to the EPA applies only to those performance tests conducted using test methods that will be supported by the ERT. The ERT contains a specific electronic data entry form for most of the commonly used EPA reference methods. A listing of the pollutants and test methods supported by the ERT is available at: *http://www.epa.gov/ttn/chief/ert/index.html.*

We believe that industry will benefit from this proposed approach to electronic data submittal. The EPA believes, through this approach, industry will save time in the performance test submittal process. Additionally, the standardized format that the ERT uses allows sources to create a more complete test report resulting in less time spent on data backfilling if a source did not know which data elements were required to be submitted. Also through this proposal, industry would only need to submit a report once to meet the requirements of the applicable subpart. This means that the report would be accessible on the WebFIRE database by any stakeholder who requested a copy from the facility resulting in a time saving for industry. This also benefits industry by cutting back on recordkeeping costs as the performance test reports that are submitted to the EPA using CEDRI are

no longer required to be kept on-site. Thus, staff time needed to coordinate these records would be reduced.

Another benefit to industry is that since the EPA will already have performance test data in hand, fewer or less substantial data collection requests in conjunction with prospective required technology reviews will be needed. This would result in a decrease in staff time needed to respond to data collection requests.

State, local and tribal agencies will also benefit from more streamlined and accurate review of electronic data submitted to them. For example, the ERT would allow for an electronic review process rather than a manual data assessment; thus making review and evaluation of the source-provided data and calculations easier and more efficient. In addition, the public stands to benefit from electronic reporting of emissions data because the electronic data will be easier for the public to access and it will be available shortly after it is submitted in the system. For example, the WebFIRE database is easily accessible and provides a user friendly interface for any stakeholder to find and review any report submitted.

One major shared advantage of the proposed submittal of performance test data through the ERT is a standardized method to compile and store much of the documentation required to be reported by this rule. The ERT clearly states what testing information would be required by the test method and has the ability to house additional data elements required by a delegated authority. Another important proposed benefit of submitting these data to the EPA at the time the source test is conducted is that it should substantially reduce the effort involved in data collection activities in the future. Having these data allows the EPA to develop improved emission factors, make fewer information requests and promulgate better regulations.

In addition, the EPA must have performance test data to conduct effective reviews of CAA sections 112 and 129 standards, as well as for many other purposes including compliance determinations, emission factor development and annual emission rate determinations. In conducting these required reviews, the EPA has found it ineffective and time consuming, not only for us, but also for regulatory agencies and source owners and operators, to locate, collect and submit performance test data because of varied locations for data storage and varied data storage methods. In recent years, however, stack testing firms have typically collected performance test data in electronic format, making it possible to move to an electronic data submittal system that would increase the ease and efficiency of data submittal and improve data accessibility.

A common complaint heard from industry and regulators is that emission factors are outdated or not representative of a particular source category. With timely receipt and incorporation of data from performance tests, the EPA would be able to ensure that emission factors, when updated, represent the most current range of operational practices. Finally, another benefit of the proposed data submittal to WebFIRE electronically is that these data would greatly improve the overall quality of existing and new emissions factors by supplementing the pool of emissions test data for establishing emissions factors

In summary, in addition to supporting regulation development, control strategy development and other air pollution control activities, having an electronic database populated with performance test data would save industry, state, local, tribal agencies and the EPA significant time, money and effort while also improving the quality of emission inventories and, as a result, air quality regulations.

3. Startup, Shutdown and Malfunction Provisions

The general provisions in 40 CFR part 60 provide that emissions in excess of the level of the applicable emissions limit during periods of SSM shall not be considered a violation of the applicable emission limit unless otherwise specified in the applicable standard (see 40 CFR 60.8(c)). In its 2008 decision in *Sierra Club* v. *EPA,* 551 F.3d 1019 (D.C. Cir. 2008), 130 S. Ct. 1735 (U.S. 2010), the U.S. Court of Appeals for the District of Columbia Circuit vacated portions of two provisions in the EPA's CAA section 112 regulations governing the emissions of HAP during periods of SSM. Specifically, the Court vacated the SSM exemption contained in 40 CFR 63.6(f)(1) and 40 CFR 63.6(h)(1), holding that under section 302(k) of the CAA, emissions standards or limitations must be continuous in nature and that the SSM exemption violates the CAA's requirement that some section 112 standards apply continuously. We are proposing the elimination of the SSM exemption in this rule. Consistent with *Sierra Club* v. *EPA,* the EPA is proposing standards in this rule that apply at all times, including periods of startup or shutdown. The EPA has attempted to ensure that the provisions we are proposing to eliminate are inappropriate, unnecessary or redundant in the absence of the SSM exemption. We are specifically seeking comment on whether we have successfully done so.

a. Periods of Startup and Shutdown

In proposing the standards in this rule, the EPA has taken into account startup and shutdown periods and does not have any information that indicates that emissions during startup and shutdown are different from emissions during steady-state operation; therefore, the EPA proposes to apply the proposed standards during all periods of operation.

If you believe that the EPA's conclusion is incorrect or that the EPA has failed to consider any relevant information on this point, we encourage you to submit comments, including test data during periods of startup and shutdown. In particular, we note that the general provisions in part 60 require facilities to keep records of the occurrence and duration of any SSM (40 CFR 60.7(b)) and either report to the EPA any period of excess emissions that occurs during periods of SSM (40 CFR 60.7(c)(2)) or report that no excess emissions occurred (40 CFR 60.7(c)(4)). Thus, any comments that contend that sources cannot meet the proposed standard during startup and shutdown periods should provide these data and other specifics supporting their claim.

b. Periods of Malfunction

Periods of startup, normal operations and shutdown are all predictable and routine aspects of a source's operations. However, by contrast, malfunction is defined as ''any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner. Failures that are caused in part by poor maintenance or careless operation are not malfunctions.'' (40 CFR 60.2). The EPA has determined that section 111 does not require that emissions that occur during periods of malfunction be factored into development of CAA section 111 standards. Nothing in CAA section 111 or in case law requires that the EPA anticipate and account for the innumerable types of potential malfunction events in setting emission standards. CAA section 111 provides that the EPA set standards of performance which reflect the degree of emission limitation achievable through ''the application of the best system of emission reduction'' that the EPA determines is adequately demonstrated. A malfunction is a failure of the source to perform in a ''normal or usual manner'' and no statutory language

compels EPA to consider such events in setting standards based on the ''best system of emission reduction.'' The ''application of the best system of emission reduction'' is more appropriately understood to include operating units in such a way as to avoid malfunctions.

Further, accounting for malfunctions in setting emission standards would be difficult, if not impossible, given the myriad different types of malfunctions that can occur across all sources in the category and given the difficulties associated with predicting or accounting for the frequency, degree and duration of various malfunctions that might occur. As such, the performance of units that are malfunctioning is not ''reasonably'' foreseeable. See, e.g., *Sierra Club* v. *EPA,* 167 F. 3d 658, 662 (D.C. Cir. 1999) (''The EPA typically has wide latitude in determining the extent of data-gathering necessary to solve a problem. We generally defer to an agency's decision to proceed on the basis of imperfect scientific information, rather than to 'invest the resources to conduct the perfect study.'''). See also, *Weyerhaeuser* v. *Costle,* 590 F.2d 1011, 1058 (D.C. Cir. 1978) (''In the nature of things, no general limit, individual permit, or even any upset provision can anticipate all upset situations. After a certain point, the transgression of regulatory limits caused by 'uncontrollable acts of third parties,' such as strikes, sabotage, operator intoxication or insanity, and a variety of other eventualities, must be a matter for the administrative exercise of case-by-case enforcement discretion, not for specification in advance by regulation.''). In addition, emissions during a malfunction event can be significantly higher than emissions at any other time of source operation and thus accounting for malfunctions could lead to standards that are significantly less stringent than levels that are achieved by a well-performing non-malfunctioning source. It is reasonable to interpret section 111 to avoid such a result. The EPA's approach to malfunctions is consistent with section 111 and is a reasonable interpretation of the statute.

In the event that a source fails to comply with the applicable CAA section 111 standards as a result of a malfunction event, the EPA would determine an appropriate response based on, among other things, the good faith efforts of the source to minimize emissions during malfunction periods, including preventative and corrective actions, as well as root cause analyses to ascertain and rectify excess emissions. The EPA would also consider whether the source's failure to comply with the CAA section 111 standards was, in fact, ''sudden, infrequent, not reasonably preventable'' and was not instead ''caused in part by poor maintenance or careless operation.'' 40 CFR 60.2 (definition of malfunction).

Further, to the extent the EPA files an enforcement action against a source for violation of an emission standard, the source can raise any and all defenses in that enforcement action and the federal district court will determine what, if any, relief is appropriate. The same is true for citizen enforcement actions. Similarly, the presiding officer in an administrative proceeding can consider any defense raised and determine whether administrative penalties are appropriate.

In several prior rules, the EPA had included an affirmative defense to civil penalties for violations caused by malfunctions in an effort to create a system that incorporates some flexibility, recognizing that there is a tension, inherent in many types of air regulation, between ensuring adequate compliance and simultaneously recognizing that despite the most diligent of efforts, emission standards may be violated under circumstances entirely beyond the control of the source. Although the EPA recognized that its case-by-case enforcement discretion provides flexibility in these circumstances, it included the affirmative defense language to provide a more formalized approach and more regulatory clarity. *See Weyerhaeuser Co.* v. *Costle,* 590 F.2d 1011, 1057–58 (D.C. Cir. 1978) (holding that an informal case-by-case enforcement discretion approach is adequate); *but see Marathon Oil Co.* v. *EPA,* 564 F.2d 1253, 1272–73 (9th Cir. 1977) (requiring a more formalized approach to consideration of ''upsets beyond the control of the permit holder.''). Under the EPA's regulatory affirmative defense provisions, if a source could demonstrate in a judicial or administrative proceeding that it had met the requirements of the affirmative defense in the regulation, civil penalties would not be assessed. Recently, the United States Court of Appeals for the District of Columbia Circuit vacated such an affirmative defense in one of the EPA's Section 112(d) regulations. *NRDC v. EPA,* No. 10–1371 (D.C. Cir. April 18, 2014) 2014 U.S. App. LEXIS 7281 (vacating affirmative defense provisions in Section 112(d) rule establishing emission standards for Portland cement kilns). The court found that the EPA lacked authority to establish an affirmative defense for private civil suits and held that under the CAA, the authority to determine civil penalty amounts lies exclusively with the courts, not the EPA. Specifically, the Court found: ''As the language of the statute makes clear, the courts determine, on a case-by-case basis, whether civil penalties are 'appropriate.'''' *See NRDC,* 2014 U.S. App. LEXIS 7281 at *21 (''[U]nder this statute, deciding whether penalties are 'appropriate' in a given private civil suit is a job for the courts, not EPA.'').[4] In light of *NRDC,* the EPA is not including a regulatory affirmative defense provision in this rulemaking. As explained above, if a source is unable to comply with emissions standards as a result of a malfunction, the EPA may use its case-by-case enforcement discretion to provide flexibility, as appropriate. Further, as the DC Circuit recognized, in an EPA or citizen enforcement action, the court has the discretion to consider any defense raised and determine whether penalties are appropriate. *Cf. NRDC,* 2014 U.S. App. LEXIS 7281 *at *24.* (arguments that violations were caused by unavoidable technology failure can be made to the courts in future civil cases when the issue arises). The same logic applies to EPA administrative enforcement actions.

D. How did the EPA evaluate additional changes for the grain elevator NSPS?

As summarized in section IV of this preamble, we are proposing revisions to three provisions in subpart DD to clarify applicability of the standards for grain elevators under subpart DD. These proposed revisions are intended to keep the meaning and intent of the definitions as originally promulgated while making the definitions applicable to the changes in the industry since the last review of subpart DD in 1984. The same clarifications are being proposed in subpart DDa. These proposed clarifications would apply to all affected facilities that commence construction, modification or reconstruction after August 3, 1978 (i.e., all affected facilities under both subpart DD and proposed subpart DDa). None of these clarifications would increase the cost of the rule or result in a change in PM emissions.

1. Revision to the Definition of ''Grain Unloading Station''

We are proposing to revise the definition of ''grain unloading station''

[4] The court's reasoning in *NRDC* focuses on civil judicial actions. The Court noted that ''EPA's ability to determine whether penalties should be assessed for Clean Air Act violations extends only to administrative penalties, not to civil penalties imposed by a court.'' *Id.*

to clarify which components of the unloading station are part of the affected facility.

The background information document (BID) (EP–450/2–77–001a) for the original grain elevator NSPS does not define each piece of equipment included in the term ''grain unloading station''. However, throughout the BID, in the description of the grain elevator emission sources and processes in chapter 2, and in Figures 2–2 through 2–4, and Figures 4–1 through 4–4, the unloading process is described and shown to terminate at a hopper. Grain is then transported from the hopper via a conveyor to a bucket elevator. Based on the information in the BID, we concluded that at the time the NSPS was proposed and later finalized, the standard practice of the grain elevator industry was to have the hopper be the ending piece of equipment at the truck, rail, and barge/ship unloading stations. We received information from the grain elevator industry that since the last review of subpart DD in 1984, some grain unloading stations no longer use a hopper as the end of the unloading station, and instead use another storage unit, or transfer grain directly onto the grain conveyor. Industry white papers that serve as the basis for this conclusion can be found at Docket ID Number EPA–HQ–OAR–2010–0706. Because of these changes, we are proposing to better define the outer boundaries of a ''grain unloading station'' where the termination point of the unloading operation is not a hopper. The NSPS and the BID also do not specify the types of equipment included in grain unloading stations, resulting in the boundaries of the ''unloading station'' affected facilities being unclear to the regulated community. We received input from the grain industry on the types of equipment that are included in the ''grain unloading station''. Consequently, we are also proposing to clarify in the definition all the types of equipment involved in unloading, up to the point that the grain is transferred to either storage or to grain handling operations. Industry white papers that serve as the basis for this conclusion can be found at Docket ID Number EPA–HQ–OAR–2010–0706.

We are therefore proposing revisions to the definition of ''grain unloading station'' to clarify that a ''grain unloading station'' encompasses the portion of a grain elevator where the grain is transferred from a truck, railcar, barge or ship to a receiving hopper, or to the grain handling equipment that connects the unloading station to the rest of the grain elevator. This definition includes all of the equipment, support structures and associated dust control equipment and aspiration systems required to operate or are otherwise connected to the grain unloading station. We are requesting comment on our interpretation of the intent of the original NSPS definition of ''grain unloading station'' and our proposed revisions to the definition.

2. Revision to Definition of ''Grain Loading Station''

We are proposing to revise the definition of ''grain loading station'' to clarify all the types of equipment involved in unloading, up to the point that the grain is transferred to either storage or to grain handling operations. As discussed in section V.D.1 of this preamble, the background information document (BID) (EP–450/2–77–001a) for the original grain elevator NSPS does not define each piece of equipment included in the term ''grain loading station''. Because the NSPS and the BID do not specify the types of equipment included in grain unloading stations, the boundaries of the ''grain loading station'' affected facilities are unclear to the regulated community. We also received input from the grain industry on the types of equipment that are included in the ''grain loading station''. Consequently, we are proposing to clarify in the definition all the types of equipment involved in loading. Industry white papers that serve as the basis for this conclusion can be found at Docket ID Number EPA–HQ–OAR–2010–0706. The proposed revision also maintains consistency with the proposed revision to the definition of ''grain unloading station''. These changes are supported by representatives of the grain elevator industry in their white papers.

3. Revision to the Operating Requirements for Barge and Ship Unloading Stations

Current § 60.302(d)(1) requires that the unloading leg be enclosed from the top, including the receiving hopper, to the center line of the bottom pulley. However, not all barge and ship unloading stations currently use a hopper. More recently, new technologies have been developed such that a hopper is not required. We are proposing to revise § 60.302(d)(1) to clarify the provision for affected barge and ship unloading stations for which aspiration of the casing provides dust control at the boot of the conveyor and a receiving hopper is not used. The proposed revision clarifies that, in such cases, the unloading leg is required to be enclosed from the top to the center line of the bottom pulley and ventilation to a control device is required to be maintained on both sides of the leg.

VI. Summary of Cost, Environmental, Energy and Economic Impacts of These Proposed Standards

In setting standards, the CAA requires us to consider emission control approaches, taking into account the estimated costs and emission reductions, as well as impacts on energy, solid waste and other effects.

A. What are the impacts for subpart DDa?

The cost, environmental and economic impacts presented in this section are expressed as incremental differences between the impacts of grain elevators complying with the proposed subpart DDa and the current NSPS requirements of subpart DD. The impacts are presented for future grain elevators that are projected to commence construction, reconstruction or modification over the 5 years following proposal of the revised NSPS. Costs are based on 2012 dollars. The analyses and the documents referenced below can be found at Docket ID Number EPA–HQ–OAR–2010–0706.

In order to estimate the incremental impacts of the proposed subpart DDa requirements, we first identified the potential scenarios where grain elevators may be constructed, reconstructed or modified and subject to subpart DDa. Seven different scenarios were identified and are summarized in Table 4 of this preamble.

TABLE 4—SCENARIOS USED TO ESTIMATE IMPACTS OF PROPOSED SUBPART DDA REQUIREMENTS

Scenario	Description
1a	Greenfield grain elevator with capacity (based on permanent storage only) > DDa cutoffs.
1b	Greenfield grain elevator with capacity > DDa cutoffs due to TSF capacity.
2	Existing grain elevator with capacity < DDa cutoffs, but then adds TSF capacity and exceeds cutoffs.
3	Existing grain elevator with capacity < DDa cutoffs, but then adds permanent storage capacity and exceeds cutoffs.

TABLE 4—SCENARIOS USED TO ESTIMATE IMPACTS OF PROPOSED SUBPART DDA REQUIREMENTS—Continued

Scenario	Description
4	Existing grain elevator with capacity > DDa cutoffs, but then adds TSF capacity.
5	Existing grain elevator with capacity > DDa cutoffs, but then adds permanent storage capacity.
6	Existing grain elevator with capacity > DDa cutoffs, and does modification or reconstruction.

We then estimated the number of potential grain elevators, and affected facilities within grain elevators, that would incur an incremental cost and emission reduction for each scenario. The estimates were developed by reviewing responses to a 2009 CAA section 114 survey and extrapolating the results over the next 5 years. For further detail on the methodology of these calculations, see the memorandum, ''Impacts of Grain Elevator NSPS Review,'' at Docket ID Number EPA–HQ–OAR–2010–0706.

The requirements in the proposed subpart DDa that differ from subpart DD are a revised applicability determination by incorporating TSF capacity, control of affected facilities associated with TSFs, annual opacity testing for affected facilities, PM testing every 60 months for affected facilities, weekly visual inspection of affected facilities, inspection of fabric filters and baghouses every 6 months, new recordkeeping requirements, reporting in ERT, a new opacity limit for wire screen column dryers and a new opacity limit for barge unloading stations using an en-masse conveyor system. These proposed requirements would be incurred only by affected facilities that commence construction, modification or reconstruction after July 9, 2014 (i.e., they would not be incurred by all affected facilities at a grain elevator). Barge unloading stations using an en-masse conveyor and wire screen column dryers are not expected to incur a cost or emissions impact because data collected indicate that sources should be able to meet the standards without additional controls. Particulate matter testing every 5 years for affected facilities would occur outside of the 5-year period analyzed because most construction, reconstructions and modifications for grain elevators are expected to occur after the first or second year following promulgation. The cost for Method 5 PM testing is contained in the memorandum, ''Impacts of Grain Elevator NSPS Review,'' at Docket ID Number EPA–HQ–OAR–2010–0706. Based on information provided in the responses to the 2009 survey, including permits, we believe grain elevators are already keeping the records that we are proposing in subpart DDa, except for those associated with visual monitoring. The only incremental cost estimated for subpart DDa would be for control of affected facilities using fixed equipment associated with TSFs, initial testing at affected facilities that meet the subpart DDa applicability criteria due to TSFs, annual opacity testing at affected facilities, weekly visual inspection of affected facilities, inspection of fabric filters for affected facilities every 6 months, the recordkeeping associated with visual monitoring and inspections, and reporting in ERT. Eighty-eight grain elevators, with 221 affected facilities, are projected to be subject to the NSPS in the next 5 years, in one of the seven scenarios, because they will construct, reconstruct or modify an affected facility. Table 5 summarizes the costs of this action. Capital costs are estimated to be $1,087,000 to comply with the proposed requirements. We estimate that the total increase in nationwide annual costs for the 221 affected facilities at 88 grain elevators is $1,116,000 for the number of affected facilities that are projected to be constructed, reconstructed or modified by the fifth year following promulgation of subpart DDa. Recordkeeping and reporting annual costs are estimated to be $83,000 for the number of affected facilities that are projected to be constructed, reconstructed or modified by the third year following promulgation of subpart DDa. We determined that the projected compliance costs are reasonable as they are not expected to result in a significant market impact, whether they are passed on to the purchaser or absorbed by firms. Incremental emissions reductions of PM_{10} for complying with subpart DDa using a fabric filter are estimated to be 31 tpy.

TABLE 5—SUMMARY OF THE COSTS OF THE PROPOSED SUBPART DDa FOR NEW, MODIFIED AND RECONSTRUCTED AFFECTED SOURCES AT GRAIN ELEVATORS

Requirement	Capital cost ($ thousand)	Annual Cost [a] ($ thousand/yr)
PM control	1,087	350
Emissions testing and monitoring/reporting and recordkeeping	0	849
Total nationwide	1,087	1,116

[a] For the third year after promulgation, the associated annual cost (including annualized PM control cost and emissions testing and monitoring) is $757,000.

In addition to reducing emissions, there are several benefits to today's proposed rulemakings. The proposed subpart DDa rule eliminates the startup, shutdown and malfunction exemption. The removal of SSM is meant to ensure continuous compliance with the final standards. The rule establishes a 5-year repeat emissions testing requirement. The repeat testing requirement was established in a way that minimizes the costs for testing and reporting while still providing the source and the agency the necessary information needed to ensure continuous compliance with the final standards. We are adding a requirement for electronic submittal of performance test data. This simplifies submittal for affected sources and having such data publicly available enhances transparency and accountability through better public access to pollution control data.

B. What are the secondary impacts for subpart DDa?

We do not expect any indirect or secondary incremental air quality

impacts associated with subpart DDa. No additional control technologies or operating standards are necessary to comply with the new proposed standards for barge unloading stations and wire screen column dryers. Additional solid waste impacts due to controlling total PM emissions from grain sent to TSFs are estimated to be 116 tpy. Energy impacts are estimated to be negligible.

C. What are the economic impacts for subpart DDa?

The total costs associated with subpart DDa's proposed control requirements and testing and monitoring requirements are $1.11 million over five years for the total number of affected facilities that are projected to be constructed, reconstructed or modified by the fifth year following promulgation.

The EPA also performed a screening analysis for impacts on all affected small entities by comparing compliance costs to average sales revenues. This is known as the cost-to-revenue or cost-to-sales ratio, or the ''sales test.'' The use of a ''sales test'' for estimating small business impacts for a rulemaking is consistent with guidance offered by the EPA on compliance with SBREFA and is consistent with guidance published by the U.S. SBA's Office of Advocacy that suggests that cost as a percentage of total revenues is a metric for evaluating cost increases on small entities in relation to increases on large entities.

These projected compliance costs are reasonable as they are not expected to result in a significant market impact, whether they are passed on to the purchaser or absorbed by firms. The small business screening analysis results indicated that approximately 98% of all affected small facilities would have a cost-to-sales ratio of less than 1%, with a minimum cost-to-sales ratio of less than 1%, an average cost-to-sales ratio of less than 1%, and a maximum cost-to-sales ratio of 2.4%. The small business screening analysis results indicated that the NSPS for Grain Elevators will not have a significant economic impact on a substantial number of small entities (SISNOSE).

VII. Other Considerations

Executive Order 13563: Improving Regulation and Regulatory Review

Executive Order 13563, Improving Regulation and Regulatory Review, requires federal agencies to ''. . . review existing rules that may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.'' A coalition representing the grain elevator industry submitted a petition for the EPA to review and repeal the existing NSPS for grain elevators in 40 CFR part 60, subpart DD. In considering the directives of the Executive Order and the coalition petition, the EPA conducted several analyses aimed at determining the effectiveness of the existing subpart DD standard, determining whether the standard is still relevant and determining whether the standard was excessively burdensome. The analyses and results are discussed in detail in the memorandum, ''Evaluation of Grain Elevator Emission Standards in Response to Executive Order 13563,'' in the grain elevator docket at EPA–HQ–OAR–2010–0706.

To address questions on the necessity and value of the standard, the effectiveness of subpart DD in reducing emissions was evaluated. Since the development of the original standard, the EPA has focused PM emission control programs on limiting direct emissions of PM_{10} (the smaller size fraction of PM) rather than total PM. As a result, we analyzed the effectiveness of the NSPS for controlling PM_{10}. Three scenarios were assessed: (1) Emissions assuming no regulatory requirements (no subpart DD or state rules), (2) emissions assuming compliance with the subpart DD standards, and (3) emissions assuming no subpart DD, but with state rules in place. A comparison between these three scenarios indicates how effective subpart DD is in controlling PM_{10} and whether repeal of the standard could potentially effect emissions, considering state rules for PM that are in place.

As a first step in the analyses, we assembled a database of grain elevators from: (1) Responses to a 2009 CAA section 114 survey sent to grain elevators; (2) information gathered from state regulatory agencies and (3) information gathered from the EPA's OECA and from the USDA FSA. Uncontrolled PM_{10} emissions from this population of grain elevators in the dataset were estimated using emission factors from EPA's AP–42 document. Emissions after compliance with subpart DD were estimated based on the typical controls that facilities use to comply with the standards. In order to assess whether state requirements are as protective as subpart DD, we reviewed the PM_{10} control requirements in the 12 states with the highest grain storage. These states are Iowa, Illinois, Minnesota, Nebraska, Kansas, Indiana, North Dakota, South Dakota, Ohio, Texas, Missouri and Wisconsin. The review evaluated how each state implemented subpart DD and also evaluated state regulations controlling PM_{10}, opacity and fugitive dust emissions that may be applicable to grain elevators.

We concluded that the NSPS achieves a substantial emission reduction (approximately 85,000 tpy) of PM_{10} in these states and significantly less emission reduction would be achieved if subpart DD were to be rescinded and only the requirements in state rules were applicable. The state PM rules that are applicable to grain elevators are in most cases significantly less stringent than the NSPS.

To assess whether the subpart DD standards are still relevant, grain production projections from the USDA were evaluated to determine if crop production is expected to increase in the future and consequently increase the demand for grain storage. The USDA provides crop production projections from 2010 through 2021 for corn, sorghum, barley, oats, wheat, rice and soybeans, which are the typical crops stored at grain elevators. A review of the projections shows that production of wheat, sorghum, oats and rice is expected to remain unchanged or decrease between 2010 and 2015, and between 2010 and 2021. The production of corn, soybeans and barley is expected to increase during these time intervals. The increases in corn, soybeans and barley offset the decreases in the other grains and total production of grain is projected to increase by 1.46 billion bushels (7.7 percent) by 2015, and 2.79 billion bushels (14.8 percent) by 2021.

A review also was conducted to identify if any new grain elevators have been constructed in the last 5 years. We found that over the past 5 years three grain elevators with capacities greater than 2.5 million bushels have been constructed and would likely be subject to subpart DD. The results of the search show that grain elevators are continuing to be constructed. Based on the pattern of information in the survey responses and other information collection, some are replacements for facilities that were shutdown and some are completely new facilities. Given the high crop production, excepting the 2012 drought year, many units added capacity, either as permanent or temporary storage, if a new greenfield facility was not constructed. It is not known how many of these grain elevators with increased capacity are subject to subpart DD. While it cannot be determined how many new grain elevators will be constructed in the future, or whether capacities at existing facilities will be

increased, the projections show that there will be a significant increase in the demand for grain storage. Based on activities of the previous years in the grain elevator industry, a combination of new elevators and increased capacities for existing elevators is expected.

To address whether the standard is overly burdensome, we reviewed the cost of complying with the subpart DD standards. Grain elevators meet the PM emission limit using fabric filters. Fabric filters are also routinely used for dust control for health and safety reasons (e.g., prevent fugitive dust explosions); fabric filters that are used for health and safety will meet the NSPS requirements. Therefore, for most affected facilities, the specific cost that is associated only with subpart DD is compliance testing. Subpart DD requires only an initial Method 5 test for PM and an initial Method 9 test for opacity. The cost for each initial Method 5 PM test is $12,200 and each initial Method 9 opacity test is $2,500. Annualized over 5 years, the costs are $3,000 and $610, respectively. There are no monitoring, recordkeeping and reporting requirements for subpart DD. Based on an evaluation of these one-time costs associated with compliance, the EPA concluded that the subpart DD standards do not impose an excessive burden on grain elevators.

Based on the results of these analyses, the EPA concluded that the subpart DD standards are still effective, relevant and not excessively burdensome.

VIII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2001).

As described in section VII., the EPA prepared an analysis of the potential costs and benefits associated with this action. This analysis is contained in the memorandum, ''Estimated Impacts of Revisions to the Grain Elevator NSPS'' in the grain elevator docket at EPA–HQ–OAR–2010–0706. The total cost of the revisions to the NSPS is estimated to be $0.22 million per year over the next 5 years, totaling $1.11 million in the fifth year.

B. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the OMB under the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* The ICR document prepared by the EPA has been assigned the EPA ICR number 2497.01 for 40 CFR part 60, subpart DDa.

The operating, monitoring and recordkeeping requirements in this proposed rule would be based on the information collection requirements in CAA section 111, the EPA's NSPS General Provisions (40 CFR part 60, subpart A), as well as state operating permits. The recordkeeping and reporting requirements in the General Provisions are mandatory pursuant to CAA section 114 (42 U.S.C. 7414). All information other than emission data submitted to the EPA pursuant to the information collection requirements for which a claim of confidentiality is made is treated according to CAA section 114(c) and the EPA's implementing regulations at 40 CFR part 2, subpart B.

The annual average burden associated with the proposed revisions to NSPS requirements is estimated to involve 3,300 labor hours at $110,000 and operation and maintenance costs of $265,000. The annual average burden for the designated administrator is estimated to involve 810 labor hours at $54,000. Burden is defined at 5 CFR 1320.3(b).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9.

To comment on the agency's need for this information, the accuracy of the provided burden estimates and any suggested methods for minimizing respondent burden, the EPA has established a public docket for this rule, which includes this ICR, under Docket ID Number EPA–HQ–OAR–2010–0706. Submit any comments related to the ICR to the EPA and OMB. See the **ADDRESSES** section at the beginning of this notice for where to submit comments to the EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Office for EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after July 9, 2014, a comment to OMB is best assured of having its full effect if OMB receives it by August 8, 2014. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

C. Regulatory Flexibility Act

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedures Act or any other statute unless the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations and small government jurisdictions.

For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) A small business as defined by the SBA's regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The small entities directly regulated by this proposed rule are small grain elevators, cooperative elevators and small grain processors. We have determined that 2 percent of all affected small grain elevators, or two facilities, may experience an impact in total revenue of 2 percent.

Although the proposed rule will not have a significant economic impact on a substantial number of small entities, the EPA nonetheless has tried to reduce the impact of this rule on small entities by minimizing testing, monitoring, recordkeeping and reporting requirements to be only those essential to assuring compliance with the NSPS.

D. Unfunded Mandates Reform Act

This rule does not contain a federal mandate that may result in expenditures of $100 million or more for state, local and tribal governments, in the aggregate, or the private sector in any 1 year. While there are hundreds of grain elevators in use, the new testing, monitoring, recordkeeping and reporting requirements of subpart DDa apply only to new affected facilities that commence construction on or after July 9, 2014. The EPA projects that only 88 grain elevators will be subject to the new requirements, and based on the burden estimate, believes the costs to be minimal. Thus, this rule is not subject

to the requirements of sections 202 or 205 of UMRA.

This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. Grain elevators are not operated by government entities.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This proposed action will not impose substantial direct compliance costs on state or local governments and will not preempt state law. Thus, Executive Order 13132 does not apply to this action.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between the EPA and state and local governments, the EPA specifically solicits comment on this proposed action from state and local officials.

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

This action does not have tribal implications, as specified in Executive Order 13175, (65 FR 67249; November 9, 2000). The EPA is not aware of any grain elevators owned or operated by Indian tribal governments. Thus, Executive Order 13175 does not apply to this action.

The EPA specifically solicits comments from tribal officials on any potential impact on tribes from this proposed action.

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

The EPA interprets Executive Order 13045 (62 F.R. 19885, April 22, 1997) as applying to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it is based solely on an analysis of the degree of emission reduction that is achievable through the application of the best system of emissions reduction, as provided in CAA section 111.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution or Use

This action is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the NTTAA of 1995, Public Law No. 104–113 (15 U.S.C. 272 note) directs the EPA to use (voluntary consensus standards) VCS in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. VCS are technical standards (e.g., materials specifications, test methods, sampling procedures and business practices) that are developed or adopted by VCS bodies. The NTTAA directs the EPA to provide Congress, through OMB, explanations when the agency decides not to use available and applicable VCS.

This proposed rulemaking involves technical standards. We conducted searches for Performance Standards for Grain Elevators (40 CFR part 60, subparts DD and DDa) through the enhanced National Standards Service Network database managed by the ANSI. We also contacted VCS organizations and accessed and searched their databases. Searches were conducted for EPA Methods 5 and 9 of 40 CFR part 60, Appendix A. During the search, if the title or abstract (if provided) of the VCS described technical sampling and analytical procedures that are similar to the EPA's reference method, we considered it as a potential equivalent method. All potential standards were reviewed to determine the practicality of the VCS for this rule. This review requires significant method validation data which meets the requirements of EPA Method 301 for accepting alternative methods or scientific, engineering and policy equivalence to procedures in EPA reference methods. We may reconsider determinations of impracticality when additional information is available for particular VCS.

One VCS was identified as an acceptable alternative to EPA test methods for the purpose of this rule. The VCS ASTM D7520–09, ''Standard Test Method for Determining the Opacity of a Plume in the Outdoor Ambient Atmosphere'' is an acceptable alternative to Method 9 if operated under specific conditions, documented in the memorandum, ''Voluntary Consensus Standard Results for Performance Standards for Grain Elevators (40 CFR Part 60, Subparts DD and DDa)'', in the grain elevator docket in EPA–HQ–OAR–2010–0706. The search identified five VCS that were potentially applicable for this rule in lieu of EPA reference methods. After reviewing the available standards, EPA determined that five candidate VCS (ASME B133.9–1994 (2001), ISO 9096:1992 (2003), ANSI/ASME PTC–38–1980 (1985), ASTM D3685/D3685M–98 (2005), CAN/CSA Z223.1–M1977) identified for measuring emissions of pollutants or their surrogates subject to emission standards in the rule would not be practical due to lack of equivalency, documentation, validation data and other important technical and policy considerations. The EPA welcomes comments on this aspect of the proposed rulemaking and specifically invites the public to identify potentially-applicable VCS and to explain why such standards should be used in this regulation.

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

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes federal executive policy on EJ. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make EJ part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies and activities on minority populations and low-income populations in the United States.

The EPA has concluded that it is not feasible to determine whether there would be disproportionately high and adverse human health or environmental effects on minority, low income or indigenous populations from the proposal of this rule because it is unknown where new facilities will be located and the EPA does not have specific location information for sources that would be affected by this NSPS. The agency is seeking comment on the location of sources covered by the proposed standards and on the potential impacts of this rule on minority, low income and indigenous populations. The additional information that will be collected from the increase in testing requirements is expected to better inform the agency of the emissions associated with this source category and their significance, and will ensure better compliance with the proposed rule, and

thus will result in the proposed rule being more protective of human health.

List of Subjects in 40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: June 27, 2014.

Gina McCarthy,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, of the Code of Federal Regulations is proposed to be amended as follows:

PART 60—[AMENDED]

■ 1. The authority citation for part 60 continues to read as follows:

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

Subpart DD—[AMENDED]

■ 2. Section 60.300 is amended by revising paragraph (b) to read as follows:

§ 60.300 Applicability and designation of affected facility.

* * * * *

(b) Any facility under paragraph (a) of this section which commences construction, modification, or reconstruction after August 3, 1978, and on or before July 9, 2014, is subject to the requirements of this part.

■ 3. Section 60.301 is amended by revising paragraphs (j) and (k) to read as follows:

§ 60.301 Definitions.

* * * * *

(j) *Grain unloading station* means that portion of a grain elevator where the grain is transferred from a truck, railcar, barge, or ship to a receiving hopper or to the grain handling equipment that connects the unloading station to the rest of the grain elevator. A grain unloading station includes all of the equipment, support structures, and associated dust control equipment and aspiration systems required to operate or otherwise connected to the grain unloading station.

(k) *Grain loading station* means that portion of a grain elevator where the grain is transferred from the elevator to a truck, railcar, barge, or ship. A grain loading station includes all of the equipment, support structures, and associated dust control equipment and aspiration systems required to operate or otherwise connected to the grain loading station.

* * * * *

■ 4. Section 60.302 is amended by revising paragraph (d)(1) to read as follows:

§ 60.302 Standard for particulate matter.

* * * * *

(d) * * *

(1) The unloading leg shall be enclosed from the top (including the receiving hopper) to the center line of the bottom pulley and ventilation to a control device shall be maintained on both sides of the leg and the grain receiving hopper. Where aspiration of the casing provides dust control at the boot of the conveyor and a receiving hopper is not used, the unloading leg must be enclosed from the top to the center line of the bottom pulley and ventilation to a control device must be maintained on both sides of the leg.

* * * * *

■ 5. Add Subpart DDa, consisting of 60.300a through 60.307a, to part 60 to read as follows:

Subpart DDa—Standards of Performance for Grain Elevators for Which Construction, Reconstruction, or Modification Commenced After July 9, 2014

Sec.
60.300a Applicability and designation of affected facility.
60.301a Definitions.
60.302a Standard for particulate matter.
60.303a Test methods and procedures.
60.304a Monitoring requirements.
60.305a Recordkeeping requirements.
60.306a Reporting requirements.
60.307a Modifications.

Subpart DDa—Standards of Performance for Grain Elevators for Which Construction, Reconstruction, or Modification Commenced After July 9, 2014

§ 60.300a Applicability and designation of affected facility.

(a) The provisions of this subpart apply to each affected facility at any grain terminal elevator or any grain storage elevator, except as provided under § 60.304a(b). The affected facilities are each truck unloading station, truck loading station, barge and ship unloading station, barge and ship loading station, railcar loading station, railcar unloading station, grain dryer, and all grain handling operations.

(b) Any facility under paragraph (a) of this section that commences construction, modification, or reconstruction after July 9, 2014 is subject to the requirements of this part.

§ 60.301a Definitions.

As used in this subpart, all terms not defined herein have the meaning given them in the Clean Air Act and in subpart A of this part.

(a) *Capture system* means all of the equipment, such as sheds, hoods, ducts, fans, dampers, etc., used to collect particulate matter generated by an affected facility at a grain elevator.

(b) *Column dryer* means any equipment used to reduce the moisture content of grain in which the grain flows from the top to the bottom in one or more continuous packed columns between two perforated metal sheets.

(c) *En-masse drag conveyor* means a device that uses paddles or flights mounted on a chain to remove grain from a barge or ship.

(d) *Fugitive emission* means the particulate matter which is not collected by a capture system and is released directly into the atmosphere from an affected facility at a grain elevator.

(e) *Grain* means corn, wheat, sorghum, rice, rye, oats, barley, and soybeans.

(f) *Grain elevator* means any plant or installation at which grain is unloaded, handled, cleaned, dried, stored, or loaded.

(g) *Grain handling operations* include bucket elevators or legs (excluding legs used to unload barges or ships), scale hoppers and surge bins (garners), turn heads, scalpers, cleaners, trippers, and the headhouse and other such structures.

(h) *Grain loading station* means that portion of a grain elevator where the grain is transferred from the elevator to a truck, railcar, barge, or ship. A grain loading station includes all of the equipment, support structures, and associated dust control equipment and aspiration systems required to operate or otherwise connected to the grain loading station.

(i) *Grain storage elevator* means any grain elevator located at any wheat flour mill, wet corn mill, dry corn mill (human consumption), rice mill, or soybean oil extraction plant which has a permanent grain storage capacity of 35,200 m^3 (ca. 1 million bushels).

(j) *Grain terminal elevator* means any grain elevator which has a permanent storage capacity of more than 88,100 m^3 (ca. 2.5 million U.S. bushels), except those located at animal food manufacturers, pet food manufacturers, cereal manufacturers, breweries, and livestock feedlots.

(k) *Grain unloading station* means that portion of a grain elevator where the grain is transferred from a truck, railcar, barge, or ship to a receiving hopper or to the grain handling equipment that connects the unloading station to the rest of the grain elevator. A grain unloading station includes all of the equipment, support structures, and associated dust control equipment and

aspiration systems required to operate or otherwise connected to the grain unloading station.

(l) *Permanent storage capacity* means the grain storage capacity calculated as specified in either paragraph (l)(1) or (l)(2) of this section, as applicable.

(1) *Grain throughput and grain storage capacity are known.* If all of the grain storage buildings, bins and silos associated with the grain elevator existed prior to the date of construction, modification, or reconstruction of the affected facility, then use Equation 1 of this subpart to calculate permanent storage capacity.

$$C_{tp} = C_p + \left(\frac{C_p}{T_p} * C_t\right) \quad \text{(Eq. 1)}$$

Where:

C_{tp} = Total permanent storage capacity of all buildings, bins (including TSFs) and silos used to store grain (bushels).

C_p = Total storage capacity of all buildings, bins (excluding TSFs) and silos used to store grain (bushels).

T_p = Maximum annual throughput of grain for all buildings, bins (excluding TSFs) and silos used to store grain (bushels per year) over the previous 5 years.

C_t = Total storage capacity of all temporary storage facilities used to store grain (bushels).

(2) *Grain throughput and grain storage capacity are not known.* If any one of the grain storage buildings, bins or silos associated with the grain elevator did not exist prior to the date of construction, modification, or reconstruction of the affected facility, then use Equation 2 of this subpart to calculate permanent storage capacity.

$$C_{tp} = C_p + (0.34 * C_t) \quad \text{(Eq. 2)}$$

Where:

C_{tp} = Total permanent storage capacity of all buildings, bins (including TSFs) and silos used to store grain (bushels).

C_p = Total storage capacity of all buildings, bins (excluding TSFs) and silos used to store grain (bushels).

C_t = Total storage capacity of all temporary storage facilities used to store grain (bushels).

0.34 = Default ratio of permanent grain storage capacity to annual throughput.

(m) *Portable equipment* include (but are not limited to) portable augers, portable conveyors and front-end loaders that are not fixed at any one spot and can be moved around the site.

(n) *Process emission* means the particulate matter which is collected by a capture system.

(o) *Rack dryer* means any equipment used to reduce the moisture content of grain in which the grain flows from the top to the bottom in a cascading flow around rows of baffles (racks).

(p) *Railcar* means railroad hopper car or boxcar.

(q) *Temporary storage facility, or TSF,* means any grain storage bin that:

(1) Uses an asphalt, concrete, or other comparable base material;

(2) Uses rigid, self-supporting sidewalls;

(3) Provides adequate aeration; and

(4) Provides an acceptable covering (e.g., tarp).

(r) *Unloading leg* means a device which includes a bucket-type elevator which is used to remove grain from a barge or ship.

(s) *Wire screen column dryer* means any equipment used to reduce the moisture content of grain in which the grain flows from the top to the bottom in one or more continuous packed columns between two woven wire screens.

§ 60.302a Standard for particulate matter.

(a) On and after the date of completing the initial performance test required in § 60.8, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere any gases which exhibit:

(1) Greater than 0 percent opacity from any column dryer with column plate perforation exceeding 2.4 mm diameter (ca. 0.094 inch).

(2) Greater than 0 percent opacity from any rack dryer in which exhaust gases pass through a screen filter coarser than 50 mesh.

(3) Greater than 10 percent opacity from any wire screen column dryer.

(b) On and after the date of completing the initial performance test required in § 60.8, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected facility except a grain dryer, or grain handling, loading, or unloading affected facilities at a TSF using portable equipment, any process emission which:

(1) Contains particulate matter in excess of 0.023 g/dscm (ca. 0.01 gr/dscf).

(2) Exhibits greater than 0 percent opacity.

(c) On and after the date of completing the initial performance test required in § 60.8, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere any fugitive emission from:

(1) Any individual truck unloading station, railcar unloading station, or railcar loading station, which exhibits greater than 5 percent opacity.

(2) Any grain handling operation which exhibits greater than 0 percent opacity.

(3) Any truck loading station which exhibits greater than 10 percent opacity.

(4) Any barge or ship loading station which exhibits greater than 20 percent opacity.

(d) The owner or operator of any barge or ship unloading station must meet the requirements specified in paragraph (d)(1), (2), or (3) of this section.

(1) Barge or ship unloading operations using an unloading leg must operate as specified in paragraphs (d)(1)(i) and (ii) of this section.

(i) The unloading leg must be enclosed from the top (including the receiving hopper) to the center line of the bottom pulley and ventilation to a control device must be maintained on both sides of the leg and the grain receiving hopper. Where aspiration of the casing provides dust control at the boot of the conveyor and a receiving hopper is not used, the unloading leg must be enclosed from the top to the center line of the bottom pulley and ventilation to a control device must be maintained on both sides of the leg.

(ii) The total rate of air ventilated must be at least 32.1 actual cubic meters per cubic meter of grain handling capacity (ca. 40 ft3/bu).

(2) On and after the date of completing the initial performance test required in § 60.8, visible emissions from a barge or ship unloading station using an en-masse drag conveyor must not exceed 10 percent opacity.

(3) For barge or ship unloading stations not using an unloading leg or an en-masse drag conveyor, the owner or operator must use other methods of emission control demonstrated to the Administrator's satisfaction to reduce emissions of particulate matter to the same level or less.

(e) These standards apply at all times.

§ 60.303a Test methods and procedures.

(a) In conducting the performance tests required in § 60.8, the owner or operator must use as reference methods and procedures the test methods in appendix A of this part or other methods and procedures as specified in this section, except as provided in § 60.8(b). Acceptable alternative methods and procedures are given in paragraph (c) of this section.

(b) The owner or operator must determine compliance with the particulate matter and opacity standards in § 60.302a as follows:

(1) Method 5 at 40 CFR part 60, appendix A–3 must be used to determine the particulate matter concentration and the volumetric flow rate of the effluent gas. The sampling time and sample volume for each run must be at least 60 minutes and 1.70 dscm (60 dscf). The probe and filter holder must be operated without heaters.

(2) Method 2 at 40 CFR part 60, appendix A–1 must be used to

determine the ventilation volumetric flow rate.

(3) Method 9 at 40 CFR part 60, appendix A–4 and the procedures in § 60.11 must be used to determine opacity.

(c) The owner or operator may use the following as alternatives to the reference methods and procedures specified in this section:

(1) For Method 5 at 40 CFR part 60, appendix A–3, Method 17 at 40 CFR part 60, appendix A–6 may be used.

(d) Periodic performance tests must be conducted as specified in paragraphs (d)(1) and (2) of this section.

(1) Method 9 at 40 CFR part 60, appendix A–4 testing for opacity must be performed annually. The first performance test must be conducted no later than 12 months after the initial performance test required in § 60.8 of this part. Subsequent performance tests must be conducted at intervals no longer than 12 months following the previous periodic performance test.

(2) Method 5 at 40 CFR part 60, appendix A–3 testing for particulate matter concentration must be conducted no later than 60 months after the initial performance test required in § 60.8 of this part. Subsequent performance tests must be conducted at intervals no longer than 60 months following the previous periodic performance test. The periodic performance test results must be submitted according to § 60.306a. The performance test must be conducted while processing grains that will result in the highest PM emissions.

§ 60.304a Monitoring requirements.

(a) You must conduct weekly visual emissions checks for each affected facility and take corrective action for positive visual emissions checks.

(b) You must conduct inspections of fabric filters and baghouses at each affected facility no later than 6 months after the initial performance test required in § 60.8 of this part. Subsequent inspections must be conducted at intervals no longer than 6 months following the previous inspection.

§ 60.305a Recordkeeping requirements.

You must maintain the records specified in subpart A of this part and the records specified in paragraphs (a) through (f) of this section.

(a) Total storage capacity and annual throughput of grain (bushels) for each building, bin (excluding TSFs), and silo used to store grain.

(b) Total storage capacity for each TSF.

(c) The date, time and duration of each event that causes an affected source to fail to meet an applicable standard; the record must list the affected source or equipment, an estimate of the volume of each regulated pollutant emitted over the standard for which the source failed to meet a standard, and a description of the method used to estimate the emissions.

(d) Results of 6 month baghouse and fabric filter inspections, including any corrective action taken.

(e) Weekly visual emissions checks and any corrective action taken as a result of positive visual emissions checks.

(f) Results of 12 month opacity tests.

§ 60.306a Reporting Requirements.

(a) Within 60 days after the date of completing each performance test (defined in § 60.8) as required by this subpart and § 60.8, you must submit the results of the performance tests, and include the type of grain processed at the affected facility for which the performance test is being conducted, required by this subpart to the EPA by the following steps. You must use the EPA's Electronic Reporting Tool (ERT) (see *http://www.epa.gov/ttn/chief/ert/index.html*) to document performance test data. You must submit the file package generated by ERT through the EPA's Compliance and Emissions Data Reporting Interface (CEDRI), which can be accessed by logging in to the EPA's Central Data Exchange (CDX) (*https://cdx.epa.gov/*). Only data collected using test methods supported by the ERT as listed on the ERT Web site are subject to the requirement to submit the performance test data electronically. Owners or operators who claim that some of the information being submitted for performance tests is confidential business information (CBI) must submit a complete ERT file including information claimed to be CBI on a compact disk, flash drive, or other commonly used electronic storage media to the EPA. The electronic media must be clearly marked as CBI and mailed to U.S. EPA/OAPQS/CORE CBI Office, Attention: WebFIRE Administrator, MD C404–02, 4930 Old Page Rd., Durham, NC 27703. The same ERT file with the CBI omitted must be submitted to the EPA via CDX as described earlier in this paragraph. At the discretion of the delegated authority, you must also submit these reports, including the confidential business information, to the delegated authority in the format specified by the delegated authority. For any performance test conducted using test methods that are not listed on the ERT Web site, the owner or operator shall submit the results of the performance test to the Administrator at the appropriate address listed in § 60.4.

(b) Within 60 days after the date of completing each Method 9 opacity test required in this subpart and § 60.11, you must submit the results of the opacity tests to the Administrator at the appropriate address as shown in 40 CFR 60.4.

(c) The date, time and duration of each event that causes an affected facility to fail to meet a standard; the record must list the affected facility or equipment, an estimate of the volume of each regulated pollutant emitted over the standard for which the source failed to meet a standard, and a description of the method used to estimate the emissions.

§ 60.307a Modifications.

(a) The factor 6.5 must be used in place of ''annual asset guidelines repair allowance percentage,'' to determine whether a capital expenditure as defined by § 60.2 has been made to an existing facility.

(b) The following physical changes or changes in the method of operation are not by themselves considered to be a modification of any existing facility:

(1) The addition of gravity loadout spouts to existing grain storage or grain transfer bins.

(2) The installation of automatic grain weighing scales.

(3) Replacement of motor and drive units driving existing grain handling equipment.

(4) The installation of permanent storage capacity with no increase in hourly grain handling capacity.

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Part VI

Environmental Protection Agency

40 CFR Parts 9 and 721

Significant New Use Rules on Certain Chemical Substances; Direct Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 721

[EPA–HQ–OPPT–2014–0166; FRL–9910–01]

RIN 2070–AB27

Significant New Use Rules on Certain Chemical Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is promulgating significant new use rules (SNURs) under the Toxic Substances Control Act (TSCA) for 43 chemical substances which were the subject of premanufacture notices (PMNs). Six of these chemical substances are subject to TSCA section 5(e) consent orders issued by EPA. This action requires persons who intend to manufacture (including import) or process any of these 43 chemical substances for an activity that is designated as a significant new use by this rule to notify EPA at least 90 days before commencing that activity. The required notification will provide EPA with the opportunity to evaluate the intended use and, if necessary, to prohibit or limit that activity before it occurs.

DATES: This rule is effective on September 8, 2014. For purposes of judicial review, this rule shall be promulgated at 1 p.m. (e.s.t.) on July 23, 2014.

Written adverse or critical comments, or notice of intent to submit adverse or critical comments, on one or more of these SNURs must be received on or before August 8, 2014 (see Unit VI. of the **SUPPLEMENTARY INFORMATION**). If EPA receives written adverse or critical comments, or notice of intent to submit adverse or critical comments, on one or more of these SNURs before August 8, 2014, EPA will withdraw the relevant sections of this direct final rule before its effective date.

For additional information on related reporting requirement dates, see Units I.A., VI., and VII. of the **SUPPLEMENTARY INFORMATION**.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2014–0166, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Kenneth Moss, Chemical Control Division (7405 M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–9232; email address: *moss.kenneth@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you manufacture, process, or use the chemical substances contained in this rule. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Manufacturers or processors of one or more subject chemical substances (NAICS codes 325 and 324110), e.g., chemical manufacturing and petroleum refineries.

This action may also affect certain entities through pre-existing import certification and export notification rules under TSCA. Chemical importers are subject to the TSCA section 13 (15 U.S.C. 2612) import certification requirements promulgated at 19 CFR 12.118 through 12.127 and 19 CFR 127.28. Chemical importers must certify that the shipment of the chemical substance complies with all applicable rules and orders under TSCA. Importers of chemicals subject to these SNURs must certify their compliance with the SNUR requirements. The EPA policy in support of import certification appears at 40 CFR part 707, subpart B. In addition, any persons who export or intend to export a chemical substance that is the subject of a proposed or final SNUR, are subject to the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611(b)) (see § 721.20), and must comply with the export notification requirements in 40 CFR part 707, subpart D.

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

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

A. What action is the Agency taking?

EPA is promulgating these SNURs using direct final procedures. These SNURs will require persons to notify

EPA at least 90 days before commencing the manufacture or processing of a chemical substance for any activity designated by these SNURs as a significant new use. Receipt of such notices allows EPA to assess risks that may be presented by the intended uses and, if appropriate, to regulate the proposed use before it occurs. Additional rationale and background to these rules are more fully set out in the preamble to EPA's first direct final SNUR published in the **Federal Register** issue of April 24, 1990 (55 FR 17376). Consult that preamble for further information on the objectives, rationale, and procedures for SNURs and on the basis for significant new use designations, including provisions for developing test data.

B. What is the Agency's authority for taking this action?

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a ''significant new use.'' EPA must make this determination by rule after considering all relevant factors, including the four bulleted TSCA section 5(a)(2) factors listed in Unit III. Once EPA determines that a use of a chemical substance is a significant new use, TSCA section 5(a)(1)(B) requires persons to submit a significant new use notice (SNUN) to EPA at least 90 days before they manufacture or process the chemical substance for that use. Persons who must report are described in § 721.5.

C. Applicability of General Provisions

General provisions for SNURs appear in 40 CFR part 721, subpart A. These provisions describe persons subject to the rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of the rule to uses occurring before the effective date of the rule. Provisions relating to user fees appear at 40 CFR part 700. According to § 721.1(c), persons subject to these SNURs must comply with the same SNUN requirements and EPA regulatory procedures as submitters of PMNs under TSCA section 5(a)(1)(A). In particular, these requirements include the information submission requirements of TSCA section 5(b) and 5(d)(1), the exemptions authorized by TSCA section 5(h)(1), (h)(2), (h)(3), and (h)(5), and the regulations at 40 CFR part 720. Once EPA receives a SNUN, EPA may take regulatory action under TSCA section 5(e), 5(f), 6, or 7 to control the activities for which it has received the SNUN. If EPA does not take action, EPA is required under TSCA section 5(g) to explain in the **Federal Register** its reasons for not taking action.

III. Significant New Use Determination

Section 5(a)(2) of TSCA states that EPA's determination that a use of a chemical substance is a significant new use must be made after consideration of all relevant factors, including:

- The projected volume of manufacturing and processing of a chemical substance.
- The extent to which a use changes the type or form of exposure of human beings or the environment to a chemical substance.
- The extent to which a use increases the magnitude and duration of exposure of human beings or the environment to a chemical substance.
- The reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal of a chemical substance.

In addition to these factors enumerated in TSCA section 5(a)(2), the statute authorized EPA to consider any other relevant factors.

To determine what would constitute a significant new use for the 43 chemical substances that are the subject of these SNURs, EPA considered relevant information about the toxicity of the chemical substances, likely human exposures and environmental releases associated with possible uses, and the four bulleted TSCA section 5(a)(2) factors listed in this unit.

IV. Substances Subject to This Rule

EPA is establishing significant new use and recordkeeping requirements for 43 chemical substances in 40 CFR part 721, subpart E. In this unit, EPA provides the following information for each chemical substance:

- PMN number.
- Chemical name (generic name, if the specific name is claimed as CBI).
- Chemical Abstracts Service (CAS) Registry number (if assigned for non-confidential chemical identities).
- Basis for the TSCA section 5(e) consent order or the basis for the TSCA non-section 5(e) SNURs (i.e., SNURs without TSCA section 5(e) consent orders).
- Tests recommended by EPA to provide sufficient information to evaluate the chemical substance (see Unit VIII. for more information).
- CFR citation assigned in the regulatory text section of this rule.

The regulatory text section of this rule specifies the activities designated as significant new uses. Certain new uses, including production volume limits (i.e., limits on manufacture and importation volume) and other uses designated in this rule, may be claimed as CBI. Unit IX. discusses a procedure companies may use to ascertain whether a proposed use constitutes a significant new use.

This rule includes 6 PMN substances (P-11-526, P-12-241, P-12-242, P-12-557, P-12-558, and P-13-237) that are subject to ''risk-based'' consent orders under TSCA section 5(e)(1)(A)(ii)(I) where EPA determined that activities associated with the PMN substances may present unreasonable risk to human health or the environment. Those consent orders require protective measures to limit exposures or otherwise mitigate the potential unreasonable risk. The so-called ''TSCA section 5(e) SNURs'' on these PMN substances are promulgated pursuant to § 721.160, and are based on and consistent with the provisions in the underlying consent orders. The TSCA section 5(e) SNURs designate as a ''significant new use'' the absence of the protective measures required in the corresponding consent orders.

This rule also includes SNURs on 36 PMN substances that are not subject to consent orders under TSCA section 5(e). In these cases, for a variety of reasons, EPA did not find that the use scenario described in the PMN triggered the determinations set forth under TSCA section 5(e). However, EPA does believe that certain changes from the use scenario described in the PMN could result in increased exposures, thereby constituting a ''significant new use.'' These so-called ''TSCA non-section 5(e) SNURs'' are promulgated pursuant to § 721.170. EPA has determined that every activity designated as a ''significant new use'' in all TSCA non-section 5(e) SNURs issued under § 721.170 satisfies the two requirements stipulated in § 721.170(c)(2), i.e., these significant new use activities, ''(i) are different from those described in the premanufacture notice for the substance, including any amendments, deletions, and additions of activities to the premanufacture notice, and (ii) may be accompanied by changes in exposure or release levels that are significant in relation to the health or environmental concerns identified'' for the PMN substance.

PMN Numbers P-08-512 and P-08-513

Chemical names: (P-08-512) Alcohol propoxylate (generic) and (P-05-513) Alcohol propoxylate sulfate salt (generic).

CAS numbers: Claimed confidential.

Basis for action: The PMNs state that the generic (non-confidential) use of the substances are as a chemical intermediate (P-08-512), and for enhanced oil recovery applications (P-

08-513). Based on structural activity relationship (SAR) analysis of the test data on analogous neutral organics (P-08-512) and anionic surfactants (P-08-513), EPA predicts toxicity to aquatic organisms at concentrations that exceed 1 part per billion (ppb) of P-08-512 and 15 ppb of P-08-513 in surface waters. However, based on test data submitted on analogous chemical substances, EPA expects the actual risk to aquatic organisms in surface waters to be significantly mitigated following biological treatment at publicly owned treatment works or at on-site waste water treatment plants, injection to Class I or II wells, or incineration. As described in the PMN notices, releases are either injected into Class I or II wells, incinerated, or released to surface waters after biological treatment. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that non-industrial use, or any release during manufacturing, processing, or use other than injection to Class I or II wells, incineration, or release to water following biological treatment and clarification may cause significant adverse environmental effects. Based on this information, the PMN substances meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a Modified Shake-Flask Biodegradation Test (Cripe, C.R., Walker, W.W., Pritchard, P.H., Borquin, A.W. (1987). Shake-Flask Test for Estimation of Biodegradability of Toxic Organic Substances in the Aquatic Environment. Ecotoxicology and Environmental Safety 14:239–251) utilizing an algal toxicity test (Office of Chemical Safety and Pollution Prevention (OCSPP) Test Guideline 850.4500); an aquatic invertebrate toxicity test, freshwater daphnids (OPPTS Test Guideline 850.1010); and a fish acute toxicity test, freshwater and marine (OPPTS Test Guideline 850.1075) with supplemental analytics to identify degradation products, would help to characterize the environmental effects of the PMN substances. Testing is recommended to be conducted on P-08-513. EPA suggests conducting the modified shake-flask biodegradation test first as the results may impact the ecotoxicity testing recommendations.

CFR citation: 40 CFR 721.10725 (P-08-512) and 40 CFR 721.10726 (P-08-513).

PMN Number P-11-526

Chemical name: Amphoteric fluorinated surfactant (generic).

CAS number: Claimed confidential.

Effective date of TSCA section 5(e) consent order: August 20, 2013.

Basis for TSCA section 5(e) consent order: The PMN states that the generic (non-confidential) use of the substance will be as a surface active agent. Based on test data on the PMN substance and data currently available to the Agency on analogous perfluorooctanoic acid (PFOA), EPA identified concerns for potential incineration or other decomposition products or degradants of the PMN substance. EPA also has concerns that exposures to the PMN substance under certain conditions of use—particularly non-industrial, commercial, or consumer uses—could cause lung effects, based on data on analogous perfluorinated compounds. PFOA is expected to persist for years in the environment. Biodegradation and photolysis tests of analogous substances indicate little or no biodegradation or photolysis of perfluoroalkyl compounds. Bioaccumulation concerns are based on the measured presence of certain perfluoroalkyl compounds, including PFOA, in wildlife and in human blood samples. Toxicity studies on PFOA indicate developmental, reproductive and systemic toxicity in various species, as well as cancer. These factors taken together raise concerns for potential adverse chronic effects in humans and wildlife. The consent order was issued under TSCA sections 5(e)(1)(A)(i), 5(e)(1)(A)(ii)(I), and 5(e)(1)(A)(ii)(II) based on a finding that these substances may present an unreasonable risk of injury to human health and the environment, these substances may be produced in substantial quantities and may reasonably be anticipated to enter the environment in substantial quantities, and there may be significant (or substantial) human exposure to the substances and their potential degradation products. To protect against these risks, the consent order requires:

1. Risk notification. If as a result of the test data required, the company becomes aware that the PMN substance may present a risk of injury to human health or the environment, the company must incorporate this new information, and any information on methods for protecting against such risk into a Material Safety Data Sheet (MSDS), within 90 days.

2. Manufacture of the PMN substance: (a) According to the chemical composition section of the consent order, including analyzing and reporting certain starting material impurities to EPA; and (b) within the maximum established limits of certain fluorinated impurities of the PMN substance as stated in the consent order.

3. Use of the substance only as described in the consent order.

4. Submission of certain testing prior to exceeding the confidential production volume limit of the PMN substance specified in the consent order.

The SNUR designates as a ''significant new use'' the absence of these protective measures.

Recommended testing: EPA has determined that the test data from certain human health, environmental fate, and ecotoxicity testing identified in the consent order would help characterize possible effects of the substances and their degradation products. The company has agreed not to exceed the first production limit without performing a Zahn-Wellens biodegradation test (OPPTS Test Guideline 835.5200) with analysis for degradation products as specified, and a hydrolysis test as a function of pH and temperature (OPPTS Test Guideline 835.2130). The PMN submitter has also agreed not to exceed the second production limit without performing a 90-day repeated dose oral toxicity study in rats with 1-generation reproduction parallel study (must include modifications) (OECD Test Guideline 421 modified) and a soil biodegradation study (OECD Test Guideline 307). The company has agreed not to exceed the third production limit without performing an ultraviolet (UV) visible light absorption study (OPPTS Test Guideline 830.7050), a direct photolysis test, if wavelengths greater than 290 nautical miles (nm) are absorbed in the previous test (OPPTS Test Guideline 830.7050) (OPPTS Test Guideline 835.2210), an indirect photolysis screening test (OPPTS Test Guideline 835.5270), an anaerobic biodegradability of organic compounds in digested sludge test (OECD Test Guideline 311), and an avian reproduction test (OPPTS Test Guideline 850.2300) in bobwhite quail. Further testing details are available in the consent order located in the docket under docket EPA–HQ–OPPT–2014–0166. The consent order does not require submission of the additional pended testing detailed in the consent order at any specified time or production volume. However, the consent order's restrictions on manufacture, processing, distribution in commerce, use, and disposal of the PMNs will remain in effect until the consent order is modified or revoked by EPA based on submission of that or other relevant information.

CFR citation: 40 CFR 721.10727.

PMN Numbers P-12-241 and P-12-242

Chemical names: (P-12-241) 2-Propenoic acid, 2-methyl-, 2-hydroxyethyl esters, telomers with C18-26-alkyl acrylate, 1-dodecanethiol, N-(hydroxymethyl)-2-methyl-2-propenamide, polyfluorooctyl methacrylate, 2,2′-[1,2-diazenediylbis(1-methylethylidene)]bis[4,5-dihydro-1H-imidazole]hydrochloride (1:2)-initiated (generic) and (P-12-242) 2-Propenoic acid, 2-methyl-, C16-18 esters, telomers with 3-chloro-2-hydroxypropyl methacrylate, 1-dodecanethiol, N-(hydroxymethyl)-2-methyl-2-propenamide, polyfluorooctyl methacrylate, and rel- (1R,2R,4R)-1,7,7-trimethylbicyclo[2.2.1]hept-2-yl methacrylate, 2,2′-[1,2-diazenediylbis(1-methylethylidene)]bis[4,5-dihydro-1H-imidazole]hydrochloride (1:2)-initiated (generic).

CAS numbers: Claimed confidential.

Effective date of TSCA section 5(e) consent order: June 5, 2013.

Basis for TSCA section 5(e) consent order: The PMNs state that the generic (non-confidential) use of these substances is as a water and oil repellant. Based on analogy to other perfluorinated chemicals, including PFOA, EPA has concerns for potential fluorinated incineration or other decomposition products of the PMN substances. EPA has concerns that these perfluorinated products may be released to the environment from incomplete incineration of the PMN substances at low temperatures. EPA has preliminary evidence that suggests that, under some conditions, the PMN substances could degrade in the environment. Based on data on analogous chemicals, including PFOA, EPA has concerns that these degradation products will persist in the environment, could bioaccumulate or biomagnify, and could be toxic to people, wild mammals, and birds. PFOA is expected to persist for years in the environment. Biodegradation and photolysis tests of analogous substances indicate little or no biodegradation or photolysis of perfluoroalkyl compounds. Bioaccumulation concerns are based on the measured presence of certain perfluoroalkyl compounds, including PFOA, in wildlife and in human blood samples. Toxicity studies on PFOA indicate developmental, reproductive and systemic toxicity in various species, as well as possible cancer concerns. These factors, taken together, raise concerns for potential adverse chronic effects in humans and wildlife. The consent order was issued under TSCA section 5(e)(1)(A) based on a finding that these substances may present an unreasonable risk of injury to human health and the environment, these substances may be produced in substantial quantities and may reasonably be anticipated to enter the environment in substantial quantities, and there may be significant (or substantial) human exposure to the substances and their potential degradation products. To protect against these risks, the consent order requires:

1. Risk notification. If as a result of the test data required, the company becomes aware that the PMN substances may present a risk of injury to human health or the environment, the company must incorporate this new information, and any information on methods for protecting against such risk into a Material Safety Data Sheet (MSDS), within 90 days.

2. Manufacture of the PMN substances: (a) According to the chemical composition section of the consent order, including analyzing and reporting certain starting raw material impurities to EPA; and (b) within the maximum established limits of certain fluorinated impurities of the PMN substances as stated in the consent order.

3. Use of the substances only as described in the consent order.

4. Submission of certain environmental fate and toxicity testing prior to exceeding the confidential production volume limit of the aggregate amount of the PMN substances described in P-12-241 and P-12-242 specified in the consent order.

5. The individual annual manufacture volume for P-12-241 and P-12-242 must not reach the confidential annual production volume specified in the consent order.

The SNUR designates as a ''significant new use'' the absence of these protective measures.

Recommended testing: EPA has determined that the test data from certain human health, environmental fate, and ecotoxicity testing identified in the consent order would help characterize possible effects of the substances and their degradation products. The company has agreed not to exceed the first production limit without performing a hydrolysis as a function of pH and temperature test (OPPTS Test Guideline 835.2130), a ready biodegradation test (OPPTS Test Guideline 835.3110), a UV/Visible light spectrum test (OPPTS Test Guideline 830.7050), a direct photolysis test (OPPTS Test Guideline 835.2210) and an indirect photolysis screening test (OPPTS Test Guideline 835.5270). The company has also agreed not to exceed the second production limit without performing a modified semi-continuous activated sludge (SCAS) with analysis of degradation products test (OPPTS Test Guideline 835.5045/), an aerobic/anaerobic transformation in soil test (OECD Test Guideline 307), an anaerobic biodegradability of organic compounds in digested sludge test (OECD Test Guideline 311), a phototransformation of chemicals in soil test, 2002, surfaces—2 soils (draft OECD, a simulation test—aerobic sewage treatment (activated sludge units) (OECD Test Guideline 303A), an aerobic and anaerobic transformation in aquatic sediment systems test (OECD Test Guideline 308), and an acute inhalation toxicity test (OPPTS Test Guideline 870.1300). Further testing details are available in the consent order located in the docket under docket EPA–HQ–OPPT–2014–0166. The consent order does not require submission of the pended testing detailed in the consent order at any specified time or production volume. However, the consent order's restrictions on manufacture, processing, distribution in commerce, use, and disposal of the PMNs will remain in effect until the consent order is modified or revoked by EPA based on submission of that or other relevant information.

CFR citation: 40 CFR 721.10728 (P-12-241) and 40 CFR 721.10729 (P-12-242).

PMN Numbers P-12-557 and P-12-558

Chemical names: (P-12-557) Tires, wastes, pyrolyzed, C6-39 oil fraction and (P-12-58) Tires, wastes, pyrolyzed, C7-56 oil fraction.

CAS numbers: (P-12-557) 1410795–89–9 and (P-12-558) 1410795-87-7.

Effective date of TSCA section 5(e) consent order: July 22, 2013.

Basis for TSCA section 5(e) consent order: The PMNs state that the substances will be used as naphtha used for high octane gas and cleaning fluids, kerosene used for jet fuels, distillate fuel oil used for off-highway diesel engines and power generation, and vacuum gas oil used for gasoline. Based on structure-activity relationship analysis of test data on analogous neutral organic chemicals, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 360 ppb (for P-12-557) and 170 ppb (for P-12-558) in surface waters. The consent order was issued under TSCA sections 5(e)(1)(A)(i) and 5(e)(1)(A)(ii)(I) based on a finding that uncontrolled manufacture, processing, distribution in commerce, use, and disposal of these substances may present an unreasonable risk of injury to the environment. To protect against these risks, the consent order requires:

1. Establishment and use of a hazard communication program, including human health, environmental hazard precautionary statements on each label and the MSDS.

2. Use of the substances only as described in the consent order.

3. No use of the substances resulting in surface water concentrations exceeding the concentrations of concern identified in the releases to water section of the consent order.

Recommended testing: EPA has determined that the results of a fish acute toxicity test, freshwater and marine (OPPTS Test Guideline 850.1075); an aquatic invertebrate acute toxicity text, freshwater daphnids (OPPTS Test Guideline 850.1010); and an algal toxicity test (OCSPP Test Guideline 850.4500) would help characterize the environmental effects of the PMN substances. EPA also recommends that the guidance document on aquatic toxicity testing of difficult substances and mixtures (OECD Test Guideline 23) be followed. The order does not require the submission of these tests at any specified time or production volume. However, the order's restrictions on manufacture, processing, distribution in commerce, use, and disposal of the PMN substances will remain in effect until the order is modified or revoked by EPA based on submission of that or other relevant information.

CFR citation: 40 CFR 721.10730 (P-12-557) and 40 CFR 721.10731 (P-12-558).

PMN Number P-13-60

Chemical name: Neodymium, butadiene iso-Bu neodecanoate complexes.

CAS number: 1386395–00–1.

Basis for action: The PMN states that the use of the substance is as a precursor to polymerization catalyst. Based on SAR analysis of test data on analogous neodymium complexes, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 8 ppb of the PMN substance in surface waters. As described in the PMN, releases of the substance are not expected to result in surface water concentrations exceeding 8 ppb. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in releases to surface waters exceeding 8 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish early-life stage toxicity test (OPPT Test Guideline 850.1400); a daphnid chronic toxicity test (OPPT Test Guideline 850.1300); and an algal toxicity test (OCSPP Test Guideline 850.4500) would help characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10732.

PMN Number P-13-237

Chemical name: Tires, wastes, pyrolyzed, C5-15 condensate oil fraction.

CAS number: Claimed confidential.

Chemical substance definition: A complex combination of hydrocarbons obtained from the substance produced by the pyrolysis of rubber-based tires after removal of the carbon black fraction. It consists predominantly of hydrocarbons having carbon numbers in the range of C5 through C15. It boils in the range of approximately 36 °C to 265 °C (97 °F to 509 °F).

Effective date of TSCA section 5(e) consent order: August 8, 2013.

Basis for TSCA section 5(e) consent order: The PMN states that the use of the substance will be as a raw feed stock for refineries. Based on data for benzene which comprises 6% of the PMN substance, EPA identified concerns for oncogenicity, immunotoxicity, and liver and blood toxicity. Based on data for limonene, which constitutes 13% of the PMN substance, EPA identified concerns for dermal sensitization. Based on SAR analysis for neutral organic chemicals the PMN substance may be toxic to aquatic organisms at concentrations as low as 4 ppb. The order was issued under TSCA sections 5(e)(1)(A)(i) and 5(e)(1)(A)(ii)(I) based on a finding that this substance may present an unreasonable risk of injury to human health or the environment. To protect against this risk, the consent order requires:

1. An 8-hour time-weighted-average (TWA) inhalation exposure limit of 1 part per million (ppm) to the PMN substance.

2. Use of the PMN substance only as a raw feed stock for refineries.

3. No use of the substance resulting in surface water concentrations that exceed 4 ppb.

The SNUR designates as a ''significant new use'' the absence of these protective measures.

Recommended testing: EPA has determined that the results of inhalation monitoring data, collected according to the EPA draft Inhalation Monitoring Data Collection Guidelines (located in the docket to this rule); a fish acute toxicity test, freshwater and marine (OPPTS Test Guideline 850.1075); an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS Test Guideline 850.l010); and an algal toxicity test (OCSPP Test Guideline 850.4500) would help characterize the human health and environmental effects of the PMN substance. The order does not require submission of these tests at any specified time or production volume. However, the order's restrictions on manufacture, processing, distribution in commerce, use, and disposal of the PMN substance will remain in effect until the order is modified or revoked by EPA based on submission of that or other relevant information.

CFR citation: 40 CFR 721.10733.

PMN Number P-13-248

Chemical name: Lithium salt of substituted imide (generic).

CAS number: Claimed confidential.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as an electrolyte. Based on test data on the PMN substance, and SAR analysis of test data on analogous lithium salts, the EPA identified concerns for irritation, possible corrosion, acute toxicity, blood and thyroid effects, neurotoxicity, and immunotoxicity from exposure to the PMN substance via inhalation and dermal exposures. As described in the PMN, occupational exposures are expected to be minimal due to the use of a National Institute of Occupational Safety and Health (NIOSH)-certified particulate respirator with an assigned protection factor (APF) of at least 10. Further, general population exposures are not expected as the PMN is not used in consumer products. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the PMN substance without a NIOSH-certified particulate respirator with an APF of at least 10, where there is a potential for inhalation exposures; or any use in a consumer product may cause serious health effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(3)(i) and (b)(3)(ii).

Recommended testing: EPA has determined that the results of inhalation monitoring data, collected according to the EPA draft Inhalation Monitoring Data Collection Guidelines (located in the docket to this rule) would help characterize the human health effects of the PMN substance.

CFR citation: 40 CFR 721.10734.

PMN Number P-13-270

Chemical name: Aromatic dibenzoate (generic).

CAS number: Claimed confidential.

Basis for action: The PMN states that the generic (non-confidential) use of the substance is as a catalyst component. Based on SAR analysis of test data on analogous esters, EPA predicts chronic toxicity to aquatic organisms may occur at concentrations that exceed 1 ppb of the PMN substance in surface waters. Based on uses described in the PMN, releases of the substance are not expected to result in surface water concentrations that exceed 1 ppb. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that should there be any new use of the substance resulting in releases to surface waters exceeding 1 ppb significant adverse environmental effects could occur. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a sediment-water chironomid life-cycle toxicity test using spiked water or spiked sediment (OECD Test Guideline 233); a hydrolysis test (OECD Test Guideline 111); and a Zahn-Wellens inherent biodegradation test (OECD Test Guideline 302B) would help characterize the potential for chronic aquatic toxicity of the PMN substance. EPA also recommends that the guidance document on aquatic toxicity testing of difficult substances and mixtures (OECD Test Guideline 23) be followed to facilitate solubility in the test media, because of the PMN substance's low water solubility.

CFR citation: 40 CFR 721.10735.

PMN Number P-13-309

Chemical name: Alcohols, C9–11-branched, ethoxylated propoxylated.

CAS number: 1400790–00–2.

Basis for action: The PMN states that the use of the substance will be as a component of a pigment dispersant blend for inks and coatings. Based on SAR analysis of test data on analogous nonionic surfactants, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 170 ppb of the PMN substance in surface waters for greater than 20 days per year. This 20-day criterion is derived from partial life cycle tests (daphnid chronic and fish early life stage tests) that typically range from 21 to 28 days in duration. EPA predicts toxicity to aquatic organisms may occur if releases of the substance to surface water, from uses other than as described in the PMN, exceed releases from the use described in the PMN. For the use described in the PMN, environmental releases did not exceed 170 ppb for more than 20 days per year. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance other than as a component of a pigment dispersant blend for inks and coatings may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish early-life stage toxicity test (OPPT Test Guideline 850.1400); a daphnid chronic toxicity test (OPPTS Test Guideline 850.1300); and an algal toxicity test (OCSPP Test Guideline 850.4500) would help characterize the environmental effects of the PMN substance. EPA also recommends that the guidance document on aquatic toxicity testing of difficult substances and mixtures (OECD Test Guideline 23) be followed to facilitate solubility in the test media, because of the PMN substance's low water solubility.

CFR citation: 40 CFR 721.10736.

PMN Number P-13-378

Chemical name: Carboxylic anhydride, polymer with -hydro-hydroxypoly(oxy-1,2-diethanediyl), compd. with 2,3,4,6,7,8,9,10-octahydropyrimido-[1,2-a]azepine (generic).

CAS number: Claimed confidential.

Basis for action: The PMN states that the use of the substance is as a polyurethane catalyst. Based on SAR analysis of test data on analogous aliphatic amines, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 24 ppb of the PMN substance in surface waters. As described in the PMN, releases of the substance are not expected to result in surface water concentrations that exceed 24 ppb. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in releases to surface waters exceeding 24 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish acute toxicity test, freshwater and marine (OPPTS Test Guideline 850.1075); a fish acute toxicity test mitigated by humic acid (OPPTS Test Guideline 850.1085); an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS Test Guideline 850.1010); and an algal toxicity test (OCSPP Test Guideline 850.4500) would help characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10737.

PMN Number P-13-453

Chemical name: Formaldehyde, polymer with 2,3-dimethylphenol, 2,4-dimethylphenol, 2,5-dimethylphenol, 3,5-dimethylphenol, 3-ethylphenol, 4-ethylphenol, 3-methylphenol, 4-methylphenol and phenol.

CAS number: 1415313–86–8.

Basis for action: The PMN states that the substance will be used as a coating for electronic components. Based on SAR analysis of test data on analogous phenols, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 5 ppb of the PMN substance in surface waters. As described in the PMN, releases of the substance are not expected to result in surface water concentrations that exceed 5 ppb. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in releases to surface waters exceeding 5 ppb may result in significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish acute toxicity test, freshwater and marine (OPPTS Test Guideline 850.1075); an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS Test Guideline 850.1010); and an algal toxicity test (OCSPP Test Guideline 850.4500) would help characterize the environmental effects of the PMN substance. EPA also recommends that the guidance document on aquatic toxicity testing of difficult substances and mixtures (OECD Test Guideline 23) be followed to facilitate solubility in the test media, because of the PMN substance's low water solubility.

CFR citation: 40 CFR 721.10738.

PMN Number P-13-465

Chemical name: Caprolactone homopolymer of substituted benzotriazole (generic).

CAS number: Claimed confidential.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a UV stabilizer. Based on SAR analysis of test data on analogous benzotriazoles, esters, phenols, and amides, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 1 ppb of the PMN substance in surface waters. As described in the PMN, releases of the substance are not expected to result in surface water concentrations that exceed 1 ppb. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in surface water concentrations exceeding 1 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a water solubility test (OECD Test Guideline 105); a fish early life stage toxicity test (OPPTS Test Guideline 850.1400); a daphnid chronic toxicity test (OPPTS Test Guideline 850.1300); and an algal toxicity test (OCSPP Test Guideline 850.4500) would help characterize the environmental effects of the PMN substance. EPA also recommends that the guidance document on aquatic toxicity testing of difficult substances and mixtures (OECD Test Guideline 23) be followed to facilitate solubility in the test media, due to the low water solubility of the PMN material. EPA suggests conducting the water solubility test first as the results may impact the ecotoxicity testing recommendations.

CFR citation: 40 CFR 721.10739.

PMN Number P-13-473

Chemical name: Tin(2+) salt of alkylcarboxylic acid (generic).

CAS number: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a catalyst. Based on test data on the PMN, as well as SAR analysis of test data on analogous tin compounds, the EPA identified potential human health concerns regarding eye corrosion, dermal sensitization, and asthma, from the PMN substance via dermal exposure. Further, based on SAR analysis of test data on analogous tin salts and anionic surfactants, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 27 ppb of the PMN substance in surface waters for greater than 20 days per year. This 20-day criterion is derived from partial life cycle tests (daphnid chronic and fish early life stage tests) that typically range from 21 to 28 days in duration. EPA predicts toxicity to aquatic organisms may occur if releases of the substance to surface water, exceed releases from the use and production volume described in the PMN. For the use and production volume described in the PMN, environmental releases did not exceed 27 ppb for more than 20 days per year. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that use of the substance without the use of impervious gloves and goggles, when there is a potential dermal exposure; use of the substance other than as described in the PMN; or any increase in the annual confidential production volume could result in exposures which may cause serious human health and significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(3)(i), (b)(3)(ii), and (b)(4)(ii).

Recommended testing: EPA has determined that a fish early-life stage toxicity test (OPPTS Test Guideline 850.1400); a daphnid chronic toxicity test (OPPTS Test Guideline 850.1300); and an algal toxicity test (OCSPP Test Guideline 850.4500) would help characterize the environmental effects of the PMN substance. EPA also recommends filtration should be avoided and that the guidance document on aquatic toxicity testing of difficult substances and mixtures (OECD Test Guideline 23) followed to facilitate solubility in the test media, because of the PMN substance's low water solubility. Repeated dose health tests are not recommended because of the PMN substance's corrosive nature.

CFR citation: 40 CFR 721.10740.

PMN Number P-13-563

Chemical name: Propylene glycol, alpha isocyanate, omega silane (generic).

CAS number: Claimed confidential.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a chemical intermediate for polyurethane polymers. Based on SAR analysis of analogous diisocyanates, EPA identified concerns for oncogenicity, mutagenicity, respiratory and dermal sensitization and lung and mucous membrane irritation from exposure to the PMN substance via inhalation and dermal exposures. For the use described in the PMN, EPA does not expect significant occupational or consumer exposure. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance without a NIOSH-certified particulate respirator with an APF of at least 10, where there is a potential for inhalation exposures; any use other than as an intermediate; or any use of the substance in consumer products, may cause serious health effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(1)(i)(C) and (b)(3)(ii).

Recommended testing: EPA has determined that the results of a skin sensitization test (OPPTS Test Guideline 870.2600); a 90-day inhalation toxicity test (OPPTS Test Guideline 870.3465); and a carcinogenicity test (OPPTS Test Guideline 870.4200) would help characterize the human health effects of the PMN substance.

CFR citation: 40 CFR 721.10741.

PMN Numbers P-13-617, P-13-618, and P-13-619

Chemical names: (P-13-617) Aromatic dicarboxylic acid polymer with alkanediol, alkyl alkyl-2-alkenoate,1,4-dialkyl aromatic dicarboxylate, alkanedioic acid, alkanediol, .alpha.-hydro-.omega.-hydroxypoly[oxy(alkyl-alkanediyl)], hydroxyalkyl 2-alkyl-2-alkenoate, aromatic diisocyanate, alkyl 2-alkyl-2-alkenoate and 2-alkyl-2-alkenoic acid (generic), (P-13-618) Alkanedioic acid, polymer with alkyl 2-alkyl-2-alkenoate, alkanedioic acid, alkanediol, .alpha.-hydro-.omega.-hydroxypoly[oxy(alkyl-1 2-alkanediyl)], hydroxyalkyl 2-alkyl-2-alkenoate, aromatic diisocyanate, alkyl 2-alkyl-2-alkenoate and 2-alkyl-2-alkenoic acid (generic); and (P-13-619) Alkanedioic acid, polymer with alkyl alkyl-alkenoate, alkanedioic acid, alkanediol, .alpha.-hydro-.omega.-hydroxypoly[oxy(alkyl-1,2-alkanediyl)], aromatic diisocyanate, alkyl alkyl-alkeneoate and alkyl-alkenoic acid (generic).

CAS numbers: Claimed confidential.

Basis for action: The PMN states that the generic (non-confidential) use of the substances will be as an adhesive. Based on SAR analysis of test data on analogous diisocyanates, EPA identified concerns for respiratory sensitization. For the use described in the PMN, EPA does not expect significant occupational or consumer inhalation exposure as the substances are not applied using a method that generates a vapor, mist, or aerosol, nor are they used in a consumer product. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the

substances may present an unreasonable risk. EPA has determined, however, that any use of the substances without a NIOSH-certified particulate respirator with an APF of at least 10, where there is a potential for inhalation exposures; any use in consumer products; or any use of the substances involving an application method that generates a vapor, mist, or aerosol may cause serious health effects. Based on this information, the PMN substances meet the concern criteria at § 721.170(b)(3)(ii).

Recommended testing: EPA has determined that the results of a 90-day inhalation toxicity test (OPPTS Test Guideline 870.3465) would help characterize the human health effects of the PMN substances.

CFR citation: 40 CFR 721.10742 (P-13-617); 40 CFR 721.10743 (P-03-618) and 40 CFR 721.10744 (P-13-619).

PMN Number P-13-722

Chemical name: Alkoxylated quaternary alkyl ammonium fluoroalkylsulfonimide (generic).

CAS number: Claimed confidential.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a polymer additive. Based on SAR analysis of test data on analogous cationic surfactants, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 9 ppb of the PMN substance in surface waters. For the use described in the PMN, environmental releases are not expected to result in surface water concentrations that exceed 9 ppb. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in surface water concentrations exceeding 9 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish acute toxicity test, freshwater and marine (OPPTS Test Guideline 850.1075); an aquatic invertebrate acute toxicity, freshwater daphnids (OPPTS Test Guideline 850.1010); and an algal toxicity test (OPPTS Test Guideline 850.4500) would help characterize the environmental effects of the PMN substance. EPA also recommends that the guidance document on aquatic toxicity testing of difficult substances and mixtures (OECD Test Guideline 23) be followed to facilitate solubility in the test media, due to the low water solubility of the PMN material.

CFR citation: 40 CFR 721.10745.

PMN Number P-13-753

Chemical name: Isocyanate terminated urethane polymer (generic).

CAS number: Claimed confidential.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as an adhesive and sealant. Based on SAR analysis of test data on analogous isocyanates, EPA identified concerns for respiratory and dermal sensitization to workers from exposure to the PMN substance. In addition, based on test data submitted under the TSCA section 8(e) program, the Agency identified concern for mutagenicity. For the uses described in the PMN, significant occupational dermal and inhalation exposures are not expected. Further, general population exposures are not expected as the PMN is not used in consumer products. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance without a NIOSH-certified particulate respirator with an APF of at least 10, where there is a potential for inhalation exposure, or any use in consumer products may cause serious health effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(3)(ii).

Recommended testing: EPA has determined that the results of a 90-day inhalation toxicity test (OPPTS Test Guideline 870.3465) would help characterize the human health effects of the PMN substance.

CFR citation: 40 CFR 721.10746.

PMN Number P-13-773

Chemical name: 4-Pyrimidianamine, 2,5 dimethoxy-.

CAS number: 6960–17–4.

Basis for action: The PMN states that the substance will be used as an herbicide intermediate. Based on test data of the PMN substance, as well as SAR analysis of test data on analogous aromatic amines, EPA identified concerns for mutagenicity, oncogenicity, and developmental toxicity to workers exposed to the PMN substance. Further, based on SAR analysis of test data on analogous anilines, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 7 ppb of the PMN substance in surface water. As described in the PMN, EPA does not expect significant occupational exposures and releases of the PMN substance are not expected to result in surface water concentrations that exceed 7 ppb. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance without a NIOSH-certified respirator with an APF of at least 10, where there is potential inhalation exposure; any use without impervious gloves, where there is potential for dermal exposure; or any use other than as an herbicide intermediate may cause serious health and environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(1)(i)(B), (b)(1)(i)(C), (b)(3)(ii), (b)(4)(i) and (b)(4)(ii).

Recommended testing: EPA has determined that the results of a combined repeated dose toxicity test (OECD Test Guideline 422), with the reproduction/development toxicity screening test; a 90-day inhalation toxicity test (OPPTS Test Guideline 870.3465); and an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS Test Guideline 850.1010) would help characterize the human health and environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10747.

PMN Numbers P-13-796, P-13-797, P-13-798, P-13-799, and P-13-800

Chemical names: (P-13-796, P-13-797, and P-13-798) Dicarbomonocycle-substituted carbomonocycledicarboxamide (generic); (P-13-799) Dicarboheterocycle-substituted carbomonocycledicarboxamide (generic); and (P-13-800) Tricarbomonocycle-substituted carbomonocycletricarboxamide (generic).

CAS numbers: Claimed confidential.

Basis for action: The PMN states that the generic (non-confidential) use of the substances are as additives for polymer manufacturing. Based on SAR analysis of test data on analogous amides, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 4 ppb (for P-13-796 and P-13-797); 14 ppb (for P-13-798); 1 ppb (for P-13-799); and 2 ppb (for P-13-800) of the PMN substance in surface waters. For the use described in the PMNs, releases of the substances are not expected to result in surface water concentrations that exceed the respective concentrations for concern. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that use of the substance resulting in releases to surface waters exceeding the respective concentrations of concern

may result in significant adverse environmental effects. Based on this information, the PMN substances meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a ready biodegradability test (OECD Test Guideline 301); a fish early-life stage toxicity test (OPPTS Test Guideline 850.1400); a daphnid chronic toxicity test (OPPTS Test Guideline 850.1300); and an algal toxicity test (OCSPP Test Guideline 850.4500) would help characterize the environmental effects of the PMN substance. EPA also recommends that the guidance document on aquatic toxicity testing of difficult substances and mixtures (OECD Test Guideline 23) be followed to facilitate solubility in the test media, because of the PMN substance's low water solubility. EPA suggests conducting the biodegradation test first as the results may impact the ecotoxicity testing recommendations.

CFR citation: 40 CFR 721.10748 (P-13-796, P-13-797, and P-13-798); 40 CFR 721.10749 (P-13-799); and 40 CFR 721.10750 (P-13-800).

PMN Number P-13-810, P-13-811, P-13-812, P-13-813, P-13-814, and P-13-815

Chemical names: Cycloalkylamino oleyl alkylamide acid salts (generic).

CAS numbers: Claimed confidential.

Basis for action: The PMNs state that the generic (non-confidential) use of these substances are as inhibitors for oil field applications. Based on SAR analysis of test data on analogous aliphatic amines, EPA predicts chronic toxicity to aquatic organisms may occur at concentrations that exceed 1 ppb of the PMN substances in surface waters. As described in the PMNs, releases of the substances are not expected to result in surface water concentrations exceeding 1 ppb of the aggregate of these PMN substances. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substances may present an unreasonable risk. EPA has determined, however, that use of the substances resulting in releases to surface waters exceeding 1 ppb may result in significant adverse environmental effects. Based on this information, the PMN substances meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a water solubility: Column elution method; shake flask method test (OPPTS Test Guideline 830.7840) or a water solubility: Generator column method test (OPPTS Test Guideline 830.7860); a determination of the partition coefficient (n-octanol/water) by shake flask method (OPPTS Test Guideline 830.7550), generator column method (OPPTS Test Guideline 830.7560), or estimation by liquid chromatography (OPPTS Test Guideline 830.7570); and log Koc determination by adsorption-desorption using a batch equilibrium method (OECD Test Guideline 106) in representative salt water conditions would help characterize the environmental effects of the PMN substances. Based on the results of these studies, EPA would recommend either of the following as additional testing:

(A) Fish acute toxicity test, freshwater and marine (OPPTS Test Guideline 850.1075); a mysid acute toxicity test (OPPTS Test Guideline 850.1350); and an algal toxicity test (OCSPP Test Guideline 850.4500) or;

(B) the whole sediment acute toxicity test, invertebrates, marine (OPPTS Test Guideline 850.1740).

CFR citation: 40 CFR 721.10751.

PMN Numbers P-13-816, P-13-817, P-13-818, P-13-819, P-13-820, and P-13-821

Chemical names: Cycloalkylamino cocoalkyl alkylamide acid salts (generic).

CAS numbers: Claimed confidential.

Basis for action: The PMNs state that the generic (non-confidential) use of these substances is as inhibitors for oil field applications. Based on SAR analysis of test data on analogous aliphatic amines, EPA predicts chronic toxicity to aquatic organisms may occur at concentrations that exceed 1 ppb of the PMN substances in surface waters. As described in the PMNs, releases of the substances are not expected to result in surface water concentrations exceeding 1 ppb of the aggregate of these PMN substances. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substances may present an unreasonable risk. EPA has determined, however, that use of the substances resulting in releases to surface waters exceeding 1 ppb may result in significant adverse environmental effects. Based on this information, the PMN substances meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a water solubility: Column elution method; shake flask method test (OPPTS Test Guideline 830.7840) or a water solubility: Generator column method test (OPPTS Test Guideline 830.7860); a determination of the partition coefficient (n-octanol/water) by shake flask method (OPPTS Test Guideline 830.7550), generator column method (OPPTS Test Guideline 830.7560), or estimation by liquid chromatography (OPPTS Test Guideline 830.7570); and log Koc determination by adsorption-desorption using a batch equilibrium method (OECD Test Guideline 106) in representative salt water conditions would help characterize the environmental effects of the PMN substances. Based on the results of these studies, EPA would recommend either of the following as additional testing:

(A) Fish acute toxicity test, freshwater and marine (OPPTS Test Guideline 850.1075); a mysid acute toxicity test (OPPTS Test Guideline 850.1350); and an algal toxicity test (OCSPP Test Guideline 850.4500) or;

(B) the whole sediment acute toxicity test, invertebrates, marine (OPPTS Test Guideline 850.1740).

CFR citation: 40 CFR 721.10752.

PMN Number P-13-839

Chemical name: Methanamine, N,N-dimethyl-, reaction products with alkylamine-epichlorohydrin polymer, chlorides (generic).

CAS number: Claimed confidential.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as an ingredient of pre-coat solution. Based on the test data submitted with this PMN as well as the structural activity relationships analysis for analogous polycationic polymers, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 1 ppb of the PMN substance in surface waters. As described in the PMN, releases of the substance to surface waters are not expected. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in surface water concentrations exceeding 1 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(i) and (ii).

Recommended testing: EPA has determined that the results of a fish early-life stage toxicity test (OPPTS Test Guideline 850.1400); a fish acute toxicity mitigated by humic acid (OPPTS Test Guideline 850.1085); a daphnid chronic toxicity test (OPPTS Test Guideline 850.1300); and an algal toxicity test (OCSPP Test Guideline 850.4500) would help characterize the environmental effects of the PMN substance. EPA also recommends that the guidance document on aquatic toxicity testing of difficult substances and mixtures (OECD Test Guideline 23) be followed to facilitate solubility in the

test media, because of the PMN substance's low water solubility.

CFR citation: 40 CFR 721.10753.

PMN Number P-13-882

Chemical name: Mixture of alkylated benzene, brominated (generic) and alkylated benzene, dibrominated (generic).

CAS numbers: Claimed confidential.

Basis for action: The PMN states that the use of the substance will be as a feed for a bromine recovery unit. Based on analogous chemical substances that contain bromine and alkylation potential of the PMN substance, EPA identified concerns for neurotoxicity, liver and kidney toxicities, mutagenicity, and oncogenicity, as well as concerns for developmental toxicity and dermal sensitization to workers exposed to the PMN substance. The Agency also identified the potential for human health risk due to the possible formation of dioxins. Further, based on test data on analogous benzyl halides, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 5 ppb of the PMN substance in surface water. For the use described in the PMN, EPA does not expect significant occupational inhalation or dermal exposures; significant general population inhalation or drinking water exposures; or releases of the PMN substance that result in surface water concentrations that exceed 5 ppb. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that use other than for use other than as feed for a bromine recovery unit may cause serious health and significant environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(1)(i)(D), (b)(3)(ii) and (b)(4)(ii).

Recommended testing: EPA has determined that the results of a 90-day inhalation toxicity test (OPPTS Test Guideline 870.3465); a fish early-life stage toxicity test (OPPTS Test Guideline 850.1400); a daphnid chronic toxicity test (OPPTS Test Guideline 850.1300); and an algal toxicity test (OCSPP Test Guideline 850.4500) would help characterize the human health and environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10754.

PMN Number: P-14-42

Chemical name: Substituted perfluoroether (generic).

CAS Number: Claimed confidential.

Basis for Action: The PMN states that the generic (non-confidential) use of the substance is as a surfactant for laboratory use fluid. Based on SAR analysis of test data on analogous high molecular weight polymers, EPA identified concerns for lung toxicity if respirable droplets of the PMN substance are inhaled. Further, based on analogy to perfluorooctanoic acid (PFOA) and perfluorooctane sulfonate (PFOS), EPA identified concerns for liver toxicity, acute toxicity, developmental and reproductive toxicity, and cancer, for the PMN substance, when the mean moles of each perfluoro propylene (PPO) unit is less than 5. The low molecular weight species have been identified as having the potential to be persistent, bioaccumulative, and toxic (PBT) chemicals. EPA does not have comparable toxicity information on the low molecular weight fraction of the PMN substance and unreacted starting material. EPA has concerns that this PMN substance will persist in the environment. In addition, the perfluoro degradation products could persist, bioaccumulate, and be toxic to people, wild mammals, and birds. EPA's concerns are based on analogy to other perfluoro chemicals, including PFOA and PFOS, which are both currently under review by EPA for PBT concerns. PFOA and PFOS are expected to persist for years in the environment. Biodegradation and photolysis tests of analogous substances indicate little or no biodegradation or photolysis of perfluoroalkyl compounds. Bioaccumulation concerns are based on the measured presence of certain perfluoroalkyl compounds, including PFOA, in wildlife and in human blood samples. In addition, EPA expects the PMN substance and the perfluoro degradation products to be highly persistent, and the low molecular weight fraction is expected to be mobile and bioaccumulate in the environment. No ecotoxicological concerns were raised for the PMN substance itself. However, there is high concern for possible environmental effects to mammals and wild birds from the perfluoro degradation products of the PMN substance. As stated previously, the analog PFOA is persistent in the environment; has a long bioretention time in various species; has been detected in a number of species of wildlife, including marine mammals; and is considered toxic to mammalian and other species. The toxicological properties and presence of PFOA in the environment continue to be investigated. For the use described in the PMN, EPA does not expect occupational, general population, or environmental exposures to the PMN substance. Therefore, EPA has not determined that the proposed manufacture, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance other than as described in the PMN, or any manufacture of the PMN substance where the mean number of moles of each perfluoro propylene oxide unit is less than 5, may result in serious health effects or significant adverse environmental effects. Based on this information, the PMN meets the concern criteria at 721.170(b)(3)(i), (b)(3)(ii), (b)(4)(ii), and (b)(4)(iii).

Recommended Testing: EPA has determined that the results of the following testing on the presumed perfluoro degradation products of the PMN substance would be necessary to evaluate the potential human health effects of the PMN substance: a repeated dose metabolism and pharmacokinetics test (OPPTS Test Guideline 870.7485) in rats and mice; a 1-generation reproduction study (OECD Test Guideline 421), modified; a 90-day oral toxicity test (OPPTS Test Guideline 870.3100) in rats; a combined chronic toxicity/carcinogenicity test (OPPTS Test Guideline 870.4300 or OECD Test Guideline 453) in rats; and an avian reproduction test (OPPTS Test Guideline 850.2300 or OECD Test Guideline 206). EPA recommends that the Company conduct the pharmacokinetics testing first to confirm species acceptability and to provide a reliable half-life for this substance. Further, EPA has determined that the results of the following physical/chemical properties and fate and transport tests on the PMN substance would be necessary to evaluate the environmental fate and transport: A UV visible light absorption test (OPPTS Test Guideline 830.7050); a hydrolysis as a function of pH test (OPPTS Test Guideline 835.2130); a semi-continuous activated sludge (''SCAS'') test (OPPTS Test Guideline 835.5045, OPPTS Test Guideline 835.3210, or OECD Test Guideline 302A) modified for analysis for perfluoro degradation products; an aerobic transformation in soil test (OECD Test Guideline 307); an aerobic and anaerobic transformations test (OECD Test Guideline 308) in aquatic sediment systems; a direct photolysis test (OPPTS Test Guideline 835.2210); an indirect photolysis screening test (OPPTS Test Guideline 835.5270); phototransformation of chemicals on soil surfaces (Draft OECD Test Guideline

January 2002) using 2 soils, a simulation test-aerobic sewage treatment (OECD Test Guideline 303A) activated sludge units; and an anaerobic biodegradability test (OECD Test Guideline 311) on organic compounds in digested sludge.

CFR Citation: 40 CFR 721.10764.

V. Rationale and Objectives of the Rule

A. Rationale

During review of the PMNs submitted for the chemical substances that are subject to these SNURs, EPA concluded that for 6 of the 43 chemical substances, regulation was warranted under TSCA section 5(e), pending the development of information sufficient to make reasoned evaluations of the health or environmental effects of the chemical substances. The basis for such findings is outlined in Unit IV. Based on these findings, TSCA section 5(e) consent orders requiring the use of appropriate exposure controls were negotiated with the PMN submitters. The SNUR provisions for these chemical substances are consistent with the provisions of the TSCA section 5(e) consent orders. These SNURs are promulgated pursuant to § 721.160 (see Unit VI.).

In the other 36 cases, where the uses are not regulated under a TSCA section 5(e) consent order, EPA determined that one or more of the criteria of concern established at § 721.170 were met, as discussed in Unit IV.

B. Objectives

EPA is issuing these SNURs for specific chemical substances which have undergone premanufacture review because the Agency wants to achieve the following objectives with regard to the significant new uses designated in this rule:

- EPA will receive notice of any person's intent to manufacture or process a listed chemical substance for the described significant new use before that activity begins.
- EPA will have an opportunity to review and evaluate data submitted in a SNUN before the notice submitter begins manufacturing or processing a listed chemical substance for the described significant new use.
- EPA will be able to regulate prospective manufacturers or processors of a listed chemical substance before the described significant new use of that chemical substance occurs, provided that regulation is warranted pursuant to TSCA sections 5(e), 5(f), 6, or 7.
- EPA will ensure that all manufacturers and processors of the same chemical substance that is subject to a TSCA section 5(e) consent order are subject to similar requirements.

Issuance of a SNUR for a chemical substance does not signify that the chemical substance is listed on the TSCA Chemical Substance Inventory (TSCA Inventory). Guidance on how to determine if a chemical substance is on the TSCA Inventory is available on the Internet at *http://www.epa.gov/opptintr/existingchemicals/pubs/tscainventory/index.html.*

VI. Direct Final Procedures

EPA is issuing these SNURs as a direct final rule, as described in § 721.160(c)(3) and § 721.170(d)(4). In accordance with § 721.160(c)(3)(ii) and § 721.170(d)(4)(i)(B), the effective date of this rule is September 8, 2014 without further notice, unless EPA receives written adverse or critical comments, or notice of intent to submit adverse or critical comments before August 8, 2014.

If EPA receives written adverse or critical comments, or notice of intent to submit adverse or critical comments, on one or more of these SNURs before August 8, 2014, EPA will withdraw the relevant sections of this direct final rule before its effective date. EPA will then issue a proposed SNUR for the chemical substance(s) on which adverse or critical comments were received, providing a 30-day period for public comment.

This rule establishes SNURs for a number of chemical substances. Any person who submits adverse or critical comments, or notice of intent to submit adverse or critical comments, must identify the chemical substance and the new use to which it applies. EPA will not withdraw a SNUR for a chemical substance not identified in the comment.

VII. Applicability of the Significant New Use Designation

To establish a significant new use, EPA must determine that the use is not ongoing. The chemical substances subject to this rule have undergone premanufacture review. In cases where EPA has not received a notice of commencement (NOC) and the chemical substance has not been added to the TSCA Inventory, no person may commence such activities without first submitting a PMN. Therefore, for chemical substances for which an NOC has not been submitted EPA concludes that the designated significant new uses are not ongoing.

When chemical substances identified in this rule are added to the TSCA Inventory, EPA recognizes that, before the rule is effective, other persons might engage in a use that has been identified as a significant new use. However, TSCA section 5(e) consent orders have been issued for 6 of the 43 chemical substances, and the PMN submitters are prohibited by the TSCA section 5(e) consent orders from undertaking activities which would be designated as significant new uses. The identities of 39 of the 43 chemical substances subject to this rule have been claimed as confidential and EPA has received no post-PMN *bona fide* submissions (per 40 CFR 720.25 and § 721.11). Based on this, the Agency believes that it is highly unlikely that any of the significant new uses described in the regulatory text of this rule are ongoing.

Therefore, EPA designates July 9, 2014 as the cutoff date for determining whether the new use is ongoing. Persons who begin commercial manufacture or processing of the chemical substances for a significant new use identified as of that date would have to cease any such activity upon the effective date of the final rule. To resume their activities, these persons would have to first comply with all applicable SNUR notification requirements and wait until the notice review period, including any extensions, expires. If such a person met the conditions of advance compliance under § 721.45(h), the person would be considered exempt from the requirements of the SNUR. Consult the **Federal Register** document of April 24, 1990, for a more detailed discussion of the cutoff date for ongoing uses.

VIII. Test Data and Other Information

EPA recognizes that TSCA section 5 does not require developing any particular test data before submission of a SNUN. The two exceptions are:

1. Development of test data is required where the chemical substance subject to the SNUR is also subject to a test rule under TSCA section 4 (see TSCA section 5(b)(1)).

2. Development of test data may be necessary where the chemical substance has been listed under TSCA section 5(b)(4) (see TSCA section 5(b)(2)).

In the absence of a TSCA section 4 test rule or a TSCA section 5(b)(4) listing covering the chemical substance, persons are required only to submit test data in their possession or control and to describe any other data known to or reasonably ascertainable by them (see 40 CFR 720.50). However, upon review of PMNs and SNUNs, the Agency has the authority to require appropriate testing. In cases where EPA issued a TSCA section 5(e) consent order that requires or recommends certain testing, Unit IV. lists those tests. Unit IV. also lists recommended testing for TSCA non-section 5(e) SNURs. Descriptions of tests are provided for informational purposes.

EPA strongly encourages persons, before performing any testing, to consult with the Agency pertaining to protocol selection. To access the OCSPP test guidelines referenced in this document electronically, please go to *http://www.epa.gov/ocspp* and select ''Test Methods and Guidelines.'' The Organisation for Economic Co-operation and Development (OECD) test guidelines are available from the OECD Bookshop at *http://www.oecdbookshop.org* or SourceOECD at *http://www.sourceoecd.org.*

In the TSCA section 5(e) consent orders for several of the chemical substances regulated under this rule, EPA has established production volume limits in view of the lack of data on the potential health and environmental risks that may be posed by the significant new uses or increased exposure to the chemical substances. These limits cannot be exceeded unless the PMN submitter first submits the results of toxicity tests that would permit a reasoned evaluation of the potential risks posed by these chemical substances. Under recent TSCA section 5(e) consent orders, each PMN submitter is required to submit each study before reaching the specified production limit. Listings of the tests specified in the TSCA section 5(e) consent orders are included in Unit IV. The SNURs contain the same production volume limits as the TSCA section 5(e) consent orders. Exceeding these production limits is defined as a significant new use. Persons who intend to exceed the production limit must notify the Agency by submitting a SNUN at least 90 days in advance of commencement of non-exempt commercial manufacture or processing.

The recommended tests specified in Unit IV. may not be the only means of addressing the potential risks of the chemical substance. However, submitting a SNUN without any test data may increase the likelihood that EPA will take action under TSCA section 5(e), particularly if satisfactory test results have not been obtained from a prior PMN or SNUN submitter. EPA recommends that potential SNUN submitters contact EPA early enough so that they will be able to conduct the appropriate tests.

SNUN submitters should be aware that EPA will be better able to evaluate SNUNs which provide detailed information on the following:

- Human exposure and environmental release that may result from the significant new use of the chemical substances.
- Potential benefits of the chemical substances.
- Information on risks posed by the chemical substances compared to risks posed by potential substitutes.

IX. Procedural Determinations

By this rule, EPA is establishing certain significant new uses which have been claimed as CBI subject to Agency confidentiality regulations at 40 CFR part 2 and 40 CFR part 720, subpart E. Absent a final determination or other disposition of the confidentiality claim under 40 CFR part 2 procedures, EPA is required to keep this information confidential. EPA promulgated a procedure to deal with the situation where a specific significant new use is CBI, at § 721.1725(b)(1).

Under these procedures a manufacturer or processor may request EPA to determine whether a proposed use would be a significant new use under the rule. The manufacturer or processor must show that it has a *bona fide* intent to manufacture or process the chemical substance and must identify the specific use for which it intends to manufacture or process the chemical substance. If EPA concludes that the person has shown a *bona fide* intent to manufacture or process the chemical substance, EPA will tell the person whether the use identified in the *bona fide* submission would be a significant new use under the rule. Since most of the chemical identities of the chemical substances subject to these SNURs are also CBI, manufacturers and processors can combine the *bona fide* submission under the procedure in § 721.1725(b)(1) with that under § 721.11 into a single step.

If EPA determines that the use identified in the *bona fide* submission would not be a significant new use, i.e., the use does not meet the criteria specified in the rule for a significant new use, that person can manufacture or process the chemical substance so long as the significant new use trigger is not met. In the case of a production volume trigger, this means that the aggregate annual production volume does not exceed that identified in the *bona fide* submission to EPA. Because of confidentiality concerns, EPA does not typically disclose the actual production volume that constitutes the use trigger. Thus, if the person later intends to exceed that volume, a new *bona fide* submission would be necessary to determine whether that higher volume would be a significant new use.

X. SNUN Submissions

According to § 721.1(c), persons submitting a SNUN must comply with the same notification requirements and EPA regulatory procedures as persons submitting a PMN, including submission of test data on health and environmental effects as described in 40 CFR 720.50. SNUNs must be submitted on EPA Form No. 7710–25, generated using e-PMN software, and submitted to the Agency in accordance with the procedures set forth in 40 CFR 720.40 and § 721.25. E-PMN software is available electronically at *http://www.epa.gov/opptintr/newchems.*

XI. Economic Analysis

EPA has evaluated the potential costs of establishing SNUN requirements for potential manufacturers and processors of the chemical substances subject to this rule. EPA's complete economic analysis is available in the docket under docket ID number EPA–HQ–OPPT–2014–0166.

XII. Statutory and Executive Order Reviews

A. Executive Order 12866

This rule establishes SNURs for several new chemical substances that were the subject of PMNs, or TSCA section 5(e) consent orders. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993).

B. Paperwork Reduction Act (PRA)

According to PRA (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR part 9, and included on the related collection instrument or form, if applicable. EPA is amending the table in 40 CFR part 9 to list the OMB approval number for the information collection requirements contained in this rule. This listing of the OMB control numbers and their subsequent codification in the CFR satisfies the display requirements of PRA and OMB's implementing regulations at 5 CFR part 1320. This Information Collection Request (ICR) was previously subject to public notice and comment prior to OMB approval, and given the technical nature of the table, EPA finds that further notice and comment to amend it is unnecessary. As a result, EPA finds that there is ''good cause'' under section 553(b)(3)(B) of the Administrative Procedure Act (5 U.S.C.

553(b)(3)(B)) to amend this table without further notice and comment.

The information collection requirements related to this action have already been approved by OMB pursuant to PRA under OMB control number 2070–0012 (EPA ICR No. 574). This action does not impose any burden requiring additional OMB approval. If an entity were to submit a SNUN to the Agency, the annual burden is estimated to average between 30 and 170 hours per response. This burden estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete, review, and submit the required SNUN.

Send any comments about the accuracy of the burden estimate, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, to the Director, Collection Strategies Division, Office of Environmental Information (2822T), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001. Please remember to include the OMB control number in any correspondence, but do not submit any completed forms to this address.

C. Regulatory Flexibility Act (RFA)

On February 18, 2012, EPA certified pursuant to RFA section 605(b) (5 U.S.C. 601 *et seq.*), that promulgation of a SNUR does not have a significant economic impact on a substantial number of small entities where the following are true:

1. A significant number of SNUNs would not be submitted by small entities in response to the SNUR.

2. The SNUR submitted by any small entity would not cost significantly more than $8,300.

A copy of that certification is available in the docket for this rule.

This rule is within the scope of the February 18, 2012 certification. Based on the Economic Analysis discussed in Unit XI. and EPA's experience promulgating SNURs (discussed in the certification), EPA believes that the following are true:

- A significant number of SNUNs would not be submitted by small entities in response to the SNUR.
- Submission of the SNUN would not cost any small entity significantly more than $8,300.

Therefore, the promulgation of the SNUR would not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act (UMRA)

Based on EPA's experience with proposing and finalizing SNURs, State, local, and Tribal governments have not been impacted by these rulemakings, and EPA does not have any reasons to believe that any State, local, or Tribal government will be impacted by this rule. As such, EPA has determined that this rule does not impose any enforceable duty, contain any unfunded mandate, or otherwise have any effect on small governments subject to the requirements of UMRA sections 202, 203, 204, or 205 (2 U.S.C. 1501 *et seq.*).

E. Executive Order 13132

This action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999).

F. Executive Order 13175

This rule does not have Tribal implications because it is not expected to have substantial direct effects on Indian Tribes. This rule does not significantly nor uniquely affect the communities of Indian Tribal governments, nor does it involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), do not apply to this rule.

G. Executive Order 13045

This action is not subject to Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because this is not an economically significant regulatory action as defined by Executive Order 12866, and this action does not address environmental health or safety risks disproportionately affecting children.

H. Executive Order 13211

This action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), because this action is not expected to affect energy supply, distribution, or use and because this action is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

In addition, since this action does not involve any technical standards, NTTAA section 12(d) (15 U.S.C. 272 note), does not apply to this action.

J. Executive Order 12898

This action does not entail special considerations of environmental justice related issues as delineated by Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

XIV. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: June 27, 2014.

Maria J. Doa,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

Therefore, 40 CFR parts 9 and 721 are amended as follows:

PART 9—[AMENDED]

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.,* 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.,* 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.,* 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

■ 2. In § 9.1, add the following sections in numerical order under the undesignated center heading ''Significant New Uses of Chemical Substances'' to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
* * * * *	
Significant New Uses of Chemical Substances	
* * * * *	
721.10725	2070–0012
721.10726	2070–0012
721.10727	2070–0012
721.10728	2070–0012
721.10729	2070–0012
721.10730	2070–0012
721.10731	2070–0012
721.10732	2070–0012
721.10733	2070–0012
721.10734	2070–0012
721.10735	2070–0012
721.10736	2070–0012
721.10737	2070–0012
721.10738	2070–0012
721.10739	2070–0012
721.10740	2070–0012
721.10741	2070–0012
721.10742	2070–0012
721.10743	2070–0012
721.10744	2070–0012
721.10745	2070–0012
721.10746	2070–0012
721.10747	2070–0012
721.10748	2070–0012
721.10749	2070–0012
721.10750	2070–0012
721.10751	2070–0012
721.10752	2070–0012
721.10753	2070–0012
721.10754	2070–0012
721.10764	2070–0012
* * * * *	

PART 721—[AMENDED]

■ 3. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

■ 4. Add § 721.10725 to subpart E to read as follows:

§ 721.10725 Alcohol propoxylate (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as alcohol propoxylate (PMN P-08-512) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(l)

(ii) *Disposal.* Requirements as specified in § 721.85(a)(1), (a)(3) (Class I or II wells), (b)(1), (b)(3) (Class I or II wells), (c)(1), and (c)(3) (Class I or II wells).

(iii) *Release to water.* Requirements as specified in § 721.90(a)(2)(ii), (b)(2)(ii), and (c)(2)(ii).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in in § 721.125(a), (b), (c), (i), (j), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 5. Add § 721.10726 to subpart E to read as follows:

§ 721.10726 Alcohol propoxylate sulfate salt (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as alcohol propoxylate sulfate salt (PMN P-08-513) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(l)

(ii) *Disposal.* Requirements as specified in § 721.85(a)(1), (a)(3) (Class I or II wells), (b)(1), (b)(3) (Class I or II wells), (c)(1), and (c)(3) (Class I or II wells).

(iii) *Release to water.* Requirements as specified in § 721.90(a)(2)(ii), (b)(2)(ii), and (c)(2)(ii).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in in § 721.125(a), (b), (c), (i), (j), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 6. Add § 721.10727 to subpart E to read as follows:

§ 721.10727 Amphoteric fluorinated surfactant (generic).

(a) Chemical substance and significant new uses subject to reporting. (1) The chemical substance identified generically as amphoteric fluorinated surfactant (PMN P-11-526) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* A significant new use of this substance is any manner or method of manufacture or processing associated with any use of this substance without providing risk notification as follows:

(A) If as a result of the test data required under the TSCA section 5(e) consent order for this substance, the employer becomes aware that this substance may present a risk of injury to human health or the environment, the employer must incorporate this new information, and any information on methods for protecting against such risk, into a MSDS as described in § 721.72(c) within 90 days from the time the employer becomes aware of the new information. If this substance is not being manufactured, processed, or used in the employer's workplace, the employer must add the new information to a MSDS before the substance is reintroduced into the workplace.

(B) The employer must ensure that persons who will receive the PMN substance from the employer, or who have received the PMN substance from the employer within 5 years from the date the employer becomes aware of the new information described in paragraph (a)(2)(i)(A) of this section, are provided an MSDS containing the information required under paragraph (a)(2)(i)(A) of this section within 90 days from the time the employer becomes aware of the new information.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k)(a significant new use is any use other than as allowed by the section 5(e) consent order which includes analysis and reporting and limitations of maximum impurity levels of certain fluorinated impurities), and (q).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), (f), (h), and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(ii) of this section.

■ 7. Add § 721.10728 to subpart E to read as follows:

§ 721.10728 2-Propenoic acid, 2-methyl-, 2-hydroxyethyl esters, telomers with C18–26-alkyl acrylate, 1-dodecanethiol, N-(hydroxymethyl)-2-methyl-2-propenamide, polyfluorooctyl methacrylate, 2,2′-[1,2-diazenediylbis(1-methylethylidene)]bis[4,5-dihydro-1H-imidazole]hydrochloride (1:2)-initiated (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as 2-propenoic acid, 2-methyl-, 2-hydroxyethyl esters, telomers with C18-26-alkyl acrylate, 1-dodecanethiol, N-(hydroxymethyl)-2-methyl-2-propenamide, polyfluorooctyl methacrylate, 2,2′-[1,2-diazenediylbis(1-methylethylidene)]bis[4,5-dihydro-1H-imidazole]hydrochloride (1:2)-initiated (PMN P-12-241) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* A significant new use of this substance is any manner or method of manufacture or processing associated with any use of this substance without providing risk notification as follows:

(A) If as a result of the test data required under the TSCA section 5(e) consent order for this substance, the employer becomes aware that this substance may present a risk of injury to human health or the environment, the employer must incorporate this new information, and any information on methods for protecting against such risk, into a MSDS as described in § 721.72(c) within 90 days from the time the employer becomes aware of the new information. If this substance is not being manufactured, processed, or used in the employer's workplace, the employer must add the new information to a MSDS before the substance is reintroduced into the workplace.

(B) The employer must ensure that persons who will receive the PMN substance from the employer, or who have received the PMN substance from the employer within 5 years from the date the employer becomes aware of the new information described in paragraph (a)(2)(i)(A) of this section, are provided an MSDS containing the information required under paragraph (a)(2)(i)(A) of this section within 90 days from the time the employer becomes aware of the new information.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k) (a significant new use is any use other than as allowed by the section 5(e) consent order which includes analysis and reporting and limitations of maximum impurity levels of certain fluorinated impurities), (q), and (t).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), (d), (f), (h), and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(ii) of this section.

■ 8. Add § 721.10729 to subpart E to read as follows:

§ 721.10729 2-Propenoic acid, 2-methyl-, C16-18 esters, telomers with 3-chloro-2-hydroxypropyl methacrylate, 1-dodecanethiol, N-(hydroxymethyl)-2-methyl-2-propenamide, polyfluorooctyl methacrylate, and rel- (1R,2R,4R)-1,7,7-trimethylbicyclo[2.2.1]hept-2-yl methacrylate, 2,2′-[1,2-diazenediylbis(1-methylethylidene)]bis[4,5-dihydro-1H-imidazole]hydrochloride (1:2)-initiated (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as 2-propenoic acid, 2-methyl-, C16-18 esters, telomers with 3-chloro-2-hydroxypropyl methacrylate, 1-dodecanethiol, N-(hydroxymethyl)-2-methyl-2-propenamide, polyfluorooctyl methacrylate, and rel-(1R,2R,4R)-1,7,7-trimethylbicyclo[2.2.1]hept-2-yl methacrylate, 2,2′-[1,2-diazenediylbis(1-methylethylidene)]bis[4,5-dihydro-1H-imidazole]hydrochloride (1:2)-initiated (PMN P-12-242) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* A significant new use of this substance is any manner or method of manufacture or processing associated with any use of this substance without providing risk notification as follows:

(A) If as a result of the test data required under the TSCA section 5(e) consent order for this substance, the employer becomes aware that this substance may present a risk of injury to human health or the environment, the employer must incorporate this new information, and any information on methods for protecting against such risk, into a MSDS as described in § 721.72(c) within 90 days from the time the employer becomes aware of the new information. If this substance is not being manufactured, processed, or used in the employer's workplace, the employer must add the new information to a MSDS before the substance is reintroduced into the workplace.

(B) The employer must ensure that persons who will receive the PMN substance from the employer, or who have received the PMN substance from the employer within 5 years from the date the employer becomes aware of the new information described in paragraph (a)(2)(i)(A) of this section, are provided an MSDS containing the information required under paragraph (a)(2)(i)(A) of this section within 90 days from the time the employer becomes aware of the new information.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k) (a significant new use is any use other than as allowed by the section 5(e) consent order which includes analysis and reporting and limitations of maximum impurity levels of certain fluorinated impurities), (q), and (t).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), (d), (f), (h), and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(ii) of this section.

■ 9. Add § 721.10730 to subpart E to read as follows:

§ 721.10730 Tires, wastes, pyrolyzed, C6-39 oil fraction.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as tires, wastes, pyrolyzed, C6-39 oil fraction (P-12-557; CAS No. 1410795–89–9) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this rule do not apply to quantities of the chemical substance that has been blended into finished petroleum products or sent to a petroleum refinery for use as a chemical intermediate.

(2) The significant new uses are:

(i) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 1.0 percent), (f), (g)(3)(i), (g)(3)(ii), (g)(4)(i), and (g)(5).

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k).

(iii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=360).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), (f), (g), (h), (i), and (k) are applicable to manufacturers and processors of these substances.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(1) of this section.

■ 10. Add § 721.10731 to subpart E to read as follows:

§ 721.10731 Tires, wastes, pyrolyzed, C7-56 oil fraction.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as tires, wastes, pyrolyzed, C7–56 oil fraction (P-12-558; CAS No. 1410795–87–7) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this rule do not apply to quantities of the chemical substance that has been blended into finished petroleum products or sent to a petroleum refinery for use as a chemical intermediate.

(2) The significant new uses are:

(i) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 1.0 percent), (f), (g)(3)(i), (g)(3)(ii), (g)(4)(i), and (g)(5).

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k).

(iii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=170).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), (f), (g), (h), (i), and (k) are applicable to manufacturers and processors of these substances.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(1) of this section.

■ 11. Add § 721.10732 to subpart E to read as follows:

§ 721.10732 Neodymium, butadiene iso-Bu neodecanoate complexes.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as neodymium, butadiene iso-Bu neodecanoate complexes (PMN P-13-60; CAS No. 1386395–00–1) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Releases to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=8).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (i), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 12. Add § 721.10733 to subpart E to read as follows:

§ 721.10733 Tires, wastes, pyrolyzed, C5-15 condensate oil fraction.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as tires, wastes, pyrolyzed, C5-15 condensate oil fraction (PMN P-13-237; chemical substance definition: A complex combination of hydrocarbons obtained from the substance produced by the pyrolysis of rubber-based tires after removal of the carbon black fraction. It consists predominantly of hydrocarbons having carbon numbers in the range of C5 through C15. It boils in the range of approximately 36 °C to 265 °C (97 °F to 509 °F).) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this rule do not apply to quantities of the PMN substances that have been blended into finished petroleum products or sent to a petroleum refinery for use as a chemical intermediate, or stored as described in the Distribution section of the order.

(2) The significant new uses are:

(i) *Protection in the workplace.* The significant new use is any exposure exceeding an 8 hour time weighted average (TWA) exposure limit of 1 part per million (ppm).

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80. A significant new use is any use other than as a raw feedstock for refineries.

(iii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=4).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), (i), (k), and records documenting that exposures do not exceed an 8 hour time weighted average (TWA) exposure limit of 1 part per million are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

■ 13. Add § 721.10734 to subpart E to read as follows:

§ 721.10734 Lithium salt of substituted imide (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as lithium salt of substituted imide (PMN P-13-248) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(4), (a)(6)(i), (b) (concentration set at 1.0 percent) and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(4), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. The following National Institute for Occupational Safety and Health (NIOSH)-certified respirators with an assigned protection factor (APF) of at least 10 meet the requirements of § 721.63(a)(4):

(A) NIOSH-certified power air-purifying respirator with a hood or helmet and with appropriate gas/vapor (acid gas, organic vapor, or substance specific) cartridges in combination with HEPA filters.

(B) NIOSH-certified continuous flow supplied-air respirator equipped with a loose fitting facepiece, hood, or helmet.

(C) NIOSH-certified negative pressure (demand) supplied-air respirator with a full facepiece.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), (d), (e), and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 14. Add § 721.10735 to subpart E to read as follows:

§ 721.10735 Aromatic dibenzoate (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as aromatic dibenzoate (PMN P-13-270) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Releases to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 15. Add § 721.10736 to subpart E to read as follows:

§ 721.10736 Alcohols, C9-11-branched, ethoxylated propoxylated.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as alcohols, C9–11-branched, ethoxylated propoxylated (PMN P-13-309; CAS No. 1400790–00–2) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80. A significant new use is any use other than as a component of a pigment dispersant blend for inks and coatings.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 16. Add § 721.10737 to subpart E to read as follows:

§ 721.10737 Carboxylic anhydride, polymer with -hydro—hydroxypoly(oxy-1,2-diethanediyl), compd. with 2,3,4,6,7,8,9,10-octahydropyrimido-[1,2-a]azepine (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as carboxylic anhydride, polymer with -hydro—hydroxypoly(oxy-1,2-diethanediyl), compd. with 2,3,4,6,7,8,9,10-octahydropyrimido-[1,2-a]azepine (PMN P-13-378) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Releases to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=24).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 17. Add § 721.10738 to subpart E to read as follows:

§ 721.10738 Formaldehyde, polymer with 2,3-dimethylphenol, 2,4-dimethylphenol, 2,5-dimethylphenol, 3,5-dimethylphenol, 3-ethylphenol, 4-ethylphenol, 3-methylphenol, 4-methylphenol and phenol.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as formaldehyde, polymer with 2,3-dimethylphenol, 2,4-dimethylphenol, 2,5-dimethylphenol, 3,5-dimethylphenol, 3-ethylphenol, 4-ethylphenol, 3-methylphenol, 4-methylphenol and phenol (PMN P-13-453; CAS No. 1415313–86–8) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=5).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 18. Add § 721.10739 to subpart E to read as follows:

§ 721.10739 Caprolactone homopolymer of substituted benzotriazole (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as caprolactone homopolymer of substituted benzotriazole (PMN P-13-465) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=1).

(ii) [Reserved].

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 19. Add § 721.10740 to subpart E to read as follows:

§ 721.10740 Tin(2+) salt of alkylcarboxylic acid (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as tin(2+) salt of alkylcarboxylic acid (PMN P-13-473) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j) and (s).

(ii) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(iii), and (a)(3).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), (d), (e) and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(1) of this section.

■ 20. Add § 721.10741 to subpart E to read as follows:

§ 721.10741 Polyalkylene glycol, alpha isocyanate, omega silane (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as polyalkylene glycol, alpha isocyanate, omega silane (PMN P-13-563) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(4), (a)(6)(ii), (a)(6)(v), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(4), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. The following National Institute for Occupational Safety and Health (NIOSH)-certified respirators with an assigned protection factor (APF) of at least 10 meet the requirements of § 721.63(a)(4):

(A) NIOSH-certified power air-purifying respirator with a hood or helmet and with appropriate gas/vapor (acid gas, organic vapor, or substance specific) cartridges in combination with HEPA filters.

(B) NIOSH-certified continuous flow supplied-air respirator equipped with a loose fitting facepiece, hood, or helmet.

(C) NIOSH-certified negative pressure (demand) supplied-air respirator with a full facepiece.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(g) and (o).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), (d), and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 21. Add § 721.10742 to subpart E to read as follows:

§ 721.10742 Aromatic dicarboxylic acid polymer with alkanediol, alkyl alkyl-2-alkenoate, 1,4-dialkyl aromatic dicarboxylate, alkanedioic acid, alkanedioic acid. alkanediol, .alpha.-hydro-.omega.-hydroxypoly[oxy(alkyl-alkanediyl)], hydroxyalkyl 2-alkyl-2-alkenoate, aromatic diisocyanate, alkyl 2-alkyl-2-alkenoate and 2-alkyl-2-alkenoic acid (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as aromatic dicarboxylic acid polymer with alkanediol, alkyl alkyl-2-alkenoate,1,4-dialkyl aromatic dicarboxylate, alkanedioic acid, alkanedioic acid. alkanediol, .alpha.-hydro-.omega.-hydroxypoly[oxy(alkyl-alkanediyl)], hydroxyalkyl 2-alkyl-2-alkenoate, aromatic diisocyanate, alkyl 2-alkyl-2-alkenoate and 2-alkyl-2-alkenoic acid (PMN P-13-617) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(4), (a)(6)(ii), (a)(6)(v), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(4), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. The following National Institute for Occupational Safety and Health (NIOSH)-certified respirators with an assigned protection factor (APF) of at least 10 meet the requirements of § 721.63(a)(4):

(A) NIOSH-certified power air-purifying respirator with a hood or helmet and with appropriate gas/vapor (acid gas, organic vapor, or substance specific) cartridges in combination with HEPA filters.

(B) NIOSH-certified continuous flow supplied-air respirator equipped with a loose fitting facepiece, hood, or helmet.

(C) NIOSH-certified negative pressure (demand) supplied-air respirator with a full facepiece.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o) and (y)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), (d), and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 22. Add § 721.10743 to subpart E to read as follows:

§ 721.10743 Alkanedioic acid, polymer with alkyl 2-alkyl-2-alkenoate, alkanedioic acid, alkanediol, .alpha.-hydro-.omega.-hydroxypoly[oxy(alkyl-1 2-alkanediyl)], hydroxyalkyl 2-alkyl-2-alkenoate, aromatic diisocyanate, alkyl 2-alkyl-2-alkenoate and 2-alkyl-2-alkenoic acid (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as alkanedioic acid, polymer with alkyl 2-alkyl-2-alkenoate, alkanedioic acid, alkanediol, .alpha.-hydro-.omega.-hydroxypoly[oxy(alkyl-1 2-alkanediyl)], hydroxyalkyl 2-alkyl-2-alkenoate, aromatic diisocyanate, alkyl 2-alkyl-2-alkenoate and 2-alkyl-2-alkenoic acid (PMN P-13-618) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(4), (a)(6)(ii), (a)(6)(v), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(4), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. The following National Institute for Occupational Safety and Health (NIOSH)-certified respirators with an assigned protection factor (APF) of at least 10 meet the requirements of § 721.63(a)(4):

(A) NIOSH-certified power air-purifying respirator with a hood or helmet and with appropriate gas/vapor (acid gas, organic vapor, or substance

specific) cartridges in combination with HEPA filters.

(B) NIOSH-certified continuous flow supplied-air respirator equipped with a loose fitting facepiece, hood, or helmet.

(C) NIOSH-certified negative pressure (demand) supplied-air respirator with a full facepiece.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o) and (y)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), (d), and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 23. Add § 721.10744 to subpart E to read as follows:

§ 721.10744 Alkanedioic acid, polymer with alkyl alkyl-alkenoate, alkanedioic acid, alkanediol, .alpha.-hydro-.omega.-hydroxypoly[oxy(alkyl-1,2-alkanediyl)], aromatic diisocyanate, alkyl alkyl-alkeneoate and alkyl-alkenoic acid (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as alkanedioic acid, polymer with alkyl alkyl-alkenoate, alkanedioic acid, alkanediol, .alpha.-hydro-.omega.-hydroxypoly[oxy(alkyl-1,2-alkanediyl)], aromatic diisocyanate, alkyl alkyl-alkeneoate and alkyl-alkenoic acid (PMN P-13-619) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(4), (a)(6)(ii), (a)(6)(v), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(4), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. The following National Institute for Occupational Safety and Health (NIOSH)-certified respirators with an assigned protection factor (APF) of at least 10 meet the requirements of § 721.63(a)(4):

(A) NIOSH-certified power air-purifying respirator with a hood or helmet and with appropriate gas/vapor (acid gas, organic vapor, or substance specific) cartridges in combination with HEPA filters.

(B) NIOSH-certified continuous flow supplied-air respirator equipped with a loose fitting facepiece, hood, or helmet.

(C) NIOSH-certified negative pressure (demand) supplied-air respirator with a full facepiece.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o) and (y)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), (d), and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 24. Add § 721.10745 to subpart E to read as follows:

§ 721.10745 Alkoxylated quaternary alkyl ammonium fluoroalkylsulfonimide (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as alkoxylated quaternary alkyl ammonium fluoroalkylsulfonimide (PMN P-13-722) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=9).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 25. Add § 721.10746 to subpart E to read as follows:

§ 721.10746 Isocyanate terminated urethane polymer (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as isocyanate terminated urethane polymer (PMN P-13-753) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(4), (a)(6)(ii), (a)(6)(v), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(4), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. The following National Institute for Occupational Safety and Health (NIOSH)-certified respirators with an assigned protection factor (APF) of at least 10 meet the requirements of § 721.63(a)(4):

(A) NIOSH-certified power air-purifying respirator with a hood or helmet and with appropriate gas/vapor (acid gas, organic vapor, or substance specific) cartridges in combination with HEPA filters.

(B) NIOSH-certified continuous flow supplied-air respirator equipped with a loose fitting facepiece, hood, or helmet.

(C) NIOSH-certified negative pressure (demand) supplied-air respirator with a full facepiece.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), (d), and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 26. Add § 721.10747 to subpart E to read as follows:

§ 721.10747 4-Pyrimidianamine, 2,5 dimethoxy-.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as 4-pyrimidianamine, 2,5 dimethoxy- (PMN P-13-773; CAS No. 6960–17–4) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(3), (a)(4), (a)(6)(ii), (a)(6)(v), (b) (concentration set at 0.1 percent) and (c). When determining which persons are

reasonably likely to be exposed as required for § 721.63(a)(1) and (a)(4), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. The following National Institute for Occupational Safety and Health (NIOSH)-certified respirators with an assigned protection factor (APF) of at least 10 meet the requirements of § 721.63(a)(4):

(A) NIOSH-certified power air-purifying respirator with a hood or helmet and with appropriate gas/vapor (acid gas, organic vapor, or substance specific) cartridges in combination with HEPA filters;

(B) NIOSH-certified continuous flow supplied-air respirator equipped with a loose fitting facepiece, hood, or helmet;

(C) NIOSH-certified negative pressure (demand) supplied-air respirator with a full facepiece.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80. A significant new use is any use other than as an herbicide intermediate.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), (d), (e) and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 27. Add § 721.10748 to subpart E to read as follows:

§ 721.10748 Dicarbomonocycle-substituted carbomonocycledicarboxamide (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substances identified generically as dicarbomonocycle-substituted carbomonocycledicarboxamide (PMNs P-13-796, P-13-797, and P-13-798) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=4 for P-13-796 and P-13-797; and N=14 for P-13-798).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers and processors of this substance,

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

■ 28. Add § 721.10749 to subpart E to read as follows:

§ 721.10749 Dicarboheterocycle-substituted carbomonocycledicarboxamide (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as dicarboheterocycle-substituted carbomonocycledicarboxamide (PMN P-13-799) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers and processors of this substance,

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

■ 29. Add § 721.10750 to subpart E to read as follows:

§ 721.10750 Tricarbomonocycle-substituted carbomonocycletricarboxamide (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as tricarbomonocycle-substituted carbomonocycletricarboxamide (PMN P-13-800) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=2).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers and processors of this substance,

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

■ 30. Add § 721.10751 to subpart E to read as follows:

§ 721.10751 Cycloalkylamino oleyl alkylamide acid salts (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substances identified generically as cycloalkylamino oleyl alkylamide acid salts (PMNs P-13-810, P-13-811, P-13-812, P-13-813, P-13-814, and P-13-815) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=1, for the aggregate of the PMN substances P-13-810, P-13-811, P-13-812, P-13-813, P-13-814, and P-13-815).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 31. Add § 721.10752 to subpart E to read as follows:

§ 721.10752 Cycloalkylamino cocoalkyl alkylamide acid salts (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substances identified generically as cycloalkylamino cocoalkyl alkylamide acid salts (PMNs P-13-816, P-13-817, P-13-818, P-13-819, P-13-820, and P-13-821) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=1, for the aggregate of the PMN substances P-13-816, P-13-817, P-13-818, P-13-819, P-13-820, and P-13-821).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 32. Add § 721.10753 to subpart E to read as follows:

§ 721.10753 Methanamine, N,N-dimethyl-, reaction products with alkylamine-epichlorohydrin polymer, chlorides (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as methanamine, N,N-dimethyl-, reaction products with alkylamine-epichlorohydrin polymer, chlorides (PMN P-13-839) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 33. Add § 721.10754 to subpart E to read as follows:

§ 721.10754 Mixture of alkylated benzene, brominated (generic) and alkylated benzene, dibrominated (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as mixture of alkylated benzene, brominated and alkylated benzene, dibrominated (PMN P-13-882) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80. A significant new use is any use other than as feed for a bromine recovery unit.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 34. Add § 721.10764 to subpart E to read as follows:

§ 721.10764 Substituted perfluoroether (generic)

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as substituted perfluoroether (PMN P-14-42) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80. A significant new use of this substance is: (1) Use of the substance for any application other than the confidential use identified in the Premanufacture Notice (PMN) or (2) Manufacture of the PMN substance where the mean number of moles of each perfluoro propylene oxide (''PPO'') unit is less than 5.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.180 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(i) of this section.

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