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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 40

[Docket No. RM14–8–000; Order No. 803]

Protection System Maintenance Reliability Standard

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Final rule.

SUMMARY: Pursuant to the Federal Power Act, the Commission approves a revised Reliability Standard, PRC–005–3 (Protection System and Automatic Reclosing Maintenance), submitted by the North American Electric Reliability Corporation (NERC). In addition, the Commission approves one new definition and six revised definitions referenced in the Reliability Standard, the assigned violation risk factors and violation severity levels, and NERC's implementation plan. Consistent with Order No. 758, the Reliability Standard requires applicable entities to test and maintain certain autoreclosing relays as part of a protection system maintenance program. However, to ensure that proper maintenance and testing is done for all parts of a reclosing relay scheme that can affect the reliable operation of the Bulk-Power System, the Commission directs that NERC develop a modification to the Reliability Standard to include maintenance and testing of supervisory relays.

DATES: This rule will become effective March 30, 2015.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

1. Pursuant to section 215 of the Federal Power Act (FPA),[1] the Commission approves a revised Reliability Standard, PRC–005–3 (Protection System and Automatic Reclosing Maintenance), submitted by the North American Electric Reliability Corporation (NERC). In addition, the Commission approves one new definition and six revised definitions referenced in the Reliability Standard, the assigned violation risk factors and violation severity levels, and NERC's implementation plan. Consistent with Order No. 758,[2] the revised Reliability Standard requires applicable entities to test and maintain certain autoreclosing relays as part of a protection system maintenance program. However, to ensure that proper maintenance and testing is done for all parts of a reclosing relay scheme that can affect the reliable operation of the Bulk-Power System, the Commission directs that NERC develop a modification to the Reliability Standard to include maintenance and testing of supervisory relays, as discussed below.[3]

I. Background

A. Regulatory Background

2. Section 215 of the FPA requires a Commission-certified Electric Reliability Organization (ERO) to develop mandatory and enforceable Reliability Standards, subject to Commission review and approval.[4] Once approved, the Reliability Standards may be enforced by the ERO subject to Commission oversight, or by the Commission independently.[5] In 2006, the Commission certified NERC as the ERO.[6]

3. In 2007, in Order No. 693, the Commission approved an initial set of Reliability Standards submitted by NERC, including initial versions of four protection system and load-shedding-related maintenance standards: PRC–005–1, PRC–008–0, PRC–011–0, and PRC–017–0.[7] In addition, the Commission directed that NERC develop a revision to PRC–005–1 to incorporate a maximum time interval during which to conduct maintenance and testing of protection systems, and to consider combining into one standard the various maintenance and testing requirements for all of the maintenance and testing-related Reliability Standards for protection systems, underfrequency load shedding (UFLS) equipment and undervoltage load shedding (UVLS) equipment.

4. The Commission issued Order No. 758 in February 2012, in response to NERC's request for approval of its interpretation of Requirement R1 of the then-current version of the protection system maintenance standard, PRC–005–1. The Commission accepted NERC's proposed interpretation of PRC–005–1, which identified the types of protection system equipment to which the Reliability Standard applied. In addition, the Commission directed NERC to develop modifications to the standard to address gaps highlighted by the proposed interpretation, including the need to address reclosing relays that may affect the reliability of the Bulk-Power System.[8]

5. Prior to issuance of Order No. 758, NERC had begun developing revisions to its initial maintenance standards for protection systems and underfrequency and undervoltage load shedding equipment in response to the Order No. 693 directives. Those revisions, reflected in a consolidated Reliability Standard, PRC–005–2, were approved

[1] 16 U.S.C. 824o (2012).

[2] *Interpretation of Protection System Reliability Standard,* Order No. 758, 138 FERC ¶ 61,094, *clarification denied,* 139 FERC ¶ 61,227 (2012).

[3] Supervisory devices, as applied to autoreclosing relays, essentially ''supervise'' the actions of an autoreclosing scheme, *i.e.,* allow autoreclosing for desirable conditions or block autoreclosing for undesirable conditions.

[4] 16 U.S.C. 824o(c) and (d).

[5] *See id.* at 824o(e).

[6] *North American Electric Reliability Corp.,* 116 FERC ¶ 61,062, *order on reh'g and compliance,* 117 FERC ¶ 61,126 (2006), *order on compliance,* 118 FERC ¶ 61,030, *order on compliance,* 118 FERC ¶ 61,190, *order on reh'g,* 119 FERC ¶ 61,046 (2007), *rev. denied sub nom. Alcoa, Inc.* v. *FERC,* 564 F.3d 1342 (D.C. Cir. 2009).

[7] *Mandatory Reliability Standards for the Bulk-Power System,* Order No. 693, FERC Stats. & Regs. ¶ 31,242 at PP 1474, 1492, 1497, and 1514, *order on reh'g,* Order No. 693–A, 120 FERC ¶ 61,053 (2007).

[8] *See* Order No. 758, 138 FERC ¶ 61,094 at PP 7, 23–24.

by the Commission on December 24, 2013 in Order No. 793.[9]

B. NERC Petition and Proposed Standard PRC–005–3

6. On February 14, 2014, NERC submitted a petition seeking approval of proposed Reliability Standard PRC–005–3. In its petition, NERC maintained that the standard promotes reliability by making certain reclosing relays subject to a mandatory maintenance program, including adding detailed tables of minimum maintenance activities and maximum maintenance intervals for the reclosing relays. NERC explained that the purpose of PRC–005–3 is to ''document and implement programs for the maintenance of all Protection Systems and Automatic Reclosing affecting the reliability of the Bulk Electric System so that they are kept in working order.'' [10]

7. NERC explained that the subset of reclosing applications included in proposed PRC–005–3 is based on the findings of a technical study performed, in response to Order No. 758, by NERC's System Analysis and Modeling Subcommittee (SAMS) and System Protection and Control Subcommittee (SPCS). The resulting study (the Joint Committee Report), attached to NERC's petition as Exhibit D, examined both the scope of reclosing relays that could affect the reliable operation of the Bulk-Power System and appropriate maintenance intervals and activities for those relays.

8. In its petition, NERC explained that reclosing relays are ''utilized on transmission systems to restore elements to service following automatic circuit breaker tripping,'' and are ''typically installed to lessen the burden on Transmission operators of manually restoring transmission lines.'' [11] NERC explained that ''while more efficient restoration of transmission lines following temporary faults does provide an inherent reliability benefit, certain applications of reclosing relays can result in undesired relay operation or operation not consistent with relay design, leading to adverse reliability impacts.'' [12] After examining these potential reliability impacts, the Joint Committee Report recommended that the revised standard should:

(1) Explicitly address maintenance and testing of reclosing relays applied as an integral part of a Special Protection System; and (2) include maintenance and testing of reclosing relays at or in proximity to generating plants at which the total installed capacity is greater than the capacity of the largest generating unit within the Balancing Authority Area.[13]

In addition, NERC explained that the Joint Committee Report recommended that ''proximity'' to these large generators be defined as ''substations one bus away if the substation is within 10 miles of the plant.'' [14]

9. The Joint Committee Report recommendations are reflected in the applicability section of PRC–005–3, which identifies, *inter alia,* the following facilities:

4.2.6.1 Automatic Reclosing applied on terminals of Elements connected to the BES bus located at generating plant substations where the total installed gross generating plant capacity is greater than the gross capacity of the largest BES generating unit within the Balancing Authority Area.

4.2.6.2 Automatic Reclosing applied on the terminals of all BES Elements at substations one bus away from generating plants specified in Section 4.2.6.1 when the substation is less than 10 circuit-miles from the generating plant substation.

4.2.6.3 Automatic Reclosing applied as an integral part of an SPS specified in Section 4.2.4.[15]

10. Further, NERC proposed modifications to the language of Requirements R1, R3, and R4 of PRC–005–2 to reflect the inclusion of automatic reclosing relays. NERC also proposed to include a new definition as part of the revised standard, as follows:

Automatic Reclosing—Includes the following Components:

- Reclosing relay
- Control circuitry associated with the reclosing relay.

NERC stated that the definition is intended for use within PRC–005–3 only, and would not be incorporated into the NERC Glossary of Terms. In addition, NERC proposed modifications to four defined terms referenced in PRC–005–2, Protection System Maintenance Plan, Component Type, Component, and Countable Event, to reflect the inclusion of automatic reclosing components. Finally, NERC proposed to revise the definitions of Unresolved Maintenance Issue and Segment, also currently referenced in PRC–005–2, to capitalize the reference to the defined term ''Component.''

11. NERC's implementation plan for PRC–005–3 incorporates the phased-in implementation period approved for PRC–005–2, with the addition of compliance dates for the new requirements for automatic reclosing components. NERC explained that retirement of the legacy Reliability Standards (PRC–005–1b, PRC–008–0, PRC–011–0, and PRC–017–0) will continue to ''key off'' the regulatory approval date for PRC–005–2, although PRC–005–2 itself will be retired in the United States immediately prior to the effective date of PRC–005–3, on the first day of the first calendar quarter twelve months following regulatory approval.[16] According to NERC, applicable entities will continue to calculate compliance dates for Protection System Components by counting forward from the Commission approval date of PRC–005–2, and for Automatic Reclosing Components by counting forward from the effective date of Commission approval of PRC–005–3. Finally, for newly-identified Automatic Reclosing Components (*e.g.,* resulting from the addition or retirement of generating units), compliance would be required by the end of the third calendar year following identification of those Components.

12. NERC stated that the violation risk factors proposed in PRC–005–3 track those in the currently approved standard PRC–005–2, and that the violation severity levels now include the additional component (Automatic Reclosing) in a manner consistent with the approach taken for PRC–005–2.[17]

C. Notice of Proposed Rulemaking

13. On July 17, 2014, the Commission issued a Notice of Proposed Rulemaking (NOPR) proposing to approve Reliability Standard PRC–005–3.[18] While the NOPR acknowledged that NERC had provided technical support for the proposed thresholds for identifying applicable reclosing relays, the Commission noted that it ''nonetheless [had] concerns whether the thresholds are too narrow.'' [19] Based on those concerns, the Commission proposed to require NERC to submit a report

[9] *Protection System Maintenance Reliability Standard,* Order No. 793, 145 FERC ¶ 61,253 (2013).

[10] NERC Petition at 8.

[11] *Id.* at 9 (citations to Joint Committee Report omitted).

[12] *Id.*

[13] *Id.* at 10.

[14] *Id.* NERC staff conducted its own analysis of this definition of ''proximity,'' ''to verify that the 10-mile threshold provides adequate margin to ensure maintenance and testing of all reclosing relays where failure could result in generating station instability.'' *Id.* at 20. *See Protection System Maintenance Reliability Standard,* Notice of Proposed Rulemaking, 79 FR 43987 at 43989 (July 29, 2013), 148 FERC ¶ 61,041, at PP 11–14 (2014) for additional background on the Joint Committee Report and NERC staff analysis.

[15] NERC Petition, Ex. A at 1–2.

[16] *See id.* at 22–24.

[17] On June 4, 2014, NERC submitted two additional filings: (1) Proposed revisions to a violation severity level assigned to Requirement R1 of PRC–005, consistent with a Commission directive in Order No. 793; and (2) an errata to NERC's petition to reflect proper capitalization of defined terms as used in the proposed standard.

[18] *Protection System Maintenance Reliability Standard,* 148 FERC ¶ 61,041 (2014).

[19] *Id.* P 22.

examining the effectiveness of the revised standard in identifying reclosing relay schemes that could affect the reliable operation of the Bulk-Power System based on ''(1) actual operations data, and (2) simulated system conditions from planning assessments.'' [20]

14. With regard to actual operations data, the NOPR proposed that NERC enhance the granularity of its existing misoperations database ''to gather relevant information regarding events that involve autoreclosing relays, such as distance from the fault, whether the relay reclosed into the fault, and whether that reclosure caused or exacerbated an event.'' [21] With regard to simulated system conditions, the NOPR suggested that the contingency analyses generated as part of planning assessments required under Reliability Standard TPL–001–4 could provide an appropriate benchmark for assessing PRC–005–3's applicability thresholds for reclosing relays.[22]

15. The NOPR also proposed to direct modification of PRC–005–3 to include supervisory devices associated with applicable reclosing relay schemes. The Commission raised concerns that the failure of supervisory devices could raise reliability concerns under certain conditions, such as when static system angles are greater than designed and allow autoreclosing into a fault. Finally, the NOPR requested that commenters address the data retention obligations as proposed in PRC–005–3, which require applicable entities to retain maintenance records for a minimum of two maintenance cycles (up to 24 years).

16. Comments on the NOPR were filed by NERC; the Edison Electric Institute (EEI); International Transmission Company (ITC); Associated Electric Cooperative, Inc., Basin Electric Power Cooperative, Inc. and Tri-State Generation and Transmission Association, Inc. (together G&T Cooperatives); and Idaho Power Company (Idaho Power).

II. Discussion

17. Pursuant to section 215(d)(2) of the FPA, we adopt our NOPR proposal and approve Reliability Standard PRC–005–3, including the associated definitions, violation risk factors and violation severity levels, and implementation plan (including the proposed retirement of identified ''legacy'' standards), as just, reasonable, not unduly discriminatory or preferential and in the public interest. As discussed above, NERC, EEI, ITC, and G&T Cooperatives support approval, commenting that the modifications to PRC–005–3 ''address a known reliability gap'' and address the directive in Order No. 758.[23] We agree with NERC and the commenters, and conclude that Reliability Standard PRC–005–3 will enhance reliability by reducing the risk of autoreclosing relay misoperations through the imposition of minimum maintenance activities and maximum maintenance intervals for these relays. We further determine that PRC–005–3 adequately addresses the Commission directive from Order No. 758 with respect to the inclusion of reclosing relays in an adequate protection system maintenance program. In addition, as discussed below, we direct NERC to develop one modification to PRC–005–3 pertaining to the inclusion of supervisory relays for applicable reclosing relay schemes, and we clarify that NERC's proposal set forth in its NOPR comments is an appropriate approach to satisfy this directive.

18. Below, we discuss the following matters: (A) Proposed reporting on the effectiveness of PRC–005–3; (B) supervisory devices; and (C) requested clarification on the applicability provisions of PRC–005–3.

A. Proposed Reporting on Effectiveness of PRC–005–3

NOPR

19. As noted above, the Commission proposed in the NOPR to direct NERC to submit a report, two years after the effective date of PRC–005–3, addressing the effectiveness of PRC–005–3 in identifying reclosing relay schemes that could impact the reliable operation of the Bulk-Power System. The Commission suggested that NERC submit such a report to address the Commission's on-going concerns whether the standard's applicability thresholds reasonably identify those types of reclosing relays that can affect the reliability of the Bulk-Power System. The NOPR proposed two means of evaluating the standard's scope, based on (1) actual operations data and (2) simulated system conditions, such as contingency analyses required as part of the requirements of Reliability Standard TPL–001–4. The NOPR sought comment on the value of these means to evaluate PRC–005–3.

Comments

20. NERC objects to additional reporting of any kind, contending that it adequately supported the applicability thresholds in PRC–005–3 through the analysis provided in the Joint Committee Report. NERC argues that the Commission did not adequately justify the need for additional reporting or analysis, and did not provide a sufficiently detailed description of its concerns to allow the industry to ''meaningfully comment'' on the Commission's reporting proposals.[24] NERC also objects to the specific reporting benchmarks proposed in the NOPR, arguing that the planning assessment information generated by TPL–001–4 would not provide a meaningful benchmark for analyzing the scope of PRC–005–3. According to NERC, the simulations of autoreclosing in these planning assessments would not provide information relevant to the Commission's concerns with PRC–005–3 because they only assess the impact of (1) a successful autoreclosing, which is the ''desired outcome,'' and (2) an unsuccessful autoreclosing into a fault, which NERC claims ''will not provide information regarding the potential impact of an autoreclosing failure that may result in premature reclosing into a fault.'' [25]

21. EEI supports the Commission's proposed directive to require NERC to evaluate the effectiveness of PRC–005–3 through the submission of a report. However, EEI maintains that the Commission should ''allow NERC, with industry input and support, the latitude to develop'' the methods and processes for such an evaluation.[26] EEI contends that this approach would appropriately give due weight to the technical expertise of NERC, in recognition of the requirements of FPA section 215.

22. EEI also asks the Commission to refrain from requiring changes to NERC's existing Misoperations Database, stating that such a directive could ''inadvertently change the purpose and intent of this system.'' [27] According to EEI, the Misoperations Database ''is currently used to track misoperations, categorize the misoperation type and assign cause,'' and ''was not intended to assess impact.'' [28] Moreover, EEI does not support the use of the contingency analyses required by TPL–001–4 to assess the scope of reclosing relays encompassed by PRC–005–3, because the two standards were developed for different purposes and should not necessarily be expected to align. Finally,

[20] *Id.* P 23.

[21] *Id.*

[22] *See id.* PP 24–27.

[23] EEI Comments at 2. *See also* ITC Comments at 4; G&T Cooperatives Comments at 2 (supporting approval of the Reliability Standard).

[24] NERC Comments at 12.

[25] *Id.* at 14.

[26] EEI Comments at 3.

[27] *Id.* at 4.

[28] *Id.*

EEI notes that considerable study has already been conducted to address the Commission's identified concerns on the potential impact of reclosing relay misoperations, and asks that the Commission ''allow those recommendations to be applied, vetted, and studied before setting a new set of criteria which may not be necessary to ensure BES reliability.'' [29]

23. Idaho Power agrees with NERC and EEI that the misoperations database enhanced reporting requirement as proposed in the NOPR is of little value, and notes that the only autoreclosing relays that should be subject to additional scrutiny are those relatively few reclosing relays needed to ensure reliability.

24. By contrast, ITC does not generally oppose the proposed directive on gathering additional misoperations data related to reclosing relays, but asks for clarification about certain information NERC would be required to collect. Specifically, ITC asks that the Commission recognize that an entity may not be able to report the distance from the fault without some allowable margin of specificity.

Commission Determination

25. Based on the comments received on this issue, we are persuaded not to require NERC to submit a report on the effectiveness of PRC–005–3 in identifying reclosing relay schemes that can have an impact on the reliable operation of the Bulk-Power System, as we had proposed in the NOPR. Instead, we direct NERC to obtain, maintain, and make available to the Commission upon request, one year following the effective date of the standard and on an annual basis thereafter, data sufficient to analyze the effectiveness of PRC–005–3, whether it be through NERC's Event Analysis process or other means. Specifically, NERC is to collect relevant information regarding Bulk-Power System events that involve high speed autoreclosing relays. Such information would include the operations of autoreclosing relays and their supervisory functionalities (*e.g.,* time delays, synchronism check, voltages, etc.) that caused or exacerbated the events, and any unintended consequences of the events. The Commission encourages NERC and FERC staff to collaborate on the specific data to be collected, which could include, but is not limited to, the approximate distance from the fault and the generation loss associated with the event. Further, the Commission is also interested in knowing if those autoreclosing relays identified as causing or exacerbating an event operated as designed, and if PRC–005–3 is applicable to the autoreclosing relays that were involved. We expect NERC to share all appropriate data as needed to evaluate autoreclosing relay performance, in accordance with our general expectation that NERC will ''cooperate with and share all appropriate data and information with Commission staff'' as needed ''to ensure that the ERO Enterprise and the Commission are both able to effectively perform their duties under section 215 of the FPA.'' [30]

26. Given our decision in this Final Rule, we need not address the various arguments regarding the use of simulated contingency analyses as a benchmark for determining whether PRC–005–3 encompasses an adequate set of reclosing relays, and need not address ITC's request for clarification about the data points potentially required under our proposed revisions to NERC's misoperations database.

B. Supervisory Devices

NOPR

27. The NOPR proposed to require modification of PRC–005–3 to include maintenance and testing of supervisory devices associated with autoreclosing relay schemes otherwise covered by the standard, such as sync-check and voltage relays that may be critical to the operation of an autoreclosing scheme.[31] In doing so, the Commission noted that requiring the inclusion of supervisory devices within the scope of PRC–005–3 is consistent with Commission orders on NERC's Transmission Relay Loadability Reliability Standard.[32] In addition, the Commission noted that NERC had failed to explain how a failure of a sync-check relay for undesirable conditions, such as when static system angles are greater than designed, would not allow autoreclosing, thus leading to the reliability concerns identified in Order No. 758.[33]

Comments

28. NERC states that it would support modification of PRC–005–3 to include certain supervisory devices to address the Commission's concerns as stated in the NOPR. Specifically, NERC suggests modifying the Reliability Standard to include ''maintenance of supervision functions for which a failure can result in autoreclosing into a fault and potentially cause generating or plant instability.'' [34] Accordingly, NERC states that it ''would support the addition of voltage supervision, and where used, supervisory inputs associated with selective autoreclosing in the coverage of PRC–005.'' [35] While asserting that ''synchronism check failures do not have the potential to affect reliable operation of the Bulk-Power System,'' NERC also acknowledges that ''including synchronism check supervision, as suggested by the Commission, would provide a reliability benefit.'' [36] Thus, NERC states that it supports the addition of synchronism check supervision to the Reliability Standard's coverage.

29. Idaho Power generally supports the inclusion of supervisory devices as part of PRC–005–3, based on its position that ''any component required for the successful operation of the reclosing system at the identified critical location should be tested and maintained.'' [37]

30. Other commenters support modification of PRC–005–3 to include supervisory devices with certain limitations. EEI asks that the Commission limit the directive ''to only those supervisory relays, which are directly associated with automatic reclosing schemes that would be covered by the proposed Reliability Standard.'' [38] G&T Cooperatives ask that the Commission limit any directive on supervisory devices to ''those supervisory sync-check relays that can reclose on another transmission line,'' arguing that these are the only supervisory devices where failure could lead to a reliability concern.[39]

Commission Determination

31. For the reasons stated in the NOPR and based on the commenters' general support, we adopt our NOPR proposal and direct that, pursuant to section 215(d)(5) of the FPA, NERC develop modifications to PRC–005–3 to include supervisory devices associated with autoreclosing relay schemes to which the Reliability Standard applies. Further, we clarify that NERC's proposal regarding the scope of supervisory devices is an acceptable approach to satisfy the Commission directive. Specifically, NERC proposed in its NOPR comments, and we find

[29] *Id.* at 5.

[30] *Order on the Electric Reliability Organization's Five-Year Performance Assessment,* 149 FERC ¶ 61,141 at P 38 (2014).

[31] NOPR, 148 FERC ¶ 61,041 at P 28.

[32] *Id.* P 29 (citing *Transmission Relay Loadability Reliability Standard,* Order No. 733, 130 FERC ¶ 61,221 (2010)).

[33] *Id.* P 30.

[34] NERC Comments at 4.

[35] *Id.*

[36] *Id.* at 5.

[37] Idaho Power Comments at 3–4.

[38] EEI Comments at 5.

[39] G&T Cooperatives Comments at 4.

acceptable, that the scope of the supervisory devices to be encompassed in the Reliability Standard are those providing voltage supervision, supervisory inputs associated with selective autoreclosing, and sync-check relays that are part of a reclosing scheme covered by PRC–005–3.

C. Requested Clarification on Applicability Sections

Comments

32. ITC requests that the Commission clarify, or direct NERC to clarify, two applicability provisions. First, ITC asks for clarification that ''the largest BES generating unit within the Balancing Authority Area'' under Applicability section 4.2.6.1 would be determined using the NERC-defined term ''Balancing Authority,'' and not the MISO-defined term ''Local Balancing Authority.'' In addition, ITC requests that the Commission provide guidance on how to measure the gross capacity of multi-unit generating plants that are connected to electrically-isolated buses under section 4.2.6.2.

Commission Determination

33. We decline to provide the requested clarifications. Rather, we expect that an applicable entity will consult with the relevant Balancing Authority and/or Regional Entity, as appropriate, with questions concerning identification of the largest generating unit within the Balancing Authority Area, or the determination of gross generating plant capacity under the applicability sections of Reliability Standard PRC–005–3.

III. Information Collection Statement

34. The following collection of information contained in this rule is subject to review by the Office of Management and Budget (OMB) under section 3507(d) of the Paperwork Reduction Act of 1995.[40] OMB's regulations require approval of certain information collection requirements imposed by agency rules.[41] Upon approval of a collection(s) of information, OMB will assign an OMB control number and an expiration date. Respondents subject to the filing requirements of a rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number.

35. The Commission solicited comments on the need for and purpose of the information contained in Reliability Standard PRC–005–3 and the corresponding burden to implement the standard. The Commission received one comment on the reporting and information collection estimates. Specifically, EEI recommends that the Commission revise the cost estimate associated with the increase in information collection burdens expected under the proposed standard. EEI states that the NOPR underestimated the cost burden because it failed to take into account the extent to which compliance ''will require significant coordination with other entities, the modification of existing maintenance programs, identification of affected plants as well as all affected substations.'' [42]

36. The Final Rule approves Reliability Standard PRC–005–3 (Protection System and Automatic Reclosing Maintenance), which will replace PRC–005–2 (Protection System Maintenance). We decline to alter the burden estimate as calculated in the NOPR, as the only party to comment on the estimate (EEI) failed to point out any specific, quantifiable errors in the NOPR's estimate or otherwise offered an alternative quantification.

37. Further, in the NOPR, the Commission requested comment on the data retention requirements, explaining that PRC–005–3 requires applicable entities to maintain documentation of covered maintenance activities performed since the last audit, or of the two most recent maintenance cycles if the maintenance interval exceeds the normal audit cycle. Because the longest maintenance interval for certain components under PRC–005–3 is twelve years, an entity could be required to retain records for up to 24 years.

38. EEI, Idaho Power, and G&T Cooperatives oppose continuation of the data retention requirement, claiming that it is unnecessary and burdensome to retain maintenance records for 24 years, and noting that the record retention period far exceeds the normal audit cycle. Likewise, NERC avers that there is no ''substantial need'' to maintain the records for two full cycles. Further, NERC states that another version of the standard is being developed (version 4) that will reduce the data retention requirement so that records must only be maintained for the length of the audit cycle if the maintenance interval is shorter than the audit cycle, or for the length of the maintenance interval if not.

39. We generally agree with NERC and other commenters that the current data retention requirement, with a maximum retention period of 24 years, is unnecessarily long and burdensome. However, since the issuance of the NOPR and subsequent comments, NERC has submitted a petition for approval of the version 4 standard, PRC–005–4, which includes a modified document retention requirement.[43] Rather than ruling in the immediate docket, we will address the data retention issue in the context of NERC's version 4 standard. As a result, there is no need to make corresponding adjustments to the NOPR's burden estimate as part of this Final Rule.

40. The approved Reliability Standard expands the applicability of the existing standard to include reclosing schemes that meet certain criteria, imposing mandatory minimum maintenance activities and maximum maintenance intervals for the various reclosing scheme components. Because the specific requirements were designed to reflect common industry practice, entities are not expected generally to experience a meaningful change in actual maintenance and documentation practices. However, applicable entities will have to perform a one-time review of their reclosing schemes to determine which ones fall under PRC–005–3, and, if they have applicable reclosing schemes, review current reclosing scheme maintenance programs to ensure that they meet the requirements of PRC–005–3. Accordingly, all information collection costs are expected to be limited to the first year of implementation of the revised standard.

41. *Public Reporting Burden:* Our estimate below regarding the number of respondents is based on an analysis of the generating plants within the footprint of the PJM Interconnection, LLC (PJM) that meet the inclusion criteria of the proposed standard. There are an estimated 23 generating plants in PJM that meet these criteria. These generating plants represent approximately 47,000 MWs of the approximately 184,000 MWs within PJM. Based on 2012 data, total installed capacity in the continental United States is 1,153,000 MWs.[44] Applying the PJM ratio to this total results in an estimated 144 plant sites nationwide to which PRC–005–3 would be applicable. We also assume that a substation will be located within 10 miles of each plant site, resulting in an estimated total

[40] 44 U.S.C. 3507(d) (2006).

[41] 5 CFR 1320.11.

[42] EEI Comments at 6.

[43] *See* December 18, 2014, NERC Petition for Approval of Proposed Reliability Standard PRC–005–4, Docket No. RM15–9–000. Nothing in this Final Rule prejudges the outcome in the separate proceeding addressing the Version 4 standard.

[44] *See http://search.usa.gov/search?utf8=%E2%9C%93&affiliate=eia.doe.gov&query=generation+capacity+all+states&search=Submit* and *http://www.eia.gov/electricity/annual/html/epa_08_07_a.html.*

number of entities that meet the inclusion criteria of 288.[45] Finally, we assume that all generator owners and transmission owners must review their existing plant and substation sites to determine applicability under the proposed standard.

42. Affected entities must perform a one-time review of their existing reclosing scheme maintenance program to ensure that it contains at a minimum the activities listed in Table 4 in Reliability Standard PRC–005–3, and that the activities are performed within the applicable maximum interval listed in Table 4. If the existing reclosing scheme maintenance program does not meet the criteria in Reliability Standard PRC–005–3, the entity will have to make certain adjustments to the program.

RM14–8–000 (MANDATORY RELIABILITY STANDARDS: RELIABILITY STANDARD PRC–005–3)

	Number of respondents (1)	Annual number of responses per respondent (2)	Total number of responses (1) * (2) = (3)	Average burden and cost per response [46] (4)	Total annual burden hours and total annual cost (3) * (4) = (5)	Cost per respondent ($) (5) ÷ (1)
One-time review of existing plant and substation sites to determine which ones fall under PRC–005–3	[47] 937	1	937	2 $146	1,874 $136,802	$146
One-time review and adjustment of existing program	[48] 288	1	288	8 $584	2,304 $168,192	584
Total			1,225		4,178 $304,994	

Title: FERC–725P, Mandatory Reliability Standards: Reliability Standard PRC–005–3.

Action: Final rule.

OMB Control No: 1902–0269.

Respondents: Business or other for-profit and not-for-profit institutions.

Frequency of Responses: One time.

Necessity of the Information: The approved Reliability Standard PRC–005–3 will implement the Congressional mandate of the Energy Policy Act of 2005 to develop mandatory and enforceable Reliability Standards to better ensure the reliability of the nation's Bulk-Power System. Specifically, the standard will ensure that transmission and generation protection systems and reclosing relays affecting the reliability of the bulk electric system are maintained and tested.

43. *Internal review:* The Commission has reviewed revised Reliability Standard PRC–005–3 and made a determination that approval of this standard is necessary to implement section 215 of the FPA. The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimates associated with the information requirements.

44. Interested persons may obtain information on the reporting requirements by contacting the Federal Energy Regulatory Commission, Office of the Executive Director, 888 First Street NE., Washington, DC 20426 [Attention: Ellen Brown, email: *DataClearance@ferc.gov,* phone: (202) 502–8663, fax: (202) 273–0873].

45. Comments concerning the information collections approved in this Final Rule and the associated burden estimates should be sent to the Commission in this docket and may also be sent to the Office of Management and Budget, Office of Information and Regulatory Affairs [Attention: Desk Officer for the Federal Energy Regulatory Commission]. For security reasons, comments should be sent by email to OMB at the following email address: *oira_submission@omb.eop.gov.* Comments submitted to OMB should reference the collection number (FERC–725P) and OMB Control No. 1902–0269.

IV. Regulatory Flexibility Act Analysis

46. The Regulatory Flexibility Act of 1980 (RFA)[49] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. As shown in the information collection section, an estimated 288 entities are expected to have applicable reclosing relays under the revised Reliability Standard. The proposed Reliability Standard requires applicable entities to test and maintain certain autoreclosing relays as part of a protection system maintenance program. More specifically, affected entities must perform a one-time review of their existing reclosing scheme maintenance program to ensure that it contains at a minimum the activities listed in Table 4 in Reliability Standard PRC–005–3. Comparison of the applicable entities with the Commission's small business data indicates that approximately 197 are small entities[50] or 68.24 percent of the respondents affected by this Final Rule.

47. As discussed above, we estimate that Reliability Standard PRC–005–3 will apply to 144 generating plant sites and 144 substations that are located within 10 miles of the plant site. We therefore estimate that 288 entities will have applicable reclosing relays subject to the revised Reliability Standard's requirements, conservatively assuming

[45] This estimate conservatively assumes that the proximate substation would be owned by a different entity than the generating plant.

[46] The estimates for cost per response are derived using the following formula: Average Burden Hours per Response * $73 per Hour = Average Cost per Response. The hourly cost figure comes from the average of the salary plus benefits for a manager and an engineer (rounded to the nearest dollar). The figures are taken from the Bureau of Labor Statistics at (*http://bls.gov/oes/current/naics3_221000.htm*).

[47] This figure reflects the generator owners and transmission owners identified in the NERC Compliance Registry as of May 28, 2014.

[48] This figure is a subset of GOs and TOs, as discussed in P 41 and n. 44.

[49] 5 U.S.C. 601–12.

[50] The Small Business Administration sets the threshold for what constitutes a small business. Public utilities may fall under one of several different categories, each with a size threshold based on the company's number of employees, including affiliates, the parent company, and subsidiaries. For the analysis in this Final Rule, we are using a 500 employee threshold for each affected entity. Each entity is classified as Electric Bulk Power Transmission and Control (NAICS code 221121).

that the proximate substation would be owned by a different entity than the generating plant. In addition, we estimate that all generator owners and transmission owners will initially review plant and substation sites to determine applicability with the proposed standard.

48. On average, each small entity affected may have a one-time cost of $730 per site, representing a one-time review of the program for each entity, consisting of 10 man-hours at $73/hour as explained above in the information collection statement. We do not consider this cost to be a significant economic impact for small entities. The Commission certifies that Reliability Standard PRC–005–3 will not have a significant economic impact on a substantial number of small entities. Accordingly, no regulatory flexibility analysis is required.

V. Environmental Analysis

49. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[51] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Included in the exclusion are rules that are clarifying, corrective, or procedural or that do not substantially change the effect of the regulations being amended.[52] The actions taken herein fall within this categorical exclusion in the Commission's regulations.

VI. Document Availability

50. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Home Page (*http://www.ferc.gov*) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street NE., Room 2A, Washington, DC 20426.

51. From the Commission's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

52. User assistance is available for eLibrary and the Commission's Web site during normal business hours from the Commission's Online Support at 202–502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov.*

VII. Effective Date and Congressional Notification

53. This Final Rule is effective March 30, 2015.

54. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a ''major rule'' as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.[53] The Commission will submit the Final Rule to both houses of Congress and to the General Accountability Office.

By direction of the Commission. Commissioner Honorable is voting present.

Issued: January 22, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–01424 Filed 1–26–15; 8:45 am]

BILLING CODE 6717–01–P

[51] *Regulations Implementing the National Environmental Policy Act of 1969,* Order No. 486, FERC Stats. & Regs. ¶ 30,783 (1987).

[52] 18 CFR 380.4(a)(2)(ii).

[53] *See* 5 U.S.C. 804(2).

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 310

[Docket ID: DOD–2013–OS–0023]

RIN 0790–AJ03

DoD Privacy Program

AGENCY: Deputy Chief Management Officer, DoD.

ACTION: Final rule; amendment.

SUMMARY: This rule updates the established policies, guidance, and assigned responsibilities of the DoD Privacy Program pursuant to The Privacy Act and Office of Management and Budget (OMB) Circular No. A–130; authorizes the Defense Privacy Board and the Defense Data Integrity Board; prescribes uniform procedures for implementation of and compliance with the DoD Privacy Program; and delegates authorities and responsibilities for the effective administration of the DoD Privacy Program.

This rule is part of DoD's retrospective plan, completed in August 2011, under Executive Order 13563, ''Improving Regulation and Regulatory Review.'' DoD's full plan and updates can be accessed at: *http://exchange.regulations.gov/exchange/topic/eo-13563.*

DATES: This rule is effective February 26, 2015.

FOR FURTHER INFORMATION CONTACT: Samuel P. Jenkins, 703–571–0070.

SUPPLEMENTARY INFORMATION:

Executive Summary

I. Purpose of the Regulatory Action

a. The need for the regulatory action and how the action will meet that need.

An individual's privacy is a fundamental legal right that must be respected and protected. This regulatory action ensures that DoD's need to collect, use, maintain, or disseminate personally identifiable information (PII) about individuals for purposes of discharging its statutory responsibilities will be balanced against their right to be protected against unwarranted privacy invasions. This regulatory action also describes the rules of conduct and responsibilities of DoD personnel, DoD contractors, and DoD contractor personnel to ensure that any PII contained in a system of records that they access and use to conduct official business will be protected so that the security and confidentiality of the information is preserved.

b. Succinct statement of legal authority for the regulatory action (explaining, in brief, the legal authority laid out later in the preamble).

Authority: 5 U.S.C. 552a, The Privacy Act of 1974, as amended, which requires the implementation of the Act by Federal agencies.

II. Summary of the Major Provisions of the Regulatory Action in Question

This rule:

a. Establishes rules of conduct for DoD personnel and DoD contractors involved in the design, development, operation, or maintenance of any system of records.

b. Establishes appropriate administrative, technical, and physical safeguards to ensure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity that could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual about whom information is maintained.

c. Ensures that guidance, assistance, and subject matter expert support are provided to the combatant command

privacy officers in the implementation and execution of and compliance with the DoD Privacy Program.

d. Ensures that laws, policies, procedures, and systems for protecting individual privacy rights are implemented throughout DoD.

III. Costs and Benefits

This regulatory action imposes no monetary costs to the Agency or public. The benefit to the public is the accurate reflection of the Agency's Privacy Program to ensure that policies and procedures are known to the public.

Public Comments

The Department published a proposed rule on August 22, 2013 (78 FR 52117), with a request for comments. The following comments were received and are addressed below:

Comment 1: An argument against the elimination of the term (and position/role) ''System Manager''. Yes, it is every employee's responsibility to ensure PII is properly handled, but the System Manager is the 'control valve' for each specific SOR and should continue to have a big say in determining 'who' should have access to sensitive material. Much like the world of classified information, being trained and having the 'clearance' to access the information is only part of the equation . . . the concept of ''need-to-know'' is equally important when determining access, and the System Manager is the POC that checks ''need-to-know''. In addition, the System Manager knows (or should know) which SORN authorizes the collection of their SOR, they know with whom the info can be shared, they know what should be in the SOR and they verify that info every year, they keep track of disclosure accounting, etc. The average user with access only knows to protect it, and they wouldn't know a SORN if they tripped over it. I would suggest returning the ''System Manager'' to this document.

DoD Response: This Comment addresses the Rules of Conduct as described under 32 CFR 310.8(b)(1)–(3). These particular requirements have been revised and incorporated into 32 CFR 310.8(j)–(l), and are now applicable to all DoD personnel and DoD contractor personnel, including system mangers. This revision does not eliminate the position/role of system managers.

Comment 2: 32 CFR 310.22. This comment is targeted to a part of 32 CFR part 310 that DoD saw fit to not update, and it is a missed opportunity to clarify current DoD practices. The DoD has gone out of its way to establish that sharing lists of PII with non-DoD requestors is prohibited by FOIA. The DoD has requested that OPM not share DoD personnel information with requestors, and OPM has approved that request. DoD has gone to court (supporting OPM), and won, in its effort to ensure that requests for personnel information of DoD employees is exempt under the FOIA. (see *Long* v. *OPM* (Case 5:05–cv–01522–NAM–DEP)). And while the DPCLD continues to state that ''there is no DoD FOIA policy denying the release of names of DoD personnel below the Director, O–7, or SES levels. All such decisions to deny names that do not comprise a list must be made by using the Reporters Committee balancing test.'', in fact DoD has issued a policy memorandum (09 Nov 2001) stating exactly that.

Sidebarring whether it is ''actual'' DoD policy to withhold or not, I think it is fair to say that DoD will likely discourage or prevent release of personnel information (either in lists per the Nov. 2001 memo or not-in-lists via FOIA exemptions). Therefore the contention expressed in 32 CFR 310.22(b)(5)(i)(A) that ''. . . personal information regarding DoD civilian employees that normally may be released without a clearly unwarranted invasion of personal privacy'' is misleading and disingenuous and should be reworded. As presently constituted, this wording gives the impression that this info is normally released, so either some DoD commands may release it without being aware that DoD, in practice, does exactly the opposite, or some citizens wishing to know how their government works may actually think they have a chance of getting that info from DoD without a court fight.

If the policy memo written just after 9/11 is indeed the new permanent policy and not, as Michael Donley declared, that ''it was believed that this would only be a temporary policy'', please change the CFR to reflect that. 12 years of relying on a scrap of paper touting a 'temporary policy' and not changing Federal Regulations seems to be circumventing the purpose of the CFR.

DoD Response: This Comment addresses the release of ''personal information that is normally releasable'' as described in 32 CFR 310.22(b)(5)(i)(A). The commentator objects to the wording ''personally information regarding DoD civilian employees that normally may be released without a clear unwarranted invasion of personal privacy,'' as ''misleading and disingenuous.'' Attention should be drawn to the use of the word ''may,'' as in indicator that it is permissible to release this information, but not required.

Comment 3: 32 CFR 310.4(h). The amendment to the definition of DoD Personnel should also include ''dependents of members of armed services registered in DEERS.'' Military dependents receive no protection under both the current and proposed versions of the Privacy Program. Aside from ongoing military operations, military dependents are just as likely to depend upon DoD services requiring the use of PII and/or PHI, but are afforded no protections.

Currently, family members are only required to receive notice of PII spillage, but are not afforded any civil remedies, nor is their information protected by criminal action against its malicious use. See DoD 5400.11–R, sec. C10.6.1.2.2. The Federal Tort Claims Act (FTCA) also severely limits any torts arising out of PII spillage by parties to whom the Privacy Program applies. See 28 U.S.C. 2680(h). For military dependents stationed overseas, who are more likely to use federal contractor services and in so doing, place their confidential information in someone else's care, the FTCA might preclude any protections at tort law for military families whatsoever. See 28 U.S.C. 2860(k).

Protecting DEERS dependent information has the added benefits of enhancing national security, providing accountability for dependents' records, and increasing oversight over DoD dependents' data by government contractors. Protecting dependents' privacy enhances national security by preventing another avenue by which malicious actors can exploit service members. During a service member's deployment, DoD dependents on the homefront frequently contact family readiness groups and other on-base agencies for news on their military members, provide information to DoD agencies to qualify for benefits, and join military unit sponsored clubs to relieve the stress of their loved one's absence. While information on the military member would be protected under the Privacy Program, the DoD dependent's information would not be. Thus, a malicious actor could legally request information about a service member's family and use it to exploit a service member's actions in a forward area, or illegally gain it by hacking information that is currently not required to be protected.

Adding this definition also creates accountability for DEERS dependent records. DoD dependents often become highly involved in on-base activities that require sharing private information.

When that DoD dependent changes duty stations with their DoD member, there is no accounting for the disposition of the records the DEERS member left behind. On-base agencies are often the same from one base to the next. A Privacy Program mandated recordkeeping program would allow for more easier integrations of service members and their families from one duty location to the next, by allowing a standardization of the sharing and safekeeping of records between ''franchises'' at different bases. This in turn allows service members to more rapidly begin work at a new duty station.

Admittedly, such an amendment possibly triggers an economic impact analysis under E.O. 12866, and an unfunded mandates analysis under the Unfunded Mandates Reform Act, due to the increase in costs in archiving additional data and requiring contractor compliance.

However, the benefit to the welfare of our armed services, the eventual elimination of replication of efforts in data collection at different bases, and the savings to DoD family members' lost time and wages in fighting possible identity theft due to PII spillage, will outweigh the burden of such an amendment.

DoD Response: This Comment addresses the classification of DoD Personnel in 32 CFR 310.4(h) and suggests the inclusion of ''dependents of members of the armed services registered in DEERS'' in this classification. Although military dependents do carry many of the same attributes of military service members, they are not DoD employees and therefore cannot be classified as ''DoD Personnel.'' The commentator also suggests that military dependents ''are afforded no protections'' under the Privacy Program. Information concerning dependents of members of the armed services registered in DEERS is maintained by DoD in accordance with the Privacy Act of 1974, as amended, which does provide protection to military dependents. Within the DoD Privacy Program, ''family members'' are specifically mentioned in 32 CFR 310.14(a)(1) and 32 CFR 310.50(a)(2)(ii) with respect to breach notification and Privacy Act violations.

Comment 4: The Brennan Center is a nonpartisan law and policy institute that seeks to improve our systems of democracy and justice. The Brennan Center's Liberty and National Security Program works to further national security policies that respect constitutional values and the rule of law while protecting our people. Specifically, the Center seeks to restore the proper flow of information between the government and the people, ensure that domestic counterterrorism policies effectively target the terrorist threat, and secure appropriate mechanisms for oversight and accountability.

The Brennan Center recently published a report, What the Government Does with Americans' Data, that explores the federal government's retention of non-criminal information about Americans. The report recommends specific reforms, including reforms to the Privacy Act and limits on the retention of information reflecting the exercise of rights protected by the First Amendment.

With respect to the DoD proposed regulation, we note that a coalition of organizations is submitting a letter urging the DoD to require the National Security Agency, a component of the DoD, to publish System of Records Notices for three NSA databases: (1) A system containing ''telephone numbers and electronic communications accounts/addresses/identifiers that NSA has reason to believe are being used by United States persons,'' used to distinguish U.S. persons from foreigners in the source of targeting persons for the purpose of surveillance under Section 702 of the Foreign Intelligence Surveillance Act; (2) a database of email address lists and instant messaging ''buddy lists'' belonging to U.S. citizens and residents; and (3) a database with information about social networks, including data relating to U.S. persons. We endorse this recommendation, and believe it is critically important that the NSA comply with its obligations to provide the notices required by the Privacy Act regarding searchable databases containing information about Americans and legal residents.

DoD Response: This Comment addresses System of Records Notices (SORNs) with respect to the DoD, and with the National Security Agency (NSA) in particular. It is DoD policy to ''publish in the **Federal Register** upon establishment or revision a notice of the existence and character of the system of records . . .'' 5 U.S.C. 552a(e)(4). A SORN is required when (1) information about an individual is collected and stored by a DoD Component; and (2) that information is retrievable by a unique personal identifier. 32 CFR 310.10. NSA has twenty-five active SORNS that are publicly available for review. NSA generates SORNs as require by the Privacy Act of 1974 and applicable DoD regulation, 32 CFR 310.10. One NSA SORN, GNSA 18, concerns NSA ''collection of operations records.'' GNSA 18 covers all individuals, as that term is defined within the Privacy Act to encompass citizens of the United States and lawful permanent residents. The purpose of GNSA 18 is to allow NSA to maintain, as that term is defined by the Privacy Act, records on foreign intelligence, counterintelligence, and information systems security matters relating to the missions of NSA. Specifically, GNSA 18 covers all individuals, as that term is defined by the Privacy Act, who are identified in NSA foreign intelligence, counterintelligence, or information system security reports, including supportive materials. As such, the DoD Privacy Program complies with the Privacy Act of 1974, as amended, and as codified at 5 U.S.C. 552a.

Comment 5: The Policy section of the DoD's Privacy Program currently states that ''No record shall be maintained on how an individual exercises rights guaranteed by the First Amendment to the constitution. . . .'' There are three enumerated exceptions: When retention is authorized by statute, where the individual has authorized it, or ''when the record is pertinent to and within the scope of an authorized law enforcement activity.'' Under the proposed rule, the analogous section would expand the third exception to allow information relating to First Amendment-protected speech to be maintained when the records is ''pertinent to and within the scope of an authorized intelligence or administrative investigation.'' (This same change is reflected in the proposed changes to the Privacy Program's Rules of Conduct as well.)

This exception—both as it stands and as revised—is simultaneously overly broad and vague. To begin with, it is not clear what matters are encompassed by ''law enforcement activities''; it seems likely that those activities could include more than an authorized investigation, but it is unknown what other actions might qualify as an ''activity'' and thus trigger the ability to maintain First Amendment-protected information. The new terms are even more ambiguous. ''Intelligence activities'' are not defined, and the meaning of ''administrative activities'' is particularly uncertain; it appears susceptible to being used as a catch-all to permit the retention of First Amendment-protected information in almost any circumstances.

Furthermore, the requirement that the record be ''pertinent to and within the scope of'' one of the above matters is an extremely low standard, as nearly any record could be found to be ''pertinent to'' a particular activity. This is particularly true in light of the assertions by the NSA and the DOJ that databases containing nearly all

American's phone records are ''relevant'' to the NSA's activities because some minute percentage may be germane in the future. A higher standard would be the ''relevant and necessary'' standard, which is reflected in a proposed change to the Rules of Conduct requiring all users to ''minimize the collection of [personally identifiable information] to that which is relevant and necessary to accomplish a purpose of the DoD.''

In short, the exception as proposed would allow First Amendment-related information to remain in an individual's file under almost any circumstances, as long as there is a colorable argument that it is related in some way, or might be related in the future, to some law enforcement, intelligence, or ''administrative'' matter. Because of the ambiguity of these terms, American citizens are left with little guidance about the actual circumstances under which information about their protected speech or associations may be maintained in DoD files.

Accordingly, we urge the DoD to reject the proposed changes and to significantly narrow this exception. Appropriate steps would include: (1) Adding definitions for ''law enforcement activities,'' ''intelligence activities,'' and ''administrative activities to 32 CFR 310.4, Definitions; (2) Limiting the retention of information reflecting the exercise of First Amendment-protected rights to circumstances in which it is relevant and necessary to an authorized investigation; (3) Ensuring that at the close of any investigation, First Amendment-protected information is purged. (All information gathered about U.S. persons should be purged if no reasonable suspicion of criminal activity is developed.) If this information must be retained as part of an investigative file that is reasonably maintained in the ordinary course of business, it should be masked to ensure that it is accessible in the future only if strictly relevant and necessary to another authorized investigation; and (4) Specifying the circumstances under which any PII about Americans, including records reflecting First Amendment-protected activities, may be shared with other local, state, or federal agencies, foreign governments, or private parties or entities.

DoD Response: This Comment addresses the terms ''law enforcement activities,'' ''intelligence activities,'' and ''administrative activities,'' and raises First Amendment concerns. The proposed revision to the DoD policy includes that ''no record will be maintained on how an individual exercises rights guaranteed by the First Amendment . . . , except (1) when expressly authorized by statute; (2) when expressly authorized by the individual that the record is about; or (3) when the record is pertinent to and within the scope of an authorized law enforcement activity, including an authorized intelligence or administrative investigation.'' 32 CFR 310.5(f) (proposed). The Privacy Act of 1974 permits ''exception from such requirements with respect to records provided in this Act only in those cases where there is an important public policy need for such exemption as has been determined by specific statutory authority.'' Public Law 93–579, Section 2(b)(5). General and Specific Exemptions are provided in 5 U.S.C. 552a(j) and (k). As such, the DoD Privacy Program complies with the Privacy Act of 1974, as amended, and as codified at 5 U.S.C. 552a.

Comment 6: By notice published August 22, 2013, the Department of Defense (''DoD'') proposes to amend its Privacy Program implementing the Privacy Act of 1974. Specifically, DoD proposes to change its ''policies, guidance, and assigned responsibilities of the DoD Privacy Program . . . ; authoriz[e] the Defense Privacy Board and the Defense Data Integrity Board; prescrib[e] uniform procedures for implementation of and compliance with the DoD Privacy Program; and delegat[e] authorities and responsibilities for the effective administrative of the DoD Privacy Program.''

The proposed amendments apply to all organizational entities within the DoD, including the Office of the Secretary of Defense, the Military Departments, and the DoD Office of the Inspector General, which the DoD refers to collectively as the ''DoD Components.'' The National Security Agency (''NSA'') is an organizational entity and agency component within the DoD. Therefore, the DoD's proposal applies to the NSA.

As discussed below, NSA currently maintains at least three unlawful Privacy Act systems of records pertaining to US citizens and permanent residents. These systems of records violate both the Privacy Act and current DoD Privacy Program regulations. Accordingly, pursuant to DoD's notice of proposed rulemaking (''NPRM''), the undersigned privacy, consumer rights, and civil rights organizations [hereinafter ''Privacy Commentators''] hereby submit these comments to urge DoD to enjoin the NSA—a DoD component subject to the DoD Privacy Program—from violating the Privacy Act and current DoD Privacy Program regulations.

Although the DoD's Privacy Program NPRM is generally favorable to individual privacy and First Amendment rights and adheres to the Privacy Act, the NSA's current collection, maintenance, and disclosure of records violate the Privacy Act and current DoD Privacy Program regulations. The NSA's activity would also violate DoD's proposal.

Because the NSA is under the purview of the DoD Privacy Program, the DoD must ensure NSA implements ''information privacy protections, including full compliance with federal laws, regulations, and policies relating to information privacy'' before issuing a final rule. Specifically, the DoD must ensure that the NSA complies with the Privacy Act by publishing additional system of records notices and otherwise adhering to the Privacy Act.

I. The Privacy Act Grants Individuals Judicially Enforceable Rights and Imposes Obligations on Federal Agencies

The Privacy Act of 1974 governs federal agency maintenance, collection, use, and dissemination of U.S. citizen and lawful permanent resident ''records'' contained in a ''system of records.'' The Act broadly defines ''record'' to include: Any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his education, financial transactions, medical history, and criminal or employment history and that contains his name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph[.]

A ''system of records'' is: A group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual[.]

When it enacted the Privacy Act of 1974, Congress sought to restrict the amount of personal information that federal agencies could collect and required transparency in agency information practices. Privacy Act legislative history reveals that the Act is intended ''to promote accountability, responsibility, legislative oversight, and open government with respect to the use of computer technology in the personal information systems data of the Federal Government [.]'' The Act is also intended to guard the privacy interests of citizens and lawful permanent residents against government intrusion.

Congress found that ''the privacy of an individual is directly affected by the collection, maintenance, use, and dissemination of personal information by Federal agencies,'' and recognized that ''the right to privacy is a personal and fundamental right to protected by the Constitution of the United States.'' Congress thus sought to ''provide certain protections for an individual against an invasion of personal privacy'' by establishing a set of procedural and substantive rights These rights, for example, guarantee that individuals:

• May request access to records an agency maintains about him or her, as well as have copies made;

• may amend a record about him or her; and

• must be informed whom the agency asks to supply information;

Importantly, the Privacy Act grants individuals a private right of action and individuals may sue federal agencies for violating the Privacy Act.

In addition to granting individual rights, the Privacy Act also imposes several obligations on federal agencies, including obligations that agencies must:

• At least 30 days prior to publication of each record routine, ''publish in the **Federal Register** notice of any new use or intended use of the information in the system, and provide an opportunity for interested persons to submit written data, views, or arguments to the agency'';

• not maintain records ''describing how any individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute or by the individual about whom the record is maintained or unless pertinent to and within the scope of an authorized law enforcement activity'';

• give individuals access to the accounting of disclosure of their records;

• make notes of requested amendments within the records;

• collect records ''about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or by executive order of the President'';

• ''collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs'';

• assure that all records used by the agency in making determinations about an individual are accurate, relevant, timely and complete as reasonably necessary to maintain fairness;

• make a reasonable effort to notify an individual when a record about him or her is made available to another individual when it is a matter of public record;

• promulgate rules establishing procedures that notify an individual in response to record requests pertaining to him or her, including ''reasonable times, places, and requirements for identifying an individual'', institute disclosure procedures for medical and psychological records, create procedures to review amendment requests, as well as determine the request, the status of appeals to denial of requests, and establish fees for record duplication, excluding the cost for search and review of the record;

In addition to assessing ''reasonable attorney fees and other litigation costs'' for noncompliant agencies, courts may order agencies to amend individuals records, as well as ''enjoin the agency from withholding records.'' The Act also imposes criminal penalties for officers and agency employees who willfully disclose agency records in violation of the Privacy Act or Privacy Act regulations.

II. NSA Record Maintenance, Collection, Use, and Dissemination Are Subject to the Privacy Act and DoD Privacy Program Regulations

The NSA is an ''agency'' as defined in the Privacy Act. The NSA is also a DoD organizational entity within the DoD. Accordingly, NSA is subject to the Privacy Act, current DoD Privacy Program regulations, and the NPRM. Pursuant to the Privacy Act and DoD Privacy Program regulations, the NSA has published twenty-six systems of records. These are as follows:

Identifier	Notices	Exemptions claimed
Preamble:		
GNSA 02	NSA/CSS Applicants (June 5, 2008, 73 FR 31997)	(k)(1) and (k)(5).
GNSA 03	NSA/CSS Correspondence, Cases, Complaints, Visitors, Requests (February 22, 1993, 58 FR 10531).	(k)(1), (k)(2), (k)(4), (k)(5).
GNSA 05	NSA/CSS Equal Employment Opportunity Data Statistical Data (December 30, 2008, 73 FR 79851).	(k)(1), (k)(2), (k)(4).
GNSA 06	NSA/CSS Health, Medical and Safety Files (March 15, 2012, 77 FR 15360)	(k)(1), (k)(4), (k)(5), (k)(6).
GNSA 07	NSA/CSS Motor Vehicles and Carpools (July 25, 2008, 73 FR 43411)	(k)(1).
GNSA 08	NSA/CSS Payroll Processing File (October 3, 2012, 77 FR 60401)	(k)(1) and (k)(2).
GNSA 09	NSA/CSS Personnel File (December 30, 2011, 76 FR 82283)	(k)(1), (k)(4), (k)(5), (k)(6).
GNSA 10	NSA/CSS Personnel Security File (June 16, 2009, 74 FR 28483)	(k)(1), (k)(2), (k)(5), (k)(6).
GNSA 11	NSA/CSS Key Accountability Records (June 28, 2010, 75 FR 36642)	(k)(2).
GNSA 12	NSA/CSS Education, Training and Workforce Development (March 24, 2009, 74 FR 12116).	(k)(1), (k)(2), (k)(5), (k)(6).
GNSA 14	NSA/CSS Library Patron File Control System (July 30, 2013, 78 FR 45913)	(k)(1) and (k)(4).
GNSA 15	NSA/CSS Computer Users Control System (February 5, 2010, 75 FR 6000)	(k)(1) and (k)(2).
GNSA 16	NSA/CSS Drug Testing Program (September 22, 2011, 76 FR 58787).	
GNSA 17	NSA/CSS Employee Assistance Service Case Records (November 14, 2011, 76 FR 70427).	(j)(2), (k)(1), (k)(2), (k)(4), and (k)(5).
GNSA 18	Operations Records (November 30, 2010, 75 FR 74019).	(k)(1), (k)(2), and (k)(5).
GNSA 19	NSA/CSS Child Development Services (December 4, 2009, 74 FR 63732).	
GNSA 20	NSA Police Operational Files (April 23, 2010, 75 FR 21250)	(k)(2), (k)(4), and (k)(5).
GNSA 21	NSA/CSS Morale, Welfare, and Recreation (MWR) and Non-appropriated Fund Instrumentality (NAFI) Files (May 7, 2010, 75 FR 25215).	
GNSA 22	Garnishment Processing Files, (October 25, 2010, 75 FR 65457).	
GNSA 24	NSA/CSS Pre-Publication Review Records (September 15, 2010, 75 FR 56079).	
GNSA 25	NSA/CSS Travel Records (September 13, 2012, 77 FR 56626)	(k)(2), (k)(4).
GNSA 26	NSA/CSS Accounts Receivable, Indebtedness and Claims (August 19, 2009, 74 FR 41872).	(k)(4).
GNSA 27	Information Assurance Scholarship Program (October 5, 2011, 76 FR 61679).	

Identifier	Notices	Exemptions claimed
GNSA 28	Freedom of Information Act, Privacy Act and Mandatory Declassification Review Records (January 19, 2011, 76 FR 3098).	(k)(1) through (k)(7).
GNSA 29	NSA/CSS Office of Inspector General Investigations and Complaints (May 3, 2012, 77 FR 26254).	(j)(2),(k)(2), (k)(5).
GNSA 30	Congressional, Executive, and Political Inquiry Records (September 13, 2012, 77 FR 56628).	

III. NSA's Maintenance, Collection, Use, and Dissemination of Records From Unpublished System of Records Violate the Privacy Act and DoD Privacy Program Regulations

Recent Administration admissions and NSA documents reveal that over the last several years, NSA has maintained at least three unpublished system of records that allow the agency to retrieve information by ''identifying number[s], symbol[s], or other identifying particular[s] assigned to . . . individual[s].'' These groups of records violate the Privacy Act and DoD Privacy Program regulations because they were collected without individual consent, public notice, and other Privacy Act procedural requirements.

The first unlawful NSA system of records contains ''telephone numbers and electronic communications accounts/addresses/identifiers that NSA has reason to believe are being used by United States persons.'' The NSA uses these ''identifying numbers, symbols, and other particulars'' to retrieve information to identify if an individual whom the NSA intends to monitor is a U.S. person.

The second unlawful NSA system of records is comprised of contact lists that the NSA retrieves from email address books and instant message ''buddy lists.'' In this system of records, the NSA gathers email contact lists and instant message buddy lists that traverse global data links. The contact lists and buddy lists include those belonging to U.S. citizens. The lists are maintained within a searchable contact list database that permits the NSA to retrieve information by an ''identifying number, symbol, or other identifying particular,''—*i.e.,* email addresses and instant message accounts.

Furthermore, email contact lists, in particular, can contain other identifying information beyond the email address of the contact, such as name, address, business association, and relationship to the contact.

The third unlawful NSA system of records is a database containing information relating to social networks. Within this system of records, the NSA maintains information on social connections (*e.g.* associates or travel companions), location information, email addresses, phone numbers, and publicly available information from commercial entities, as well as location at certain times among other personal information. The NSA retrieves information in this system of records to perform social network analysis. General Keith Alexander confirmed the social networking analysis, stating that the Supplemental Procedures allow the NSA ''to use metadata that [it has] acquired under Executive Order 12–333 and chain, whether it's phone records or emails, it through U.S. selectors to figure out social networks abroad.'' General Alexander confirmed that the 2009 Supplemental Procedures are still being used.

All three of the aforementioned NSA systems of records violate the Privacy Act and DoD Privacy Program regulations because the NSA has failed to publish system of records notices for each of the system of records. None of the NSA's twenty-six published SORNs listed above describes the type of data collection or dissemination that the NSA is conducting with these systems of records. Moreover, they violate the Privacy Act and DoD Privacy Program regulations because the records were collected without individual notice, consent, or other Privacy Act rights.

Finally, each of the three unpublished systems of records maintains records describing how individuals exercise their First Amendment rights, including press freedoms, and the rights to freely associate and assemble. The Privacy Act forbids agencies from maintaining these types of records ''unless expressly authorized by statute or by the individual about whom the record is maintained or unless pertinent to and within the scope of an authorized law enforcement activity.'' In addition to the aforementioned Privacy Act violations, the NSA has violated and continues to violate the Privacy Act by maintaining records describing how individuals exercise their First Amendment rights.

Conclusion. The NSA is currently in violation of the Privacy Act and DoD Privacy Program regulations. The DoD must ensure that the NSA complies with the Privacy Act by publishing additional system of records notices and otherwise adhering to the Privacy Act before it can adopt its current proposal.

DoD Response: This Comment addresses System of Records Notices (SORNs) with respect to the DoD, and with the National Security Agency (NSA) in particular. It is DoD policy to ''publish in the **Federal Register** upon establishment or revision a notice of the existence and character of the system of records . . .'' 5 U.S.C. 552a(e)(4). A SORN is required when (1) information about an individual is collected and stored by a DoD Component; and (2) that information is retrievable by a unique personal identifier. 32 CFR 310.10 NSA has twenty-five active SORNS that are publicly available for review. NSA generates SORNs as require by the Privacy Act of 1974 and applicable DoD regulation, 32 CFR 310.10. One NSA SORN, GNSA 18, concerns NSA ''collection of operations records.'' GNSA 18 covers all individuals, as that term is defined within the Privacy Act to encompass citizens of the United States and lawful permanent residents. The purpose of GNSA 18 is to allow NSA to maintain, as that term is defined by the Privacy Act, records on foreign intelligence, counterintelligence, and information systems security matters relating to the missions of NSA. Specifically, GNSA 18 covers all individuals, as that term is defined by the Privacy Act, who are identified in NSA foreign intelligence, counterintelligence, or information system security reports, including supportive materials. As such, the DoD Privacy Program complies with the Privacy Act of 1974, as amended, and as codified at 5 U.S.C. 552a.

Regulatory Procedures

Executive Order 12866, ''Regulatory Planning and Review'' and Executive Order 13563, ''Improving Regulation and Regulatory Review''

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs

and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a ''substantive non-significant regulatory action.''

Sec. 202, Public Law 104–4, ''Unfunded Mandates Reform Act''

It has been determined that 32 CFR part 310 does not contain a Federal mandate that may result in expenditure by State, local and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. 601)

It has been certified that 32 CFR part 310 is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

It has been determined that 32 CFR part 310 does not impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

Executive Order 13132, ''Federalism''

It has been determined that 32 CFR part 310 does not have federalism implications, as set forth in Executive Order 13132. This rule does not have substantial direct effects on:

(1) The States;

(2) The relationship between the National Government and the States; or

(3) The distribution of power and responsibilities among the various levels of Government.

List of Subjects in 32 CFR Part 310

Privacy.

Accordingly 32 CFR part 310 is amended as follows:

PART 310—[AMENDED]

■ 1. The authority citation for 32 CFR part 310 is revised to read as follows:

Authority: 5 U.S.C. 552a.

Subpart A—[Amended]

■ 2. Section 310.2 is revised to read as follows:

§ 310.2 Purpose.

This part:

(a) Updates the established policies and assigned responsibilities of the DoD Privacy Program pursuant to 5 U.S.C. 552a (also known and referred to in this part as ''The Privacy Act'') and Office of Management and Budget (OMB) Circular No. A–130.

(b) Authorizes the Defense Privacy Board and the Defense Data Integrity Board.

(c) Prescribes uniform procedures for implementation of and compliance with the DoD Privacy Program.

(d) Delegates authorities and responsibilities for the effective administration of the DoD Privacy Program.

■ 3. Section 310.3 is revised to read as follows:

§ 310.3 Applicability and scope.

(a) This part applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the DoD (referred to collectively in this part as the ''DoD Components'').

(b) For the purposes of subsection (i), ''Criminal penalties,'' of The Privacy Act, any DoD contractor and any employee of such a contractor will be considered to be an employee of DoD when DoD provides by a contract for the operation by or on behalf of DoD of a system of records to accomplish a DoD function. DoD will, consistent with its authority, cause the requirements of section (m) of The Privacy Act to be applied to such systems.

■ 4. Section 310.4 is revised to read as follows:

§ 310.4 Definitions.

The following definitions apply to this part:

Access. The review of a record or a copy of a record or parts thereof in a system of records by any individual.

Agency. For the purposes of disclosing records subject to the Privacy Act among the DoD Components, the Department of Defense is considered a single agency. For all other purposes to include requests for access and amendment, denial of access or amendment, appeals from denials, and record keeping as relating to release of records to non-DoD Agencies, each DoD Component is considered an agency within the meaning of the Privacy Act.

Breach. A loss of control, compromise, unauthorized disclosure, unauthorized acquisition, unauthorized access, or any similar term referring to situations where persons other than authorized users and for an other than authorized purpose have access or potential access to personally identifiable information (PII), whether physical or electronic.

Computer matching. The computerized comparison of two or more automated systems of records or a system of records with non-federal records. Manual comparisons are not covered.

Confidential source. A person or organization who has furnished information to the Federal Government under an express promise, if made on or after September 27, 1975, that the person's or the organization's identity shall be held in confidence or under an implied promise of such confidentiality if this implied promise was made on or before September 26, 1975.

Disclosure. The information sharing or transfer of any PII from a system of records by any means of communication (such as oral, written, electronic, mechanical, or actual review) to any person, government agency, or private entity other than the subject of the record, the subject's designated agent, or the subject's legal guardian.

DoD contractor. Any individual or other legal entity that:

(1) Directly or indirectly (*e.g.,* through an affiliate) submits offers for or is awarded, or reasonably may be expected to submit offers for or be awarded, a government contract, including a contract for carriage under government or commercial bills of lading, or a subcontract under a government contract; or

(2) Conducts business, or reasonably may be expected to conduct business, with the federal government as an agent or representative of another contractor.

DoD personnel. Service members and federal civilian employees.

Federal benefit program. A program administered or funded by the Federal Government, or by any agent or State on behalf of the Federal Government, providing cash or in-kind assistance in the form of payments, grants, loans, or loan guarantees to individuals.

Federal personnel. Officers and employees of the Government of the United States, members of the uniformed services (including members of the Reserve Components), individuals entitled to receive immediate or deferred retirement benefits under any retirement program of the United States (including survivor benefits).

Individual. A living person who is a U.S. citizen or an alien lawfully admitted for permanent residence. The parent of a minor or the legal guardian of any individual also may act on behalf of an individual, except as otherwise provided in this part. Members of the Military Services are ''individuals.'' Corporations, partnerships, sole proprietorships, professional groups, businesses, whether incorporated or

unincorporated, and other commercial entities are not ''individuals'' when acting in an entrepreneurial capacity with the DoD, but persons employed by such organizations or entities are ''individuals'' when acting in a personal capacity (*e.g.,* security clearances, entitlement to DoD privileges or benefits).

Individual access. Access to information pertaining to the individual by the individual or his or her designated agent or legal guardian.

Information sharing environment. Defined in Public Law 108–458, ''The Intelligence Reform and Terrorism Prevention Act of 2004''.

Lost, stolen, or compromised information. Actual or possible loss of control, unauthorized disclosure, or unauthorized access of personal information where persons other than authorized users gain access or potential access to such information for an other than authorized purpose where one or more individuals will be adversely affected. Such incidents also are known as breaches.

Maintain. The collection, maintenance, use, or dissemination of records contained in a system of records.

Member of the public. Any individual or party acting in a private capacity to include Federal employees or military personnel.

Mixed system of records. Any system of records that contains information about individuals as defined by the Privacy Act and non-U.S. citizens and/or aliens not lawfully admitted for permanent residence.

Non-Federal agency. Any state or local government, or agency thereof, which receives records contained in a system of records from a source agency for use in a computer matching program.

Official use. Within the context of this part, this term is used when officials and employees of a DoD Component have a demonstrated a need for the record or the information contained therein in the performance of their official duties, subject to DoD 5200.1–R.[3]

Personally identifiable information (PII). Information used to distinguish or trace an individual's identity, such as name, social security number, date and place of birth, mother's maiden name, biometric records, home phone numbers, other demographic, personnel, medical, and financial information. PII includes any information that is linked or linkable to a specified individual, alone, or when combined with other personal or identifying information. For purposes of this part, the term PII also includes personal information and information in identifiable form.

Privacy Act request. A request from an individual for notification as to the existence of, access to, or amendment of records pertaining to that individual. These records must be maintained in a system of records.

Protected health information (PHI). Defined in DoD 6025.18–R, ''DoD Health Information Privacy Regulation'' (available at *http://www.dtic.mil/whs/directives/corres/pdf/602518r.pdf*).

Recipient agency. Any agency, or contractor thereof, receiving records contained in a system of records from a source agency for use in a computer matching program.

Record. Any item, collection, or grouping of information in any media (*e.g.,* paper, electronic), about an individual that is maintained by a DoD Component, including, but not limited to, education, financial transactions, medical history, criminal or employment history, and that contains the name, or identifying number, symbol, or other identifying particular assigned to the individual, such as a fingerprint, a voice print, or a photograph.

Risk assessment. An analysis considering information sensitivity, vulnerabilities, and cost in safeguarding personal information processed or stored in the facility or activity.

Routine use. The disclosure of a record outside the Department of Defense for a use that is compatible with the purpose for which the information was collected and maintained by the Department of Defense. The routine use must be included in the published system notice for the system of records involved.

Source agency. Any agency which discloses records contained in a system of records to be used in a computer matching program, or any state or local government, or agency thereof, which discloses records to be used in a computer matching program.

Statistical record. A record maintained only for statistical research or reporting purposes and not used in whole or in part in making determinations about specific individuals.

System of records. A group of records under the control of a DoD Component from which PII is retrieved by the individual's name or by some identifying number, symbol, or other identifying particular uniquely assigned to an individual.

System of records notice (SORN). A notice published in the **Federal Register** that constitutes official notification to the public of the existence of a system of records.

■ 5. Section 310.5 is revised to read as follows:

§ 310.5 Policy.

It is DoD policy that:

(a) An individual's privacy is a fundamental legal right that must be respected and protected.

(1) The DoD's need to collect, use, maintain, or disseminate (also known and referred to in this part as ''maintain'') PII about individuals for purposes of discharging its statutory responsibilities will be balanced against their right to be protected against unwarranted privacy invasions.

(2) The DoD protects individuals' rights, consistent with federal laws, regulations, and policies, when maintaining their PII.

(3) DoD personnel and DoD contractors have an affirmative responsibility to protect an individual's privacy when maintaining his or her PII.

(4) Consistent with section 1016(d) of Public Law 108–458 and section 1 of Executive Order 13388, ''Further Strengthening the Sharing of Terrorism Information to Protect Americans'', the DoD will protect information privacy and provide other protections relating to civil liberties and legal rights in the development and use of the information sharing environment.

(b) The DoD establishes rules of conduct for DoD personnel and DoD contractors involved in the design, development, operation, or maintenance of any system of records. DoD personnel and DoD contractors will be trained with respect to such rules and the requirements of this section and any other rules and procedures adopted pursuant to this section and the penalties for noncompliance. The DoD Rules of Conduct are established in § 310.8.

(c) DoD personnel and DoD contractors conduct themselves consistent with the established rules of conduct in § 310.8, so that records maintained in a system of records will only be maintained as authorized by 5 U.S.C. 552a and this part.

(d) DoD legislative, regulatory, or other policy proposals will be evaluated to ensure consistency with the information privacy requirements of this part.

(e) Pursuant to The Privacy Act, no record will be maintained on how an individual exercises rights guaranteed by the First Amendment to the Constitution of the United States (referred to in this part as ''the First Amendment''), except:

[3] See footnote 1 to § 310.1

(1) When specifically authorized by statute.

(2) When expressly authorized by the individual that the record is about.

(3) When the record is pertinent to and within the scope of an authorized law enforcement activity, including an authorized intelligence or administrative investigation.

(f) Disclosure of records pertaining to an individual from a system of records is prohibited except with his or her consent or as otherwise authorized by 5 U.S.C. 552a and this part or 32 CFR part 286. When DoD Components make such disclosures, the individual may, to the extent authorized by 5 U.S.C. 552a and this part, obtain a description of such disclosures from the Component concerned.

(g) Disclosure of records pertaining to personnel of the National Security Agency, the Defense Intelligence Agency, the National Reconnaissance Office, and the National Geospatial-Intelligence Agency is prohibited to the extent authorized by Public Law 86–36, ''National Security Agency-Officers and Employees'' and 10 U.S.C. 424. Disclosure of records pertaining to personnel of overseas, sensitive, or routinely deployable units is prohibited to the extent authorized by 10 U.S.C. 130b.

(h) The DoD establishes appropriate administrative, technical, and physical safeguards to ensure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity that could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual about whom information is maintained.

(i) Disclosure of PHI will be consistent with DoD 6025.18–R.

(j) All DoD personnel and DoD contractors will be provided training pursuant to 5 U.S.C. 552a and OMB Circular No. A–130.

(k) PII collected, used, maintained, or disseminated will be:

(1) Relevant and necessary to accomplish a lawful DoD purpose required by statute or Executive Order.

(2) Collected to the greatest extent practicable directly from the individual. He or she will be informed as to why the information is being collected, the authority for collection, how it will be used, whether disclosure is mandatory or voluntary, and the consequences of not providing that information.

(3) Relevant, timely, complete, and accurate for its intended use.

(4) Protected using appropriate administrative, technical, and physical safeguards based on the media (*e.g.,* paper, electronic) involved. Protection will ensure the security of the records and prevent compromise or misuse during maintenance, including working at authorized alternative worksites.

(l) Individuals are permitted, to the extent authorized by 5 U.S.C. 552a and this part, to:

(1) Upon request by an individual, gain access to records or to any information pertaining to the individual which is contained in a system of records.

(2) Obtain a copy of such records, in whole or in part.

(3) Correct or amend such records once it has been determined that the records are not accurate, relevant, timely, or complete.

(4) Appeal a denial for a request to access or a request to amend a record.

(m) Non-U.S. citizens and aliens not lawfully admitted for permanent residence may request access to and amendment of records pertaining to them; however, this part does not create or extend any right pursuant to The Privacy Act to them.

(n) SORNs and notices of proposed or final rulemaking are published in the **Federal Register** (FR), and reports are submitted to Congress and OMB, in accordance with 5 U.S.C. 552a, OMB Circular No. A–130, and this part, Volume 1 of DoD Manual 8910.01, ''DoD Information Collections Manual: Procedures for DoD Internal Information Collections'' (available at *http://www.dtic.mil/whs/directives/corres/pdf/891001m_vol1.pdf*), and DoD Instruction 5545.02, ''DoD Policy for Congressional Authorization and Appropriations Reporting Requirements'' (available at *http://www.dtic.mil/whs/directives/corres/pdf/554502p.pdf*). Information about an individual maintained in a new system of records will not be collected until the required SORN publication and review requirements are satisfied.

(o) All DoD personnel must make reasonable efforts to inform an individual, at their last known address, when any record about him or her is disclosed:

(1) Due to a compulsory legal process.

(2) In a manner that will become a matter of public record.

(p) Individuals must be notified in a timely manner, consistent with the requirements of this part, if there is a breach of their PII.

(q) At least 30 days prior to disclosure of information pursuant to subparagraph (e)(4)(D) (routine uses) of The Privacy Act, the DoD will publish an FR notice of any new use or intended use of the information in the system, and provide an opportunity for interested people to submit written data, views, or arguments to the agency.

(r) Computer matching programs between the DoD Components and federal, state, or local governmental agencies are conducted in accordance with the requirements of 5 U.S.C. 552a, OMB Circular No. A–130, and this part.

(s) The DoD will publish in the FR notice any establishment or revision of a matching program at least 30 days prior to conducting such program of such establishment or revision if any DoD Component is a recipient agency or a source agency in a matching program with a non-federal agency.

■ 6. Revise § 310.6 to read as follows:

§ 310.6 Responsibilities.

(a) The Deputy Chief Management Officer of the Department of Defense (DCMO):

(1) Serves as the Senior Agency Official for Privacy (SAOP) for the DoD. These duties, in accordance with OMB Memorandum M–05–08, ''Designation of Senior Agency Officials for Privacy'' (available at *http://www.whitehouse.gov/sites/default/files/omb/assets/omb/memoranda/fy2005/m05-08.pdf*), include:

(i) Ensuring DoD implementation of information privacy protections, including full compliance with federal laws, regulations, and policies relating to information privacy.

(ii) Overseeing, coordinating, and facilitating DoD privacy compliance efforts.

(iii) Ensuring that DoD personnel and DoD contractors receive appropriate training and education programs regarding the information privacy laws, regulations, policies, and procedures governing DoD-specific procedures for handling of PII.

(2) Provides rules of conduct and policy for, and coordinates and oversees administration of, the DoD Privacy Program to ensure compliance with policies and procedures in 5 U.S.C. 552a and OMB Circular No. A–130.

(3) Publishes this part and other guidance to ensure timely and uniform implementation of the DoD Privacy Program.

(4) Serves as the chair of the Defense Privacy Board and the Defense Data Integrity Board.

(5) As requested, ensures that guidance, assistance, and subject matter expert support are provided to the Combatant Command privacy officers in the implementation and execution of and compliance with the DoD Privacy Program.

(6) Acts as The Privacy Act Access and Amendment appellate authority for OSD and the Office of the Chairman of

the Joint Chiefs of Staff when an individual is denied access to or amendment of records pursuant to The Privacy Act, DoD Directive 5105.53, ''Director of Administration and Management (DA&M)'' (available at *http://www.dtic.mil/whs/directives/corres/pdf/510553p.pdf*), and Deputy Secretary of Defense Memorandum, ''Reorganization of the Office of the Deputy Chief Management Officer.''

(b) Under the authority, direction, and control of the DCMO, through the Director for Oversight and Compliance, the Chief, Defense Privacy and Civil Liberties Division (DPCLD):

(1) Ensures that laws, policies, procedures, and systems for protecting individual privacy rights are implemented throughout DoD.

(2) Oversees and provides strategic direction for the DoD Privacy Program.

(3) Assists the DCMO in performing the responsibilities in paragraphs (a)(1)–(a)(6) of this section.

(4) Reviews DoD legislative, regulatory, and other policy proposals that contain information on privacy issues relating to how the DoD keeps its PII. These reviews must include any proposed legislation, testimony, and comments having privacy implications in accordance with DoD Directive 5500.01, ''Preparing, Processing, and Coordinating Legislation, Executive Orders, Proclamations, Views Letters, and Testimony'' (available at *http://www.dtic.mil/whs/directives/corres/pdf/550001p.pdf*).

(5) Reviews proposed new, altered, and amended systems of records. Submits required SORNs for publication in the FR and, when required, provides advance notification to OMB and Congress consistent with 5 U.S.C. 552a, OMB Circular No. A–130, and this part.

(6) Reviews proposed DoD Component privacy exemption rules. Submits the exemption rules for publication in the FR, and submits reports to OMB and Congress consistent with 5 U.S.C. 552a, OMB Circular No. A–130, and this part.

(7) Develops, coordinates, and maintains all DoD computer matching agreements. Submits required match notices for publication in the FR and provides advance notification to OMB and Congress consistent with 5 U.S.C. 552a, OMB Circular No. A–130, and this part.

(8) Provides guidance, assistance, and support to the DoD Components in their implementation of the DoD Privacy Program to ensure that:

(i) All requirements developed to maintain PII conform to the DoD Privacy Program standards.

(ii) Appropriate procedures and safeguards are developed and implemented to protect PII when it is collected, used, maintained, or disseminated in any media.

(iii) Specific procedures and safeguards are developed and implemented when PII is collected and maintained for research purposes.

(9) Compiles data in support of the DoD Chief Information Officer (DoD CIO) submission of the Federal Information Security Management Act (FISMA) Privacy Reports, pursuant to OMB Memorandum M–06–15, ''Safeguarding Personally Identifiable Information'' (available at *http://www.whitehouse.gov/sites/default/files/omb/memoranda/fy2006/m-06-15.pdf*); the Biennial Matching Activity Report to OMB, in accordance with OMB Circular No. A–130 and this part; the semiannual Section 803 report in accordance with 42 U.S.C. 2000ee and 2000ee–1; and other reports as required.

(10) Reviews and coordinates on DoD Component privacy program implementation rules to ensure they are in compliance with the DoD-level guidance.

(11) Provides operational and administrative support to the Defense Privacy Board and the Defense Data Integrity Board.

(c) The General Counsel of the Department of Defense (GC DoD):

(1) Provides advice and assistance on all legal matters related to the administration of the DoD Privacy Program.

(2) Appoints a designee to serve as a member of the Defense Privacy Board and the Defense Data Integrity Board.

(3) When a DoD Privacy Program group is created, appoints a designee to serve as a member.

(d) The DoD Component heads:

(1) Provide adequate funding and personnel to establish and support an effective DoD Privacy Program.

(2) Establish DoD Component-specific procedures in compliance with this part and publish these procedures as well as rules of conduct in the FR.

(3) Establish and implement appropriate administrative, physical, and technical safeguards and procedures prescribed in this part and other DoD Privacy Program guidance.

(4) Ensure Component compliance with supplemental guidance and procedures in accordance with all applicable federal laws, regulations, policies, and procedures.

(5) Appoint a Component senior official for privacy (CSOP) to support the SAOP in carrying out the SAOP's duties identified in OMB Memorandum M–05–08.

(6) Appoint a Component privacy officer to administer the DoD Privacy Program, on behalf of the CSOP.

(7) Ensure DoD personnel and DoD contractors having primary responsibility for implementing the DoD Privacy Program receive appropriate privacy training. This training must be consistent with the requirements of this part and will address the provisions of 5 U.S.C. 552a, OMB Circular No. A–130, and this part.

(8) Ensure that all DoD Component legislative, regulatory, or other policy proposals are evaluated to ensure consistency with the information privacy requirements of this part.

(9) Assess the impact of technology on the privacy of PII and, when feasible, adopt privacy-enhancing technology to:

(i) Preserve and protect PII contained in a DoD Component system of records.

(ii) Audit compliance with the requirements of this part.

(10) Ensure that officials who have specialized knowledge of the DoD Privacy Program periodically review Component implementation of and compliance with the DoD Privacy Program.

(11) Submit reports, consistent with the requirements of this part, in accordance with 5 U.S.C. 552a and OMB Circular No. A–130, and as otherwise directed by the Chief, DPCLD.

(e) In addition to the responsibilities in paragraph (d), the Secretaries of the Military Departments provide program and financial support to the Combatant Commands as identified in DoD Directive 5100.03, ''Support to the Headquarters of Combatant and Subordinate Unified Commands'' (available at *http://www.dtic.mil/whs/directives/corres/pdf/510003p.pdf*) to fund, without reimbursement, the administrative and logistic support required by combatant and subordinate unified command headquarters to perform their assigned missions effectively.

§ 310.7 [Removed and Reserved]

■ 7. Section 310.7 is removed and reserved.

■ 8. Section 310.8 is revised to read as follows:

§ 310.8 Rules of conduct.

In accordance with section (e)(9) of The Privacy Act, this section provides DoD rules of conduct for the development, operation, and maintenance of systems of records. DoD personnel and DoD contractor personnel will:

(a) Take action to ensure that any PII contained in a system of records that they access and use to conduct official

business will be protected so that the security and confidentiality of the information is preserved.

(b) Not disclose any PII contained in any system of records, except as authorized by The Privacy Act, or other applicable statute, Executive order, regulation, or policy. Those willfully making any unlawful or unauthorized disclosure, knowing that disclosure is prohibited, may be subject to criminal penalties and/or administrative sanctions.

(c) Report any unauthorized disclosures of PII from a system of records to the applicable Privacy point of contact (POC) for the respective DoD Component.

(d) Report the maintenance of any system of records not authorized by this part to the applicable Privacy POC for the respective DoD Component.

(e) Minimize the collection of PII to that which is relevant and necessary to accomplish a purpose of the DoD.

(f) Not maintain records describing how any individual exercises rights guaranteed by the First Amendment, except:

(1) When specifically authorized by statute.

(2) When expressly authorized by the individual that the record is about.

(3) When the record is pertinent to and within the scope of an authorized law enforcement activity, including authorized intelligence or administrative activities.

(g) Safeguard the privacy of all individuals and the confidentiality of all PII.

(h) Limit the availability of records containing PII to DoD personnel and DoD contractors who have a need to know in order to perform their duties.

(i) Prohibit unlawful possession, collection, or disclosure of PII, whether or not it is within a system of records.

(j) Ensure that all DoD personnel and DoD contractors who either have access to a system of records or develop or supervise procedures for handling records in a system of records are aware of their responsibilities and are properly trained to safeguard PII being maintained under the DoD Privacy Program.

(k) Prepare any required new, amended, or altered SORN for a given system of records and submit the SORN through their DoD Component Privacy POC to the Chief, DPCLD, for coordination and submission for publication in the FR.

(l) Not maintain any official files on individuals, which are retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual, also known as a system of records, without first ensuring that a notice has been published in the FR. Any official who willfully maintains a system of records without meeting the publication requirements as prescribed by this part and The Privacy Act may be subject to criminal penalties and/or administrative sanctions.

(m) Maintain all records in a mixed system of records as if all the records in such a system are subject to The Privacy Act.

■ 9. Amend § 310.9 to revise paragraphs (a) and (b) to read as follows:

§ 310.9 Privacy boards and office, composition and responsibilities.

(a) *The Defense Privacy Board*—(1) *Membership.* The Board consists of:

(i) *Voting members.* Representatives designated by the Secretaries of the Military Departments and the following officials or their designees:

(A) The DCMO, who serves as the chair.

(B) The Chief, DPCLD, who serves as the Executive Secretary and as a member.

(C) The Under Secretary of Defense for Personnel and Readiness.

(D) The Assistant Secretary of Defense for Health Affairs.

(E) The DoD CIO.

(F) The Director, Defense Manpower Data Center.

(G) The Director, Executive Services Directorate, Washington Headquarters Services (WHS).

(H) The GC DoD.

(I) The Chief of the National Guard Bureau.

(ii) *Non-voting members.* Non-voting members are the Director, Enterprise Information Technology Services Directorate (EITSD), WHS; and the representatives designated by Defense Agency and DoD Field Activity directors.

(2) *Responsibilities.* The Board:

(i) Serves as the primary DoD policy forum for matters involving the DoD Privacy Program, meeting as necessary to address issues of common concern to ensure that consistent policy is adopted and followed by the DoD Components. The Board issues advisory opinions, as necessary, on the DoD Privacy Program to promote uniform and consistent application of 5 U.S.C. 552a, OMB Circular No. A–130, and this part.

(ii) Establishes and convenes committees as necessary.

(iii) Establishes working groups whose membership is composed of DoD Component privacy officers and others as necessary.

(b) *The Defense Data Integrity Board*—(1) *Membership.* The Board consists of:

(i) The DCMO, who serves as the chair.

(ii) The Chief, DPCLD, who serves as the Executive Secretary.

(iii) The representatives designated by the Secretaries of the Military Departments; the DoD CIO; the GC DoD; the Inspector General of the Department of Defense, who is a non-voting advisory member; the Director, EITSD; and the Director, Defense Manpower Data Center.

(2) *Responsibilities.* The Board:

(i) Oversees and coordinates, consistent with the requirements of 5 U.S.C. 552a, OMB Circular No. A–130, and this part, all computer matching agreements involving personal records contained in systems of records maintained by the DoD Components.

(ii) Reviews and approves all computer matching agreements between the DoD and other federal, state, or local governmental agencies, as well as any memorandums of understanding, when the match is internal to the DoD. This review ensures that, in accordance with 5 U.S.C. 552a, OMB Circular No. A–130, and this part, appropriate procedural and due process requirements are established before engaging in computer matching activities.

* * * * *

Dated: January 21, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2015–01262 Filed 1–26–15; 8:45 am]

BILLING CODE 5001–06–P

ENVIRONMENTAL PROTECTION AGENCY

48 CFR Parts 1523 and 1552

[EPA–HQ–OARM–2014–0515; FRL–9916–21–OARM]

Environmental Protection Agency Acquisition Regulation (EPAAR); Environmental, Conservation, Occupational Safety, and Drug-Free Workplace

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) amends the EPA Acquisition Regulation (EPAAR) to address minor non-substantive changes in three clauses and two related prescriptions. The direct final rule updates ''Protection of Human Subjects'', ''Care of Laboratory Animals'', and ''EPA Green Meetings and Conferences''. EPA does not anticipate any adverse comments.

DATES: This rule is effective on March 30, 2015 without further notice, unless adverse comment is received February 26, 2015. If adverse comment is received, the EPA will publish a timely withdrawal of the rule in the **Federal Register**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OARM–2014–0515 by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: docket.oei@epa.gov.*
- *Fax:* (202) 566–1753.
- *Mail:* EPA–HQ–OARM–2014–0515, OEI Docket, Environmental Protection Agency, 2822T, 1200 Pennsylvania Ave. NW., Washington, DC 20460. Please include a total of three (3) copies.
- *Hand Delivery:* EPA Docket Center-Attention OEI Docket, EPA West, Room B102, 1301 Constitution Ave. 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–OARM–2014–0515. 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. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to 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, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Government Property-Contract Property Administration 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 EPA Docket Center is (202) 566–1752. This Docket Facility is open from 8:30 a.m. to 4:30 p.m. Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Holly Hubbell, Policy, Training, and Oversight Division, Acquisition Policy and Training Service Center (3802R), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: 202–564–1091; email address: *hubbell.holly@epa.gov.*

SUPPLEMENTARY INFORMATION:

General Information

1. Do not submit Classified Business Information (CBI) to EPA Web site *http://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 so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. Tips for Preparing Your Comments. When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) Part or section number.
- Explain why you agree or disagree, suggest alternatives, and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

3. Make sure to submit your comments by the comment period deadline identified.

I. Background

The EPA is revising EPAAR 1552.223–70 Protection of Human Subjects and 1552.223–72 Care of Laboratory Animals to update the clauses with current references and legislative information. Except for administrative changes, the clauses were last updated in 1984 and 2000, respectively. Prescription 1523.303–72 for EPAAR 1552.223–72 clarifies the applicability of the clause of care and use. The revisions to prescription 1523.703–1 Acquisition of Environmentally Preferable Meeting and Conference Services updates the applicability of clause 1552.223–71 EPA Green Meetings and Conferences. The revision of EPAAR 1552.223–71 replaces the ''14 questions'' with more relevant questions which clarify the current requirements for environmentally preferred facilities.

II. Final Rule

This final rule makes the following changes:

1. Revise prescription EPAAR 1523.303–72 to clarify the applicability of the clause EPAAR 1552.223–72 Care of Laboratory Animals.

2. Revise prescription EPAAR 1523.703–1 to clarify the applicability of clause 1552.223–71 requiring information about the environmental preferability features and practices of lodging and non-lodging oriented meeting and conference facilities.

3. Revise EPAAR 1552.223–70 to update the legislative and guidance references and information.

4. Revise EPAAR 1552.223–71 by replacing the ''14 questions'' with more relevant questions that better clarify essential attributes for environmentally preferred facilities.

5. Revise EPAAR 1552.223–72 to update the legislative references and guidance information.

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 (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b).

C. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

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 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 impact of today's final rule on small entities, ''small entity'' is defined as: (1) A small business that meets the definition of a small business found in the Small Business Act and codified 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; or (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 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, because the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the proposed rule on small entities'' 5 U.S.C. 503 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. This action revises current EPAAR clauses and will not have a significant economic impact on substantial number of small entities. We continue to be interested in the potential impacts of the rule on small entities and welcome 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 Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, and tribal governments or the private sector. The action imposes no enforceable duty on any State, local or tribal governments or the private sector. Therefore, this action is not subject to the requirements of Sections 202 or 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.

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. 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 comment on this 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). Thus, Executive Order 13175 does not apply to this action.

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

Executive Order 13045, entitled ''Protection of Children from Environmental Health and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be economically significant as defined under EO 12886, and (2) concerns an environmental health or safety risk that may have a proportionate effect on children. This rule is not subject to EO 13045 because it is not an economically significant rule as defined by EO 12866, and because it does not have a proportionate effect on children.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28335 May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act of 1995 (NTTAA)

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

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

Executive Order 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 final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment in the general public.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules (1) rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of Agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties.

List of Subjects

48 CFR Part 1523

Environmental protection, Acquisition of environmentally preferable meeting and conference services, Care of laboratory animals, Environmental, conservation, occupational safety, and drug-free workplace, Government procurement.

48 CFR Part 1552

Environmental protection, Care of laboratory animals, EPA green meetings and conferences, Protection of human subjects, Government procurement.

Dated: January 7, 2015.

John R. Bashista,

Director, Office of Acquisition Management.

For the reasons stated in the preamble, Chapter 15 of Title 48 Code of Federal Regulations, parts 1523 and 1552 are amended as set forth below:

PART 1523—ENVIRONMENTAL, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

■ 1. The authority citation for part 1523 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

■ 2. Revise 1523.303–72 to read as follows:

1523.303–72 Use and care of laboratory animals.

Contracting officers shall insert the clause at 1552.223–72, Use and Care of Laboratory Animals, in all contracts involving the use of animals in testing, research or training.

■ 3. Revise 1523.703–1 to read as follows:

1523.703–1 Acquisition of environmentally preferable meeting and conference facilities and services.

(a) *Scope.* This section establishes the policy and the procedures for acquiring environmentally preferable meeting and conference facilities and services. For purposes of this section, the term ''contracting officer'' refers to any EPA employee with purchasing authority. For purposes of this section, the terms ''meeting and conference facilities'' or ''conference facilities'' refer to any off-site commercial facility which is purchased for the use of an EPA conference or event, whether the purpose of the event is a meeting, conference, training session, or other official purpose.

(b) *Conference facilities.* EPA conducts government events at facilities owned and operated by private, third-party vendors. These facilities—

(1) May provide conference participants with lodging, food and beverage, and other on-site event support services.

(2) Demonstrate they are environmentally preferable by their responses to the 17 questions in 1552.223–71(c) highlighting environmental performance. These questions address, among other things, reducing greenhouse gas (GHG) emissions, the production and disposal of solid waste, the use of and exposure to toxic chemicals/materials, and the depletion of natural resources including water.

(c) *Policy.* Contracting officers shall purchase environmentally preferable meeting and conference facilities and services to the greatest extent practicable. Environmentally preferable is defined at FAR 2.101 and shall be considered in all purchases of meeting and conference facilities and services.

(d) *Procedures for micropurchases.* The contracting officer shall request that potential third party conference facility vendors respond to the 17 questions in 1552.223–71(c) or language substantially the same as these questions, in order to evaluate their environmental performance.

(e) *Procedures for purchases of conference facilities exceeding the micropurchase threshold.* The contracting officer shall request that potential third party conference facility vendors respond to the 17 questions in 1552.223–71(c) or language substantially the same as these questions, in order to evaluate their environmental performance. The contracting officer shall notify vendors that the basis for award will be best value with price and other factors considered. Environmental preferability, as determined by evaluating the information submitted in response to the questions and specifications at 1552.223–71(c) or information submitted in response to substantially similar questions and specifications, shall be considered among the other factors. The contracting officer shall determine the relative importance of price and other factors as appropriate to the acquisition, but in all cases shall consider environmental preferability as a significant factor.

(f) *Contractor support for meetings and conferences.* A contract, order, work assignment or purchasing agreement that includes contractor support for meeting and conference planning and logistics must include requirements to make use of environmentally preferable meeting and conference facilities and services. The contracting officer shall ensure language is included in the tasking document work statement that requires the contractor to use the provisions at 1552.223–71 or language approved by the contracting officer that is substantially the same as the provisions, when soliciting quotes or offers for meeting and conference services on behalf of the EPA.

(g) *Solicitation provision.* The contracting officer shall insert provisions or language substantially the same as the provisions at 1552.223–71 EPA Green Meetings and Conferences, in solicitations for meeting and conference services. Contracting officers issuing an oral solicitation must also use these provisions, though they may be provided to the vendor orally or electronically. Contractors soliciting quotes or offers for meeting and conference services on behalf of EPA shall use the provisions, or language approved by the contracting officer that

is substantially the same as the provisions.

PART 1552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 4. The authority citation for part 1552 continues to read as follows:

Authority: 5 U.S.C. 301; Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c); and 41 U.S.C. 418b.

■ 5. Revise 1552.223–70 to read as follows:

1552.223–70 Protection of human subjects.

As prescribed in 1523.303–70, insert the following contract clause when the contract involves human test subjects.

Protection of Human Subjects March 2015

(a) The contractor shall meet all EPA requirements for studies using human subjects prior to undertaking any work with human subjects in accordance with 40 CFR part 26 and EPA Order 1000.17 A1 Policy and Procedures on Protection of Human Research Subjects in EPA Conducted or Supported Research. Studies involving intentional exposure of human subjects who are children or pregnant or nursing women are prohibited. Requirements regarding observational studies involving children or pregnant women and fetuses are referenced in subparts C and D of 40 CFR part 26.

(b) The contractor's Institutional Review Board (IRB) approval must state that the contractor's study meets the EPA's regulations at 40 CFR part 26 and EPA Order 1000.17 A1. No work involving human subjects, including recruiting, may be initiated before the EPA has received a copy of the contractor's IRB approval of the project and the EPA has also issued approval. Where human subjects are involved in the research, the contractor must provide evidence of subsequent IRB reviews, including amendments or minor protocol changes, as part of annual reports.

(c) The contractor shall bear full responsibility for the proper and safe performance of all work and services involving the use of human subjects under this contract and shall ensure that work is conducted in a proper manner and as safely as is feasible. The contractor agrees that it has entered into this contract and will discharge its obligations, duties, and undertakings and the work pursuant thereto, whether requiring professional judgment or otherwise, as an independent contractor without imputing liability on the part of the government for the acts of the contractor, its employees, sub-contractors, consultants, heirs, assignees, etc.

(d) If at any time during the performance of this contract, the contracting officer determines that the contractor is not in compliance with any of the requirements and/or standards stated in above, the contracting officer may immediately suspend, in whole or in part, work and further payments under this contract until the contractor corrects the noncompliance. The contracting officer may communicate the notice of suspension by telephone with confirmation in writing. If the contractor fails to complete corrective action within the period of time designated in the contracting officer's written notice of suspension, the contracting officer may terminate this contract in whole or in part.

(End of clause)

■ 6. Revise 1552.223–71 to read as follows:

1552.223–71 EPA Green Meetings and Conferences.

As prescribed in 1523.703–1, insert the following provision, or language substantially the same as the provision, in solicitations for meetings and conference facilities.

EPA Green Meetings and Conferences March 2015

(a) The mission of the EPA is to protect human health and the environment. As such, all EPA meetings and conferences will be staged using as many environmentally preferable measures as possible. Environmentally preferable means products or services that have a lesser or reduced effect on the environment when compared with competing products or services that serve the same purpose.

(b) Potential meeting or conference facility providers for EPA shall provide information about the environmentally preferable features and practices identified by the checklist contained in paragraph (c) of this section, addressing sustainability for meeting and conference facilities including lodging and non-lodging oriented facilities.

(c) The following list of questions is provided to assist contracting officers in evaluating the environmental perferability of prospective meeting and conference facility providers. More information about EPA's Green Meetings initiative may be found on the Internet at *http://www.epa.gov/oppt/greenmeetings/*.

(1) Does your facility track energy usage and/or GHG emissions through ENERGY STAR Portfolio Manager (*http://www.energystar.gov/benchmark*) or some other calculator based on a recognized greenhouse gas tracking protocol? Y/N____

(2) If available for your building type, does your facility currently qualify for the Energy Star certification for superior energy performance? Y/N ____, NA____

(3) Does your facility track water use through ENERGY STAR Portfolio Manager or another equivalent tracking tool and/or undertake best management practices to reduce water use in the facility (*http://www.epa.gov/watersense/commercial*)? Y/N____

(4) Do you use landscaping professionals who are either certified by a WaterSense recognized program or actively undertake the WaterSense ''Water-Smart'' landscaping design practices (*http://www.epa.gov/watersense/outdoor*)? Y/N____, NA____

(5) Based on the amount of renewable energy your buildings uses, does (or would) your facility qualify as a partner under EPA's Green Power Partnership program (*http://www.epa.gov/greenpower/join/purchase.htm*)? Y/N____

(6) Do you restrict idling of motor vehicles in front of your facility, at the loading dock and elsewhere at your facility? Y/N____

(7) Does your facility have a default practice of not changing bedding and towels unless requested by guests? Y/N____, NA____

(8) Does your facility participate in EPA's WasteWise (*http://www.epa.gov/epawaste/conserve/smm/wastewise/*) and/or Food Recovery Challenge (*http://www.epa.gov/foodrecoverychallenge/*) programs? Y/N____

(9) Do you divert from landfill at least 50% of the total solid waste generated at your facility? Y/N____

(10) Will your facility be able to divert from the landfill at least 75% of the total solid waste expected to be generated during this conference/event? Y/N____

(11) Do you divert from landfill at least 50% of the food waste generated at your facility (through donation, use as animal feed, recycling, anaerobic digestion, or composting)? Y/N____

(12) Will your facility be able to divert from landfill at least 75% of the food waste expected to be generated during this conference/event (through donation, use as animal feed, recycling, anaerobic digestion, or composting)? Y/N____

(13) Does your facility provide recycling containers for visitors, guests and staff (paper and beverage at minimum)? Y/N____

(14) With respect to any food and beverage prepared and/or served at your facility, does at least 50% of it on average meet sustainability attributes such as: Local, organic, fair trade, fair labor, antibiotic-free, etc.? Y/N____

(15) Will your facility be able to ensure that at least 75% of the food and beverage expected to be served during this conference/event meets sustainability attributes such as: Local, organic, fair trade, fair labor, antibiotic-free, etc.? Y/N____

(16) Does your facility use Design for the Environment (DfE) cleaning products (*http://www.epa.gov/dfe/*), or similar products meeting other recognized standards for being 'environmentally preferable' (*http://www.epa.gov/epp/*) or more sustainable? Y/N____

(17) Is your facility prepared to document or demonstrate all of the claims you have made above? Y/N____

(d) The contractor shall include any additional ''Green Meeting'' information in their proposal which is believed is pertinent to better assist us in considering environmental preferability in selecting our meeting venue.

■ 7. Revise 1552.223–72 to read as follows:

1552.223–72 Use and care of laboratory animals.

As prescribed in 1523.303–72, insert the following clause in all contracts involving the use of animals in testing, research or training:

Use and Care of Laboratory Animals March 2015

(a) *Use of laboratory animals.* (1) Before undertaking performance of any contract involving the use of laboratory animals, the contractor shall register with the Secretary of Agriculture of the United States in accordance with the Secretary of Agriculture of the United States in accordance with the Animal Welfare Act of 1966, as amended (AWA), codified at 7 U.S.C. 2131 *et seq.* and promulgated at 9 CFR parts 1–4. The contractor shall furnish evidence of such registration to the contracting officer.

(2) The contractor shall acquire animals used in research and development programs from a dealer licensed by the Secretary of Agriculture, or from exempted sources in accordance with 9 CFR 2.25–2.28. Animals shall not be acquired from any random source Class B dealer.

(3) The contractor may request registration of his/her facility and a current listing of licensed dealers from the Regional Office of the Animal and Plant Health Inspection Service (APHIS), USDA, for the region in which his/her research facility is located. The location of the appropriate APHIS Regional Office as well as information concerning this program may be obtained at *http://www.aphis.usda.gov/contact_us/.*

(b) *Care of laboratory animals.* (1) In the care of any live animals used or intended for use in the performance of this contract, the contractor shall adhere to:

(i) The standards and practices incorporated in the *Guide for Care and Use of Laboratory Animals,* prepared by the Institute of Laboratory Animal Research of the National Research Council of the National Academies (ILAR/NRC),

(ii) The Animal Welfare Regulations found in 9 CFR parts 1–4, and

(iii) The National Institutes of Health (NIH) Public Health Service (PHS) Policy on the Humane Care and Use of Laboratory Animals.

(2) In case of conflict between standards, the higher standard shall be used.

(3) The contractor's reports on portions of the contract in which animals were used shall contain a certificate stating that the animals were cared for in accordance with the principles enunciated in the *Guide for Care and Use of Laboratory Animals,* prepared by the ILAR/NRC, and/or in the Animal Welfare Regulations found in 9 CFR parts 1–4.

(End of clause)

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 131211999–5045–02]

RIN 0648–BD86

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources in the Gulf of Mexico and Atlantic Region; Amendment 20B

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement Amendment 20B to the Fishery Management Plan for the Coastal Migratory Pelagic Resources (CMP) in the exclusive economic zone (EEZ) of the Gulf of Mexico and Atlantic Region (FMP) (Amendment 20B), as prepared and submitted by the Gulf of Mexico (Gulf) and South Atlantic Fishery Management Councils (Councils). This rule modifies Gulf migratory group king mackerel trip limits and fishing years, allows transit through areas closed to king mackerel fishing, creates zones and quotas for Atlantic migratory group king and Spanish mackerel, modifies the framework procedures for the FMP, increases annual catch limits (ACLs) and annual catch targets (ACTs) for cobia, and creates an east coast zone and quotas for Gulf migratory group cobia. In addition, this rule reorganizes the description of CMP zones in the regulations and clarifies that spearguns and powerheads are allowable gear for cobia in Federal waters of the South Atlantic and Mid-Atlantic regions. The purpose of this rule is to help achieve optimum yield (OY) for the CMP fishery while ensuring allocations are fair and equitable and fishery resources are utilized efficiently.

DATES: This rule is effective March 1, 2015.

ADDRESSES: Electronic copies of Amendment 20B, which includes an environmental assessment, a Regulatory Flexibility Act analysis, and a regulatory impact review, may be obtained from the Southeast Regional Office Web site at *http://sero.nmfs.noaa.gov/sustainable_fisheries/gulf_sa/cmp/index.html.*

FOR FURTHER INFORMATION CONTACT: Susan Gerhart, telephone: 727–824–5305, or email: *Susan.Gerhart@noaa.gov.*

SUPPLEMENTARY INFORMATION: The CMP fishery in the Gulf and Atlantic is managed under the FMP. The FMP was prepared by the Councils and implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

On October 17, 2014, NMFS published a notice of availability for Amendment 20B and requested public comment (79 FR 62410). On October 31, 2014, NMFS published a proposed rule for Amendment 20B and requested public comment (79 FR 64728). The proposed rule and Amendment 20B outline the rationale for the actions contained in this final rule. A summary of the actions implemented by this final rule is provided below.

Management Measures Contained in Amendment 20B and This Final Rule

Amendment 20B and this rule modify Gulf migratory group king mackerel trip limits and fishing years, allow transit through areas closed to king mackerel fishing, create zones and quotas for Atlantic migratory group king and Spanish mackerel, modify the framework procedures for the FMP, increase ACLs and ACTs for cobia, and create an east coast zone and quotas for Gulf migratory group cobia. The purpose of this rule is to help achieve OY for the CMP fishery while ensuring allocations are fair and equitable and fishery resources are utilized efficiently.

Gulf Migratory Group King Mackerel Commercial Hook-and-Line Trip Limits

This final rule removes the Gulf migratory group king mackerel hook-and-line trip limit reduction for the northern and southern subzones of the Gulf eastern zone's Florida west coast subzone, to allow the harvest of 1,250 lb (567 kg) per day until the quota for the subzone has been met or projected to be met and the respective subzone is closed to king mackerel harvest.

Gulf Migratory Group Eastern Zone Northern and Southern Subzone King Mackerel Fishing Years

This rule changes the Florida west coast northern subzone fishing year to October 1 through September 30. The fishing year for the Florida west coast southern subzone will remain July 1 through June 30.

Transit Through Areas Closed to King Mackerel

This rule allows a vessel with a valid commercial vessel permit for king

mackerel that has onboard king mackerel harvested in an open area of the EEZ to transit through areas closed to the harvest of king mackerel due to a quota closure, if fishing gear is appropriately stowed. For the purpose of this provision, transit means a direct and non-stop continuous course through the area. Fishing gear appropriately stowed means that: (1) A gillnet must be left on the drum (any additional gillnets not attached to the drum must be stowed below deck), (2) a rod and reel must be removed from the rod holder and stowed securely on or below deck, (3) terminal gear (*i.e.,* hook, leader, sinker, flasher, or bait) must be disconnected and stowed separately from the rod and reel, and (4) sinkers must be disconnected from the down rigger and stowed separately.

Atlantic Migratory Group King and Spanish Mackerel Zones

This rule creates northern and southern zones for Atlantic migratory group king and Spanish mackerel, each with separate commercial quotas. The boundary between the zones is a line extending from the South Carolina/North Carolina state line. The commercial ACL is split between the zones based on landings from the 2002/2003–2011/2012 fishing years. The northern zone allocation was calculated using combined commercial landings from North Carolina, Virginia, Maryland, Delaware, Pennsylvania, New Jersey, and New York. The southern zone allocation was calculated using combined commercial landings from South Carolina, Georgia, the Florida east coast, and Florida Keys on the Atlantic side.

For king mackerel, applying this formula results in an allocation of 33.3 percent for the northern zone and 66.7 percent for the southern zone. For Spanish mackerel, the formula results in an allocation of 19.9 percent for the northern zone and 80.1 percent for the southern zone. NMFS will monitor the commercial quotas, and close Federal waters in each zone when the respective quota is reached or projected to be reached. Transfer of quota between zones is allowed through a request to NMFS initiated by either North Carolina (northern zone) or Florida (southern zone). The recreational ACLs for Atlantic migratory group king and Spanish mackerel will remain unchanged.

Modifications to the FMP Framework Procedures

This rule allows modification to certain management measures under the standard documentation process of the open framework procedure. These management measures include acceptable biological catches (ABCs) and ABC control rules, ACLs and ACL control rules, and accountability measures. This rule also modifies the framework procedures to the FMP to designate responsibility to each council (Gulf or South Atlantic) for setting specified management measures for the migratory groups of each species in their respective regions. Additionally, ''sale and purchase restrictions'' and ''transfer at sea provisions'' are removed from the list in § 622.389.

Cobia Zones, ACLs, and ACTs

Based on the results of the most recent stock assessment for Gulf and South Atlantic cobia, this rule divides Gulf migratory group cobia into a Gulf zone (Texas through the Gulf side of the Florida Keys) and a Florida east coast zone (east coast of Florida and Atlantic side of the Florida Keys, *i.e.,* the area within the South Atlantic Council's jurisdiction). The Gulf ACL is allocated between the zones based on landings from the 1998–2012 fishing years. The South Atlantic Council is responsible for regulations for the Florida east coast zone, similar to management of the Florida east coast subzone for king mackerel. This rule also increases the ACLs for both migratory groups, the recreational ACT for the Atlantic migratory group, and the stock ACT for the Gulf zone.

Additional Management Measures Contained in This Final Rule

This rule reorganizes the description of the CMP zones and subzones and adds § 622.369 to the codified text to describe the zones and Appendix G to part 622 to represent the zones in figures. In addition, this rule clarifies that spearguns and powerheads are allowable gear for cobia in Federal waters of the South Atlantic and Mid-Atlantic regions.

Comments and Responses

NMFS received a total of 11 submissions from the public, 3 of which were duplicates. Within the 8 unique submissions, some comments addressed issues beyond the scope of the proposed rule. NMFS identified 4 issues related to Amendment 20B and its proposed rule. These comments and NMFS' respective responses are summarized below.

Comment 1: Changing the start of the fishing year for the Florida west coast northern subzone to a date that is later than the start of the fishing year for the Gulf western zone will result in a very short fishing season for the northern subzone. When the western zone quota is filled, most of the traveling fishermen will move over to the northern subzone and quickly catch the small quota.

Response: NMFS disagrees that changing the start of the fishing year for the Florida west coast northern subzone from July 1 to October 1 will allow the quota for that zone to be harvested substantially faster than occurs now. Currently, fishermen travel from the Atlantic coast fish in the western zone until that quota is met, and then move to the northern subzone and quickly harvest that quota. Delaying the start of the northern subzone fishing year until October is not likely to change this pattern unless one of two things occur, either of which could discourage traveling fishermen from fishing in the northern subzone. First, the delay in the opening of the northern subzone could result in a period of time when both the western zone and northern subzones are closed. This could decrease the number of fishers staying in the northern Gulf waiting for the northern subzone to open. Second, the delay in opening could allow the fish to migrate to the southern part of the northern subzone, which extends down the west coast of Florida, before the quota is met and the subzone is closed. The traveling fishermen do not generally follow the fish as they migrate south, leaving these fish available to the local fisherman in this part of the northern subzone.

Comment 2: A strong market for king mackerel exists in the northeastern United States and eastern Canada during the summer months. To take greatest advantage of this market the western zone and the Florida west coast northern subzone should both open at least by June 1, if not May 1.

Response: NMFS disagrees that having a May 1 or June 1 opening date would result in fishermen being able to take advantage of a strong market during the summer. Although niche markets may arise, over the period 2011–2013, the average price per pound (round weight; NMFS Fisheries Statistics Division) for king mackerel harvested in the Gulf was highest in the fall (September through December), followed by the summer (June through August), and the winter/spring (January through May). Although other price determinants may have applied, these prices reflected the volume of king mackerel sold, with the highest average prices associated with the lowest amounts of king mackerel sold, the lowest average prices with the highest amounts sold, etc. Average prices in May and June have likely been high due to the low volume of king mackerel sold during these months and, as a result, prices would be expected to fall if the

start of the seasons were adjusted to allow increased harvests during these months.

Comment 3: The daily trip limits for king mackerel in the Gulf should be kept low to extend the season to at least 6 months and to increase prices. The only reason the season is open as long as it is now is because of the 500-lb (227-kg) reduction once the 75-percent level is reached. Taking away that reduction will only shorten the season even more. Also, currently, the season closes before king mackerel reach the southern part of the northern subzone in the eastern Gulf. The king mackerel fishermen in the southern part of the zone may be able to catch king mackerel once they arrive back south after the migration if a lower trip limit is implemented.

Response: NMFS disagrees that the 500-lb (227-kg) trip limit reduction makes any substantial difference in the season length and agrees with the Council's decision to remove this in-season reduction. The estimated difference in the season length for the northern subzone with and without the trip limit reduction is only 3 days. In addition, the trip limit reduction is difficult to implement in a timely manner. Regarding the permanent trip limit, the Council did not consider any trip limits lower than the current 1,250 lb (567 kg) for Gulf migratory grouper king mackerel in Amendment 20B. Although a lower trip limit could extend the season, testimony from fishermen indicated that the cost of fuel versus the income from a small amount of fish would be too high to maintain a profit. However, as explained in the response to Comment 2, changing the start of the fishing year in the northern subzone to October 1 could allow the fish to migrate back to the south before the season closes, providing additional fishing opportunities for those in the southern part of that zone.

Comment 4: One commenter noted that the creation of northern and southern zones for Atlantic migratory group Spanish mackerel would include an increased trip limit and that there was no upper limit on pounds of mackerel allowed.

Response: The trip limits and catch limits for Atlantic migratory group Spanish mackerel will not be affected by Amendment 20B. The trip limit in both zones will remain 3,500 lb (1,588 kg), except off Florida, where the trip limit changes throughout the year. The ACL will remain in place; the only change implemented in this final rule is that the ACL will be divided between the two zones as separate quotas. The Spanish mackerel ACL was recently increased through a separate action effective December 22, 2014 (79 FR 69058, November 20, 2014).

Changes From the Proposed Rule

A final rule for CMP Framework Amendment 1, effective on December 22, 2014 (79 FR 69058, November 20, 2014), increased the ACLs for Atlantic migratory group Spanish mackerel, based on the results of the most recent stock assessments for Atlantic and Gulf migratory group Spanish mackerel. Therefore, this final rule applied the allocation formula in Amendment 20B to the revised ACLs, resulting in quotas for the northern and southern zone for Atlantic migratory group Spanish mackerel that are greater than those proposed.

Classification

The Regional Administrator, Southeast Region, NMFS, has determined that this final rule is necessary for the conservation and management of Atlantic and Gulf migratory groups of king mackerel, Spanish mackerel, and cobia and is consistent with Amendment 20B, the FMP, the Magnuson-Stevens Act and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this rule would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination was published in the proposed rule and is not repeated here. Comments on the effects of setting different start dates for the Florida west coast Northern Subzone and the Western Zone, and the market incentives of the season start date are addressed in the comments and responses section of this final rule. No changes to the final rule were made in response to these comments. As a result, a final regulatory flexibility analysis was not required and none was prepared.

List of Subjects in 50 CFR Part 622

Atlantic, Coastal Migratory Pelagic Resources, Cobia, Fisheries, Fishing, Gulf, King mackerel, Spanish mackerel.

Dated: January 22, 2015.

Eileen Sobeck,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

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

■ 2. In § 622.2, the definition of ''Migratory group, for king mackerel, Spanish mackerel, and cobia'' is revised to read as follows:

§ 622.2 Definitions and acronyms.

* * * * *

Migratory group, for king mackerel, Spanish mackerel, and cobia, means a group of fish that may or may not be a separate genetic stock, but that is treated as a separate stock for management purposes. King mackerel, Spanish mackerel, and cobia are divided into migratory groups—the boundaries between these groups are specified in § 622.369.

* * * * *

■ 3. In § 622.7, paragraph (b)(1) is revised to read as follows:

§ 622.7 Fishing years.

* * * * *

(b) * * *

(1) *Gulf migratory group king mackerel*—(i) *Eastern zone*—July 1 through June 30, except the northern subzone of the Florida west coast subzone, which has a fishing year of October 1 through September 30.

(ii) *Western zone*—July 1 through June 30.

* * * * *

■ 4. Add § 622.369 to subpart Q to read as follows:

§ 622.369 Description of zones and subzones.

(a) *Migratory groups of king mackerel.* In the EEZ, king mackerel are divided into the Gulf migratory group and the Atlantic migratory group. The Gulf migratory group is bound by a line extending east of the U.S./Mexico border and the summer/winter jurisdictional boundary. The Atlantic migratory group is bound by the summer/winter jurisdictional boundary and a line from the intersection point of Connecticut, Rhode Island, and New York (as described in § 600.105(a) of this chapter). From April 1 through October 31, the summer jurisdictional boundary separates the Gulf and Atlantic migratory groups of king mackerel by a line extending due west from the Monroe/Collier County, FL, boundary. From November 1 through March 31, the winter jurisdictional boundary separates the Gulf and Atlantic migratory groups of king mackerel by a

line extending due east from the Volusia/Flagler County, FL, boundary. See Table 1 of this section for the boundary coordinates. See Figures 1 and 2 in Appendix G of this part for illustration.

(1) *Gulf migratory group.* The Gulf migratory group is divided into western and eastern zones separated by a line extending due south from the Alabama/Florida border. See Table 1 of this section for the boundary coordinates. See Figures 1 and 2 in Appendix G of this part for illustration.

(i) *Western zone.* The western zone encompasses an area of the EEZ north of a line extending east of the US/Mexico border, and west of a line extending due south of the Alabama/Florida border, including the EEZ off Texas, Louisiana, Mississippi, and Alabama. This zone remains the same year round.

(ii) *Eastern zone.* The eastern zone is divided into the Florida west coast subzone and the Florida east coast subzone.

(A) *Florida west coast subzone.* The Florida west coast subzone is further divided into the northern and southern subzones by a line extending due west from the Lee/Collier County, FL, boundary.

(*1*) *Northern subzone.* The northern subzone encompasses an area of the EEZ east of a line extending due south of the Florida/Alabama border, and north of a line extending due west of the Lee/Collier County, FL, boundary, and remains the same area year round.

(*2*) *Southern subzone.* From November 1 through March 31, the southern subzone encompasses an area of the EEZ south of a line extending due west of the Lee/Collier County, FL, boundary on the Florida west coast, and south of a line extending due east of the Monroe/Miami-Dade County, FL, boundary on the Florida east coast, which includes the EEZ off Collier and Monroe Counties, FL. From April 1 through October 31, the southern subzone is reduced to the EEZ off Collier County, and the EEZ off Monroe County becomes part of the Atlantic migratory group area.

(B) *Florida east coast subzone.* From November 1 through March 31, the Florida east coast subzone encompasses an area of the EEZ south of a line extending due east of the Flagler/Volusia County, FL, boundary, and north of a line extending due east of the Miami-Dade/Monroe County, FL, boundary. From April 1 through October 31, the Florida east coast subzone is not part of the Gulf migratory group king mackerel area; it is part of the Atlantic migratory group king mackerel area.

(2) *Atlantic migratory group.* The Atlantic migratory group is divided into the northern and southern zones separated by a line extending from the North Carolina/South Carolina border, as specified in § 622.2. See Table 1 of this section for the boundary coordinates. See Figures 1 and 2 in Appendix G of this part for illustration. See § 622.385(a)(1) for a description of the areas for Atlantic migratory group king mackerel commercial trip limits.

(i) *Northern zone.* The northern zone encompasses an area of the EEZ south of a line extending from the intersection point of New York, Connecticut, and Rhode Island (as described in § 600.105(a) of this chapter), and north of a line extending from the North Carolina/South Carolina border, as specified in § 622.2, including the EEZ off each state from North Carolina to New York. This zone remains the same year round.

(ii) *Southern zone.* From April 1 through October 31, the southern zone encompasses an area of the EEZ south of a line extending from the North Carolina/South Carolina border, as specified in § 622.2, and south of a line extending due west of the Lee/Collier County, FL, boundary. From November 1 through March 31, the southern zone encompasses an area of the EEZ south of a line extending from the North Carolina/South Carolina border, as specified in § 622.2, and north of a line extending due east of the Flagler/Volusia County, FL, boundary.

TABLE 1 TO § 622.369—KING MACKEREL DESCRIPTION OF ZONES

[For illustration, see Figures 1 and 2 in Appendix G of this part]

Area	Boundary 1	Boundary 2	
		Summer	Winter
Gulf Migratory Group—Western Zone	US/Mexico, A line east of the intersection of 25°58′30.57″ N lat. and 96°55′27.37″ W long.	AL/FL: 87°31′6″ W long.	
Gulf Migratory Group—Eastern Zone: Florida West Coast Northern Subzone.	AL/FL, 87°31′6″ W long	Lee/Collier: 26°19′48″ N lat.	
Gulf Migratory Group—Eastern Zone: Florida West Coast Southern Subzone.	Lee/Collier, 26°19′48″ N lat	Collier/Monroe: 25°48″ N lat.	Monroe/Miami-Dade: 25°20′24″ N lat.
Gulf Migratory Group—Eastern Zone: Florida East Coast Subzone.	Monroe/Miami-Dade, 25°20′24″ N lat.	NA	Volusia/Flagler: 29°25″ N lat.
Atlantic Migratory Group—Northern Zone	NY/CT/RI, 41°18′16.249″ N lat. and 71°54′28.477″ W long. southeast to 37°22′32.75″ N lat. and the intersection point with the outward boundary of the EEZ.	NC/SC, a line extending in a direction of 135°34′55″ from true north beginning at 33°51′07.9″ N lat. and 78°32′32.6″ W long. to the intersection point with the outward boundary of the EEZ.	
Atlantic Migratory Group—Southern Zone	NC/SC, a line extending in a direction of 135°34′55″ from true north beginning at 33°51′07.9″ N lat. and 78°32′32.6″ W long. to the intersection point with the outward boundary of the EEZ.	Collier/Monroe: 25°48″ N lat.	Volusia/Flagler: 29°25″ N lat.

(b) *Migratory groups of Spanish mackerel*—(1) *Gulf migratory group.* In the EEZ, the Gulf migratory group is bounded by a line extending east of the US/Mexico border and a line extending due east of the Monroe/Miami-Dade County, FL, boundary. See Table 2 of this section for the boundary coordinates. See Figure 3 in Appendix G of this part for illustration.

(2) *Atlantic migratory group.* In the EEZ, the Atlantic migratory group is bounded by a line extending due east of the Monroe/Miami-Dade County, FL, boundary and a line extending from the intersection point of New York, Connecticut, and Rhode Island (as described in § 600.105(a) of this chapter). The Atlantic migratory group is divided into the northern and southern zones. See Table 2 of this section for the boundary coordinates. See Figure 3 in Appendix G of this part for illustration. See § 622.385(b)(1) for a description of the areas for Atlantic migratory group Spanish mackerel commercial trip limits.

(i) *Northern zone.* The northern zone encompasses an area of the EEZ south of a line extending from the intersection point of New York, Connecticut, and Rhode Island (as described in § 600.105(a) of this chapter), and north of a line extending from the North Carolina/South Carolina border, as specified in § 622.2, including the EEZ off each state from North Carolina to New York.

(ii) *Southern zone.* The southern zone encompasses an area of the EEZ south of a line extending from the North Carolina/South Carolina border, as specified in § 622.2, and north of a line extending due east of the Monroe/Miami-Dade County, FL, boundary, including the EEZ off South Carolina, Georgia, and Florida.

TABLE 2 TO § 622.369—SPANISH MACKEREL DESCRIPTION OF ZONES

[For illustration, see Figure 3 in Appendix G of this part]

Area	Boundary 1	Boundary 2
Gulf Migratory Group	US/Mexico, A line east of the intersection of 25°58′30.57″ N lat. and 96°55′27.37″ W long.	Monroe/Miami-Dade, 25°20′24″N lat.
Atlantic Migratory Group—Northern Zone	NY/CT/RI, 41°18′16.249″ N lat. and 71°54′28.477″ W long. southeast to 37°22′32.75″ N lat. and the intersection point with the outward boundary of the EEZ.	NC/SC, a line extending in a direction of 135°34′55″ from true north beginning at 33°51′07.9″ N lat. and 78°32′32.6″ W long. to the intersection point with the outward boundary of the EEZ.
Atlantic Migratory Group—Southern Zone	NC/SC, a line extending in a direction of 135°34′55″ from true north beginning at 33°51′07.9″ N lat. and 78°32′32.6″ W long. to the intersection point with the outward boundary of the EEZ.	Monroe/Miami-Dade, 25°20′24″N lat.

(c) *Migratory groups of cobia*—(1) *Gulf migratory group.* In the EEZ, the Gulf migratory group is bounded by a line extending east from the U.S./Mexico border and a line extending due east from the Florida/Georgia border. See Table 3 of this section for the boundary coordinates. (See Figure 4 in Appendix G of this part for illustration.)

(i) *Gulf zone.* The Gulf zone encompasses an area of the EEZ north of a line extending east of the U.S./Mexico border, and north and west of the line of demarcation between the Atlantic Ocean and the Gulf of Mexico (the Council boundary, as described in § 600.105(c) of this chapter).

(ii) *Florida east coast zone.* The Florida east coast zone encompasses an area of the EEZ south and east of the line of demarcation between the Atlantic Ocean and the Gulf of Mexico (as described in § 600.105(c) of this chapter), and south of a line extending due east from the Florida/Georgia border.

(2) *Atlantic migratory group.* In the EEZ, the Atlantic migratory group is bounded by a line extending from the intersection point of New York, Connecticut, and Rhode Island (as described in § 600.105(a) of this chapter) and a line extending due east of the Florida/Georgia border. See Table 3 of this section for the boundary coordinates.

TABLE 3 TO § 622.369—COBIA DESCRIPTION OF ZONES

[For illustration, see Figure 4 in Appendix G of this part]

Area	Boundary 1	Boundary 2
Gulf Migratory Group—Gulf Zone	US/Mexico, A line east of the intersection of 25°58′30.57″ N lat. and 96°55′27.37″ W long.	Council Boundary—the intersection of the outer boundary of the EEZ and 83°00′ W long., north to 24°35′ N lat., (near the Dry Tortugas Islands), then east to the mainland.
Gulf Migratory Group—Florida East Coast Zone	Council Boundary—the intersection of the outer boundary of the EEZ and 83°00′ W long., north to 24°35′ N lat., (near the Dry Tortugas Islands), then east to the mainland.	FL/GA, 30°42′45.6″ N lat.
Atlantic Migratory Group	NY/CT/RI, 41°18′16.249″ N lat. and 71°54′28.477″ W long. southeast to 37°22′32.75″ N lat. and the intersection point with the outward boundary of the EEZ.	FL/GA, 30°42′45.6″ N lat.

■ 5. In § 622.375, paragraph (a) is revised to read as follows:

§ 622.375 Authorized and unauthorized gear.

(a) *Authorized gear*—(1) *King and Spanish mackerel.* Subject to the prohibitions on gear/methods specified in § 622.9, the following are the only fishing gears that may be used in the Gulf, Mid-Atlantic, and South Atlantic EEZ in directed fisheries for king and Spanish mackerel:

(i) *King mackerel, Atlantic migratory group*—(A) North of 34°37.3′ N. lat., the latitude of Cape Lookout Light, NC—all gear except drift gillnet and long gillnet.

(B) South of 34°37.3′ N. lat.—automatic reel, bandit gear, handline, and rod and reel.

(ii) *King mackerel, Gulf migratory group*—hook-and-line gear and, in the southern Florida west coast subzone only, run-around gillnet. (See § 622.369(a)(1)(ii)(A)(*2*) for a description of the Florida west coast southern subzone.)

(iii) *Spanish mackerel, Atlantic migratory group*—automatic reel, bandit gear, handline, rod and reel, cast net, run-around gillnet, and stab net.

(iv) *Spanish mackerel, Gulf migratory group*—all gear except drift gillnet, long gillnet, and purse seine.

(2) *Cobia.* Subject to the prohibitions on gear/methods specified in § 622.9, the following are the only fishing gears that may be used in the Gulf, Mid-Atlantic, and South Atlantic EEZ for cobia.

(i) *Cobia in the Mid-Atlantic and South Atlantic EEZ*—automatic reel, bandit gear, handline, rod and reel, pelagic longline, and spear (including powerheads).

(ii) *Cobia in the Gulf EEZ*—all gear except drift gillnet and long gillnet.

* * * * *

■ 6. Section 622.378 is revised to read as follows:

§ 622.378 Area and seasonal closures.

(a) *Seasonal closures of the gillnet component for Gulf migratory group king mackerel.* The gillnet component for Gulf group king mackerel in or from the Florida west coast southern subzone is closed each fishing year from July 1 until 6 a.m. on the day after the Martin Luther King Jr. Federal holiday. The gillnet component is open on the first weekend following the Martin Luther King Jr. holiday, provided a notification of closure has not been filed under § 622.8(b). The gillnet component is closed all subsequent weekends and observed Federal holidays. Weekend closures are effective from 6 a.m. Saturday to 6 a.m. Monday. Holiday closures are effective from 6 a.m. on the observed Federal holiday to 6 a.m. the following day. All times are eastern standard time. During these closures, a person aboard a vessel using or possessing a gillnet with a stretched-mesh size of 4.75 inches (12.1 cm) or larger in the southern Florida west coast subzone may not fish for or possess Gulf migratory group king mackerel. (See § 622.369(a)(1)(ii)(A)(*2*) for a description of the Florida west coast southern subzone.)

(b) [Reserved]

■ 7. In § 622.384, the introductory text, and paragraphs (a), (b), (c), and (d) are revised to read as follows:

§ 622.384 Quotas.

See § 622.8 for general provisions regarding quota applicability and closure and reopening procedures. See § 622.369 for the descriptions of the zones. This section provides quotas and specific quota closure restrictions for coastal migratory pelagic fish. All weights are in round and eviscerated weight combined, unless specified otherwise.

(a) King and Spanish mackerel quotas apply to persons who fish under commercial vessel permits for king or Spanish mackerel, as required under § 622.370(a)(1) or (3). A fish is counted against the quota for the area where it is caught, not where it is landed.

(b) *King mackerel*—(1) *Gulf migratory group.* The Gulf migratory group is divided into zones and subzones. The descriptions of the zones and subzones are specified in § 622.369(a). Quotas for the eastern and western zones are as follows:

(i) *Eastern zone.* The eastern zone is divided into subzones with quotas as follows:

(A) *Florida east coast subzone*—1,102,896 lb (500,265 kg).

(B) *Florida west coast subzone*—(*1*) *Southern subzone.* The hook-and-line quota is 551,448 lb (250,133 kg) and the run-around gillnet quota is 551,448 lb (250,133 kg).

(*2*) *Northern subzone*—178,848 lb (81,124 kg).

(ii) *Western zone*—1,071,360 lb (485,961 kg).

(2) *Atlantic migratory group.* The Atlantic migratory group is divided into northern and southern zones. The descriptions of the zones are specified in § 622.369(a). Quotas for the northern and southern zones for the 2015–2016 fishing year and subsequent years are as follows:

(i) *Northern zone*—1,292,040 lb (586,059 kg). No more than 0.40 million lb (0.18 million kg) may be harvested by purse seines.

(ii) *Southern zone*—2,587,960 lb (1,173,879 kg).

(iii) *Quota transfers.* North Carolina or Florida, in consultation with the other states in their respective zones, may request approval from the RA to transfer part or all of their respective zone's annual commercial quota to the other zone. Requests for transfer of commercial quota for king mackerel must be made by a letter signed by the principal state official with marine fishery management responsibility and expertise of the state requesting the transfer, or his/her previously named designee. The letter must certify that all pertinent state requirements have been met and identify the states involved and the amount of quota to be transferred. For the purposes of quota closures as described in § 622.8, the receiving zone's quota will be the original quota plus any transferred amount, for that fishing season only. Landings associated with any transferred quota will be included in the total landings for the Atlantic migratory group, which will be evaluated relative to the total ACL.

(A) Within 10 working days following the receipt of the letter from the state requesting the transfer, the RA shall notify the appropriate state officials of the disposition of the request. In evaluating requests to transfer a quota, the RA shall consider whether:

(*1*) The transfer would allow the overall annual quota to be fully harvested; and

(*2*) The transfer is consistent with the objectives of the FMP and the Magnuson-Stevens Act.

(B) The transfer of quota will be valid only for the fishing year for which the request was made and does not permanently alter the quotas specified in paragraphs (b)(2)(i) and (b)(2)(ii) of this section.

(3) *Transit provisions applicable in areas closed due to a quota closure for king mackerel.* A vessel with a valid commercial vessel permit for king mackerel that has onboard king mackerel harvested in an open area of the EEZ may transit through areas closed to the harvest of king mackerel due to a quota closure, if fishing gear is appropriately stowed. For the purpose of paragraph (b) of this section, transit means direct and non-stop continuous course through the area. To be appropriately stowed fishing gear means—

(i) A gillnet must be left on the drum. Any additional gillnets not attached to the drum must be stowed below deck.

(ii) A rod and reel must be removed from the rod holder and stowed securely on or below deck. Terminal gear (*i.e.,* hook, leader, sinker, flasher, or bait)

must be disconnected and stowed separately from the rod and reel. Sinkers must be disconnected from the down rigger and stowed separately.

(c) *Spanish mackerel*—(1) *Gulf migratory group.* [Reserved]

(2) *Atlantic migratory group.* The Atlantic migratory group is divided into northern and southern zones. The descriptions of the zones are specified in § 622.369(b). The quota for the Atlantic migratory group of Spanish mackerel is 3.33 million lb (1.51 million kg). Quotas for the northern and southern zones are as follows:

(i) *Northern zone*—662,670 lb (300,582 kg).

(ii) *Southern zone*—2,667,330 lb (1,209,881 kg).

(iii) *Quota transfers.* North Carolina or Florida, in consultation with the other states in their respective zones, may request approval from the RA to transfer part or all of their respective zone's annual commercial quota to the other zone. Requests for transfer of commercial quota for Spanish mackerel must be made by a letter signed by the principal state official with marine fishery management responsibility and expertise, or his/her previously named designee, for each state involved. The letter must certify that all pertinent state requirements have been met and identify the states involved and the amount of quota to be transferred. For the purposes of quota closures as described in § 622.8, the receiving zone's quota will be the original quota plus any transferred amount, for that fishing season only. Landings associated with any transferred quota will be included in the total landings for the Atlantic migratory group, which will be evaluated relative to the total ACL.

(A) Within 10 working days following the receipt of the letter from the states involved, the RA shall notify the appropriate state officials of the disposition of the request. In evaluating requests to transfer a quota, the RA shall consider whether:

(*1*) The transfer would allow the overall annual quota to be fully harvested; and

(*2*) The transfer is consistent with the objectives of the FMP and the Magnuson-Stevens Act.

(B) The transfer of quota will be valid only for the fishing year for which the request was made and does not permanently alter any zone's quota specified in paragraph (c)(2)(i) or (c)(2)(ii) of this section.

(d) *Cobia*—(1) *Gulf migratory group*—(i) *Gulf zone.* For the 2014 fishing year, the stock quota for the Gulf migratory group of cobia in the Gulf zone is 1,420,000 lb (644,101 kg). For the 2015 fishing year, the stock quota is 1,450,000 lb (657,709 kg). For the 2016 fishing year and subsequent fishing years, the stock quota is 1,500,000 lb (680,389 kg).

(ii) *Florida east coast zone.* The following quota applies to persons who fish for cobia and sell their catch. The quota for the Gulf migratory group of cobia in the Florida east coast zone is 70,000 lb (31,751 kg).

(2) *Atlantic migratory group.* The following quotas apply to persons who fish for cobia and sell their catch. For the 2014 and 2015 fishing years, the quota for the Atlantic migratory group of cobia is 60,000 lb (27,216 kg). The quota for the 2016 fishing year and subsequent fishing years is 50,000 lb (22,680 kg).

* * * * *

■ 8. In § 622.385:

■ a. The heading for paragraph (a)(1), the heading for paragraph (a)(2), the second sentence in paragraph (a)(2), and paragraph (a)(2)(ii)(B) are revised;

■ b. Paragraph (a)(2)(iii) is removed;

■ c. Paragraph (a)(2)(iv) is redesignated as paragraph (a)(2)(iii);

■ d. Newly redesignated paragraph (a)(2)(iii) is revised; and

■ e. A heading is added to paragraph (b)(1).

The revisions and addition read as follows:

§ 622.385 Commercial trip limits.

* * * * *

(a) * * *

(1) *Atlantic migratory group.* * * *

(2) *Gulf migratory group.* * * * (See § 622.369(a)(2) for descriptions of the eastern and western zones and § 622.369(a)(2)(ii) for descriptions of the subzones in the eastern zone.)

* * * * *

(ii) * * *

(B) *Hook-and-line gear.* In the Florida west coast subzone, king mackerel in or from the EEZ may be possessed on board or landed from a vessel with a commercial permit for king mackerel, as required by § 622.370(a)(1), and operating under the hook-and-line gear quotas in § 622.384(b)(1)(i)(B)(*1*) or (*2*):

(*1*) *Northern subzone.* From October 1, each fishing year, until the northern subzone's hook-and-line gear quota has been harvested—in amounts not exceeding 1,250 lb (567 kg) per day.

(*2*) *Southern subzone.* From July 1, each fishing year, until the southern subzone's hook-and-line gear quota has been harvested—in amounts not exceeding 1,250 lb (567 kg) per day.

(iii) *Western zone.* In the western zone, king mackerel in or from the EEZ may be possessed on board or landed from a vessel for which a commercial permit for king mackerel has been issued, as required under § 622.370(a)(1), from July 1, each fishing year, until a closure of the western zone has been effected under § 622.8(b)—in amounts not exceeding 3,000 lb (1,361 kg) per day.

(b) * * *

(1) *Atlantic migratory group.* * * *

* * * * *

■ 9. In § 622.388, paragraphs (a)(1), (a)(3), (b)(1), (d)(1), (e), and (f) are revised to read as follows:

622.388 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).

* * * * *

(a) *Gulf migratory group king mackerel*—(1) *Commercial sector*—(i) If commercial landings, as estimated by the SRD, reach or are projected to reach the applicable quota specified in § 622.384(b)(1), the AA will file a notification with the Office of the Federal Register to close the commercial sector for that zone, subzone, or gear type for the remainder of the fishing year.

(ii) The commercial ACL for the Gulf migratory group of king mackerel is 3.456 million lb (1.568 million kg). This ACL is further divided into a commercial ACL for vessels fishing with hook-and-line and a commercial ACL for vessels fishing with run-around gillnets. The hook-and-line ACL (which applies to the entire Gulf) is 2,904,552 lb (1,317,483 kg) and the run-around gillnet ACL (which applies to the Gulf eastern zone Florida west coast southern subzone) is 551,448 lb (250,133 kg).

* * * * *

(3) For purposes of tracking the ACL, recreational landings will be monitored based on the commercial fishing year.

(b) *Atlantic migratory group king mackerel*—(1) *Commercial sector*—(i) If commercial landings, as estimated by the SRD, reach or are projected to reach the applicable quota specified in § 622.384(b)(2), the AA will file a notification with the Office of the Federal Register to close the commercial sector for that zone for the remainder of the fishing year.

(ii) In addition to the measures specified in paragraph (b)(1)(i) of this section, if the sum of the commercial and recreational landings, as estimated by the SRD, exceeds the stock ACL, as specified in paragraph (b)(3) of this section, and Atlantic migratory group king mackerel are overfished, based on the most recent status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year

to reduce the commercial quota for that zone for that following year by the amount of any commercial sector overage in the prior fishing year for that zone.

(iii) The commercial ACL for the Atlantic migratory group of king mackerel is 3.88 million lb (1.76 million kg).

* * * * *

(d) *Atlantic migratory group Spanish mackerel*—(1) *Commercial sector.* (i) If commercial landings, as estimated by the SRD, reach or are projected to reach the applicable quota specified in § 622.384(c)(2), the AA will file a notification with the Office of the Federal Register to close the commercial sector for that zone for the remainder of the fishing year.

(ii) In addition to the measures specified in paragraph (d)(1)(i) of this section, if the sum of the commercial and recreational landings, as estimated by the SRD, exceeds the stock ACL, as specified in paragraph (d)(3) of this section, and Atlantic migratory group Spanish mackerel are overfished, based on the most recent status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the commercial quota for that zone for that following year by the amount of any commercial sector overage in the prior fishing year for that zone.

(iii) The commercial ACL for the Atlantic migratory group Spanish mackerel is 3.13 million lb (1.42 million kg).

* * * * *

(e) *Gulf migratory group cobia*—(1) *Gulf zone.* (i) If the sum of all cobia landings, as estimated by the SRD, reaches or is projected to reach the stock quota (stock ACT), specified in § 622.384(d)(1), the AA will file a notification with the Office of the Federal Register to prohibit the harvest of Gulf migratory group cobia in the Gulf zone for the remainder of the fishing year. On and after the effective date of such a notification, all sale and purchase of Gulf migratory group cobia in the Gulf zone is prohibited and the possession limit of this species in or from the Gulf EEZ is zero. This possession limit also applies in the Gulf on board a vessel for which a valid Federal charter vessel/headboat permit for coastal migratory pelagic fish has been issued, without regard to where such species were harvested, *i.e.* in state or Federal water.

(ii) The stock ACLs for Gulf migratory group cobia in the Gulf zone are 1,570,000 lb (712,140 kg) for 2014, 1,610,000 lb (730,284 kg) for 2015, and 1,660,000 lb (752,963 kg) for 2016 and subsequent fishing years.

(2) *Florida east coast zone*—(i) *The following ACLs and AMs apply to cobia that are sold.* (A) If the sum of cobia landings that are sold, as estimated by the SRD, reach or are projected to reach the quota specified in § 622.384(d)(1)(ii) (ACL), the AA will file a notification with the Office of the Federal Register to prohibit the sale and purchase of cobia in or from the Florida east coast zone for the remainder of the fishing year.

(B) In addition to the measures specified in paragraph (e)(2)(i)(A) of this section, if the sum of cobia landings that are sold and not sold in or from the Florida east coast zone, as estimated by the SRD, exceeds the stock ACL for the Florida east coast zone, as specified in paragraph (e)(2)(iii) of this section, and Gulf migratory group cobia are overfished, based on the most recent status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the quota (ACL) for the Florida east coast zone cobia that are sold for that following year by the amount of any overage in the prior fishing year.

(ii) *The following ACLs and AMs apply to cobia that are not sold.* (A) If the sum of cobia landings that are sold and not sold, as estimated by the SRD, exceeds the stock ACL, as specified in paragraph (e)(2)(iii) of this section, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the length of the following fishing season by the amount necessary to ensure landings may achieve the applicable ACT, but do not exceed the applicable ACL in the following fishing year. Further, during that following year, if necessary, the AA may file additional notification with the Office of the Federal Register to readjust the reduced fishing season to ensure harvest achieves the ACT but does not exceed the ACL. The applicable ACTs for the Florida east coast zone of cobia are 670,000 lb (303,907 kg) for 2014, 680,000 lb (308,443 kg) for 2015, and 710,000 lb (322,051 kg) for 2016 and subsequent fishing years. The applicable ACLs for the Florida east coast zone of cobia are 810,000 lb (367,410 kg) for 2014, 830,000 lb (376,482 kg) for 2015, and 860,000 lb (390,089 kg) for 2016 and subsequent fishing years.

(B) In addition to the measures specified in paragraph (e)(2)(ii)(A) of this section, if the sum of the cobia landings that are sold and not sold in or from the Florida east coast zone, as estimated by the SRD, exceeds the stock ACL, as specified in paragraph (e)(2)(iii) of this section, and Gulf migratory group cobia are overfished, based on the most recent status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the applicable ACL and applicable ACT for the Florida east coast zone for that following year by the amount of any ACL overage in the prior fishing year.

(C) Landings will be evaluated relative to the ACL based on a moving multi-year average of landings, as described in the FMP.

(iii) The stock ACLs for Florida east coast zone cobia are 880,000 lb (399,161 kg) for 2014, 900,000 lb (408,233 kg) for 2015, and 930,000 lb (421,841 kg) for 2016 and subsequent fishing years.

(f) *Atlantic migratory group cobia*—(1) The following ACLs and AMs apply to cobia that are sold—(i) If the sum of the cobia landings that are sold, as estimated by the SRD, reach or are projected to reach the quota specified in § 622.384(d)(2) (ACL), the AA will file a notification with the Office of the Federal Register to prohibit the sale and purchase of cobia for the remainder of the fishing year.

(ii) In addition to the measures specified in paragraph (f)(1)(i) of this section, if the sum of the cobia landings that are sold and not sold in or from the Atlantic migratory group, as estimated by the SRD, exceeds the stock ACL, as specified in paragraph (f)(3) of this section, and Atlantic migratory group cobia are overfished, based on the most recent status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the applicable quota (ACL), as specified in paragraph (f)(1)(i) of this section, for that following year by the amount of any applicable sector-specific ACL overage in the prior fishing year.

(2) The following ACLs and AMs apply to cobia that are not sold.

(i) If the sum of the cobia landings that are sold and not sold, as estimated by the SRD, exceeds the stock ACL, as specified in paragraph (f)(3) of this section, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the length of the following fishing season by the amount necessary to ensure landings may achieve the applicable ACT, but do not exceed the applicable ACL in the following fishing year. Further, during

that following year, if necessary, the AA may file additional notification with the Office of the Federal Register to readjust the reduced fishing season to ensure harvest achieves the ACT but does not exceed the ACL. The applicable ACTs for the Atlantic migratory group of cobia are 550,000 lb (249,476 kg) for 2014, 520,000 lb (235,868 kg) for 2015, and 500,000 lb (226,796 kg) for 2016 and subsequent fishing years. The applicable ACLs for the Atlantic migratory group of cobia are 670,000 lb (303,907 kg) for 2014, 630,000 lb (285,763 kg) for 2015, and 620,000 lb (281,227 kg) for 2016 and subsequent fishing years.

(ii) In addition to the measures specified in paragraph (f)(2)(i) of this section, if the sum of cobia landings that are sold and not sold, as estimated by the SRD, exceeds the stock ACL, as specified in paragraph (f)(3) of this section, and Atlantic migratory group cobia are overfished, based on the most recent status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the applicable ACL and ACT, as specified in paragraph (f)(2)(i) of this section, for that following year by the amount of any applicable sector-specific overage in the prior fishing year.

(iii) Landings will be evaluated relative to the ACL based on a moving multi-year average of landings, as described in the FMP.

(3) The stock ACLs for Atlantic migratory group cobia are 730,000 lb (331,122 kg) for 2014, 690,000 lb (312,979 kg) for 2015, and 670,000 lb (303,907 kg) for 2016 and subsequent fishing years.

■ 10. Section 622.389 is revised to read as follows:

622.389 Adjustment of management measures.

In accordance with the framework procedures of the FMP for Coastal Migratory Pelagic Resources, the RA may establish or modify, and the applicable council is required to approve, the following items specified in paragraph (a) of this section for coastal migratory pelagic fish. (Note: The applicable council refers to the council whose jurisdiction applies to the management measures.)

(a) For a species or species group: Reporting and monitoring requirements, permitting requirements, bag and possession limits (including a bag limit of zero), size limits, vessel trip limits, closed seasons or areas and reopenings, acceptable biological catches (ABCs) and ABC control rules, annual catch limits (ACLs) and ACL control rules, accountability measures (AMs), annual catch targets (ACTs), quotas (including a quota of zero), MSY (or proxy), OY, management parameters such as overfished and overfishing definitions, gear restrictions (ranging from regulation to complete prohibition), gear markings and identification, vessel markings and identification, rebuilding plans, and restrictions relative to conditions of harvested fish (maintaining fish in whole condition, use as bait).

(b) [Reserved]

■ 11. Appendix G to part 622 is added to read as follows:

Appendix G to Part 622—*Coastal Migratory Pelagics Zone Illustrations*

BILLING CODE 3510–22–P

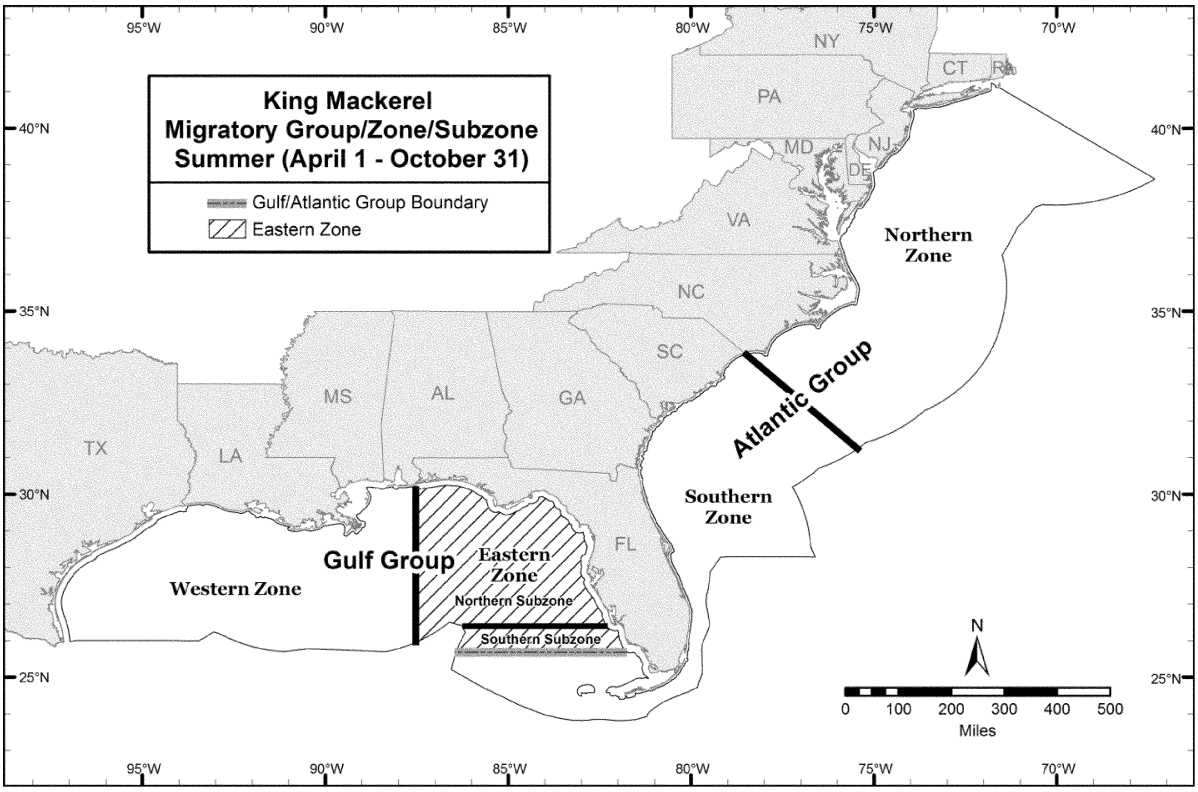

Figure 1 of Appendix G to Part 622--King Mackerel (Summer)

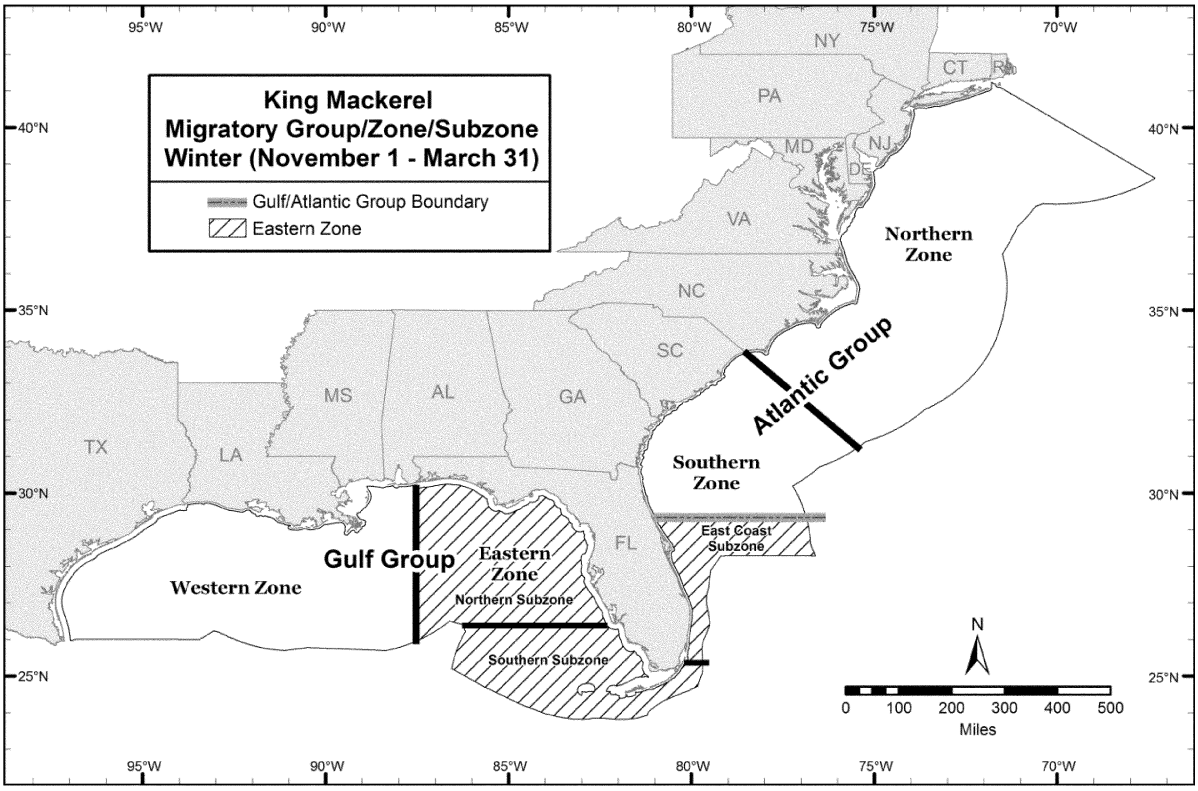

Figure 2 of Appendix G to Part 622--King Mackerel (Winter)

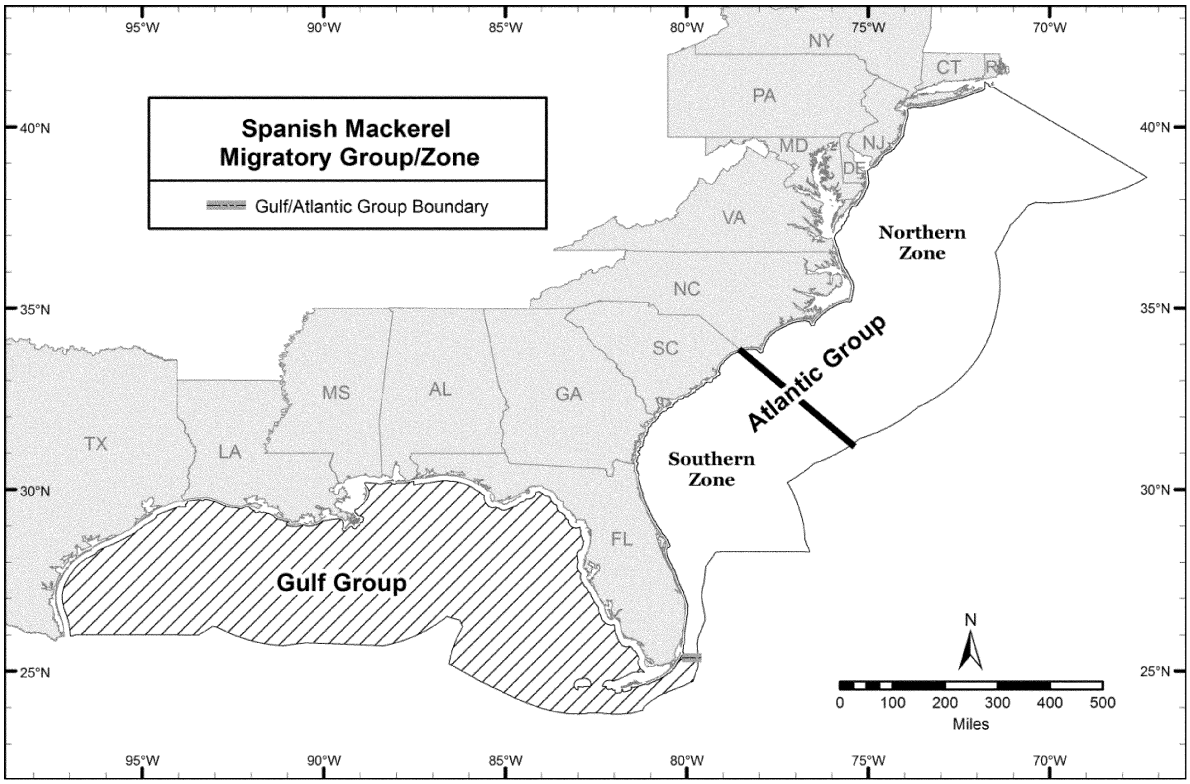

Figure 3 of Appendix G to Part 622--Spanish Mackerel

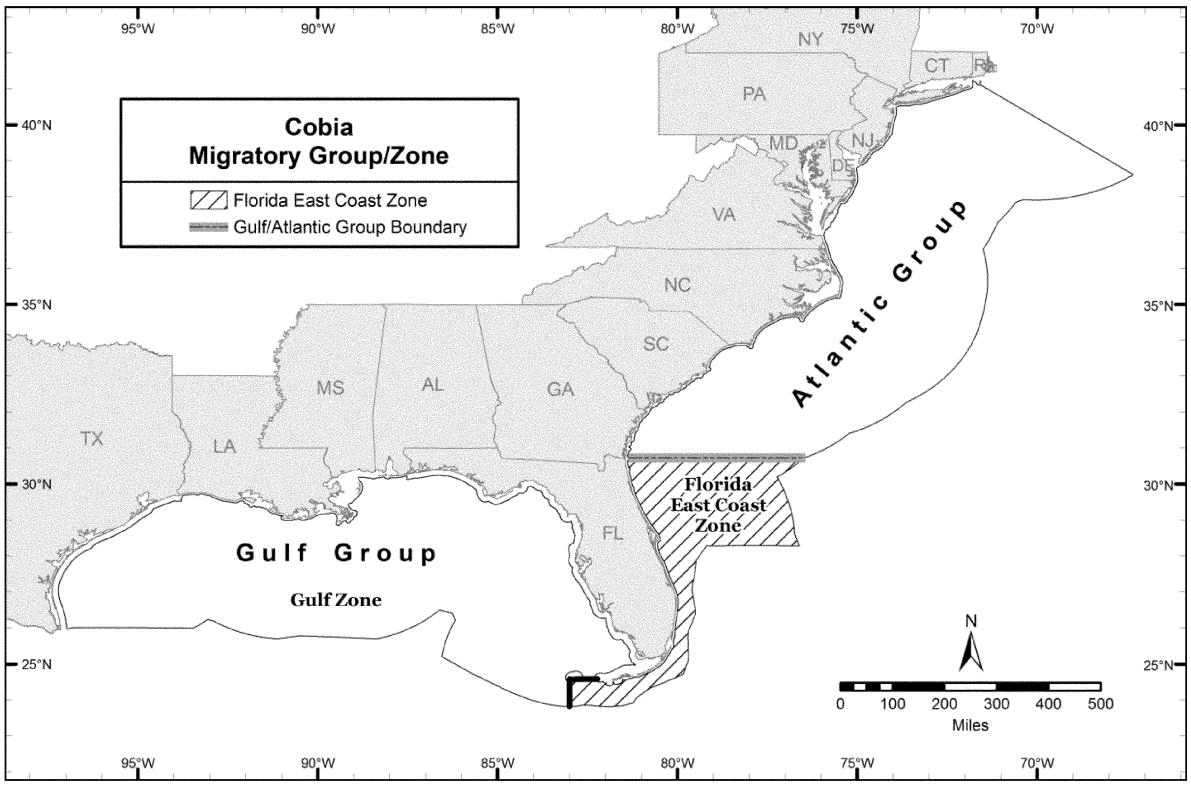

Figure 4 of Appendix G to Part 622--Cobia

[FR Doc. 2015–01442 Filed 1–26–15; 8:45 am]
BILLING CODE 3510–22–C

Proposed Rules

Federal Register
Vol. 80, No. 17
Tuesday, January 27, 2015

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF ENERGY

10 CFR 951

[Docket Number DOE–HQ–2014–0021]

RIN 1990–AA39

Convention on Supplementary Compensation for Nuclear Damage Contingent Cost Allocation

AGENCY: Office of General Counsel, U.S. Department of Energy.

ACTION: Notice of Public Meeting.

SUMMARY: This notice provides information on a public workshop, scheduled for February 20, 2015, that will discuss the U.S. Department of Energy's December 17, 2014 notice of proposed rulemaking to establish a retrospective risk pooling program under section 934 of the Energy Independence and Security Act of 2007. There will be an opportunity for public comment before and after the public workshop.

DATES: DOE will hold a public workshop on February 20, 2015 from 9 a.m. to 5 p.m. in Washington, DC. DOE will accept comments, data, and information on the December 17, 2014 notice of proposed rulemaking (NOPR) (79 FR 75076) before and after the public workshop, but no later than March 17, 2015, which is the close of the comment period on the NOPR.

ADDRESSES: The public workshop will be held at the U.S. Department of Energy, Forrestal Building, Room 1E–245, 1000 Independence Avenue SW., Washington, DC 20585–0121. The workshop can also be attended via webinar. For details regarding attendance at the workshop or webinar see the Public Participation section of this notice.

Any comments submitted on the proposed rulemaking must identify the NOPR for the Convention on Supplementary Compensation for Nuclear Damage Contingent Cost Allocation and provide docket number DOE–HQ–2014–0021 and/or regulatory information number (RIN) 1990–AA39. Comments may be submitted using any of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov* Follow the instructions for submitting comments.
2. *Email: Section934Rulemaking@Hq.Doe.gov*
3. *Mail:* Ms. Sophia Angelini, U.S. Department of Energy, Office of General Counsel, Mailstop GC–72, Section 934 Rulemaking, 1000 Independence Avenue SW., Washington, DC 20585. Please submit one signed original and three copies of all comments submitted by mail.

Docket: For access to the docket to read background documents or comments received, go to the Federal eRulemaking Portal at *http://www.regulations.gov,* or the Web site specifically established for this proceeding: *http://www.energy.gov/gc/convention-supplementary-compensation-rulemaking.*

FOR FURTHER INFORMATION CONTACT: Sophia Angelini, Attorney-Adviser, Office of General Counsel for Civilian Nuclear Programs, GC–72, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585; Telephone (202) 586–0319.

SUPPLEMENTARY INFORMATION:

Public Participation

A. Attendance at Public Workshop

If you plan to attend the public workshop, please notify Ms. Brenda Edwards at (202) 586–2945 or by email: *Brenda.Edwards@ee.doe.gov.* Please note that foreign nationals visiting DOE Headquarters are subject to advance screening procedures which require advance notice prior to attendance at the public meeting. If a foreign national wishes to participate in the public meeting, please inform DOE of this fact as soon as possible by contacting Ms. Brenda Edwards at (202) 586–2945 or by email to *Brenda.Edwards@ee.doe.gov* so that the necessary procedures may be implemented.

Due to the REAL ID Act implemented by the Department of Homeland Security (DHS), there have been recent changes regarding ID requirements for individuals wishing to enter Federal buildings from specific states and U.S. territories. Drivers' licenses from the following states or territory will not be accepted for building entry and one of the alternate forms of ID listed below will be required. DHS has determined that regular drivers' licenses (and ID cards) from the following jurisdictions are not acceptable for entry into DOE facilities: Alaska, American Samoa, Arizona, Louisiana, Maine, Massachusetts, Minnesota, New York, Oklahoma and Washington. Acceptable alternate forms of Photo-ID include: U.S. Passport or Passport Card; an Enhanced ID-Card issued by the states of Minnesota, New York, or Washington (Enhanced licenses issued by these states are clearly marked Enhanced or Enhanced Drivers' License); or a military ID or other Federal government issued Photo-ID card.

DOE requires visitors with laptop computers to be checked upon entry into the building. Any person wishing to bring these devices into the Forrestal Building will be required to obtain a property pass. Visitors should avoid bringing these devices, or allow an extra 45 minutes to check in. Please report to the Visitors' Desk to have these devices checked before proceeding through security.

In addition, you can attend the public workshop via webinar. Webinar information, participant instructions, and information about the capabilities available to webinar participants will be published on DOE's Web site specifically established for this proceeding at *http://www.energy.gov/gc/convention-supplementary-compensation-rulemaking.* Participants are responsible for ensuring their systems are compatible with the webinar software.

B. Conduct of Public Workshop

The Department will designate a DOE official to preside at the public workshop and may also use a professional facilitator to aid discussion. A court reporter will be present to record the proceeding and prepare a transcript. DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the public workshop. Interested parties may submit comments on the proceedings and any aspect of the rulemaking at any point until the end of the comment period.

The meeting will be conducted in an informal, conference style. DOE will allow time for prepared general statements by participants, and encourage all interested parties to share

their views on issues affecting this rulemaking. DOE also encourages participants to provide views and comments on the topics identified in section III of the NOPR, Issues on Which DOE Seeks Comment, or raised at the information session held on January 7, 2015. Each participant will be allowed to make a general statement (within time limits determined by DOE), before the discussion of specific topics. DOE will permit, as time allows, other participants to comment briefly on any general statements. At the end of all prepared statements on a topic, DOE will permit participants to clarify their statements briefly and comment on statements made by others. Participants should be prepared to answer questions by DOE and by other participants concerning these issues. DOE representatives may also ask questions concerning other matters relevant to this rulemaking. The official conducting the public meeting will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules or modification of the above procedures that may be needed for the proper conduct of the public meeting.

In addition, DOE will accept for consideration questions or suggestions on topics for comment in advance of the workshop, by February 10, 2015. DOE may use the questions or topic suggestions to structure the discussion and enhance participation. A transcript of the public meeting will be included in the docket, which can be viewed as described in the *Docket* section of this notice.

C. Procedure for Submitting Prepared General Statements and Suggested Topics

Persons who plan to present a prepared general statement may request that copies of the statement be made available at the public workshop. Such persons may submit requests, along with an advance electronic copy of their statement in PDF to the appropriate address shown in the **ADDRESSES** section of this notice. The request and advance copy of statements must be received at least one week before the public meeting and may be emailed, or sent by mail. DOE prefers to receive requests and advance copies via email. Please include a telephone number to enable DOE staff to make a follow-up contact, if needed.

Persons who plan to submit questions and topic suggestions for the meeting must do so by February 10, 2015, via email or by mail, to the appropriate address shown in the **ADDRESSES** section of this notice. DOE prefers to receive the requests via email. Please include a telephone number to enable DOE staff to make a follow-up contact, if needed.

D. Submission of Comments

DOE will continue to accept comments, data, and information concerning this NOPR before and after the workshop, but no later than March 17, 2015. Interested parties may submit comments using any of the methods described in the **ADDRESSES** section of this notice.

Issued in Washington, DC, on January 21, 2015.

Samuel T. Walsh,

Deputy General Counsel for Energy Policy.

[FR Doc. 2015–01401 Filed 1–26–15; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 801

[Docket No. 150108021–5021–01]

RIN 0691–AA84

International Services Surveys: BE–180, Benchmark Survey of Financial Services Transactions Between U.S. Financial Services Providers and Foreign Persons

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would amend regulations of the Bureau of Economic Analysis (BEA), Department of Commerce, to reinstate reporting requirements for the BE–180, Benchmark Survey of Financial Services Transactions between U.S. Financial Services Providers and Foreign Persons. Benchmark surveys are conducted every five years; the prior survey covered 2009. For the 2014 benchmark survey, BEA proposes one change in the data items collected. This mandatory survey would be conducted under the authority of the International Investment and Trade in Services Survey Act (the Act). Unlike most other BEA surveys conducted pursuant to the Act, a response would be required from persons subject to the reporting requirements of the BE–180, Benchmark Survey of Financial Services Transactions between U.S. Financial Services Providers and Foreign Persons, whether or not they are contacted by BEA, to ensure complete coverage of financial services transactions between U.S. financial services providers and foreign persons.

DATES: Comments on this proposed rule will receive consideration if submitted in writing on or before 5 p.m., March 30, 2015.

ADDRESSES: You may submit comments, identified by RIN 0691–AA84, and referencing the agency name (Bureau of Economic Analysis), by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. For Keyword or ID, enter ''EAB–2015–0001.''
- *Email: christopher.stein@bea.gov.*
- *Fax:* Christopher Stein, Services Surveys Branch, Balance of Payments Division, (202) 606–5318.
- *Mail:* Christopher Stein, Chief, Services Surveys Branch (BE–50), Balance of Payments Division, Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230.
- *Hand Delivery/Courier:* Christopher Stein, Chief, Services Surveys Branch (BE–50), Balance of Payments Division, Bureau of Economic Analysis, U.S. Department of Commerce, Shipping and Receiving, Section M100, 1441 L Street NW., Washington, DC 20005.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in the proposed rule should be sent to both BEA through any of the methods above and to the Office of Management and Budget (OMB), OIRA, Paperwork Reduction Project 0608–0062, Attention PRA Desk Officer for BEA, via email at *pbugg@omb.eop.gov,* or by FAX at 202–395–7245.

Public Inspection: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All personal identifying information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information. BEA will accept anonymous comments (enter N/A in required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe portable document file (pdf) formats only.

FOR FURTHER INFORMATION CONTACT: Christopher Stein, Chief, Services Surveys Branch (BE–50), Balance of Payments Division, Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone (202) 606–9850.

SUPPLEMENTARY INFORMATION: The BE–180, Benchmark Survey of Financial Services Transactions between U.S. Financial Services Providers and Foreign Persons, is a mandatory survey and is conducted once every five years by BEA under the authority provided by the International Investment and Trade in Services Survey Act, 22 U.S.C. 3101–3108 (the Act), and by Section 5408 of the Omnibus Trade and Competitiveness Act of 1988.

By rule issued in 2012 (77 FR 24373), BEA established guidelines for collecting data on international trade in services and direct investment through notices, rather than through rulemaking. This proposed rule would amend the regulations to require a response from persons subject to the reporting requirements of the BE–180, whether or not they are contacted by BEA, to ensure complete coverage of financial services transactions between U.S. financial services providers and foreign persons.

The proposed BE–180 survey is intended to cover financial services transactions with foreign persons. In nonbenchmark years, the universe estimates covering these transactions are derived from the sample data reported on BEA's BE–185, Quarterly Survey of Financial Services Transactions between U.S. Financial Services Providers and Foreign Persons.

The data are used by BEA to estimate the financial services component of the U.S. International Transactions Accounts and other economic accounts compiled by BEA. The data are needed to monitor U.S. exports and imports of financial services; analyze their impact on the U.S. and foreign economies; support U.S. international trade policy on financial services; and assess and promote U.S. competitiveness in international trade in services. In addition, they will improve the ability of U.S. businesses to identify and evaluate market opportunities.

The services covered by the BE–180 would include the following transactions: (1) Brokerage services related to equity transactions; (2) other brokerage services; (3) underwriting and private placement services; (4) financial management services; (5) credit-related services, except credit card services; (6) credit card services; (7) financial advisory and custody services; (8) securities lending services; (9) electronic funds transfer services; and (10) other financial services.

This proposed rule would amend 15 CFR part 801 by adding a new section 801.9 to set forth the reporting requirements for the BE–180, Benchmark Survey of Financial Services Transactions between U.S. Financial Services Providers and Foreign Persons. As part of its continuing effort to reduce paperwork and respondent burden, the Department of Commerce invites the general public and other Federal agencies to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520 (PRA).

Description of Changes

The proposed changes would amend the regulations and the survey form for the BE–180 Benchmark Survey of Financial Services Transactions between U.S. Financial Services Providers and Foreign Persons. These amendments include changes in the data items collected and questionnaire design.

If the proposed rule is made final, unlike most other BEA surveys conducted pursuant to the Act, persons subject to the reporting requirements of the BE–180 would be required to respond whether or not they are contacted by BEA.

BEA proposes to add one item to the benchmark survey form based upon information obtained from reporting companies that suggests this additional information is readily available in existing financial records. Specifically, questions would be added to collect equity- and debt-related underwriting transactions separately on the 2014 BE–180. A number of reporters include language in their financial statements that suggests equity- and debt-related underwriting transactions are readily obtainable from their accounting records.

In addition, BEA proposes to redesign the format and wording of the survey questionnaires. The new design would incorporate improvements made to other BEA surveys. Survey instructions and data item descriptions would be changed to improve clarity and to make the benchmark survey forms more consistent with those of other BEA surveys.

Executive Order 12866

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

Executive Order 13132

This proposed rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under E.O. 13132.

Paperwork Reduction Act

This proposed rule contains a collection-of-information requirement subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). The requirement will be submitted to OMB for approval as a reinstatement, with change, of a previously approved collection for which approval has expired under OMB control number 0608–0062.

Notwithstanding any other provisions of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection displays a currently valid OMB control number.

The BE–180 survey, as proposed, is expected to result in the filing of reports from approximately 8,750 respondents. Approximately 1,250 respondents would report mandatory or voluntary data on the survey and approximately 7,500 would file exemption claims. The respondent burden for this collection of information would vary from one respondent to another, but is estimated to average ten hours for the respondents that file mandatory or voluntary data—including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information—and two hours for other responses. Thus the total respondent burden for this survey is estimated at 27,500 hours, compared to 24,000 hours for the previous BE–180 benchmark survey in 2009. The increase in burden hours is due to an increase in the size of the respondent universe.

Comments are requested concerning: (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 burden estimate; (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 the respondents, including the use of automated collection techniques or other forms of information technology.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in the proposed rule should be sent to both BEA and OMB following the instructions given in the **ADDRESSES** section above.

Regulatory Flexibility Act

The Chief Counsel for Regulation, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, under the provisions of the Regulatory

Flexibility Act, 5 U.S.C. 605(b), that this proposed rulemaking, if adopted, will not have a significant economic impact on a substantial number of small entities. The changes proposed in this rule are discussed in the preamble and are not repeated here.

A BE–180 report would be required of any U.S. company that is a financial services provider or intermediary that had sales to, or purchases from, foreign persons. While the survey would not collect data on total sales or other measures of the overall size of the businesses that respond to the survey, historically the respondents to the existing quarterly survey of financial services transactions and to the previous benchmark surveys have been comprised mainly of major U.S. corporations. The proposed benchmark survey would be required from U.S. financial companies whose sales or purchases of the covered financial services with foreign persons exceeded $3 million for fiscal year 2014. This exemption level would exclude most small businesses from mandatory coverage. Any small businesses that may be required to report would likely have engaged in only a few covered transactions, and is therefore expected to be below the expected average burden of 10 hours per response. Even if the responses for small businesses took the expected average burden of 10 hours per response, that would not constitute a significant impact on any small business or other entity. Because this rule would not have a significant impact on any small entities, an Initial Regulatory Flexibility Analysis is not required and none has been prepared.

List of Subjects in 15 CFR Part 801

International transactions, Economic statistics, Foreign trade, Penalties, Reporting and recordkeeping requirements.

Dated January 21, 2015.

Brian C. Moyer,

Director, Bureau of Economic Analysis.

For reasons set forth in the preamble, BEA proposes to amend 15 CFR part 801 as follows:

PART 801—SURVEY OF INTERNATIONAL TRADE IN SERVICES BETWEEN U.S. AND FOREIGN PERSONS AND SURVEYS OF DIRECT INVESTMENT

■ 1. The authority citation for 15 CFR part 801 continues to read as follows:

Authority: 5 U.S.C. 301; 15 U.S.C. 4908; 22 U.S.C. 3101–3108; E.O. 11961 (3 CFR, 1977 Comp., p. 86), as amended by E.O. 12318 (3 CFR, 1981 Comp. p. 173); and E.O. 12518 (3 CFR, 1985 Comp. p. 348).

■ 2. Revise § 801.3 to read as follows:

§ 801.3 Reporting requirements.

Except for surveys subject to rulemaking in §§ 801.7, 801.8 and 801.9, reporting requirements for all other surveys conducted by the Bureau of Economic Analysis shall be as follows:

(a) Notice of specific reporting requirements, including who is required to report, the information to be reported, the manner of reporting, and the time and place of filing reports, will be published by the Director of the Bureau of Economic Analysis in the **Federal Register** prior to the implementation of a survey;

(b) In accordance with section 3104(b)(2) of title 22 of the United States Code, persons notified of these surveys and subject to the jurisdiction of the United States shall furnish, under oath, any report containing information which is determined to be necessary to carry out the surveys and studies provided for by the Act; and

(c) Persons not notified in writing of their filing obligation by the Bureau of Economic Analysis are not required to complete the survey.

■ 3. Add § 801.9 to read as follows:

§ 801.9 Rules and regulations for the BE–180, Benchmark Survey of Financial Services Transactions Between U.S. Financial Services Providers and Foreign Persons—2014.

A BE–180, Benchmark Survey of Financial Services Transactions Between U.S. Financial Services Providers and Foreign Persons will be conducted covering 2014. All legal authorities, provisions, definitions, and requirements contained in §§ 801.1 through 801.2 and §§ 801.4 through 801.6 are applicable to this survey. Specific additional rules and regulations for the BE–180 survey are given in paragraphs (a) through (e) of this section. More detailed instructions are given on the report forms and in instructions accompanying the report forms.

(a) *Response required.* A response is required from persons subject to the reporting requirements of the BE–180, Benchmark Survey of Financial Services Transactions Between U.S. Financial Services Providers and Foreign Persons—2014, contained herein, whether or not they are contacted by BEA. Also, a person, or its agent, that is contacted by BEA about reporting in this survey, either by sending a report form or by written inquiry, must respond in writing pursuant this section. This may be accomplished by:

(1) Completing and returning the BE–180 by the due date of the survey; or,

(2) If exempt, by completing pages one through five of the BE–180 survey and returning them to BEA.

(b) *Who must report.* (1) A BE–180 report is required of each U.S. person that is a financial services provider or intermediary, or whose consolidated U.S. enterprise includes a separately organized subsidiary, or part, that is a financial services provider or intermediary, and that had transactions (either sales or purchases) directly with foreign persons in all financial services combined in excess of $3,000,000 during its fiscal year covered by the survey on an accrual basis. The $3,000,000 threshold should be applied to financial services transactions with foreign persons by all parts of the consolidated U.S. enterprise combined that are financial services providers or intermediaries. Because the $3,000,000 threshold applies separately to sales and purchases, the mandatory reporting requirement may apply only to sales, only to purchases, or to both.

(i) The determination of whether a U.S. financial services provider or intermediary is subject to this mandatory reporting requirement may be based on the judgment of knowledgeable persons in a company who can identify reportable transactions on a recall basis, with a reasonable degree of certainty, without conducting a detailed manual records search.

(ii) Reporters that file pursuant to this mandatory reporting requirement must provide data on total sales and/or purchases of each of the covered types of financial services transactions and must disaggregate the totals by country and by relationship to the foreign transactor (foreign affiliate, foreign parent group, or unaffiliated).

(2) *Voluntary reporting.* If, during the fiscal year covered, sales or purchases of financial services by a firm that is a financial services provider or intermediary, or by a firm's subsidiaries, or parts, combined that are financial services providers or intermediaries, are $3,000,000 or less, the U.S. person is requested to provide an estimate of the total for each type of service. Provision of this information is voluntary. The estimates may be judgmental, that is, based on recall, without conducting a detailed records search. Because the $3,000,000 threshold applies separately to sales and purchases, this voluntary reporting option may apply only to sales, only to purchases, or to both.

(3) *Exemption claims.* Any U.S. person that receives the BE–180 survey form from BEA, but is not subject to the mandatory reporting requirements and chooses not to report voluntarily, must file an exemption claim by completing

pages one through five of the BE–180 survey and returning it to BEA. This requirement is necessary to ensure compliance with reporting requirements and efficient administration of the Act by eliminating unnecessary follow-up contact.

(c) *BE–180 definition of financial services provider.* The definition of financial services provider used for this survey is identical to the definition of the term as used in the North American Industry Classification System, United States, 2012, Sector 52–Finance and Insurance, and holding companies that own or influence, and are principally engaged in making management decisions for these firms (part of Sector 55–Management of Companies and Enterprises). For example, companies and/or subsidiaries and other separable parts of companies in the following industries are defined as financial services providers: Depository credit intermediation and related activities (including commercial banking, savings institutions, credit unions, and other depository credit intermediation); non-depository credit intermediation (including credit card issuing, sales financing, and other non-depository credit intermediation); activities related to credit intermediation (including mortgage and nonmortgage loan brokers, financial transactions processing, reserve, and clearinghouse activities, and other activities related to credit intermediation); securities and commodity contracts intermediation and brokerage (including investment banking and securities dealing, securities brokerage, commodity contracts and dealing, and commodity contracts brokerage); securities and commodity exchanges; other financial investment activities (including miscellaneous intermediation, portfolio management, investment advice, and all other financial investment activities); insurance carriers; insurance agencies, brokerages, and other insurance related activities; insurance and employee benefit funds (including pension funds, health and welfare funds, and other insurance funds); other investment pools and funds (including open-end investment funds, trusts, estates, and agency accounts, real estate investment trusts, and other financial vehicles); and holding companies that own, or influence the management decisions of, firms principally engaged in the aforementioned activities.

(d) *Covered types of services.* The BE–180 survey covers the following types of financial services transactions (sales or purchases) between U.S. financial companies and foreign persons: Brokerage services related to equity transactions; other brokerage services; underwriting and private placement services; financial management services; credit-related services, except credit card services; credit card services; financial advisory and custody services; securities lending services; electronic funds transfer services; and other financial services.

(e) *Due date.* A fully completed and certified BE–180 report, or qualifying exemption claim with pages one through five completed, is due to be filed with BEA not later than October 1, 2015.

[FR Doc. 2015–01491 Filed 1–26–15; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 33

[Docket No. PL15–3–000]

Policy Statement on Hold Harmless Commitments

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Proposed policy statement.

SUMMARY: The Commission proposes, as a statement of policy, the following clarifications regarding hold harmless commitments offered by applicants as ratepayer protection mechanisms to mitigate adverse effects on rates that may result from transactions subject to section 203 of the Federal Power Act (FPA). First, the Commission proposes to clarify the scope and definition of the costs that should be subject to hold harmless commitments. Second, the Commission proposes to clarify that applicants offering hold harmless commitments must implement controls and procedures to track the costs from which customers will be held harmless. The Commission also proposes to clarify the types of controls and procedures that applicants offering hold harmless commitments must implement. Third, the Commission proposes to no longer accept hold harmless commitments that are limited in duration. Fourth, the Commission proposes to clarify that applicants may demonstrate that, under certain circumstances, transactions will not have an adverse effect on rates without relying on hold harmless commitments or other ratepayer protection mechanisms.

DATES: Comments on the proposed policy statement are due within March 30, 2015.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

1. We propose, as a statement of policy, the following clarifications regarding hold harmless commitments offered by applicants as ratepayer protection mechanisms to mitigate adverse effects on rates that may result from transactions that are subject to section 203 of the Federal Power Act (FPA).[1] First, we propose to clarify the scope and definition of the costs that should be subject to hold harmless commitments. Second, we propose to clarify that applicants offering hold harmless commitments must implement controls and procedures to track the costs from which customers will be held harmless. We also propose to clarify the types of controls and procedures that applicants offering hold harmless commitments must implement. Third, we propose to no longer accept hold harmless commitments that are limited in duration. Fourth, we propose to clarify that applicants may demonstrate that, under certain circumstances, transactions will not have an adverse effect on rates without relying on hold harmless commitments or other ratepayer protection mechanisms.

I. Background

A. The Commission's Analysis of Proposed Transactions Under FPA Section 203

2. FPA section 203(a)(4) requires the Commission to approve a transaction if it determines that the transaction will be consistent with the public interest.[2] The Commission has stated that its analysis of whether a transaction will be consistent with the public interest generally involves consideration of three factors: (1) The effect on competition; (2) the effect on rates; and (3) the effect on regulation.[3] FPA section

[1] 16 U.S.C. 824b.

[2] 16 U.S.C. 824b(a)(4).

[3] *See Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act: Policy Statement,* Order No. 592, 61 FR 68595 (Dec. 30,

Continued

203(a)(4) also requires the Commission to find that the transaction ''will not result in cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company, unless the Commission determines that the cross-subsidization, pledge, or encumbrance will be consistent with the public interest.'' [4]

3. This proposed policy statement focuses on the second prong of the Commission's FPA section 203 analysis, the effect of a proposed transaction on rates. The Commission has stated that, when considering a proposed transaction's effect on rates, its focus ''is on the effect that a proposed transaction itself will have on rates, whether that effect is adverse, and whether any adverse effect will be offset or mitigated by benefits that are likely to result from the proposed transaction.'' [5] Specifically, as relevant here, the Commission considers whether the transaction could result in an adverse effect on rates to wholesale requirements or transmission customers.

4. If an applicant's only customers are wholesale power sales customers served under market-based rates, then the transaction will have no adverse effect on rates for such customers.[6] If, however, the transaction could result in an increase in rates and the wholesale power sales customers of the applicants are not served exclusively under market-based rates, or if the applicants have wholesale requirements or transmission customers, the Commission evaluates whether there are sufficient potential economic benefits that offset the projected increase in rates. If such benefits exist, the analysis of the effect on rates ends with a finding that there is no adverse effect on rates because of those offsetting economic benefits.[7]

5. If a proposed transaction has the potential to increase wholesale rates, but there is no showing of quantifiable offsetting economic benefits, the Commission must determine whether ratepayers are sufficiently protected from the potential rate increase, or whether there are other non-quantifiable, offsetting benefits that would, nevertheless, support a finding that the proposed transaction is consistent with the public interest, regardless of the potential for a rate increase.[8] When the Commission has considered such non-quantifiable offsetting benefits, it has often been in the context of transactions that increase competition or enable more competitive markets, such as transactions resulting in the expansion of regional transmission organizations or the increase in transmission ownership by independent transmission companies.[9]

6. Prior to the issuance of the Merger Policy Statement, the Commission had required applicants and intervenors to estimate the future costs and benefits of a transaction and then litigate the validity of those estimates. The Commission, however, eliminated those requirements in the Merger Policy Statement and established various mechanisms that applicants could implement to show that a merger would have no adverse effect on rates.[10] As the Commission explained:

> Merger applicants should propose ratepayer protection mechanisms to assure that customers are protected if the expected benefits do not materialize. The applicant bears the burden of proof to demonstrate that the customer will be protected. This puts the risk that the benefits will not materialize where it belongs—on the applicants.
>
> Furthermore, we believe that the most promising and expeditious means of addressing ratepayer protection is for the parties to negotiate an agreement on ratepayer protection mechanisms. The applicants should attempt to resolve the issue with customers even before filing, and should propose a mechanism as part of their filing. Even if these negotiations have not succeeded by the time of filing, the parties should continue to try to reach a settlement. What constitutes adequate ratepayer protection necessarily will depend on the particular circumstances of the merging utilities and their ratepayers, and we strongly encourage parties to minimize contentious issues and to resolve them without the time and expense of a formal hearing. Parties may not be able to reach an agreement on an appropriate ratepayer protection and the Commission may still be able to approve the merger. As mentioned earlier, this could occur either after a hearing or on the basis of parties' filings if we determine that the applicants' proposal sufficiently insulates the ratepayers from harm.[11]

7. The Commission then explained that it had previously accepted ''a variety of hold harmless provisions,'' and that parties could consider those as well as ''other mechanisms if they appropriately address ratepayer concerns.'' [12] Among the types of protection the Commission stated applicants could propose were the following:

—Open season for wholesale customers—applicants agree to allow existing wholesale customers a reasonable opportunity to terminate their contracts (after notice) and switch suppliers. This allows customers to protect themselves from merger-related harm.

—General hold harmless provision—a commitment from the applicant that it will protect wholesale customers from any adverse rate effects resulting from the merger for a significant period of time following the merger. Such a provision must be enforceable and administratively manageable.

1996), FERC Stats. & Regs. ¶ 31,044, at 30,111 (1996) (Merger Policy Statement), *reconsideration denied,* Order No. 592–A, 79 FERC ¶ 61,321 (1997). *See also FPA Section 203 Supplemental Policy Statement,* 72 FR 42277 (Aug. 2, 2007), FERC Stats. & Regs. ¶ 31,253 (2007). See also *Revised Filing Requirements Under Part 33 of the Commission's Regulations,* Order No. 642, 65 FR 70983 (Nov. 28, 2000), FERC Stats. & Regs. ¶ 31,111 (2000), *order on reh'g,* Order No. 642–A, 94 FERC ¶ 61,289 (2001). *See also Transactions Subject to FPA Section 203,* Order No. 669, 71 FR 1348 (Jan. 6, 2006), FERC Stats. & Regs. ¶ 31,200 (2005), *order on reh'g,* Order No. 669–A, 71 FR 28422 (May 16, 2006), FERC Stats. & Regs. ¶ 31,214, *order on reh'g,* Order No. 669–B, 71 FR 42579 (July 27, 2006), FERC Stats. & Regs. ¶ 31,225 (2006).

[4] 16 U.S.C. 824b(a)(4). The Commission's regulations establish verification and information requirements for applicants that seek a determination that a transaction will not result in inappropriate cross-subsidization or a pledge or encumbrance of utility assets. *See* 18 CFR 33.2(j).

[5] *ITC Midwest LLC,* 140 FERC ¶ 61,125, at P 19 (2012).

[6] *Cinergy Corp.,* 140 FERC ¶ 61,180, at P 41 (2012) (citing *Duquesne Light Holdings, Inc.,* 117 FERC ¶ 61,326, at P 25 (2006)) (''The Commission has previously stated that, when there are market-based rates, the effect on rates is not of concern. The effect on rates is not of concern in these circumstances because market-based rates will not be affected by the seller's cost of service and, thus, will not be adversely affected by the Proposed Transaction.'').

[7] The Commission has found that there is no adverse effect on rates where, although costs may increase in one area of the utility's operations, lower costs are expected elsewhere. *See, e.g., Bluegrass Generation Co., L.L.C.,* 139 FERC ¶ 61,094, at P 41 (2012) (finding no adverse effect on rates because increases in capacity charges would be offset by a savings in energy rates).

[8] An increase in rates ''can still be consistent with the public interest if there are countervailing benefits that derive from the merger.'' Merger Policy Statement, FERC Stats. & Regs. ¶ 31,044 at 30,114; *see also ALLETE, Inc.,* 129 FERC ¶ 61,174, at P 19 (2009) (''Our focus here is on the effect that the Proposed Transaction itself will have on rates, whether that effect is adverse, and whether any adverse effect2 will be offset or mitigated by benefits likely to result from the Proposed Transaction.'').

[9] *See, e.g., ITC Midwest LLC,* 133 FERC ¶ 61,169, at P 23 (2010) (finding offsetting benefits because of the transfer of transmission assets to a standalone transmission company); *ALLETE,* 129 FERC ¶ 61,174 at P 20 (finding that the advantages created in joining a regional transmission organization outweighed potential rate increase created by the different tax treatment of the assets after transfer); *Ameren Servs. Co.,* 103 FERC ¶ 61,121, at P 23 (2003) (finding that increasing a regional transmission organization's footprint would offset a rate increase); *Rockland Elec. Co.,* 97 FERC ¶ 61,357, at 62,651 (2001) (finding that attracting more bidders and encouraging more competition offset a potential rate increase for locational marginal prices along a seam at times of peak demand).

[10] Merger Policy Statement, FERC Stats. & Regs. ¶ 31,044 at 30,111 (''[I]n assessing the effect of a proposed merger on rates, we will no longer require applicants and intervenors to estimate the future costs and benefits of a merger and then litigate the validity of those estimates. Instead, we will require applicants to propose appropriate rate protection for customers.'').

[11] *Id.* at 30, 123–24.

[12] *Id.* at 30, 124.

—Moratorium on increases in base rates (rate freeze)—applicants commit to freezing their rates for wholesale customers under certain tariffs for a significant period of time.

—Rate reduction—applicants make a commitment to file a rate decrease for their wholesale customers to cover a significant period of time.[13]

8. The Commission concluded that, although each mechanism would provide some benefit to ratepayers, in the majority of circumstances the most meaningful (and the most likely to give wholesale customers the earliest opportunity to take advantage of emerging competitive wholesale markets) was an open season provision.[14] The Commission stated that if intervenors raised a substantial question as to the adequacy of a merger applicant's proposal, the parties should continue to pursue a settlement; if no agreement could be reached, the Commission explained it might decide the issue on the written record or set the issue for hearing.[15]

9. Subsequently, in Order No. 642, the Commission promulgated regulations governing FPA section 203 applications and described the information applicants must submit regarding the effect of a proposed transaction on rates. In relevant part, the Commission stated:

> In the [Merger] Policy Statement, we determined that ratepayer protection mechanisms (*e.g.,* open seasons to allow early termination of existing service contracts or rate freezes) may be necessary to protect the wholesale customers of merger applicants. . . .
>
> Thus, in the [Notice of Proposed Rulemaking] we proposed that all merger applicants demonstrate how wholesale ratepayers will be protected and that applicants will have the burden of proving that their proposed ratepayer protections are adequate. Specifically, we proposed that applicants must clearly identify what customer groups are covered (*e.g.,* requirements customers, transmission customers, formula rate customers, etc.), what types of costs are covered, and the time period for which the protection will apply.[16]

10. The Commission adopted the proposals set forth in the Notice of Proposed Rulemaking and emphasized that if applicants did not offer any ratepayer protection mechanisms, they must explain how the proposed merger would provide adequate ratepayer protection.[17]

B. Current Commission Practice Regarding Hold Harmless Commitments

11. Over the last decade hold harmless commitments have become a common feature of FPA section 203 applications involving mergers of traditional franchised utilities or their upstream holding companies.[18] More recently, some applicants have made hold harmless commitments in connection with transactions involving the acquisition or disposition of existing jurisdictional facilities, including in circumstances where the acquiring entity was a traditional franchised utility and entered into the transaction in order to satisfy resource adequacy requirements at the state level, to improve system reliability and/or meet other regulatory requirements.[19]

12. The Commission has consistently accepted hold harmless commitments in which FPA section 203 applicants commit not to seek recovery of transaction-related costs in jurisdictional rates except to the extent that such costs are offset by transaction-related savings.[20] Thus, hold harmless commitments typically focus on preventing recovery in rates of the costs incurred that are ''related'' to the transaction. The Commission has previously found that hold harmless commitments under which applicants commit not to seek to recover transaction-related costs except to the extent that such costs are exceeded by demonstrated transaction-related savings for a period of five years to be ''standard.'' [21]

13. Although the Commission has relied on commitments to hold customers harmless from transaction-related costs to support findings of no adverse effects on rates, in many of these cases, these commitments have not included detailed definitions of transaction-related costs or savings.[22] Further, the Commission has only provided general guidance on the scope of these costs. In most orders addressing transactions in which the Commission has accepted hold harmless commitments, the Commission has explained that transaction-related costs are not just those costs related to consummating the proposed transaction, such as legal, investment advisory, accounting and financing costs. Rather, the Commission has stated that the costs subject to hold harmless commitments include all costs that are related to the transaction. The Commission, however, has never specified what these other costs may include.[23] In more recent cases, the Commission has specified that transaction-related costs include costs, both capital and operating, incurred to achieve merger synergies.[24] The Commission has also specifically noted that acquisition premiums, including

[13] *Id.* (footnotes omitted).

[14] *Id.*

[15] *Id.*

[16] Order No. 642, FERC Stats. & Regs. ¶ 31,111 at 31,914.

[17] *Id.*

[18] The Commission has also accepted other forms of ratepayer protection in lieu of or in addition to hold harmless commitments. *See, e.g., Cinergy Services, Inc.,* 102 FERC ¶ 61,128, at P 33 (2003) (accepting rate freeze as rate mitigation); *Vermont Yankee Nuclear Power Corp.,* 91 FERC ¶ 61,325, at 62,125 (2000) (accepting rate cap and an open season provision as mitigation); *Cajun Elec. Power Coop., Inc.,* 90 FERC ¶ 61,309, at 62,005–06 (2000) (approving a transaction where current customers were allowed to keep their current contracts or choose from three different power purchasing agreements).

[19] *See, e.g., FirstEnergy Generation Corp.,* 141 FERC ¶ 61,239, at PP 1, 16, 27–30 (2012) (*FirstEnergy*) (accepting a hold harmless commitment in an asset transaction where generation assets would be turned into assets to support transmission system upgrades in order to meet needs identified in a study by PJM Interconnection, L.L.C. following the retirement of other generating facilities); *ITC Midwest,* 140 FERC ¶ 61,125 at P 15; *Int'l Transmission Co.,* 139 FERC ¶ 61,003, at P 16 (2012).

[20] *NSTAR Advanced Energy Sys., Inc.,* 131 FERC ¶ 61,098, at P 24 (2010) (''The Commission looks for assurances from public utilities that they hold customers harmless from these transaction-related costs, to the extent they are not exceeded by cost savings arising from the transaction, for a significant period of time following the merger, not an indefinite period of time.'') (internal citation omitted); *see also Cinergy,* 140 FERC ¶ 61,180 at P 42; *ITC Midwest,* 140 FERC ¶ 61,125 at PP 21–22; *Int'l Transmission,* 139 FERC ¶ 61,003 at P 17; *BHE Holdings Inc.,* 133 FERC ¶ 61,231, at P 37 (2010); *cf. Sierra Pacific Power Co.,* 133 FERC ¶ 61,017, at P 14 (2010) (accepting a commitment not to include any transaction-related costs in its Commission-accepted open access transmission tariff).

[21] *ITC Holdings Corp.,* 121 FERC ¶ 61,229, at P 128 (2007). Although five-year hold harmless commitments are most common, the Commission has also accepted three-year hold harmless commitments. *Westar Energy, Inc.,* 104 FERC ¶ 61,170, at PP 16–17 (2003); *Long Island Lighting Co.,* 82 FERC ¶ 61,129, at 61,463–65 (1998).

[22] *See, e.g., Puget Energy,* 123 FERC ¶ 61,050 at P 27 (''We accept Applicants' hold harmless commitment, which we interpret to include all merger-related costs, not only costs related to consummating the transaction. If Applicants seek to recover any merger-related costs in a subsequent section 205 filing, they must show quantifiable offsetting benefits.'') (citations and footnotes omitted); *National Grid plc,* 117 FERC ¶ 61,080, at P 54 (2006) (''Applicants have committed to hold ratepayers harmless from transaction-related costs in excess of transaction savings for a period of five years.'').

[23] *ITC Holdings Corp.,* 143 FERC ¶ 61,256, at P 138 (2013); *see also Cinergy,* 140 FERC ¶ 61,180 at P 42; *FirstEnergy Corp.,* 133 FERC ¶ 61,222, at PP 62–63 (2010); *NSTAR,* 136 FERC ¶ 61,016, at PP 62–63 (2011); *PPL Corp.,* 133 FERC ¶ 61,083, at PP 26–27 (2010); *Consumers Energy Co.,* 118 FERC ¶ 61,143, at P 33, *order on clarification,* 120 FERC ¶ 61,091 (2007).

[24] *See, e.g., Silver Merger Sub, Inc.,* 145 FERC ¶ 61,261, at P 68 (2013) (''We interpret Applicants' hold harmless commitment to apply to all transaction-related costs, including costs related to consummating the Proposed Transaction and transition costs (both capital and operating) incurred to achieve merger synergies.''); *Bangor Hydro Elec. Co.,* 144 FERC ¶ 61,030, at P 20 (2013) (same); *Exelon Corp.,* 138 FERC ¶ 61,167, at P 118 (2012) (same).

goodwill,[25] are not considered part of transaction-related costs, and that recovery of such costs must be pursued through FPA section 205 filings.[26] The Commission has also explained that protection from transaction-related costs does not mean that consumers are necessarily insulated from any rate increase, such as those related to market conditions or those unrelated to the transaction,[27] or unspecified or speculative costs that intervenors claim may result from a merger.[28]

14. With respect to recovering transaction-related costs, as noted earlier, the standard hold harmless commitment provides that applicants may not seek to recover in rates any transaction-related costs except to the extent that such costs are exceeded by demonstrated transaction-related savings. The Commission recently clarified its policy on the recovery of transaction-related costs.[29] As clarified, applicants may seek to recover transaction-related costs incurred prior to consummating a proposed transaction or those transaction-related costs incurred within the time period during which the hold harmless commitment applies by making certain filings.[30] Specifically, applicants must submit a new filing under FPA section 205, and a concurrent informational filing in the relevant FPA section 203 docket.[31] Consistent with Commission precedent, in the FPA section 205 filing, applicants must still: (1) Specifically identify the transaction-related costs they are seeking to recover; and (2) demonstrate that those costs are exceeded by the savings produced by the transaction.[32] The Commission further clarified that it will not authorize the recovery of merger-related costs in an annual informational filing under existing formula rates. After noticing the new section 205 filing for public comment, the Commission will determine both if there is adequate support to show that recovery of merger-related costs is consistent with the hold harmless commitment and that the resulting new rate is just and reasonable in light of all the other factors underlying the proposed new rate.[33] In accordance with the Merger Policy Statement, the Commission's approach places the burden of proof on applicants to demonstrate that customers are protected if the expected benefits do not materialize.[34]

II. Discussion

A. Purpose of Proposed Policy Statement

15. Upon consideration of the Commission's experience regarding hold harmless commitments since issuance of the Merger Policy Statement, we believe that clarifying the Commission's policy regarding hold harmless commitments, a frequently proposed ratepayer protection mechanism in FPA section 203 applications, would be beneficial to applicants, customers, and interested persons. We note, however, that unless specifically discussed herein, we reaffirm the guidance provided in the Merger Policy Statement and subsequent precedent, and reiterate that applicants under FPA section 203 should propose ratepayer protection mechanisms that ensure that customers are protected from the adverse rate effects of a proposed transaction. Furthermore, the guidance here should not discourage applicants from working with interested parties to resolve contentious issues regarding appropriate ratepayer protection mechanisms prior to the submission of an application under FPA section 203. As the Commission stated in the Merger Policy Statement, ''the most promising and expeditious means of addressing ratepayer protection is for the parties to negotiate an agreement on ratepayer protection mechanisms.'' [35] Accordingly, we continue to expect applicants under FPA section 203 to engage their customers, when appropriate, and discuss with them any potential adverse rate effects that may result from a proposed transaction under FPA section 203, and how those effects can be mitigated.

16. In this proposed policy statement, we propose to provide greater clarity to and seek comment from interested persons regarding the following issues related to hold harmless commitments. First, we propose to clarify those costs to which hold harmless commitments will apply. Although the Commission has provided broad guidance regarding the costs that should be covered under hold harmless commitments, it has never defined those costs with much specificity, leading to inconsistency with respect to this issue. Below, we propose to provide additional guidance by clarifying the costs that the Commission considers to be transaction-related costs. These are also the transaction-related costs that the Commission will review if and when applicants make the requisite filing under FPA section 205 to attempt to recover those costs by showing that they have been offset by savings due to the transaction. Finally, although we identify specific categories of costs below, we continue to believe that the Commission's policy must remain flexible enough to permit a case-by-case determination of transaction-related costs, and that an attempt to articulate those costs precisely could have unintended consequences.

17. Second, we propose to clarify that applicants offering hold harmless commitments must implement

[25] An acquisition premium is the excess of the total purchase price or consideration paid in the transaction over the historical cost of the net assets of the entity acquired.

[26] *Exelon,* 138 FERC ¶ 61,167 at P 118 (citing *Merger Policy Statement,* FERC Stats. & Regs. ¶ 31,044 at 30,126; *Duke Energy Moss Landing LLC,* 83 FERC ¶ 61,318 (1998), *reh'g denied,* 86 FERC ¶ 61,227, at 61,816 (1999) (citing *Mid-Louisiana Gas Co.,* 7 FERC ¶ 61,316, at 61,682, *reh'g denied,* 8 FERC ¶ 61,227 (1979), *aff'd sub nom. Transcon. Gas Pipe Line Corp.* v. *FERC,* 652 F.2d 179 (D.C. Cir. 1981)) (rate recovery of an existing facility is generally limited to the original cost of the facility)).

[27] *BHE Holdings,* 133 FERC ¶ 61,231 at P 36 (citing *PNM Resources, Inc.,* 124 FERC ¶ 61,019, at P 43 (2008) (''Applicants are not required to apply a rate freeze and may propose rate increases under section 205 filings.'')); *ITC Holdings,* 121 FERC ¶ 61,229 at P 124 (''[T]he Commission finds that any increased costs of ITC Midwest attributable to prudent transmission investment do not make the Transaction contrary to the public interest''); *Boston Generating, LLC,* 113 FERC ¶ 61,016, at P 26 (2005) (''In reviewing an application under section 203, the Commission looks at the effects of the transaction on rates, not at rate changes that may occur regardless of the transaction.'')); *Jersey Central Power & Light Co.,* 87 FERC ¶ 61,014, at 61,039 (1999) (''The Commission does not require applicants under [s]ection 203 to insulate their customers from the rate effects of market forces. Accordingly, customers are not entitled in a [s]ection 203 proceeding to be held harmless from external factors such as rising market prices.''); *Cincinnati Gas & Elec. Co.,* 64 FERC ¶ 61,237, at 62,686, 62,714 (1993), *reh'g denied,* 69 FERC ¶ 61,005, *order on clarification,* 69 FERC ¶ 61,088 (1994), *reh'g denied,* 71 FERC ¶ 61,380 (1995).

[28] *Exelon Corp.,* 127 FERC ¶ 61,161, at P 102 (2009) (citing, *inter alia, NorthWestern Corp.,* 117 FERC ¶ 61,100, at P 40 (2006) (finding speculative protestor's argument that the proposed transaction would result in a credit ratings downgrade and lead to higher rates or lower reliability)); *Old Dominion Elec. Coop.,* 117 FERC ¶ 61,313, at P 29 (2006) (affirming initial decision that ''the record supports the conclusion that the credit downgrade will not raise rates'').

[29] *Exelon Corp.,* 149 FERC ¶ 61,148 (2014) (*Exelon-Pepco*).

[30] *Id.* P 106.

[31] *Id.* P 105.

[32] *Id.* P 107.

[33] *Id.* P 106.

[34] Merger Policy Statement, FERC Stats. & Regs. ¶ 31,044 at 30,123. *See, e.g., Consol. Edison, Inc.,* 94 FERC ¶ 61,079, at 61,366 (2001) (''customers do have the opportunity to scrutinize costs before they are included in NEPOOL's formula rate, and could therefore alert the Commission to costs that, contrary to Applicants' commitments here, might be merger-related. In such a situation, we read Applicants' commitment to require them to shoulder the burden of proof, and to justify their failure to identify the costs as merger-related.'') (citing *BEC Energy,* 88 FERC ¶ 61,002, at 61,007 (1999); *New England Power Co.,* 87 FERC ¶ 61,287, at 62,146 (1999)).

[35] Merger Policy Statement, FERC Stats. & Regs. ¶ 31,044 at 30,123.

appropriate internal controls and procedures to track those costs from which they have committed to hold their customers harmless and must describe such controls and procedures as a part of their FPA section 203 applications and any section 205 filings.[36] We believe that these controls and procedures will ensure the proper identification, accounting, and rate treatment of all transaction-related costs incurred prior to and subsequent to the announcement of a proposed transaction. Requiring applicants to explain how they will track costs related to a hold harmless commitment will improve the Commission's ability to ensure that there is a process in place to prevent those costs from being recovered in rates prior to the Commission approving the recovery of them at a later date under FPA section 205, and will also clarify for customers what types of costs are covered under a hold harmless commitment, as required by Commission precedent.[37]

18. Third, we propose that, in order for a hold harmless commitment to provide adequate ratepayer protection, it should not be limited in duration. As discussed in further detail below, we are concerned that limiting the hold harmless commitment to a certain period (generally five years) raises the risk that transaction-related costs could be included in future formula rate billings without applicants making the showing of offsetting savings. Eliminating the time limit will ensure that transaction-related costs cannot be recovered from ratepayers at any time, unless applicants can demonstrate that there are offsetting transaction-related savings. This revised approach is consistent with the Merger Policy Statement, which emphasized that the burden of proof to demonstrate that customers will be protected should be on applicants and that applicants should also bear the risk that benefits will not materialize.[38]

19. Finally, we propose to clarify that applicants may demonstrate that, under certain circumstances, transactions will not have an adverse effect on rates without relying on hold harmless commitments or other ratepayer protection mechanisms. As noted above, some applicants have made hold harmless commitments in connection with transactions involving the acquisition or disposition of existing jurisdictional facilities where the acquiring entity was a traditional franchised utility and entering into the transaction in order to satisfy resource adequacy requirements at the state level, to improve system reliability, and/or meet other regulatory requirements.[39] Hold harmless commitments may not be appropriate in these and other similar circumstances given that while these proposed transactions may have an effect on rates, that effect may not be adverse. Accordingly, as discussed in further detail below, we propose that under certain circumstances, applicants may show that a transaction will not have an adverse effect on rates without proposing additional ratepayer protection mechanisms.

20. Our intent is to apply any changes to our policy on hold harmless commitments on a prospective basis, for applications submitted after the Commission has issued a policy statement, and not alter existing hold harmless commitments accepted by the Commission or submitted in applications pending at the time the Commission issues the policy statement. We seek comments from interested persons on these proposals.

B. Revisions to the Commission's Policy on Hold Harmless Commitments

1. Identifying and Accounting for Transaction-Related Costs

21. We propose to designate the following categories of costs as the transaction-related costs that should be subject to any hold harmless commitment. Accordingly, the costs set out below are those transaction-related costs from which customers must be held harmless and that may not be recovered from customers except to the extent exceeded by demonstrated savings.[40] As noted above, although we propose to provide guidance in this proposed policy statement regarding how to identify transaction-related costs, we continue to believe that attempts to precisely articulate all such costs are not feasible. For example, while many direct costs of a transaction can be tracked with proper mechanisms and controls, other costs may be more difficult to classify. Accordingly, because each transaction is unique, the final determination of what transaction-related costs may be recovered by applicants will remain subject to a case-by-case analysis; specifically, this determination will be made if and when applicants propose to recover transaction-related costs and demonstrate offsetting savings in the subsequent FPA section 205 filing described previously by the Commission.

22. First, we propose that transaction-related costs include, but are not limited to, the following costs incurred to explore, agree to, and consummate a transaction:

- The costs of securing an appraisal, formal written evaluation, or fairness opinions related to the transaction;
- The costs of structuring the transaction, negotiating the structure of the transaction, and obtaining tax advice on the structure of the transaction;
- The costs of preparing and reviewing the documents effectuating the transaction (*e.g.,* the costs to transfer legal title of an asset, building permits, valuation fees, the merger agreement or purchase agreement and any related financing documents);
- The internal labor costs of employees[41] and the costs of external, third-party, consultants and advisors to evaluate potential merger transactions, and once a merger candidate has been identified, to negotiate merger terms, to execute financing and legal contracts, and to secure regulatory approvals;[42]
- The costs of obtaining shareholder approval (*e.g.,* costs of proxy solicitation and special meeting of shareholders);
- Professional service fees incurred in the transaction (*e.g.,* fees for accountants, surveyors, engineers, and legal consultants); and

[36] The Commission has previously explained that applicants should ensure that they have appropriate internal controls and procedures to ensure the proper identification, accounting, and rate treatment for all transaction-related costs incurred prior to and subsequent to proposed transactions, including all transition costs incurred after a merger is consummated. *See, e.g., ITC Holdings,* 143 FERC ¶ 61,256 at P 168; *Silver Merger Sub,* 145 FERC ¶ 61,261 at P 78.

[37] *See, e.g.,* Order No. 642, FERC Stats. & Regs. ¶ 31,111 at 31,914 ("[A]pplicants must clearly identify what customer groups are covered (*e.g.,* requirements customers, transmission customers, formula rate customers, etc.), what types of costs are covered, and the time period for which the protection will apply.").

[38] Merger Policy Statement, FERC Stats. & Regs. ¶ 31,044 at 30,123.

[39] *See, e.g., FirstEnergy,* 141 FERC ¶ 61,239, at PP 1, 16, 27–30 (2012) (accepting a hold harmless commitment in an asset transaction where generation assets would be turned into assets to support transmission system upgrades in order to meet needs identified in a study by PJM Interconnection, L.L.C. following the retirement of other generating facilities); *ITC Midwest,* 140 FERC ¶ 61,125 at P 15; *Int'l Transmission Co.,* 139 FERC ¶ 61,003, at P 16 (2012).

[40] We expect that applicants proposing to recover these costs would track and record them pursuant to the procedures established below. *See infra* section II.B.2.

[41] If the duties of employees are not solely dedicated to activities related to a transaction, internal labor costs deemed merger-related should be determined in a manner that is proportionally equal to the amount of time spent on the merger compared to other activities of the utility and tracked accordingly.

[42] Some of these costs are typically incurred prior to the announcement of a merger.

• Installation, integration, testing, and set up costs related to ensuring the operability of facilities subject to the transaction

23. Moreover, for transactions that are pursued but never completed (transactions that ultimately fail), their costs should not be recovered from ratepayers. In addition, we recognize that not every cost listed above will be found in every transaction.

24. The second category of transaction-related costs relates to mergers, where, in addition to the transaction-related costs described above, parties typically also incur costs to integrate individuals and assets into the acquiring utility and costs to achieve merger synergies.[43] These costs, which are sometimes referred to collectively as ''transition'' costs, are incurred after the transaction is consummated, often over a period of several years. These costs include both the internal costs of employees spending time working on transition issues, and external costs paid to consultants and advisers to reorganize and consolidate functions of the merging entities to achieve merger synergies. These costs may also include both capital items (*e.g.,* a new computer system or software, or costs incurred to carry out mitigation commitments accepted by the Commission in approving the transaction to address competition issues, such as the cost of constructing new transmission lines, etc.) and expense items (*e.g.,* costs to eliminate redundancies, combine departments, or maximize contracting efficiencies). We propose that transaction-related costs incurred to integrate the operations of merging companies include, but are not limited to, the following:

• Engineering studies needed both prior to and after closing the merger;
• Severance payments;
• Operational integration costs;
• Accounting and operating systems integration costs;
• Costs to terminate any duplicative leases, contracts, and operations; and
• Financing costs to refinance existing obligations in order to achieve operational and financial synergies.

25. As above, this list of transition costs is not exhaustive, and may not include some material costs involved in the integration of two utilities after a merger. We propose to consider transition costs as transaction-related costs that should be subject to hold harmless commitments. We propose to assume that such transaction-related costs should be covered under hold harmless protection, though applicants will have an opportunity on a case-by-case basis to show why certain of those costs should not have to be covered under their hold harmless commitment based on their particular circumstances. Also, we propose to consider, on a case-by-case basis, whether other costs not discussed herein should be subject to hold harmless commitments.

26. Additionally, we note that accounting journal entries related to a merger transaction may affect expense, asset, liability, or proprietary capital accounts used in the development of a public utility's rates. These accounting journal entries may originate from transaction-related costs recorded as an expense or capitalized as an asset. Additional accounting journal entries may originate from goodwill and fair value adjustments related to the purchase price paid for the acquired company. Merger transactions are accounted for by applying purchase accounting, which adjusts the assets and liabilities of the acquired entity to fair value and recognizes goodwill for the amount paid in excess of fair value.[44] If the acquired company is a holding company, purchase accounting also provides for the fair value adjustments and goodwill to be recorded on the books of some, or all, of the acquired holding company's subsidiaries, which is commonly referred to as ''push-down'' accounting. Under appropriate circumstances, the Commission has allowed the fair value accounting adjustments and goodwill to be recorded on a public utility's books and reported in the FERC Form No. 1. Additionally, the Commission has required public utilities to maintain detailed accounting records and disclosures associated with such amounts so as to facilitate the evaluation of the effects of the transaction on common equity and other accounts in future periods if needed for ratemaking purposes.[45] We believe that ratepayers should continue to be protected from adverse effects on rates stemming from accounting entries recording goodwill and fair value adjustments on a public utility's books and reported in FERC Form Nos. 1 or 1–F. This is consistent with our long-standing policy that acquisition premiums, including goodwill, must be excluded from jurisdictional rates absent a filing under FPA section 205 and Commission authorization granting recovery of specific costs.

27. Similarly, in the context of the acquisition of discrete assets by a utility, under the Commission's accounting regulations and rate precedent the excess purchase cost of utility plant over its depreciated original cost is an acquisition premium and is excluded from recovery through rates unless a showing of offsetting benefits is demonstrated in an FPA section 205 filing. In the past, applicants have proposed to include acquisition premiums as transaction-related costs subject to their proposed hold harmless commitments,[46] and intervenors have requested that the Commission require applicants to include acquisition premiums as transaction-related costs.[47] The Commission has not, and does not, consider acquisition premiums to be part of transaction-related costs. The recovery of acquisition premiums must be pursued through a separate FPA section 205 filing, whether or not a hold harmless commitment has been made.[48] We do not believe that our proposed treatment of transaction-related costs here requires a change in the Commission's current practice with respect to acquisition premiums. We will continue to preclude recovery of acquisition premiums as part of transaction-related costs, and remind applicants that a showing of ''specific, measurable, and substantial benefits to ratepayers'' must be made in a subsequent FPA section 205 proceeding in order to recover an acquisition premium.[49]

[43] Entities engaging in certain internal corporate restructuring and reorganizations, unrelated to complying with state law restructuring requirements, may seek to achieve similar cost savings or increased efficiencies as merging entities.

[44] Purchase accounting is also commonly referred to as acquisition accounting under generally accepted accounting principles in the United States. Purchase accounting is a formal accounting method for merger transactions which measures the assets and liabilities of the acquired entity at fair value and establishes goodwill for amounts paid in excess of fair value. *See* Accounting Standard Codification Section 805–10 (Fin. Accounting Standards Bd. 2014), *available at http://asc.fasb.org.*

[45] *Michigan Electric Transmission Co., LLC,* 116 FERC ¶ 61,164, at PP 29–30 (2006); *Niagara Mohawk Holdings Inc.,* 95 FERC ¶ 61,381, at 62,415, *reh'g denied,* 96 FERC ¶ 61,144 (2001); *PPL,* 133 FERC ¶ 61,083 at P 39.

[46] *See, e.g., Florida Power & Light Co.,* 145 FERC ¶ 61,018, at PP 53, 60 (2013); *FirstEnergy,* 141 FERC ¶ 61,239 at P 16 n.13.

[47] *See, e.g., Silver Merger Sub,* 145 FERC ¶ 61,261 at PP 61–62.

[48] *Exelon-Pepco,* 149 FERC ¶ 61,148 at n.180; *Silver Merger Sub,* 145 FERC ¶ 61,261 at P 68; *Florida Power & Light,* 145 FERC ¶ 61,018 at P 60; *Exelon,* 138 FERC ¶ 61,167 at P 118 (citing Merger Policy Statement, FERC Stats. & Regs. ¶ 31,044 at 30,126; *Duke Energy Moss Landing,* 83 FERC ¶ 61,318, *reh'g denied,* 86 FERC ¶ at 61,816 (citing *Mid-Louisiana Gas,* 7 FERC ¶ 61,316, at 61,682, *reh'g denied,* 8 FERC ¶ 61,227, *aff'd sub nom. Transcon. Gas Pipe Line Co.* v. *FERC,* 652 F.2d 179 (D.C. Cir. 1981)) (rate recovery of an existing facility is generally limited to the original cost of the facility)).

[49] *Duke Energy Progress, Inc.,* 149 FERC ¶ 61,220, at PP 67–68 (2014) (reviewing Commission precedent requiring that acquisition adjustments

28. We seek comments from interested persons on these proposals. In particular, we seek comments on the categories of costs, including transition costs, that are proposed to be transaction-related costs which should be subject to hold harmless protection. We also seek comments on the costs that should not be subject to hold harmless commitments.

2. Controls and Procedures to Track and Record Costs Related To Hold Harmless Commitments

29. As noted above, applicants are required to describe in their FPA section 203 applications how they intend to protect ratepayers from transaction-related costs, consistent with their obligation to show that their transaction is consistent with the public interest.[50] As contemplated in the Merger Policy Statement, a hold harmless commitment offered by applicants must be ''enforceable and administratively manageable.'' [51] In creating an enforceable and administratively manageable commitment, applicants should provide assurances that transaction-related costs will be quantified, documented, and verified, and may not be recovered from ratepayers until applicants can demonstrate that savings, if any, offset the transaction-related costs they seek to recover. To this end, the Commission has required that applicants offering hold harmless commitments establish internal controls and/or tracking mechanisms.[52] We propose additional guidance below regarding these requirements.

30. First, we propose to clarify that all applicants offering hold harmless commitments should implement appropriate internal controls and procedures to ensure the proper identification, accounting, and rate treatment of all transaction-related costs incurred prior to and subsequent to the announcement of a proposed transaction, including all transition costs.

31. Second, we propose that applicants offering hold harmless commitments should include, as part of their FPA section 203 applications and any separate FPA section 205 filings, a detailed description of how they define, designate, accrue, and allocate transaction-related costs, and explain the criteria used to determine which costs are transaction-related. Applicants should specifically identify and describe their direct and indirect cost classifications, and the processes they use to functionalize, classify and allocate transaction-related costs. In addition, applicants should explain the types of transaction-related costs that will be recorded on their public utilities' books; how they determined the portion of these costs assigned to their public utilities; and how they classify these costs as non-operating, transmission, distribution, production, and other. Applicants should also describe their accounting procedures and practices, and how they maintain the underlying accounting data so that the allocation of transaction-related costs to the operating and non-operating accounts of their public utilities is readily available and easily verifiable.

32. We note that the Commission has, in the past, required applicants to submit their final accounting entries associated with transactions within six months of the date that the transaction is consummated.[53] As a part of this accounting filing, we propose to require applicants subject to the Commission's accounting regulations to provide the accounting entries and amounts related to all transaction-related costs incurred as of the date of the accounting filing, along with narrative explanations describing the entries.

33. We seek comments on these proposals.

3. Time Limits on Hold Harmless Commitments

34. The Commission previously stated in the Merger Policy Statement that a hold harmless commitment need only protect customers ''for a significant period of time following the merger.''[54] However, in light of the proposed treatment of certain categories of costs discussed above, the Commission's experience auditing utilities that have made hold harmless commitments and concerns of protestors in previous FPA section 203 applications,[55] we propose to reconsider whether hold harmless commitments that are limited to five years (or another specified period) adequately protect ratepayers from an adverse effect on rates. As part of this reconsideration, we believe that time-limited hold harmless commitments may not adequately protect ratepayers from transaction-related costs. Therefore, we propose that there be no time limit on hold harmless commitments and that costs subject to hold harmless commitments cannot be recovered from ratepayers at any time (regardless of when such costs are incurred), absent a showing of offsetting savings in order to demonstrate no adverse effect on rates.[56] This revised approach is consistent with the Merger Policy Statement, which emphasized that the burden of proof to demonstrate that customers will be protected should be on applicants, and that applicants should also bear the risk that benefits will not materialize.[57]

35. Specifically, we are concerned that limiting the applicability of hold harmless commitments to specific time periods may create incentives for applicants to modify how they would otherwise seek to recover or account for recovery of certain transaction-related costs based on the time period. For example, an applicant could try to include transaction-related costs in formula rates without making a showing of offsetting savings if the costs, though incurred during the hold harmless period, do not enter the ratemaking process until after the hold harmless period expires. Moreover, whether or not any such incentives exist, certain transaction-related expenditures could be properly capitalized as an asset during the hold harmless period, but the recovery of the costs associated with that asset would occur only as the asset is depreciated over future periods that extend beyond the hold harmless period.

36. Similarly, limiting the applicability of hold harmless commitments to specific time periods may incentivize applicants to delay incurring some types of transaction-related costs until after the hold harmless period expires. By waiting to incur costs subject to hold harmless commitments until after the expiration of the hold harmless period, applicants could attempt to include such costs in their future formula rate billings without making the showing of

may be recovered if the acquisition provides ''measurable benefits'' that are ''tangible and nonspeculative,'' and allowing recovery of an acquisition adjustment where ''the acquisition provides specific, measurable, and substantial benefits to ratepayers'') (internal citations omitted).

[50] *See* Order No. 642, FERC Stats. & Regs. ¶ 31,111 at 31,914.

[51] Merger Policy Statement, FERC Stats. & Regs. ¶ 31,044 at 30,124.

[52] *See Silver Merger Sub,* 145 FERC ¶ 61,261 at P 78; *ITC Holdings,* 143 FERC ¶ 61,256 at P 168.

[53] *See, e.g., Central Vermont Public Service Corp.,* 138 FERC ¶ 61,161, at P 55 (2012).

[54] Merger Policy Statement, FERC Stats. & Regs. ¶ 31,044 at 30,124.

[55] *See, e.g., PNM Resources,* 124 FERC ¶ 61,019 at P 36 (protestor alleging that the five-year limitation on recovery will simply result in the deferred recovery of transaction-related costs).

[56] Evidence of offsetting merger-related savings cannot be based on estimates or projections of future savings, but must be based on a demonstration of actual merger-related savings realized by jurisdictional customers. *Exelon-Pepco,* 149 FERC ¶ 61,148 at P 107 (citing *Audit Report of National Grid, USA,* Docket No. FA09–10–000 (Feb. 11, 2011) at 55; *Ameren Corp.,* 140 FERC ¶ 61,034, at PP 36–37 (2012)).

[57] Merger Policy Statement, FERC Stats. & Regs. ¶ 31,044 at 30,123.

offsetting savings required to justify recovery of such costs. In this regard, we believe that the focus of a hold harmless commitment should be on whether a cost is transaction-related, and not on when the cost is incurred.

37. We seek comments on this proposal.

4. Transactions Without Adverse Effects on Rates

38. As explained above, applicants under FPA section 203 must demonstrate that proposed transactions do not have an adverse effect on rates. In order to make this showing, applicants sometimes propose, and the Commission has accepted, hold harmless commitments. Pursuant to these hold harmless commitments, the Commission has held that customers must be held harmless from transaction-related costs unless and until applicants demonstrate offsetting transaction-related benefits—whether quantifiable cost savings or other non-quantifiable benefits.

39. As noted above, some applicants have made hold harmless commitments in connection with transactions involving the acquisition or disposition of existing jurisdictional facilities where the acquiring entity was a traditional franchised utility and entering into the transaction in order to satisfy resource adequacy requirements at the state level, to improve system reliability, and/or meet other regulatory requirements.[58] However, while customers in these examples may experience a rate increase due to the costs of the facilities, such rate effect may not necessarily be adverse because those costs were incurred to meet a governmental regulatory requirement. The Commission has held that, as a general matter of policy, ratepayers should bear the cost of utility service.[59]

40. Accordingly, we propose to clarify that applicants undertaking certain transactions to fulfill documented utility service needs need not propose ratepayer protection mechanisms such as a hold harmless commitment in an application under FPA section 203 in order to show that the transaction will not have an adverse effect on rates. We believe that applicants engaging in these types of transactions can make the requisite showing that, even though the proposed transaction may have an effect on rates, such effect on rates is not adverse.

41. Examples of the transactions in which applicants may demonstrate no adverse effect on rates without offering a hold harmless commitment or other ratepayer protection mechanism would include the purchase of an existing generating plant or transmission facility that is needed to serve the acquiring company's customers or forecasted load within a public utility's existing footprint, in compliance with a resource planning process, or to meet specified North American Electric Reliability Corporation (NERC) standards. We propose that applicants seeking to demonstrate that a transaction will not have an adverse effect on rates for these or other reasons should provide supporting evidence and documentation which could include an explanation that the transaction is intended to serve existing customers or forecasted load within an existing footprint; to address a state commission order or directive requiring acquisition of specific assets; to address a need for a transmission facility, as established through a regional transmission planning process or as required to satisfy a NERC standard; or to address other state or federal regulatory requirements. For instance, in *FirstEnergy*, applicants requested approval from the Commission under FPA section 203 for an internal transfer of certain assets that would address significant reliability concerns, including a potential NERC violation, at a cost that was two-thirds that of the next possible solution.[60] In that order, consistent with existing policy, the Commission accepted applicants' hold harmless commitment as it was offered. Under the clarification proposed herein, however, such a hold harmless commitment would not need to be offered in order to show that the transaction would not have an adverse effect on rates.

42. Applicants may make a showing that a particular transaction does not have an adverse effect on rates based on other grounds, but the burden remains on applicants to show in their application for authorization under FPA section 203 that the costs, or a portion of the costs, related to such a transaction should be passed on to ratepayers. Further, applicants may provide the Commission with information to show the need to meet other regulatory requirements as a means to demonstrate that the effect on rates due to the transaction is not adverse. The Commission will carefully review such a showing before determining that a proposed transaction without any proposed ratepayer protection mechanism has no adverse effect on rates. We believe this approach is consistent with both the Merger Policy Statement and the Commission's policy that ratepayers should bear the costs of utility service. We seek comments on this proposal.

III. Comment Procedures

43. We invite comments on this proposed policy statement within March 30, 2015.

IV. Document Availability

44. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Home Page (*http://www.ferc.gov*) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street NE., Room 2A, Washington, DC 20426.

45. From the Commission's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

46. User assistance is available for eLibrary and the Commission's Web site during normal business hours from FERC Online Support at (202) 502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov*, or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov.*

V. Information Collection Statement

47. The Paperwork Reduction Act (PRA)[61] requires each federal agency to seek and obtain Office of Management and Budget (OMB) approval before undertaking a collection of information directed to ten or more persons or contained in a rule of general applicability. OMB regulations require approval of certain information collection requirements imposed by agency rules.[62] Upon approval of a collection(s) of information, OMB will

[58] *See, e.g., FirstEnergy*, 141 FERC ¶ 61,239 at PP 1, 16, 27–30 (accepting a hold harmless commitment in an asset transaction where generation assets would be turned into assets to support transmission system upgrades in order to meet needs identified in a study by PJM Interconnection, L.L.C. following the retirement of other generating facilities); *ITC Midwest,* 140 FERC ¶ 61,125 at P 15; *Int'l Transmission Co.,* 139 FERC ¶ 61,003, at P 16 (2012).

[59] *See, e.g., Old Dominion Elec. Cooperative and N.C. Elec. Membership Corp.* v. *Va. Elec. and Power Co.,*146 FERC ¶ 61,200 (2014).

[60] *FirstEnergy*, 141 FERC ¶ 61,239 at P 5.

[61] 44 U.S.C. 3501–3520.

[62] *See* 5 CFR 1320.

assign an OMB control number and an expiration date. Respondents subject to the filing requirements of an agency rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number.

The following table shows the Commission's estimates for the additional burden and cost, as contained in the Proposed Policy Statement:

REVISIONS, IN THE PROPOSED POLICY STATEMENT IN DOCKET NO. PL15–3

Requirements	Number and type of respondents (1)	Number of responses per respondent (2)	Total number of responses (1) * (2) = (3)	Average burden hours & cost per response [63] (4)	Total burden hours & total cost (3) * (4)
FERC–519 (FPA Section 203 Filings)	18	1	18	20 hrs.; $1,410	360 hrs.; $25,380.
FERC–516 (FPA Section 205, Rate and Tariff Filings).	1	1	[64] 1	103.26 hrs.; $7,279.83.	103.26 hrs.; $7,279.83.
FERC–555, Record Retention	18	1	18	4 hrs.; $282	72 hrs.; $5,076.
TOTAL					535.26 hrs.; $37,735.83.

Title: FERC–519, Application under Federal Power Act Section 203; FERC–516, Electric Rate Schedules and Tariff Filings; and FERC–555, Preservation of Records for Public Utilities and Licensees, Natural Gas and Oil Pipeline Companies.

Action: Revised Collections of Information.

OMB Control No: 1902–0082 (FERC–519), 1902–0096 (FERC–516), and 1902–0098 (FERC–555).

Respondents: Business or other for profit, and not for profit institutions.

Frequency of Responses: As needed and ongoing.

Necessity of the Information: To protect ratepayers and to mitigate possible adverse effects on rates that may result from mergers or certain other transactions that are subject to section 203 of the FPA, we propose clarifications and additional information collection requirements related to hold harmless commitments offered by applicants.

Internal review: The Commission has reviewed the changes included in the Proposed Policy Statement and has determined that the additional reporting and recordkeeping requirements are necessary.

Interested persons may obtain information on the reporting requirements by contacting: Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426 [Attention: Ellen Brown, Office of the Executive Director, email: *DataClearance@ferc.gov*, Phone: (202) 502–8663, fax: (202) 273–0873].

By the Commission. Commissioner Honorable is voting present.

Issued: January 22, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–01423 Filed 1–26–15; 8:45 am]

BILLING CODE 6717–01–P

[63] The hourly cost figures are based on data for salary plus benefits. We think industry is similarly situated to FERC in terms of the average cost of a full time employee, and we are using $70.50 per hour for salary plus benefits.

The estimates for cost per response are derived using the following formula: Average Burden Hours per Response * $70.50 per Hour = Average Cost per Response.

[64] We estimate that one FPA section 205 filing may be made annually subject to the Proposed Policy Statement.

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 90

[PS Docket Nos. 13–87, 06–229; WT Docket No. 96–86, RM–11433, RM–11577; Report No. 3013]

Petition for Reconsideration of Action in Rulemaking Proceeding

AGENCY: Federal Communications Commission.

ACTION: Petition for reconsideration.

SUMMARY: In this document, a Petition for Reconsideration (Petition) has been filed in the Commission's Rulemaking proceeding by Danielle Coffey, on behalf of Telecommunications Industry Association.

DATES: Oppositions to the Petition must be filed on or before February 11, 2015. Replies to an opposition must be filed on or before February 23, 2015.

ADDRESSES: You may submit comments, identified by PS Docket Nos. 13–87, 06–229; WT Docket No. 96–86, by any of the following methods:

- *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 FURTHER INFORMATION CONTACT: John A. Evanoff, Esq., Public Safety and Homeland Security Bureau, (202) 418–0848, email *John.Evanoff@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of Commission's document, Report No. 3013, released January 14, 2015. The full text of this document is available for viewing and copying in Room CY–B402, 445 12th Street SW., Washington, DC or may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI) (1–800–378–3160). The Commission will not send a copy of this *Notice* pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A) because this notice does not have an impact on any rules of particular applicability.

Subject: Proposed Amendments to the Service Rules Governing Public Safety Narrowband Operations in the 769–775/799–805 MHz Bands (PS Docket No. 13–87); National Public Safety Telecommunications Council Petition for Rulemaking on Aircraft Voice Operations at 700 MHz (RM–11433); National Public Safety Telecommunications Council Petition for Rulemaking to Revise 700 MHz Narrowband Channel Plan (RM–11433); Region 24 700 MHz Regional Planning Committee Petition for Rulemaking (WT Docket No. 96–86 and PS Docket No. 06–229); and State of Louisiana Petition for Rulemaking (RM–11577), published at 79 FR 71321, December 2, 2014, and published pursuant to 47 CFR 1.429(e). *See also* 47 CFR 1.4(b)(1) of the Commission's rules.

Number of Petitions Filed: 1.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2015–01345 Filed 1–26–15; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 150105013–5013–01]

RIN 0648–BE62

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Red Grouper Recreational Management Measures

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to implement management measures described in a framework action to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP), as prepared by the Gulf of Mexico Fishery Management Council (Council). If implemented, this rule would revise the daily bag limit for red grouper in the Gulf of Mexico (Gulf) and remove the recreational post-season bag-limit reduction accountability measure (AM) for Gulf red grouper. Additionally, this rule would correct an error in the Gulf individual fishing quota (IFQ) multi-use provisions for the Grouper/Tilefish IFQ program. The purpose of this rule is to modify the Gulf red grouper recreational management measures to improve recreational fishing opportunities by achieving optimal yield for the red grouper resource.

DATES: Written comments must be received on or before February 26, 2015.

ADDRESSES: You may submit comments on the proposed rule, identified by ''NOAA–NMFS–2014–0153'' by any of the following methods:

• *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2014-0153,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.

• *Mail:* Submit written comments to Richard Malinowski, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

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

Electronic copies of the framework action, which includes an environmental assessment, a regulatory impact review, and a Regulatory Flexibility Act analysis may be obtained from the Southeast Regional Office Web site at *http://sero.nmfs.noaa.gov/sustainable_fisheries/gulf_fisheries/reef_fish/index.html.*

FOR FURTHER INFORMATION CONTACT: Richard Malinowski, Southeast Regional Office, NMFS, telephone: 727–824–5305, email: *rich.malinowski@noaa.gov.*

SUPPLEMENTARY INFORMATION: The Gulf reef fish fishery is managed under the FMP. The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Background

In April 2014, NMFS announced that the Gulf red grouper recreational annual catch limit (ACL) was exceeded in 2013. In accordance with recreational AMs adopted in Amendment 32 to the FMP (77 FR 6988, February 10, 2012), this triggered a reduction in the bag limit in 2014 from four fish to three fish, and a recreational closure was implemented on October 4, 2014, to ensure that landings did not exceed the recreational annual catch target (ACT). In response to the in-season recreational closure, the Council, at its June 2014 meeting, directed staff to begin development of a framework action to potentially reduce the recreational bag limit, and adjust the recreational AMs in an effort to extend the red grouper recreational fishing season.

Prior to implementation of Amendment 32 to the FMP, the red grouper recreational allocation had not been met in recent years. The red grouper recreational allocation of the total allowable catch (TAC) was initially set at 1.25 million lb (0.567 million kg), gutted weight, in 2004, was increased to 1.82 million lb (0.826 million kg), gutted weight, in 2009, and was then reduced to 1.36 million lb (0.617 million kg), gutted weight, in 2011. In 2012, Amendment 32 to the FMP replaced the red grouper TAC with an ACL and ACT, and management measures intended to allow harvest to achieve the ACT. The red grouper recreational ACL and ACT were set for 2012 and beyond at 1.9 million lb (0.862 million kg), gutted weight, and 1.73 million lb (0.785 million kg), gutted weight, respectively. Also in 2012, the red grouper bag limit was increased from two fish to four fish per person, under the four-fish aggregate grouper bag limit, to allow the recreational sector to fully harvest its allocation and achieve optimum yield. The post-season AM that was implemented in 2012, was a reduction in the bag limit by one fish, if at the end of any season, NMFS determined that the recreational sector has exceeded its red grouper ACL. Therefore, the bag limit would be reduced to three fish in the following season, and could be reduced to two fish the season after that, if the ACL was again exceeded. The bag limit would not be reduced below two fish.

Management Measures Contained in This Proposed Rule

This rule would reduce the Gulf red grouper recreational bag limit from four fish to two fish within the four-fish aggregate grouper bag limit, and remove the post-season AM that reduces the daily bag limit the next fishing season when the previous fishing year's ACL is exceeded. The other post-season AMs currently codified in the regulations would remain in effect without change. The first post-season AM currently codified in the regulations applies regardless of whether red grouper are overfished and requires that NMFS will publish a notification to reduce the length of the recreational red grouper fishing season the following fishing year by the amount necessary to ensure red grouper recreational landings do not exceed the recreational ACT. The second post-season AM currently codified in the regulations applies if red grouper are overfished, and requires NMFS to reduce the recreational ACL and recreational ACT the following fishing year by the prior fishing year's recreational ACL overage.

Additional Proposed Changes to Codified Text

Amendment 32 to the FMP established a formula-based method for setting gag and red grouper multi-use allocations for the Gulf Grouper/Tilefish IFQ program to allow for flexibility in harvesting practices and address potential bycatch associated with co-occurring species (77 FR 6988, February 2, 2012). At the beginning of each fishing year, a percentage of the gag and red grouper allocation is designated as multi-use allocation valid for harvesting either gag or red grouper. However, gag multi-use allocation is not available if red grouper is under a rebuilding plan and red grouper multi-use allocation is not available if gag is under a rebuilding plan. For example, gag multi-use allocation would be set to zero percent if red grouper is under a rebuilding plan.

The final rule for Amendment 32 erroneously stated that if red grouper is under a rebuilding plan, then red grouper multi-use allocation should be set to zero. NMFS corrects this mistake and changes ''red grouper multi-use allocation'' to ''gag multi-use allocation'' in this instance.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the Assistant Administrator has determined that this proposed rule is consistent with the framework action, the FMP, the Magnuson-Stevens Act and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule, if implemented, would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination is as follows:

The objective of this proposed rule is to change the red grouper recreational management measures in the Gulf to improve recreational fishing opportunities by extending the number of days in the fishing season. The Magnuson-Stevens Act provides the statutory basis for this proposed rule.

This proposed rule, if implemented, would not be expected to directly affect any small entities. This proposed rule would change the red grouper recreational bag limit in the Gulf. Only recreational anglers, who may fish from private, rental, charter vessels, or headboats, are allowed a bag or possession limit of red grouper in the Gulf. Captains or crew members on charter vessels or headboats, cannot harvest or possess red grouper under the recreational bag limit. Because only recreational anglers are allowed a bag or possession limit, only recreational anglers would be directly affected by the proposed changes to the red grouper recreational bag limit. Recreational anglers, however, are not small entities under the Regulatory Flexibility Act (RFA) and the economic effects of this proposed rule on these anglers are outside the scope of the RFA.

Charter vessels and headboats (for-hire vessels) sell fishing services to recreational anglers. These vessels provide a platform for the opportunity to fish and not a guarantee to catch or harvest any species, though expectations of successful fishing, however defined, likely factor into the decision to purchase these services. Bag limit restrictions only define what can be kept and do not explicitly prevent the continued offer of for-hire fishing services. In response to a reduced bag limit, including a zero-fish limit, catch and release fishing for a target species could continue, as could fishing for other species. Because the proposed change in the red grouper bag limit would not directly alter the service sold by these vessels, this proposed rule would not directly apply to or regulate their operations. For-hire vessels would continue to be able to offer their core service, which is an attempt to ''put anglers on fish,'' provide the opportunity for anglers to catch whatever their skills enable them to catch, and keep those fish that they desire to keep and are legal to keep. Any change in demand for these fishing services, and associated economic affects, as a result of changing the bag limit would be a consequence of behavioral change by anglers, secondary to any direct effect on anglers and, therefore, an indirect effect of the proposed rule. Because the effects on for-hire vessels would be indirect, they fall outside the scope of the RFA.

In addition, no small entities would be expected to be directly affected by the proposed corrections of the multi-use allocation regulatory text because the conditions that may have allowed inappropriate use of the allocation due to the error in the implementation of Amendment 32 to the FMP have not occurred since the implementation.

This proposed rule would not require any new reporting, record-keeping, or other compliance requirements associated with reporting or record-keeping that may require professional skills.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Gulf, Recreational, Red grouper.

Dated: January 20, 2015.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

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

■ 2. In § 622.22, the last sentence in paragraph (a)(5)(ii)(B) is revised to read as follows:

§ 622.22 Individual fishing quota (IFQ) program for Gulf groupers and tilefishes.

(a) * * *

(5) * * *

(ii) * * *

(B) * * * However, if red grouper is under a rebuilding plan, the percentage of gag multi-use allocation is equal to zero.

* * * * *

■ 3. In § 622.38, the first sentence in paragraph (b)(2) is revised to read as follows:

§ 622.38 Bag and possession limits.

* * * * *

(b) * * *

(2) *Groupers, combined, excluding goliath grouper*—4 per person per day, but not to exceed 1 speckled hind or 1 warsaw grouper per vessel per day, or 2 gag or 2 red grouper per person per day. * * *

* * * * *

■ 4. In § 622.41, the second sentence in paragraph (e)(2)(ii) is revised and the third sentence in paragraph (e)(2)(ii) is removed to read as follows:

§ 622.41 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).

* * * * *

(e) * * *

(2) * * *

(ii) * * * In addition, the notification will reduce the length of the recreational red grouper fishing season the following fishing year by the amount necessary to ensure red grouper recreational landings do not exceed the recreational ACT in the following fishing year. * * *

* * * * *

[FR Doc. 2015–01339 Filed 1–26–15; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 80, No. 17

Tuesday, January 27, 2015

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.

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Nevada Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act (FACA) that a meeting of the Nevada Advisory Committee (Committee) to the Commission will be held on Friday, February 27, 2015, at the Department of Employment, Training and Rehabilitation, 2800 East St. Louis Avenue, Conference Room C, Las Vegas, NV 89104.

The meeting is scheduled to begin at 2:30 p.m. and adjourn at approximately 4 p.m. The purpose of the meeting is for the Committee to consider and discuss a draft report on the militarization of police.

Members of the public are entitled to submit written comments. The comments must be received in the Western Regional Office of the Commission by March 27, 2015. The address is Western Regional Office, U.S. Commission on Civil Rights, 300 N. Los Angeles Street, Suite 2010, Los Angeles, CA 90012. Persons wishing to email their comments may do so by sending them to Angelica Trevino, Civil Rights Analyst, Western Regional Office, at *atrevino@usccr.gov.* Persons who desire additional information should contact the Western Regional Office, at (213) 894–3437, (or for hearing impaired TDD 913–551–1414), or by email to *atrevino@usccr.gov.* Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

Records generated from this meeting may be inspected and reproduced at the Western Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *www.usccr.gov,* or to contact the Western Regional Office at the above email or street address. The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Dated January 22, 2015.

David Mussatt,

Chief. Regional Programs Unit.

[FR Doc. 2015–01416 Filed 1–26–15; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Montana Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that an orientation and planning meeting of the Montana Advisory Committee to the Commission will convene at 1 p.m. (MDT) on Thursday, February 12, 2015, in the Community Room of the Billings Public Library, 510 North Broadway, Billings, MT 59101. The purpose of the orientation meeting is to inform the newly appointed Committee members about the rules of operation of Federal advisory committees and to select additional officers, as determined by the Committee. The purpose of the planning meeting is to discuss potential topics that the Committee may wish to study.

Persons who desire additional information may contact the Rocky Mountain Regional Office, U.S. Commission on Civil Rights, 1961 Stout Street, Suite 13–201, Denver, CO 80294, phone 303–866–1040 and fax 303–866–1050, or email to Evelyn Bohor at *ebohor@usccr.gov.*

Persons needing accessibility services should contact the Rocky Mountain Regional Office at least 10 working days before the scheduled date of the meeting.

Records generated from this meeting may be inspected and reproduced at the Rocky Mountain Regional Office, as they become available, both before and after the meeting. Persons interested in the word of this advisory committee are advised to go to the Commission's Web site, *www.usccr.gov,* or to contact the Rocky Mountain Regional Office at the above phone number, email or street address.

The meeting will be conducted pursuant to the provision of the rules and regulations of the Commission and FACA.

Dated: January 22, 2015.

David Mussatt,

Chief, Regional Programs Unit.

[FR Doc. 2015–01386 Filed 1–26–15; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–840]

Lightweight Thermal Paper From Germany: Notice of Court Decision Not in Harmony With Final Results and Notice of Amended Final Results of Antidumping Duty Administrative Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On December 31, 2014, the United States Court of International Trade (CIT) entered its final judgment in *Papierfabrik August Koehler AG* v. *United States,* Court No. 11–00147, affirming the Department of Commerce's (the Department) final results of redetermination pursuant to remand of the 2008–2009 antidumping duty administrative review of lightweight thermal paper from Germany (*Remand Redetermination*).[1] Consistent with the decision of the United States Court of Appeals for the Federal Circuit (CAFC) in *Timken Co.* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990) (*Timken*), as clarified by *Diamond Sawblades Mfrs. Coalition* v. *United States,* 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*), the Department is notifying the public that the final judgment in this case is not in harmony with the Department's final results of the administrative review of the antidumping duty order on lightweight thermal paper from Germany covering

[1] *See* Final Results Of Redetermination Pursuant To Court Remand, Lightweight Thermal Paper from Germany *Papierfabrik August Koehler AG* v. *United States,* Court No.11–00147, Slip 0p.14–31 (CIT March 25, 2014), dated June 23, 2014 (*Remand Redetermination*).

the period of review (POR) November 20, 2008, through October 31, 2009,[2] and is amending the *Final Results* with respect to the weighted-average dumping margin assigned to Papierfabrik August Koehler AG (Koehler).

DATES: *Effective Date:* January 10, 2015.

FOR FURTHER INFORMATION CONTACT: Stephanie Moore or George McMahon, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3692 and (202) 482–1167, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 20, 2011, the Department published its *Final Results* in which it assigned Koehler a weighted-average dumping margin of 3.77 percent.[3] At the CIT, Koehler challenged the Department's determination to deny Koehler's claimed adjustment for certain home market rebates in the *Final Results.*[4] Upon review, the CIT remanded the *Final Results,* holding that the Department's decision to disallow an adjustment to Koehler's normal value for its monthly home market rebates (monatsbonus) was unsupported by law because the governing regulations [5] did not give the Department the discretion not to allow for such an adjustment.[6] On remand, the Department reconsidered its findings and determined, under protest, that the court's interpretation of the relevant regulations resulted in no alternative but to alter the *Final Results* by granting the home market rebate price adjustment claimed by Koehler.[7] The resulting recalculated rate for Koehler is 0.03 percent, which is *de minimis.*[8] On December 31, 2014, the CIT entered final judgment affirming the *Remand Redetermination.*[9]

Timken Notice

In its decision in *Timken,* 893 F.2d at 341, as clarified by *Diamond Sawblades,* the CAFC held that, pursuant to section 516A(e) of the Tariff Act of 1930, as amended (the Act), the Department must publish a notice of a court decision that is not ''in harmony'' with a Department determination and must suspend liquidation of entries pending a ''conclusive'' court decision. The CIT's December 31, 2014 judgment affirming the Department's *Remand Redetermination* with respect to Koehler constitutes a final decision of the Court that is not in harmony with the Department's *Final Results.* This notice is published in fulfillment of the publication requirements of *Timken.*

Amended Final Results

Because there is now a final court decision, we are amending the *Final Results* with respect to Koehler's margin for the period November 20, 2008, through October 31, 2009. The revised weighted-average dumping margin is as follows:

Manufacturer/exporter	Weighted-average margin (percent)
Papierfabrik August Koehler AG.	0.03 (*de minimis.*)

Accordingly, the Department will continue the suspension of liquidation of the subject merchandise pending the expiration of the period of appeal, or, if appealed, pending a final and conclusive court decision. In the event the CIT's final judgment is not appealed, or if appealed, upheld by the CAFC, the Department will instruct U.S. Customs and Border Protection to liquidate unliquidated entries of the subject merchandise exported by Koehler during the POR without regard to duties because Koehler's revised rate, as determined in the *Remand Redetermination,* is *de minimis.*[10]

Cash Deposit Requirements

Since the *Final Results,* the Department has established a new cash deposit rate for Koehler. Therefore, Koehler's cash deposit rate does not need to be updated as a result of these amended final results. The cash deposit rate for Koehler will remain the company-specific rate established for the most recent period during which the respondent was reviewed, which is 0.00 percent.[11]

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(e)(1), 751(a)(1), and 777(i)(1) of the Act.

Dated: January 21, 2015.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2015–01505 Filed 1–26–15; 8:45 am]

BILLING CODE 3510–DS–P

[2] *See Lightweight Thermal Paper From Germany: Notice of Final Results of the First Antidumping Duty Administrative Review,* 76 FR 22078 (April 20, 2011) (*Final Results*).

[3] *Id.*

[4] *See Papierfabrik August Koehler AG* v. *United States,* Court No. 11–00147.

[5] *See* 19 CFR 351.401(c) and 19 CFR 351.102(b)(38).

[6] *See Papierfabrik August Koehler AG* v. *United States,* 971 F. Supp. 2d 1246, 1250–59 (CIT 2014).

[7] *See Remand Redetermination* at 4–5.

[8] *Id.*

[9] *See Papierfabrik August Koehler AG* v. *United States,* Court No. 11–000147, Slip Op. 14–160 (CIT December 31, 2014).

[10] *See* 19 CFR 351.106(c)(2).

[11] *See Lightweight Thermal Paper From Germany: Final Results of Antidumping Duty Administrative Review; 2011–2012,* 79 FR 34719 (June 18, 2014).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–601]

Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of the Antidumping Duty Administrative Review and Final Results of the New Shipper Review; 2012–2013

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On July 23, 2014, the Department of Commerce (the Department) published the preliminary results and partial rescission of the 26th administrative review and the preliminary results of one new shipper review (NSR) of the antidumping duty order on tapered roller bearings and parts thereof, finished and unfinished (TRBs), from the People's Republic of China (PRC).[1] The period of review (POR) is June 1, 2012, through May 31, 2013. Based on our analysis of the comments received, we have made certain changes in the margin calculations. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margins for the reviewed firms are listed below in the section entitled ''Final Results of the Reviews.''

DATES: *Effective Date:* January 27, 2015.

FOR FURTHER INFORMATION CONTACT: Blaine Wiltse or Steve Bailey, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–6345 or (202) 482–0193, respectively.

[1] *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Preliminary Results and Partial Rescission of the Antidumping Duty Administrative Review and Preliminary Results of the New Shipper Review; 2012–2013,* 79 FR 42758 (July 23, 2014) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

Background

These final results of administrative review cover two exporters [2] of the subject merchandise, of which the Department selected Changshan Peer Bearing Co. Ltd. (CPZ/SKF) as a mandatory respondent for individual examination. The respondent which was not selected for individual examination, Zhejiang Zhaofeng Mechanical and Electronic Co., Ltd. (Zhaofeng), is listed in the ''Final Results of the Reviews'' section of this notice. The NSR covers entries produced and exported by Shanghai Tainai Bearing Co., Ltd. (Tainai).

On July 23, 2014, the Department published the *Preliminary Results.* In August 2014, we received case and rebuttal briefs from the Timken Company (the petitioner) and CPZ/SKF. In August 2014, we also received a rebuttal brief from Tainai. In September 2014, the Department held a public hearing at the request of the petitioner. On October 27, 2014, the Department extended the final results in these reviews to no later than January 20, 2015.[3]

The Department has conducted these reviews in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The merchandise covered by the Order [4] includes tapered roller bearings tapered roller bearings and parts thereof, finished and unfinished, from the PRC; flange, take up cartridge, and hanger units incorporating tapered roller bearings; and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use. These products are currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) item numbers 8482.20.00, 8482.91.00.50, 8482.99.15, 8482.99.45, 8483.20.40, 8483.20.80, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.80, 8708.70.6060, 8708.99.2300, 8708.99.4850, 8708.99.6890, 8708.99.8115, and 8708.99.8180. Although the HTSUS item numbers are provided for convenience and customs purposes, the written description of the scope of the Order is dispositive.[5]

Separate Rates

In the *Preliminary Results,* we found that evidence provided by CPZ/SKF, Tainai, and Zhaofeng supported finding an absence of both *de jure* and *de facto* government control, and, therefore, we preliminarily granted a separate rate to each of these companies.[6] We have received no information since the issuance of the *Preliminary Results* that provides a basis for reconsidering these determinations. Therefore, for the final results, we continue to find that CPZ/SKF, Tainai, and Zhaofeng are eligible for a separate rate.

Weighted-Average Dumping Margin for the Non-Examined, Separate-Rate Company

For the exporters subject to a review that are determined to be eligible for a separate rate, but are not selected as individually examined respondents, the Department generally weight averages the rates calculated for the individually examined respondents, excluding any rates that are zero, *de minimis,* or based entirely on facts available.[7] In this administrative review, the only individually-examined company is CPZ/SKF, which has a rate that is not zero, *de minimis,* or based entirely on facts available. Accordingly, consistent with the Department's practice,[8] we have determined that the weighted-average dumping margin to be assigned to the separate rate respondent not individually examined (*i.e.,* Zhaofeng) should be the weighted-average dumping margin calculated for the mandatory respondent, CPZ/SKF.

Analysis of Comments Received

All issues which have been raised in the case briefs by parties to this administrative review and this NSR are addressed in the Issues and Decision Memo. A list of the issues which parties raised and to which we respond in the Issues and Decision Memo is attached to this notice as an Appendix. The Issues and Decision Memo is a public document and is on file electronically *via* Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS).[9] ACCESS is available to registered users at *https://access.trade.gov,* and it is available to all parties in the Central Records Unit, Room 7046 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memo can be accessed directly at *http://enforcement.trade.gov/frn/index.html.* The signed Issues and Decision Memo and the electronic version of the Issues and Decision Memo are identical in content.

Changes Since the Preliminary Results

Based on our analysis of the comments received, we made changes in the margin calculations for CPZ/SKF and Tainai. These changes are discussed in the relevant sections of the Issues and Decision Memo and company-specific analysis memoranda, as appropriate.

Period of Review

The POR is June 1, 2012, through May 31, 2013.

Final Results of the Reviews

Regarding the administrative review, we are assigning the following weighted-average dumping margins to the firms listed below for the period June 1, 2012, through May 31, 2013:

[2] This review originally covered four exporters. However, the Department rescinded the review with respect to Xiangyang Automobile Bearing Co., Ltd. and GGB Bearing Technology (Suzhou) Co., Ltd. in the *Preliminary Results. See Preliminary Results,* 79 FR at 42758–59.

[3] *See* Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, from Blaine Wiltse, Senior International Trade Compliance Analyst, Office II, Antidumping and Countervailing Duty Operations, entitled, ''Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Extension of Deadline for Final Results of Antidumping Duty Administrative Review and New Shipper Review,'' dated October 27, 2014.

[4] *See Notice of Antidumping Duty Order; Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, From the People's Republic of China,* 52 FR 22667 (June 15, 1987) (Order).

[5] For a complete description of the scope of the Order, see the ''Issues and Decision Memorandum for the Antidumping Duty Administrative Review and New Shipper Review (2012–2013): Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China,'' from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Antidumping and Countervailing Duty Operations, dated concurrently with, and adopted by, this notice (Issues and Decision Memo).

[6] *See Preliminary Results,* 79 FR at 42759, and accompanying Preliminary Decision Memorandum at 4–7.

[7] *See, e.g., Wooden Bedroom Furniture From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, Preliminary Results of New Shipper Review and Partial Rescission of Administrative Review,* 73 FR 8273, 8279 (February 13, 2008) (unchanged in *Wooden Bedroom Furniture From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review,* 73 FR 49162 (August 20, 2008)).

[8] *See, e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010–2011,* 78 FR 3396, 3397 (January 16, 2013).

[9] On November 24, 2014, Enforcement and Compliance changed the name of Enforcement and Compliance's AD and CVD Centralized Electronic Service System (''IA ACCESS'') to AD and CVD Centralized Electronic Service System (''ACCESS''). The Web site location was changed from *http://iaaccess.trade.gov* to *http://access.trade.gov.* The Final Rule changing the references to the Regulations can be found at 79 FR 69046 (November 20, 2014).

Exporter	Weighted-average dumping margin (percent)
Changshan Peer Bearing Co., Ltd	0.65
Zhejiang Zhaofeng Mechanical and Electronic Co., Ltd*	0.65

*This company demonstrated eligibility for a separate rate in this administrative review. As discussed above, the rate for this company is the calculated weighted-average dumping margin for CPZ/SKF.

Regarding the NSR, we are assigning the following weighted-average dumping margin to the exporter/producer combination listed below for the period June 1, 2012, through May 31, 2013:

Exporter	Producer	Weighted-average dumping margin (percent)
Shanghai Tainai Bearing Co., Ltd	Shanghai Tainai Bearing Co., Ltd	0.00

Disclosure

We intend to disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Act, and 19 CFR 351.212(b)(1), the Department has determined, and Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise, where applicable, in accordance with the final results of these reviews. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of reviews.

For each individually-examined respondent (either the exporter or producer and exporter combination specified above) whose weighted-average dumping margin is not zero or *de minimis* (*i.e.,* less than 0.50 percent), we calculated importer-specific assessment rates for entries subject to these reviews. For entries of subject merchandise exported by CPZ/SKF and for entries of subject merchandise produced and exported by Tainai, we calculated an *ad valorem* rate for each importer by dividing the total amount of dumping calculated for the importer's examined sales by the total entered values associated with those sales, in accordance with 19 CFR 351.212(b)(1). For duty assessment rates calculated on this basis, we will direct CBP to assess the resulting *ad valorem* rate against the entered customs values for the subject merchandise. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review where an importer-specific assessment rate is not zero or *de minimis.* Where either the respondent's weighted-average dumping margin is zero or *de minimis,* or an importer-specific assessment rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.[10] For Zhaofeng, the *ad valorem* assessment rate will be equal to the weighted-average dumping margin assigned above in the final results of review.

On October 24, 2011, the Department announced a refinement to its assessment practice in NME cases. Pursuant to this refinement in practice, for entries that were not reported in the U.S. sales databases submitted by the company individually examined during this review, the Department will instruct CBP to liquidate such entries at the rate applicable to the PRC-wide entity (*i.e.,* 92.84 percent).[11]

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For the exporters listed above, the cash deposit rate will be equal to the weighted-average dumping margin established in the final results of this review (except, if the rate is *de minimis,* then a cash deposit rate of zero will be established for that company); (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that currently have separate a rate, the cash deposit rate will continue to be the exporter-specific rate published for the most recently completed segment of this proceeding where the exporter received that separate rate; (3) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the rate for the PRC-wide entity, 92.84 percent; and (4) for all non-PRC exporters of subject merchandise which have not received their own separate rate, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that non-PRC exporter.

With respect to the NSR, consistent with the Department's practice,[12] the Department has established a producer/exporter combination cash deposit rate for Tainai as follows: (1) For subject merchandise exported and produced by Tainai, the cash deposit rate will be equal to the weighted-average dumping margin for Tainai in the final results of this review; (2) for subject merchandise exported by Tainai but not produced by Tainai, the cash deposit rate will be the rate for the PRC-wide entity, 92.84 percent; (3) for subject merchandise produced by Tainai but not exported by Tainai, the cash deposit rate will be the rate applicable to that exporter.

These deposit requirements, when imposed, shall remain in effect until further notice.

Notifications to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the

[10] *See* 19 CFR 351.106(c)(2).

[11] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011).

[12] *See e.g., Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Final Results of Antidumping Duty New Shipper Review; 2011–2012,* 78 FR 33341, 33342 (June 4, 2013).

subsequent assessment of double antidumping duties.

Notifications to Interested Parties

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing these results of review in accordance with sections 751(a)(1), 751(a)(2)(B) and 777(i)(1) of the Act.

Dated: January 20, 2015.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Issues and Decision Memo

1. Surrogate Value for Truck Freight
2. Using the *Sigma* Cap and Unreported Affiliate Distances
3. By-Products Offsets

CPZ/SKF Issues

4. Collapsing of Shanghai General Bearing Co., Ltd. and CPZ/SKF
5. Adverse Facts Available for CPZ/SKF
6. Market Economy Purchases of Steel
7. Calculation of Input Freight
8. Including Certain Fees in International Freight Expenses
9. Treatment of Value Added Tax

Tainai Issues

10. AFA for Tainai

[FR Doc. 2015–01489 Filed 1–26–15; 8:45 a.m.]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–983]

Drawn Stainless Steel Sinks From the People's Republic of China: Final Rescission of Antidumping Duty New Shipper Review; 2012–2013

AGENCY: Enforcement of Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On September 30, 2014, the Department of Commerce (''Department'') published its preliminary intent to rescind the new shipper review (''NSR'') of the antidumping duty order on drawn stainless steel sinks (''drawn sinks'') from the People's Republic of China (''PRC'') covering the period of review (''POR'') of October 4, 2012 through October 14, 2013 for Hubei Foshan Success Imp. & Exp. Co. Ltd. (''Foshan Success'').[1] Based on our analysis of comments received subsequent to the *Preliminary Rescission,* the Department continues to find that Foshan Success' sale was not *bona fide.* As a result, the Department is rescinding this NSR.

DATES: *Effective Date:* January 27, 2015.

FOR FURTHER INFORMATION CONTACT: Joy Zhang or Erin Begnal, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–1168 or (202) 482–1442, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 30, 2014, the Department published the *Preliminary Rescission.* On October 22, 2014, Foshan Success submitted a case brief. On November 4, 2014, Petitioner[2] submitted a rebuttal brief. On December 12, 2014, the Department extended the time period for issuing the final results by 30 days until January 21, 2015.[3]

Scope of the Order

The products covered by the scope of the order are drawn stainless steel sinks with single or multiple drawn bowls, with or without drain boards, whether finished or unfinished, regardless of type of finish, gauge, or grade of stainless steel. The products covered by this order are currently classified in the Harmonized Tariff Schedule of the United States (''HTSUS'') under statistical reporting numbers 7324.10.0000 and 7324.10.00.10. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope is dispositive.[4]

Final Rescission of New Shipper Review

As we explain in the Issues and Decision Memorandum and in the proprietary Foshan Success *Bona Fides* Memorandum[5] issued with the *Preliminary Rescission,* due to the totality of circumstances, including the price and quantity of Foshan Success' single sale and the importer's failure to provide evidence that the subject merchandise was resold at a profit, we continue to find that Foshan Success' sale is not *bona fide.* As a result, we are rescinding the new shipper review of Foshan Success.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs are addressed in the Issues and Decision Memorandum, which is dated concurrently and is hereby adopted by this notice. A list of the issues raised in the briefs and addressed in the Issues and Decision Memorandum is appended to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's centralized electronic service system (''ACCESS'').[6] ACCESS is available to registered users at *http://access.trade.gov* and in the Department's Central Records Unit, Room 7064 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Internet at *http://enforcement.trade.gov/frn/index.html.* The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Cash Deposit Requirements

Effective upon publication of the final rescission of the NSR of Foshan Success, the Department will instruct CBP to discontinue the option of posting a bond or security in lieu of a cash

[1] *See Drawn Stainless Steel Sinks From the People's Republic of China: Preliminary Intent To Rescind Antidumping Duty New Shipper Review; 2012–2013,* 79 FR 58743 (September 30, 2014) (''*Preliminary Rescission*'').

[2] Petitioner is Elkay Manufacturing Company.

[3] *See* Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, re: Extension of Deadline for Final Results of New Shipper Review of Drawn Stainless Steel Sinks From the People's Republic of China, dated December 12, 2014.

[4] *See* ''Issues and Decision Memorandum for Final Results of Antidumping Duty New Shipper Review: Drawn Stainless Steel Sinks From the People's Republic of China'' from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations to Paul Piquado, Assistant Secretary for Enforcement and Compliance, dated concurrently with this notice (''Issues and Decision Memorandum'') and hereby adopted by this notice, for a complete description of the Scope of the Order.

[5] *See* Memorandum to Melissa Skinner, Director, Office III, Antidumping and Countervailing Duty Operations, through Erin Begnal, Program Manager, Office III, Antidumping and Countervailing Duty Operations, from Joy Zhang, International Trade Analyst, titled ''Antidumping Duty New Shipper Review of Drawn Stainless Steel Sinks From the People's Republic of China: *Bona Fide* Sales Analysis for Hubei Foshan Success Imp. & Exp. Co., Ltd.,'' dated September 23, 2014.

[6] On November 24, 2014, Enforcement and Compliance changed the name of Enforcement and Compliance's AD and CVD Centralized Electronic Service System (''IA ACCESS'') to AD and CVD Centralized Electronic Service System (''ACCESS''). The Web site location was changed from *http://iaaccess.trade.gov* to *http://access.trade.gov.* The Final Rule changing the references to the Regulations can be found at 79 FR 69046 (November 20, 2014).

deposit for entries of subject merchandise by Foshan Success. Cash deposits will be required for exports of subject merchandise by Foshan Success entered, or withdrawn from warehouse, for consumption on or after the publication date at the PRC-wide rate.

Assessment Instructions

As the result of the rescission of NSR of Foshan Success, the entries of Foshan Success covered by this NSR will be assessed at the PRC-wide rate.

Notification to Importers

This notice serves as a reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary of Commerce's presumption that reimbursement of the antidumping and/or countervailing duties occurred and the subsequent assessment of double antidumping duties.

Return of Destruction of Proprietary Information

This notice serves as a reminder to parties subject to the administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under the APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This notice is issued and published in accordance with sections 751(a)(2)(B) and 777(i) of the Act, and 19 CFR 351.214.

Dated: January 21, 2015.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Discussion of the Issues
Comment 1: Whether Foshan Success' Sale is *Bona Fide*

[FR Doc. 2015–01502 Filed 1–26–15; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–804, A–412–801]

Ball Bearings and Parts Thereof From Japan and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews; 2010–2011

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On September 23, 2014, the Department of Commerce (the Department) published the preliminary results of the administrative reviews of the antidumping duty orders on ball bearings and parts thereof from Japan and the United Kingdom.[1] [2] The period of review (POR) is May 1, 2010, through April 30, 2011. For these final results, we continue to find that sales of the subject merchandise have been made at prices below normal value.

DATES: *Effective Date:* January 27, 2015.

FOR FURTHER INFORMATION CONTACT: Thomas Schauer, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0410.

SUPPLEMENTARY INFORMATION:

Background

On September 23, 2014, the Department published, and invited interested parties to comment on, the *Preliminary Results*.[3] We received case and rebuttal briefs from various parties to the United Kingdom review and held a hearing on December 4, 2014, for the United Kingdom review. We received no case and rebuttal briefs from interested parties for the Japan review. The Department conducted these administrative reviews in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Orders

The products covered by the Orders are ball bearings and parts thereof. These products include all antifriction bearings that employ balls as the rolling element. Imports of these products are classified under the following categories: antifriction balls, ball bearings with integral shafts, ball bearings (including radial ball bearings) and parts thereof, and housed or mounted ball bearing units and parts thereof.

Imports of these products are classified under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 3926.90.45, 4016.93.10, 4016.93.50, 6909.19.50.10, 8414.90.41.75, 8431.20.00, 8431.39.00.10, 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.05, 8482.99.35, 8482.99.25.80, 8482.99.65.95, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.50.90, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.60.80, 8708.93.30, 8708.93.60.00, 8708.99.06, 8708.99.31.00, 8708.99.40.00, 8708.99.49.60, 8708.99.58, 8708.99.80.15, 8708.99.80.80, 8803.10.00, 8803.20.00, 8803.30.00, 8803.90.30, 8803.90.90, 8708.30.50.90, 8708.40.75.70, 8708.40.75.80, 8708.50.79.00, 8708.50.89.00, 8708.50.91.50, 8708.50.99.00, 8708.70.60.60, 8708.80.65.90, 8708.93.75.00, 8708.94.75, 8708.95.20.00, 8708.99.55.00, 8708.99.68, and 8708.99.81.80.

Although the HTSUS item numbers above are provided for convenience and customs purposes, the written description of the scope of the orders remains dispositive.

The size or precision grade of a bearing does not influence whether the bearing is covered by one of the orders. The orders cover all the subject bearings and parts thereof (inner race, outer race, cage, rollers, balls, seals, shields, *etc.*) outlined above with certain limitations. With regard to finished parts, all such parts are included in the scope of the orders. For unfinished parts, such parts are included if they have been heat-treated or if heat treatment is not required to be performed on the part. Thus, the only unfinished parts that are not covered by the orders are those that will be subject to heat treatment after importation. The ultimate application of a bearing also does not influence whether the bearing is covered by the orders. Bearings designed for highly specialized applications are not excluded. Any of the subject bearings, regardless of whether they may ultimately be utilized in aircraft, automobiles, or other equipment, are within the scope of the orders.

[1] *See Ball Bearings and Parts Thereof From Japan and the United Kingdom: Preliminary Results of Antidumping Duty Administrative Review; 2010–2011,* 79 FR 56771 (September 23, 2014) (*Preliminary Results*).

[2] *See Antidumping Duty Orders: Ball Bearings, Cylindrical Roller Bearings, and Spherical Plain Bearings, and Parts Thereof From Japan,* 54 FR 20904 (May 15, 1989), and *Antidumping Duty Orders and Amendments to the Final Determinations of Sales at Less Than Fair Value: Ball Bearings, and Cylindrical Roller Bearings and Parts Thereof From the United Kingdom,* 54 FR 20910 (May 15, 1989).

[3] *Id.*

Analysis of the Comments Received

All issues raised in the case briefs by parties to the United Kingdom administrative review are addressed in the Issues and Decision Memorandum.[4] A list of the issues which parties raised and to which we responded is in the Issues and Decision Memorandum and attached to this notice as an Appendix. The Issues and Decision Memorandum is a public document and is on file electronically *via* Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS).[5] ACCESS is available to registered users at *https://access.trade.gov* and it is available to all parties in the Central Records Unit (CRU), room 7046 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the internet at *http://enforcement.trade.gov/frn/index.html.*

Changes Since the Preliminary Results

We made no changes since the *Preliminary Results.*

Final Results of the Reviews

We determine that weighted-average dumping margins on ball bearings and parts thereof exist for the period May 1, 2010, through April 30, 2011, at the following rates:

Company	Weighted-average dumping margin (percent)
JAPAN	
Bosch Packaging Technology K.K	106.61
Bosch Rexroth Corporation	106.61
Hagglunds Ltd	106.61
UNITED KINGDOM	
Bayerische Motoren Werke AG	254.25
Bosch Rexroth Limited	1.55
Caterpillar S.A.R.L	1.55
Caterpillar Group Services S.A	1.55
Caterpillar of Australia Pty Ltd	1.55
Caterpillar Overseas S.A.R.L	1.55
Caterpillar Marine Power UK	1.55
NSK	1.55
Perkins Engines Company Ltd	1.55

Assessment Rates

The Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), for NSK we calculated an importer-specific assessment rate by dividing the total amount of dumping for the reviewed sales by the total entered vale of those reviewed sales for each importer.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. This clarification will apply to entries of subject merchandise during the POR produced by NSK, for which it did not know its merchandise was destined for the United States. We will instruct CBP to liquidate unreviewed entries at the country-specific all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.[6]

For the companies which were not selected for individual examination and for the companies to which we are applying adverse facts available, we will instruct CBP to assess antidumping duties at a rate equal to the weighted-average dumping margin listed above to all entries of subject merchandise produced and/or exported by such firms.

We intend to issue liquidation instructions to CBP 15 days after publication of the final results of these administrative reviews.

Cash Deposit Requirements

Because we revoked the antidumping duty orders on ball bearings and parts thereof from Japan and the United Kingdom effective September 15, 2011, no cash deposits for estimated antidumping duties on future entries of subject merchandise will be required.[7]

Notifications

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or the destruction of APO materials or conversion to judicial protective order is

[4] *See* the memorandum from Deputy Assistant Secretary Christian Marsh to Assistant Secretary Paul Piquado entitled, ''Issues and Decision Memorandum for the Antidumping Duty Administrative Review of Ball Bearings and Parts Thereof from the United Kingdom; 2010–2011,'' dated concurrently with and hereby adopted by this notice (Issues and Decision Memorandum).

[5] On November 24, 2014, Enforcement and Compliance changed the name of Enforcement and Compliance's AD and CVD Centralized Electronic Service System (''IA ACCESS'') to AD and CVD Centralized Electronic Service System (''ACCESS''). The Web site location was changed from *http://iaaccess.trade.gov* to *http://access.trade.gov.* The Final Rule changing the references to the Regulations can be found at 79 FR 69046 (November 20, 2014).

[6] For a full discussion of this clarification, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[7] *See Ball Bearings and Parts Thereof From Japan and the United Kingdom: Final Results of Sunset Reviews and Revocation of Antidumping Duty Orders,* 79 FR 16771 (March 26, 2014).

hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

These final results of administrative reviews are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: January 21, 2015.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix

I. Summary
II. Background
III. Company Abbreviations
IV. Sales Below Cost in the Home Market
V. Discussion of the Issues
  1. Application of an Alternative Comparison Methodology
  2. Resumption of the Review
  3. Adverse Facts Available
  4. Adverse-Facts-Available Rate
VI. Recommendation

[FR Doc. 2015–01481 Filed 1–26–15; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–016]

Certain Passenger Vehicle and Light Truck Tires From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value; Preliminary Affirmative Determination of Critical Circumstances; In Part and Postponement of Final Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Department) preliminarily determines that certain Passenger Vehicle and Light Truck Tires (passenger tires) from the People's Republic of China (PRC) are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733(b) of the Tariff Act of 1930, as amended (the Act). The period of investigation (POI) is October 1, 2013, through March 31, 2014. The estimated weighted-average dumping margins of sales at LTFV are shown in the ''Preliminary Determination'' section of this notice. Interested parties are invited to comment on this preliminary determination.

DATES: *Effective Date:* January 27, 2015.

FOR FURTHER INFORMATION CONTACT: Toni Page, Lingjun Wang, or Jun Jack Zhao, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–1398, (202) 482–2316, or (202) 482–1396, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department published the notice of initiation of this investigation on July 21, 2014.[1] Pursuant to section 733(c)(1)(A) of the Act, on October 9, 2014, the Department postponed this preliminary LTFV determination by a period of 50 days.[2]

Scope of the Investigation

On December 30, 2014, the Department published an amended preliminary determination in the companion countervailing duty (CVD) investigation of passenger tires from the PRC, which contains an amended scope of this investigation.[3] For a full description of the amended scope of this investigation, *see* ''Scope of Investigation'' at Appendix I of this notice.

Methodology

The Department conducted this investigation in accordance with section 731 of the Act. We calculated export prices and constructed export prices in accordance with section 772 of the Act. Because the PRC is a non-market economy within the meaning of section 771(18) of the Act, we calculated normal value (NV) in accordance with section 773(c) of the Act.

For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum.[4]

Combination Rates

In the *Initiation Notice,* the Department stated that it would calculate combination rates for the respondents that are eligible for a separate rate in this investigation. Policy Bulletin 05.1 describes this practice.[5]

Preliminary Determination

The Department preliminarily determines that the following weighted-average dumping margins exist for the exporter-producer combinations listed below during the period October 1, 2013, through March 31, 2014:

Exporter(s)	Producer(s)	Weighted-average dumping margin (percent)
GITI:		
Giti Tire Global Trading Pte. Ltd., Giti Tire (USA) Ltd., Giti Tire (Anhui) Company Ltd., Giti Tire (Fujian) Company Ltd., Giti Tire (Hualin) Company Ltd.	Giti Tire (Anhui) Company Ltd., Giti Tire (Fujian) Company Ltd., Giti Tire (Hualin) Company Ltd.	19.17
Sailun Group:		
Sailun Group Co., Ltd., Sailun Tire International Corp., Shandong Jinyu Industrial Co., Ltd., Jinyu International Holding Co., Limited, Seatex International Inc., Dynamic Tire Corp., Husky Tire Corp., Seatex PTE. Ltd.	Sailun Group Co., Ltd., Shandong Jinyu Industrial Co., Ltd	36.26

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[1] *See Certain Passenger Vehicle and Light Truck Tires From the People's Republic of China: Initiation of Antidumping Duty Investigation,* 79 FR 42292 (July 21, 2014) (*Initiation Notice*).

[2] *See Certain Passenger Vehicle and Light Truck Tires From the People's Republic of China: Postponement of Preliminary Determination of Antidumping Duty Investigation,* 79 FR 61052 (October 9, 2014).

[3] *See Countervailing Duty Investigation of Certain Passenger Vehicle and Light Truck Tires From the People's Republic of China: Amended Affirmative Preliminary Determination,* 79 FR 78398 (December 30, 2014) at *Appendix-Scope of the Investigation*.

[4] *See* Memorandum to Paul Piquado, Assistant Secretary for Enforcement and Compliance, ''Decision Memorandum for the Preliminary Determination in the Antidumping Duty Investigation of Certain Passenger Vehicle and Light Truck Tires From the People's Republic of China'' (January 20, 2015) (Preliminary Decision Memorandum). A list of topics discussed in the Preliminary Decision Memorandum is found at Appendix II of this notice.

[5] *See* Enforcement and Compliance's Policy Bulletin No. 05.1, regarding, ''Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries,'' (April 5, 2005) (Policy Bulletin 05.1), available on the Department's Web site at *http://enforcement.trade.gov/policy/bull05-1.pdf.*

Exporter(s)	Producer(s)	Weighted-average dumping margin (percent)
Cooper Tire & Rubber Company	Cooper Chengshan (Shandong) Tire Co., Ltd., Cooper (Kunshan) Tire Co., Ltd.	27.72
Cooper Chengshan (Shandong) Tire Co., Ltd	Cooper Chengshan (Shandong) Tire Co., Ltd	27.72
Cooper (Kunshan) Tire Co., Ltd	Cooper (Kunshan) Tire Co., Ltd	27.72
Best Choice International Trade Co., Limited	Qingdao Sentury Tire Co., Ltd., Shandong Haohua Tire Co., Ltd., Beijing Capital Tire Co., Ltd.	27.72
Bridgestone (Wuxi) Tire Co., Ltd	Bridgestone (Wuxi) Tire Co., Ltd	27.72
Bridgestone Corporation	Bridgestone (Wuxi) Tire Co., Ltd	27.72
Cheng Shin Tire & Rubber (China) Co., Ltd	Cheng Shin Tire & Rubber (China) Co., Ltd., Cheng Shin Tire & Rubber (Chongqing) Co., Ltd.	27.72
Crown International Corporation	Shandong Guofeng Rubber Plastics Co., Ltd., Shandong Haohua Tire Co., Ltd., Shandong Jinyu Industrial Co., Ltd., Doublestar-Dongfeng Tyre Co., Ltd., Shandong Yongshong Rubber Group Co., Ltd., Shengtai Group Co., Ltd., Qingdao .Doublestar Tire Industrial Co., Ltd., Shandong Yongtai Chemical Co., Ltd.	27.72
Goodyear Dalian Tire Company Limited	Goodyear Dalian Tire Company Limited	27.72
Guangzhou Pearl River Rubber Tyre Ltd	Guangzhou Pearl River Rubber Tyre Ltd	27.72
Hankook Tire China Co., Ltd	Hankook Tire China Co., Ltd	27.72
Hebei Tianrui Rubber Co., Ltd	Hebei Tianrui Rubber Co., Ltd	27.72
Hong Kong Tiancheng Investment & Trading Co., Limited	Shandong Linglong Tyre Co., Ltd	27.72
Hong Kong Tri-Ace Tire Co., Limited	Shandong Yongtai Chemical Co., Ltd., Doublestar Dongfeng Tyre Co., Ltd.	27.72
Hwa Fong Rubber (Hong Kong) Ltd	Hwa Fong Rubber (Suzhou) Co., Ltd	27.72
Jiangsu Hankook Tire Co., Ltd	Jiangsu Hankook Tire Co., Ltd	27.72
Kenda Rubber (China) Co., Ltd	Kenda Rubber (China) Co., Ltd	27.72
Kumho Tire Co., Inc	Kumho Tire (Tianjin) Co., Inc., Nanjing Kumho Tire Co., Ltd., Kumho Tire (Changchun) Co., Inc.	27.72
Liaoning Permanent Tyre Co., Ltd	Liaoning Permanent Tyre Co., Ltd	27.72
Longkou Xinglong Tyre Co., Ltd	Longkou Xinglong Tyre Co., Ltd	27.72
Mayrun Tyre (Hong Kong) Limited	South China Tire &Rubber Co., Ltd., Shandong Haohua Tire Co., Ltd.	27.72
Nankang (Zhangjiagang Free Trade Zone) Rubber Industrial Co., Ltd.	Nankang (Zhangjiagang Free Trade Zone) Rubber Industrial Co., Ltd.	27.72
Pirelli Tyre Co., Ltd	Pirelli Tyre Co., Ltd	27.72
Qingdao Nama Industrial Co., Ltd	Shandong Guofeng Rubber Plastics Co., Ltd., Shandong Hengyu Science & Technology Co., Ltd., Shandong Longyue Rubber Co., Ltd., Shandong Haohua Tire Co., Ltd., Shouguang Firemax Tyre Co., Ltd., Shandong Zhongyi Rubber Co., Ltd., Shandong Yonking Rubber Co., Ltd., Shandong Hongsheng Rubber Technology Co., Ltd.	27.72
Qingdao Au-Shine Group Co., Limited	Shandong Gulun Rubber Co., Ltd	27.72
Qingdao Crown Chemical Co., Ltd	Shandong Guofeng Rubber Plastics Co., Ltd., Shandong Haohua Tire Co., Ltd., Shandong Jinyu Industrial Co., Ltd., Doublestar-Dongfeng Tyre Co., Ltd., Shandong Yongsheng Rubber Group Co., Ltd.	27.72
Qingdao Free Trade Zone Full-World International Trading Co., Ltd.	Shandong Zhentai Group Co., Ltd., Longkou Xinglong Tyre Co., Ltd., Hebei Tianrui Rubber Co., Ltd.	27.72
Qingdao Fullrun Tyre Tech Corp., Ltd	Qingdao Fullrun Tyre Tech Corp., Ltd	27.72
Qingdao Honghua Tyre Factory	Qingdao Honghua Tyre Factory	27.72
Qingdao Nexen Tire Corporation	Qingdao Nexen Tire Corporation	27.72
Qingdao Odyking Tyre Co., Ltd	Doublestar Dongfeng Tyre Co., Ltd., Shandong Fengyuan Tire Manufacturing Co., Ltd., Shouguang Firemax Tyre Co., Ltd.	27.72
Qingdao Qianzhen Tyre Co., Ltd	Qingdao Qianzhen Tyre Co., Ltd	27.72
Qingdao Qihang Tyre Co., Ltd	Qingdao Qihang Tyre Co., Ltd	27.72
Qingdao Qizhou Rubber Co., Ltd	Qingdao Qizhou Rubber Co., Ltd	27.72
Qingdao Sentury Tire Co., Ltd	Qingdao Sentury Tire Co., Ltd	27.72
Shandong Duratti Rubber Corporation Co., Ltd	Shandong Duratti Rubber Corporation Co., Ltd	27.72
Shandong Fengyuan Tire Manufacturing Co., Ltd	Shandong Fengyuan Tire Manufacturing Co., Ltd	27.72
Shandong Guofeng Rubber Plastics Co., Ltd	Shandong Guofeng Rubber Plastics Co., Ltd	27.72
Shandong Haohua Tire Co., Ltd	Shandong Haohua Tire Co., Ltd	27.72
Shandong Haolong Rubber Tire Co., Ltd	Shandong Haolong Rubber Tire Co., Ltd	27.72
Shandong Hawk International Rubber Industry Co., Ltd	Shandong Hawk International Rubber Industry Co., Ltd	27.72
Shandong Hengyu Science & Technology Co., Ltd	Shandong Hengyu Science & Technology Co., Ltd	27.72
Shandong Linglong Tyre Co., Ltd	Shandong Linglong Tyre Co., Ltd	27.72
Shandong Longyue Rubber Co., Ltd	Shandong Longyue Rubber Co., Ltd	27.72
Shandong New Continent Tire Co., Ltd	Shandong New Continent Tire Co., Ltd	27.72
Shandong Province Sanli Tire Manufactured Co., Ltd	Shandong Province Sanli Tire Manufactured Co., Ltd	27.72
Shandong Shuangwang Rubber Co., Ltd	Shandong Shuangwang Rubber Co., Ltd	27.72
Shandong Wanda Boto Tyre Co., Ltd	Shandong Wanda Boto Tyre Co., Ltd	27.72

Exporter(s)	Producer(s)	Weighted-average dumping margin (percent)
Shandong Yongtai Chemical Co., Ltd	Shandong Yongtai Chemical Co., Ltd	27.72
Shandong Zhongyi Rubber Co., Ltd	Shandong Zhongyi Rubber Co., Ltd	27.72
Shandong Huitong Tyre Co., Ltd	Shandong Huitong Tyre Co., Ltd., Laiwu Sunshine Tyre Co., Ltd.	27.72
Shengtai Group Co., Ltd	Shengtai Group Co., Ltd., Shandong Shengshitailai Rubber Technology Co., Ltd.	27.72
Shifeng Juxing Tire Co., Ltd	Shifeng Juxing Tire Co., Ltd	27.72
Shouguang Firemax Tyre Co., Ltd	Shouguang Firemax Tyre Co., Ltd	27.72
Southeast Mariner International Co., Ltd	Dongying Zhongyi Rubber Co., Ltd., Shandong Haohua Tire Co., Ltd.	27.72
Techking Tires Limited	Shandong Longyue Rubber Co., Ltd	27.72
Toyo Tire (Zhangjiagang) Co., Ltd	Toyo Tire (Zhangjiagang) Co., Ltd	27.72
Triangle Tyre Co., Ltd	Triangle Tyre Co., Ltd	27.72
Tyrechamp Group Co., Ltd	Shandong Haohua Tire Co., Ltd., Sichuan Tyre&Rubber Co., Ltd., Shandong Anchi Tyres Co., Ltd., Beijing Capital Tire Co. Ltd., Shandong Wanda Boto Tyre Co., Ltd., Shandong Wosen Rubber Co., Ltd., Shandong Zhentai Group Co., Ltd., Shandong Yonking Rubber Co., Ltd., Qingdao Doublestar Tyre Industrial Co., Ltd., South China Tire & Rubber Co. Ltd., Anhui Heding Tire Technology Co., Ltd.	27.72
Weihai Ping'an Tyre Co., Ltd	Weihai Ping'an Tyre Co., Ltd	27.72
Weihai Zhongwei Rubber Co., Ltd	Weihai Zhongwei Rubber Co., Ltd	27.72
Wendeng Sanfeng Tyre Co., Ltd	Wendeng Sanfeng Tyre Co., Ltd	27.72
Winrun Tyre Co., Ltd	Shaanxi Yanchang Petroleum Group Rubber Co. Ltd	27.72
Zenith Holdings (HK) Limited	Shandong Linglong Tyre Co., Ltd	27.72
Zhaoqing Junhong Co., Ltd	Zhaoqing Junhong Co., Ltd	27.72
PRC-Wide Entity		87.99

As detailed in the Preliminary Decision Memorandum, Yongsheng Rubber Group Co., Ltd. (Yongsheng), a mandatory respondent in this investigation, did not demonstrate that it is entitled to a separate rate. Accordingly, we consider Yongsheng to be part of the PRC-Wide Entity.

Preliminary Affirmative Determination of Critical Circumstances, In Part

On September 12, 2014, United Steel, Paper, and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO, CLC (Petitioner), timely filed a critical circumstances allegation, pursuant to section 733(e) of the Act and 19 CFR 351.206, alleging that critical circumstances exist with respect to imports of passenger tires from the PRC.[6] We preliminarily determine that critical circumstances do not exist for GITI and the Sailun Group, while they do exist for all non-individually investigated companies and the PRC-wide entity. A discussion of our determination can be found in the Preliminary Decision Memorandum at the section, ''Preliminary Determination of Critical Circumstances, In Part.''

Disclosure and Public Comment

The Department intends to disclose calculations performed for this preliminary determination to parties in this proceeding within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance, through Enforcement and Compliance's electronic records system, ACCESS, no later than seven days after the date on which the final verification report is issued in this proceeding.[7] Rebuttal briefs, limited to issues raised in case briefs, may be submitted through ACCESS no later than five days after the deadline for case briefs.[8] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, or to participate in a hearing if one is requested, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, filed electronically through ACCESS. Electronically filed case briefs/written comments and hearing requests must be received successfully in their entirety by the Department's electronic records system, ACCESS, by 5:00 p.m. Eastern Standard Time. Hearing requests must be received by the Department within 30 days after the date of publication of this notice[9] and should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be presented at the hearing. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, at a time and location to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, the Department will instruct U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of passenger tires from the PRC, as described in the ''Scope of the Investigation'' at Appendix I, entered, or withdrawn from warehouse, for consumption on or after the date of

[6] *See* Letter from Petitioner to the Secretary of Commerce, ''Certain Passenger Vehicle and Light Truck Tires From the People's Republic of China—Petitioner's Critical Circumstances Allegation,'' dated September 12, 2014.

[7] *See* 19 CFR 351.309(c).

[8] *See* 19 CFR 351.309(d).

[9] *See* 19 CFR 351.310(c).

publication of this notice in the **Federal Register**.

Section 733(e)(2) of the Act provides that, given an affirmative determination of critical circumstances, any suspension of liquidation shall apply to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the later of (a) the date which is 90 days before the date on which the suspension of liquidation was first ordered, or (b) the date on which notice of initiation of the investigation was published. As described above, we preliminarily find that critical circumstances exist for imports of passenger tires from the PRC produced or exported by the non-individually investigated companies and the PRC-wide entity. Accordingly, for the non-individually investigated companies and the PRC-wide entity, in accordance with section 733(e)(2)(A) of the Act, the suspension of liquidation shall apply to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the publication of this notice.

Pursuant to 19 CFR 351.205(d), the Department will instruct CBP to require a cash deposit [10] equal to the weighted-average amount by which NV exceeds U.S. price as follows: (1) The cash deposit rate for the exporter/producer combination listed in the table above will be the rate identified for that combination in the table, adjusted where appropriate for export subsidies [11] and estimated domestic subsidy pass-through; [12] (2) for all combinations of PRC exporters/producers of merchandise under consideration that have not received their own separate rate above, the cash-deposit rate will be the cash deposit rate established for the PRC-wide entity, 87.99 percent; and (3) for all non-PRC exporters of the merchandise under consideration which have not received their own separate rate above, the cash-deposit rate will be the cash deposit rate applicable to the PRC exporter/producer combination that supplied that non-PRC exporter. The suspension of liquidation and cash deposit instructions will remain in effect until further notice.

As stated previously, we will adjust cash deposit rates by the amount of export subsidies, where appropriate. In the companion CVD investigation, GITI received a calculated export subsidy rate of 0.45 percent while the all-others companies received a calculated export subsidy rate of 0.28 percent.[13] Therefore, we will offset GITI's cash deposit rate of 19.17 percent by 0.45 percent, while the Sailun Group's and the Separate Rate entities' cash deposit rates of 36.26 percent and 27.72 percent, respectively, will be reduced by 0.28 percent as these companies were considered ''all-others'' companies in the companion CVD case. Cooper Tire & Rubber Company, Cooper (Kunshan) Tire Co., Ltd., and Cooper Chengshan (Shandong) Tire Co., Ltd. (collectively, Cooper), did not receive a calculated export subsidy rate in the companion CVD investigation; therefore, we are not adjusting their cash deposit rate for export subsidies. Finally, we are not adjusting the cash deposit rate applicable to the PRC-wide entity for export subsidies.[14]

Pursuant to 777A(f) of the Act, we are also adjusting preliminary cash deposit rates for estimated domestic subsidy pass-through, where appropriate. We will adjust Cooper's, the Sailun Group's, and the Separate Rate recipients' cash deposit rates by 6.97 percent to account for estimated domestic subsidy pass-through.[15] We are not adjusting GITI's rate for estimated domestic subsidy pass-through because GITI has not demonstrated eligibility for an adjustment.[16] Finally, we are also not adjusting the PRC-wide entity rate for estimated domestic subsidy pass-through.[17]

Postponement of Final Determination

Pursuant to request from the mandatory respondent GITI,[18] we are postponing the final determination in accordance with section 735(a)(2)(A) of the Act. In addition, GITI requested to extend the application of the provisional measures prescribed under 733(d) of the Act and 19 CFR 351.210(e)(2), from a four-month period to a six-month period. The suspension of liquidation described above will be extended accordingly. Accordingly, we intend to make our final determination no later than 135 days after the date of publication of this preliminary determination, pursuant to section 735(a)(2) of the Act.[19]

International Trade Commission (ITC) Notification

In accordance with section 733(f) of the Act, we notified the ITC of our preliminary affirmative determination of sales at LTFV. Because the preliminary determination in this investigation is affirmative, section 735(b)(2) of the Act requires the ITC to make its final determination as to whether the domestic industry in the United States is materially injured, threatened with material injury, or is materially retarded, by reason of imports of passenger tires from the PRC, or sales (or the likelihood of sales) for importation, of the merchandise under consideration before the later of 120 days after the date of this preliminary determination or 45 days after our final determination. Because we are postponing the deadline for our final determination to 135 days from the date of publication of this preliminary determination, the ITC will make its final determination no later than 45 days after our final determination.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: January 20, 2015.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The scope of this investigation is passenger vehicle and light truck tires. Passenger vehicle and light truck tires are new pneumatic tires, of rubber, with a passenger vehicle or light truck size designation. Tires covered by this investigation may be tube-type, tubeless, radial, or non-radial, and they may be intended for sale to original equipment manufacturers or the replacement market.

Subject tires have, at the time of importation, the symbol ''DOT'' on the

[10] *See Modification of Regulations Regarding the Practice of Accepting Bonds During the Provisional Measures Period in Antidumping and Countervailing Duty Investigations,* 76 FR 61042 (October 3, 2011).

[11] *See* section 772(c)(1)(C) of the Act; *see also Notice of Final Determination of Sales at Less Than Fair Value, and Negative Determination of Critical Circumstances: Certain Lined Paper Products from India,* 71 FR 45012 (August 8, 2006), and accompanying Issues and Decision Memorandum at Comment 1.

[12] For further discussion, *see* the Preliminary Decision Memorandum at the section, ''Section 777A(f) of the Act.''

[13] *See Countervailing Duty Investigation of Certain Passenger Vehicle and Light Truck Tires From the People's Republic of China: Amended Affirmative Preliminary Determination,* 79 FR 78398 (December 30, 2014) and accompanying Allegation of Significant Ministerial Errors in the Preliminary Determination of the Countervailing Duty Investigation of Certain Passenger Vehicle and Light Truck Tires From the People's Republic of China (PRC Tires Amended CVD Preliminary Determination); *see also* Memorandum to the File Re: Calculation of the All-Others Amended Preliminary Rate (December 19, 2014).

[14] *Id.*

[15] *See* Preliminary Decision Memorandum at ''Adjustment Under Section 777A(F) of the Act.''

[16] *Id.*

[17] *Id.*

[18] *See* Letter from GITI to the Secretary of Commerce regarding ''Passenger Vehicle and Light Truck Tires from the People's Republic of China; Request for Extension of the Final Determination'' (January 13, 2013).

[19] *See also* 19 CFR 351.210(b)(2) and (e).

sidewall, certifying that the tire conforms to applicable motor vehicle safety standards. Subject tires may also have the following prefixes or suffix in their tire size designation, which also appears on the sidewall of the tire:

Prefix designations:

P—Identifies a tire intended primarily for service on passenger cars

LT—Identifies a tire intended primarily for service on light trucks

Suffix letter designations:

LT—Identifies light truck tires for service on trucks, buses, trailers, and multipurpose passenger vehicles used in nominal highway service.

All tires with a ''P'' or ''LT'' prefix, and all tires with an ''LT'' suffix in their sidewall markings are covered by this investigation regardless of their intended use.

In addition, all tires that lack a ''P'' or ''LT'' prefix or suffix in their sidewall markings, as well as all tires that include any other prefix or suffix in their sidewall markings, are included in the scope, regardless of their intended use, as long as the tire is of a size that is among the numerical size designations listed in the passenger car section or light truck section of the *Tire and Rim Association Year Book,* as updated annually, unless the tire falls within one of the specific exclusions set out below.

Passenger vehicle and light truck tires, whether or not attached to wheels or rims, are included in the scope. However, if a subject tire is imported attached to a wheel or rim, only the tire is covered by the scope.

Specifically excluded from the scope of this investigation are the following types of tires:

(1) Racing car tires; such tires do not bear the symbol ''DOT'' on the sidewall and may be marked with ''ZR'' in size designation;

(2) new pneumatic tires, of rubber, of a size that is not listed in the passenger car section or light truck section of the *Tire and Rim Association Year Book;*

(3) pneumatic tires, of rubber, that are not new, including recycled and retreaded tires;

(4) non-pneumatic tires, such as solid rubber tires;

(5) tires designed and marketed exclusively as temporary use spare tires for passenger vehicles which, in addition, exhibit each of the following physical characteristics:

(a) the size designation and load index combination molded on the tire's sidewall are listed in Table PCT–1B (''T'' Type Spare Tires for Temporary Use on Passenger Vehicles) of the *Tire and Rim Association Year Book,*

(b) the designation ''T'' is molded into the tire's sidewall as part of the size designation, and,

(c) the tire's speed rating is molded on the sidewall, indicating the rated speed in MPH or a letter rating as listed by *Tire and Rim Association Year Book,* and the rated speed is 81 MPH or a ''M'' rating;

(6) tires designed and marketed exclusively for specialty tire (ST) use which, in addition, exhibit each of the following physical characteristics:*

(a) the size designation molded on the tire's sidewall is listed in the ST sections of the *Tire and Rim Association Year Book,*

(b) the designation ''ST'' is molded into the tire's sidewall as part of the size designation,

(c) the tire incorporates a warning, prominently molded on the sidewall, that the tire is ''For Trailer Service Only'' or ''For Trailer Use Only'',

(d) the load index molded on the tire's sidewall meets or exceeds those load indexes listed in the *Tire and Rim Association Year Book* for the relevant ST tire size, and

(e) the tire's speed rating is molded on the sidewall, indicating the rated speed in MPH or a letter rating as listed by TRA, and the rated speed does not exceed 81 MPH or an ''M'' rating;

(7) tires designed and marketed exclusively for off-road use and which, in addition, exhibit each of the following physical characteristics:

(a) the size designation and load index combination molded on the tire's sidewall are listed in the off-the-road, agricultural, industrial or ATV section of the *Tire and Rim Association Year Book,*

(b) in addition to any size designation markings, the tire incorporates a warning, prominently molded on the sidewall, that the tire is ''Not For Highway Service'' or ''Not for Highway Use'',

(c) the tire's speed rating is molded on the sidewall, indicating the rated speed in MPH or a letter rating as listed by the *Tire and Rim Association Year Book,* and the rated speed does not exceed 55 MPH or a ''G'' rating, and

(d) the tire features a recognizable off-road tread design.

The products covered by the investigation are currently classified under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 4011.10.10.10, 4011.10.10.20, 4011.10.10.30, 4011.10.10.40, 4011.10.10.50, 4011.10.10.60, 4011.10.10.70, 4011.10.50.00, 4011.20.10.05, and 4011.20.50.10. Tires meeting the scope description may also enter under the following HTSUS subheadings: 4011.99.45.10, 4011.99.45.50, 4011.99.85.10, 4011.99.85.50, 8708.70.45.45, 8708.70.45.60, 8708.70.60.30, 8708.70.60.45, and 8708.70.60.60. While HTSUS subheadings are provided for convenience and for customs purposes, the written description of the subject merchandise is dispositive.

* We are currently suspending requirements (6)(d) and (e); therefore, tires entered, or withdrawn from warehouse for consumption that meet exclusion requirements (6)(a)–(c) above are excluded from the scope of this investigation.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope Comments
IV. Scope of the Investigation
V. Single Entity Treatment
VI. Discussion of the Methodology
VII. Application of Facts Available and Adverse Inferences
VIII. Preliminary Determination of Critical Circumstances, in Part
IX. Adjustment Under Section 777A(F) of the Act
X. Postponement of Final Determination
XI. Verification
XII. ITC Notification
XIII. Conclusion

[FR Doc. 2015–01504 Filed 1–26–15; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Submission for OMB Review; Comment Request; Patent Prosecution Highway (PPH) Program

The United States Patent and Trademark Office (USPTO) will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. 35).

Agency: United States Patent and Trademark Office (USPTO).

Title: Patent Prosecution Highway (PPH) Program.

OMB Control Number: 0651–0058.

Form Number(s):

- PTO/SB/20(GLBL/AT/AU/BR/CA/CN/CO/CZ/DE/DK/EP/ES/FI/HU/IL/IS/JP/KR/MX/NI/NO/PH/PL/PT/RU/SG/TW/UK).
- PTO/SB/20(PCT–AT/PCT–AU/PCT–CA/PCT–CN/PCT–EP/PCT–ES/PCT–FI/PCT–IL/PCT–JP/PCT–KR/PCT–NPI/PCT–RU/PCT–SE/PCT–US).

Type of Request: Regular.

Number of Respondents: 8,210.

Average Hours per Response: 2.

Burden Hours: 16,420 hours annually.

Cost Burden: $0.

Needs and Uses: The Patent Prosecution Highway (PPH) is a framework in which an application whose claims have been determined to be patentable by an Office of Earlier Examination (OEE) is eligible to go through an accelerated examination in an Office of Later Examination with a simple procedure upon an applicant's request. By leveraging the search and examination work product of the OEE, PPH programs (1) deliver lower prosecution costs, (2) support applicants in their efforts to obtain stable patent rights efficiently around the world, and (3) reduce the search and examination burden, while improving the examination quality, of participating patent offices.

The forms in this collection allow participants to file in a U.S. application a request to make the U.S. application special under a PPH or PCT–PPH program.

Affected Public: Businesses or other for-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

This information collection request may be viewed at reginfo.gov. Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments may be submitted by any of the following methods:

• Email: *InformationCollection@uspto.gov.* Include ''0651–0058 Patent Prosecution Highway (PPH) Program'' in the subject line of the message.

• *Mail:* Marcie Lovett, Records Management Division Director, Office of the Chief Information Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

• *Federal Rulemaking Portal: http://www.regulations.gov.*

Dated: January 21, 2015.

Marcie Lovett,

Records Management Division Director, USPTO, Office of the Chief Information Officer.

[FR Doc. 2015–01392 Filed 1–26–15; 8:45 am]

BILLING CODE 3510–16–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB–2015–0001]

Request for Information Regarding an Initiative on Safe Student Banking

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for information.

SUMMARY: The Consumer Financial Protection Bureau (Bureau or CFPB) seeks feedback on a draft *Safe Student Account Scorecard* that offers information to colleges and universities when soliciting agreements from financial institutions to market safe and affordable financial accounts for their students. The Bureau seeks comment from the public, including student and parent consumers, institutions of higher education, and financial institutions.

DATES: Comments must be received on or before March 9, 2015.

ADDRESSES: You may submit comments, identified by Docket No. CFPB–2015–0001, by any of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

• *Email: FederalRegisterComments@cfpb.gov.* Include the title and Docket No. CFPB–2015–0001 in the subject line of the message.

• *Mail:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552.

• *Hand Delivery/Courier:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1275 First Street NE., Washington, DC 20002.

Instructions: All submissions should include the agency name and docket number for this proposal. Because paper mail in the Washington, DC area and at the Bureau is subject to delay, commenters are encouraged to submit comments electronically. In general, all comments received will be posted without change to *http://www.regulations.gov.* In addition, comments will be available for public inspection and copying at 1275 First Street NE., Washington, DC 20002, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect the documents by telephoning (202) 435–7275.

All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information, such as account numbers or social security numbers, should not be included. Comments generally will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: For general inquiries, submission process questions or any additional information, please contact Monica Jackson, Office of the Executive Secretary, at 202–435–7275.

Authority: 12 U.S.C. 5511(c).

SUPPLEMENTARY INFORMATION: Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) that established the Bureau, part of the Bureau's mission is to empower consumers to take control over their economic lives. The Bureau is specifically charged with promoting financial education, researching developments in markets for consumer financial services and products, and providing information, guidance, and technical assistance regarding the offering and provision of consumer financial products or services to traditionally underserved consumers and communities.

Section 1021 of the Dodd-Frank Act charges the Bureau with ''collecting, researching, monitoring and publishing information'' about consumer financial products and services. The Bureau seeks feedback on a potential *Safe Student Account Scorecard* that colleges and universities can voluntarily use when negotiating with providers to ensure that financial accounts marketed to their students are accounts that the college or university deems safe and affordable.

The Bureau is interested in receiving comments to develop a *Safe Student Account Scorecard.* The Bureau is therefore interested in responses to the questions outlined below. The deadline for submission of comments is March 9, 2015. The Bureau encourages comments from the public, including:

• Student and parent consumers;

• Student associations and consumer organizations;

• Institutions of higher education and affiliated parties;

• Providers of financial aid disbursement services;

• Financial institutions; and

• Other interested parties.

Please note that the Bureau is not soliciting individual student account information in response to this notice and request for information, nor is the Bureau seeking personally identifiable information (PII) regarding student accounts from the parties or any third party.

All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information, such as account numbers or social security numbers, should not be included. Comments generally will not be edited to remove any identifying or contact information.

Background

Colleges and universities have long played a role in the offering of financial products to students. Institutions of higher education have partnered with banks and nonbanks to offer a variety of financial products and services, including loans under the now-discontinued Federal Family Educational Loan (FFEL) Program, private student loans, credit cards, student checking accounts, and closed-loop stored value card services tied to student ID cards.

In February 2013, the Bureau published a Notice and Request for Information on Financial Products Marketed to Students Enrolled in Institutions of Higher Education.[1] In September 2013, the Bureau hosted the Banking on Campus forum, seeking comment on the market from institutions of higher education, nonbank financial companies, technology providers, depository institutions, students, and consumer advocates.[2]

The Bureau found that financial product marketing partnerships have shifted from credit cards and preferred student lender agreements toward student debit and prepaid cards. There are now more agreements to market student checking, debit, and prepaid

cards than agreements to market credit cards.[3]

According to the Government Accountability Office (GAO), at least 852 schools had agreements to provide debit or prepaid card services to their students as of July 2013. Enrollment at these schools accounts for about 40 percent of all postsecondary students.[4]

Arrangements Between Institutions of Higher Education and Financial Institutions

Institutions of higher education have developed commercial arrangements with financial institutions to market a range of products to students. For example, some of these arrangements are limited to leasing university-owned property while others may be a sponsorship agreement or affiliated with the institution of higher education's athletics program. In many cases, these arrangements provide financial institutions unique or special marketing access to students.[5]

Deposit Accounts Linked to Student ID Cards. Some institutions of higher education automatically link bank accounts to their student ID cards, while others allow their students to choose whether or not to opt in to linking their accounts. In 2012, the National Association of College and University Business Officers (NACUBO) found that 12 percent of schools surveyed had linked student ID cards to deposit accounts.[6] According to the GAO, the ability to link an account might impact a student's choice in adopting a financial product.[7]

Marketing Access on University Property. Some financial institutions include exclusive marketing, naming rights, and other agreements in their contracts with schools. In addition to co-branding on student ID cards, financial institutions sometimes give exclusive rights to brand events and place signage on university property. According to a report published by a consumer organization submitted as a public comment to the Bureau, many students often think of co-branding as an endorsement.[8]

Pay-for-Performance Bonuses. Many institutions of higher education receive indirect or direct compensation from financial institutions in connection with the offering of financial products. Some financial institutions offer direct payments for use of college trademarks and branding, others offer bonuses based on the number of student account sign-ups, while others offer discounted—or even completely free—services in exchange for marketing access.

Financial Aid Disbursement Accounts. Many students receive scholarships, grants, and student loans that cover more than the amount of their tuition, including costs like textbooks and transportation. Many institutions of higher education partner with third-party financial companies to disburse these funds directly to students. These companies may even seek to promote a specific financial product where financial aid proceeds could be credited. In 2012 and 2014, federal agencies issued consent orders that involved one of the largest market participants in the financial aid disbursement market for alleged violations of various Federal consumer financial laws.[9]

Additional Challenges and Risks

While partnerships between financial institutions and universities have the potential to provide benefits to students, there have also been challenges.

In 2007, the New York Attorney General reported questionable conduct by school officials, including university personnel who were accepting compensation and gifts from lenders included on school preferred lender lists and officials who owned stock in companies offering loans to students.[10] The Higher Education Opportunity Act of 2008 [11] addressed many of these practices by requiring schools to clearly disclose the method and criteria used to choose lenders appearing on a ''preferred lender list'' and to develop a code of conduct. The Act also generally restricted co-branding, such as the use of a university logo or mascot.[12]

Many colleges and universities have also formed credit card marketing agreements with financial institutions, which in some cases have resulted in targeted marketing and incentive payments to the school. The Credit CARD Act of 2009 [13] restricted the use of tangible inducements (''freebies'') for students when marketing a credit card on campus, and required credit card issuers who enter into ''college card affinity agreements'' to submit agreements [14] to a public database now administered by the CFPB.[15]

The CFPB has called on financial institutions to voluntarily disclose agreements with institutions of higher education to market products to students.[16] Information about these arrangements is already required to be disclosed when marketing credit cards and private student loans to students. The CARD Act requirement is limited to credit cards and does not include other financial products, including prepaid cards and deposit accounts with debit cards, marketed through schools. The CFPB has previously noted that making these agreements available for all financial products can demonstrate a commitment to transparency by financial institutions and their partner schools, helping students and their families understand basic information about these arrangements before choosing a specific product.[17]

The GAO also noted that ''increased transparency for college card agreements could help ensure that the terms are fair and reasonable for students and the agreements are free from conflicts of interest.'' [18] Additionally, NACUBO has urged institutions to publicly disclose the terms of these agreements as they relate to debit card arrangements used to access student loan and scholarship proceeds.[19]

According to a NACUBO survey of school officials, 69 percent of debit card arrangements are already available to the public.[20] However, finding these agreements can be difficult. For example, a student may need to file a formal request under a state open records law to obtain the information. Easier access to these arrangements may increase the public's confidence that these agreements are structured in ways that consider the interests of students.

Mechanisms for Developing Partnerships

Institutions of higher education use a variety of mechanisms to develop partnerships with financial institutions. Many colleges solicit marketing partners by publishing a Request for Proposal (RFP) as part of a formal process to seek information from financial institutions. According to a NACUBO survey, 60 percent of schools use a competitive bidding process for establishing their relationships with vendors.[21]

The Bureau's scan of publicly available RFPs showed that RFPs from institutions of higher education generally solicit proposals on a wide range of banking services and student banking affinity arrangements are usually only one component of those services. It appears that when evaluating these arrangements, scores generally do not heavily weigh student account features. Evaluation criteria rarely included a consideration of product features and costs. Some of the RFPs included a scoring system, where financial compensation to the school was heavily weighted.

In light of recent concerns about the quality of banking products being offered to students through official partnerships, institutions of higher education have sought advice from the Bureau about how to ensure that

product offerings marketed to their students are superior to those that are generally available.

Safe Student Account Scorecard

The Bureau is seeking public input on material that institutions of higher education can choose to include in their RFPs when soliciting marketing partnerships with financial institutions. The scorecard, once finalized, can help committees evaluating contract proposals to determine whether product offerings have safe features and offer superior value to students, as well as whether financial institutions are able to adhere to certain guidelines for transparency and for marketing practices. The goal of the *Safe Student Account Scorecard* will be to provide responsible institutions of higher education with a standardized format to solicit critical cost and feature information from prospective financial institution partners. Schools would be able to incorporate any or all aspects of the scorecard to meet their unique needs.

For the purposes of soliciting detailed comments from the public on a scorecard, the Bureau drafted a sample version based on the FDIC's Model Safe Accounts Template.[22] A sample *Safe Student Account Scorecard* is available at *http://www.consumerfinance.gov/students/request-for-information-regarding-an-initiative-on-safe-student-banking/.*

The FDIC's template describes ''electronic, card-based accounts that limit acquisition and maintenance costs. Transaction accounts are checkless, allowing withdrawals only through automated teller machines, point-of-sale-terminals, automated clearinghouse pre-authorizations, and other automated means.'' The Bureau recognizes that the FDIC's template was not developed specifically for accounts to be utilized by students enrolled in institutions of higher education. In addition, the template may need to be adapted if institutions of higher education choose to enter marketing partnerships to offer other types of accounts.

In developing the draft for comment, the Bureau also considered public comments and testimony received as part of its 2013 Request for Information,[23] as well as public proceedings related to the negotiated rulemaking held by the U.S. Department of Education.[24]

Below are some general areas for which information is being sought. Please respond to any or all of the questions below:

1. How can institutions of higher education and students benefit from soliciting information on the features and cost of financial products marketed through a partnership with a financial institution?

2. How can the draft scorecard based on the FDIC Model Safe Accounts template be adapted to meet the needs of this specific market and to other types of products that institutions of higher education seek to offer to their students?

3. What are the potential advantages and disadvantages of separately negotiating arrangements with prospective financial institutions to market financial products to students, compared to including these arrangements as part of a broader relationship with a financial institution encompassing other services?

4. What factors would institutions of higher education consider when determining whether or not to include additional information on product features and cost as part of a Request for Proposal?

5. What other information would be useful for institutions of higher education to solicit from potential marketing partners to assist them in determining whether financial product offerings are safe and affordable for their students?

6. What tools or information would be helpful for institutions of higher education when comparing proposals from potential marketing partners and selecting the proposal offering the safest, most affordable products for students?

7. For existing arrangements between institutions of higher education and financial institutions to market student checking accounts, prepaid cards, and other financial products, what fees do students most frequently incur? To what degree do transaction patterns and fees vary among different student populations? How does this compare to the frequency of fee assessments on accounts unrelated to these marketing arrangements?

8. For which student financial products would a *Safe Student Account Scorecard* be most useful to institutions of higher education?

[1] Consumer Financial Protection Bureau, *Request for Information Regarding Financial Products to Students Enrolled in Institutions of Higher Education,* available at *http://www.regulations.gov/#!docketDetail;D=CFPB-2013-0003* (Feb. 2013).

[2] Consumer Financial Protection Bureau, *Banking on Campus Forum,* available at *http://files.consumerfinance.gov/f/201309_cfpb_banking-on-campus-forum.pdf* (Sept. 2013).

[3] Consumer Financial Protection Bureau, *College Credit Card Agreements: Annual Report to Congress,* available at *http://files.consumerfinance.gov/f/201412_cfpb_college-card-agreement-report-2014.pdf* (Dec. 2014).

[4] U.S. Gov't Accountability Office, *GAO–14–91, COLLEGE DEBIT CARDS: Actions needed to Address ATM Access, Student Choice, and Transparency,* available at *http://www.gao.gov/assets/670/660919.pdf* (Feb. 2014).

[5] Consumer Financial Protection Bureau, *What sunshine for student financial products can show us,* available at *http://www.consumerfinance.gov/blog/what-sunshine-for-student-financial-products-can-show-us/* (Feb. 2014).

[6] National Association of College and University Business Officers (NACUBO), *Students Refunds and Personal Banking at Colleges and Universities,* available at *http://www.nacubo.org/Documents/Initiatives/Campus_Card_Survey_Summary_FINAL.pdf* (Oct. 2012).

[7] U.S. Gov't Accountability Office, *GAO–14–91, COLLEGE DEBIT CARDS: Actions needed to Address ATM Access, Student Choice, and Transparency,* available at *http://www.gao.gov/assets/670/660919.pdf* (Feb. 2014).

[8] U.S. PIRG, *The Campus Debit Card Trap: Are Bank Partnerships Fair to Students?,* available at *http://www.uspirg.org/sites/pirg/files/reports/thecampusdebitcardtrap_may2012_uspef.pdf* (May 2012).

[9] Board of Governors of the Federal Reserve System, *Federal Reserve Board announces civil money penalty and issues cease and desist order against Cole Taylor Bank,* available at *http://www.federalreserve.gov/newsevents/press/enforcement/20140701b.htm* (July 2014).

Federal Deposit Insurance Corporation, *FDIC Announces Settlements With Higher One, Inc., New Haven, Connecticut, and the Bancorp Bank, Wilmington, Delaware for Unfair and Deceptive Practices,* available at *https://www.fdic.gov/news/news/press/2012/pr12092.html* (Aug. 2012).

[10] See for example, New York State Office of the Attorney General, *Press Release, Attorney General Cuomo Announces Settlement with Education Finance Partners Over its Student Loan Practices,* available at *http://www.ag.ny.gov/press-release/attorney-general-cuomo-announces-settlement-education-finance-partners-over-its* (Apr. 2007).

[11] Public Law 110–315.

[12] 20 U.S.C. 1019a.

[13] Public Law 111–24.

[14] 15 U.S.C. 1637(r).

[15] Consumer Financial Protection Bureau, *College Credit Card Agreements Database,* available at *http://www.consumerfinance.gov/credit-cards/college-agreements/.*

[16] Consumer Financial Protection Bureau, *CFPB Calls on Financial Institutions to Publicly Disclose Campus Financial Agreements,* available at *http://www.consumerfinance.gov/newsroom/cfpb-calls-on-financial-institutions-to-publicly-disclose-campus-financial-agreements/* (Dec. 2013).

[17] Consumer Financial Protection Bureau, *What sunshine for student financial products can show us,* available at *http://www.consumerfinance.gov/blog/what-sunshine-for-student-financial-products-can-show-us/* (Feb. 2013).

[18] U.S. Gov't Accountability Office, *GAO–14–91, COLLEGE DEBIT CARDS: Actions needed to Address ATM Access, Student Choice, and Transparency,* available at *http://www.gao.gov/assets/670/660919.pdf* (Feb. 2014).

[19] National Association of College and University Business Officers (NACUBO), *Students Refunds and Personal Banking at Colleges and Universities,* available at *http://www.nacubo.org/Documents/Initiatives/Campus_Card_Survey_Summary_FINAL.Pdf* (Oct. 2012).

[20] *Ibid.*

[21] *Ibid.*

[22] In January 2011, the FDIC published a Model Safe Accounts Template. The Bureau reviewed this template and the associated docket of public comments when developing this draft *Safe Student Account Scorecard* for use by colleges and universities. Available at *https://www.fdic.gov/consumers/template/background/.*

[23] Consumer Financial Protection Bureau, *Request for Information Regarding Financial Products Marketed to Students Enrolled in institutions of Higher Education,* available at *http://www.regulations.gov/#!docketDetail;D=CFPB-2013-0003* (Feb 2013).

[24] Department of Education, *Negotiated Rulemaking 2013–2014 Program Integrity and Improvement,* available at *http://www.2.ed.gov/policy/highered/reg/hearulemaking/2012/programintegrity.html.*

Dated: January 15, 2015.

Christopher D'Angelo,

Chief of Staff, Bureau of Consumer Financial Protection.

[FR Doc. 2015–01492 Filed 1–26–15; 8:45 am]

BILLING CODE 4810–AM–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Information Collection; Submission for OMB Review, Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (CNCS) has submitted a public information collection request (ICR) entitled 2015 Pay for Success Grant Opportunity for review and approval in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, (44 U.S.C. Chapter 35). Copies of this ICR, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Jennifer Stoff, at 202–606–7570 or email to *jstoff@cns.gov.* Individuals who use a telecommunications device for the deaf (TTY–TDD) may call 1–800–833–3722 between 8 a.m. and 8 p.m. Eastern Time, Monday through Friday.

ADDRESSES: Comments may be submitted, identified by the title of the information collection activity, to the Office of Information and Regulatory Affairs, Attn: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service, by any of the following two methods within 30 days from the date of publication in the **Federal Register**:

(1) By fax to: 202–395–6974, Attention: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service; or

(2) By email to: *smar@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of CNCS, 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;
- Propose ways to enhance the quality, utility, and clarity of the information to be collected; and
- Propose 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.

Comments: A 60-day Notice requesting public comment was published in the **Federal Register** on September 29, 2014. This comment period ended November 29, 2014. No public comments were received from this Notice.

Description: The Corporation for National and Community Service has submitted a public information collection request (ICR) titled ''2015 Application Instructions for Social Innovation Fund Pay for Success Grant Competition'' for review and approval in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, (44 U.S.C. Chapter 35). Copies of this ICR, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Jennifer Stoff at 202–606–7570 or email to *jstoff@cns.gov.* Individuals who use a telecommunications device for the deaf (TTY–TDD) may call 1–800–833–3722 between 8:00 a.m. and 8:00 p.m. Eastern Time, Monday through Friday.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: 2015 Application Instructions for Social Innovation Fund Pay for Success Grant Competition.

OMB Number: TBD.

Agency Number: None.

Affected Public: State and Local Government entities, Indian Tribes, nonprofit organizations.

Total Respondents: Approximately 50.

Frequency: 24 hours per response.

Estimated Total Burden Hours: 1,200 burden hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Dated: January 24, 2015.

Melissa Bradley,

Acting Director, Social Innovation Fund.

[FR Doc. 2015–01478 Filed 1–26–15; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Health Board; Notice of Federal Advisory Committee Meeting

AGENCY: Department of Defense, DoD.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The Department of Defense is publishing this notice to announce that the following Federal Advisory Committee meeting of the Defense Health Board will take place. This meeting is open to the public.

DATES:

Wednesday, February 11, 2015

8:30 a.m.–12 p.m. (Open Session)
12 p.m.–1 p.m. (Preparatory Meeting)
1 p.m.–5 p.m. (Open Session)

ADDRESSES: Defense Health Headquarters (DHHQ), Pavilion Salons B–C, 7700 Arlington Blvd., Falls Church, Virginia 22042 (escort required; see guidance in **SUPPLEMENTARY INFORMATION,** ''Public's Accessibility to the Meeting'').

FOR FURTHER INFORMATION CONTACT: The Executive Director of the Defense Health Board is Ms. Christine Bader, 7700 Arlington Boulevard, Suite 5101, Falls Church, Virginia 22042, (703) 681–6653, Fax: (703) 681–9539, *Christine.bader@dha.mil.* For meeting information, please contact Ms. Kendal Brown, 7700 Arlington Boulevard, Suite 5101, Falls Church, Virginia 22042, *Kendal.Brown.ctr@dha.mil,* (703) 681–6670, Fax: (703) 681–9539.

SUPPLEMENTARY INFORMATION: This meeting is being held under the

provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, and in accordance with section 10(a)(2) of the Federal Advisory Committee Act.

Additional information, including the agenda and electronic registration, is available at the DHB Web site, *http://www.health.mil/About-MHS/Organizational-Overview/Defense-Health-Board.*

Purpose of the Meeting

The purpose of the meeting is to conduct decision briefings for deliberation and provide progress updates on specific taskings before the DHB. In addition, the DHB will receive information briefings on current issues or lessons learned related to military operational programs, health policy, health research, disease/injury prevention, health promotion, and healthcare delivery.

Agenda

Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165 and subject to availability of space, the DHB meeting is open to the public from 8:30 a.m. to 12 p.m. and 1 p.m. to 5 p.m. on February 11, 2015. The DHB anticipates deliberating decision briefings from the Health Care Delivery Subcommittee on Sustaining and Advancing Amputee Care and from the Medical Ethics Subcommittee on Ethical Guidelines and Practices for U.S. Military Medical Professionals. The DHB also anticipates receiving progress updates from the Neuro/Behavioral Health Subcommittee on Population Normative Values for Post-Concussive Computerized Neurocognitive Assessments and from the subgroup reviewing Continuing Health Education for Military and Civilian Health Professionals. In addition, information briefings will be provided on accomplishments of the Defense Health Agency and lessons learned from Afghanistan reconstruction efforts.

Public's Accessibility to the Meeting

Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165 and subject to availability of space, this meeting is open to the public. Seating is limited and is on a first-come basis. All members of the public who wish to attend the public meeting must contact Ms. Kendal Brown at the number listed in the section **FOR FURTHER INFORMATION CONTACT** no later than 12:00 p.m. on Wednesday, February 4, 2015 to register and make arrangements for a DHHQ escort, if necessary. Public attendees requiring escort should arrive at the DHHQ Visitor's Entrance with sufficient time to complete security screening no later than 8:15 a.m. on February 11. To complete security screening, please come prepared to present two forms of identification and one must be a picture identification card.

Special Accommodations

Individuals requiring special accommodations to access the public meeting should contact Ms. Kendal Brown at least five (5) business days prior to the meeting so that appropriate arrangements can be made.

Written Statements

Any member of the public wishing to provide comments to the DHB may do so in accordance with 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act, and the procedures described in this notice.

Individuals desiring to provide comments to the DHB may do so by submitting a written statement to the DHB Designated Federal Officer (DFO) (see **FOR FURTHER INFORMATION CONTACT**). Written statements should not be longer than two type-written pages and address the following details: the issue, discussion, and a recommended course of action. Supporting documentation may also be included, as needed, to establish the appropriate historical context and to provide any necessary background information.

If the written statement is not received at least five (5) business days prior to the meeting, the DFO may choose to postpone consideration of the statement until the next open meeting.

The DFO will review all timely submissions with the DHB President and ensure they are provided to members of the DHB before the meeting that is subject to this notice. After reviewing the written comments, the President and the DFO may choose to invite the submitter to orally present their issue during an open portion of this meeting or at a future meeting. The DFO, in consultation with the DHB President, may allot time for members of the public to present their issues for review and discussion by the Defense Health Board.

Dated: January 21, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2015–01336 Filed 1–26–15; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2014–ICCD–0148]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Teacher Education Assistance for College and Higher Education Grant Eligibility Regulations

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before February 26, 2015.

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–0148 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 2E103,Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, 202–377–4018.

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: Teacher Education Assistance for College and Higher Education Grant Eligibility Regulations.

OMB Control Number: 1845–0084.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: Individuals or households, private sector, State, Local, or Tribal Government.

Total Estimated Number of Annual Responses: 251,452.

Total Estimated Number of Annual Burden Hours: 40,309.

Abstract: The Teacher Education Assistance for College and Higher Education (TEACH) Grant program is a non-need-based grant program that provides up to $4,000 per year to students who are enrolled in an eligible program and who agree to teach in a high-need field, at a low-income elementary or secondary school for at least four years within eight years of completing the program for which the Teach Grant was awarded. The TEACH Grant program regulations are required to ensure accountability of the program participants, both institutions and student recipients, for proper program administration, to determine eligibility to receive program benefits and to prevent fraud and abuse of program funds. The regulations include both record-keeping and reporting requirements. The record-keeping by the school allows for review of compliance with the regulation during on-site institutional reviews. The Department uses the required reporting to allow for close-out of institutions that are no longer participating or who lose eligibility to participate in the program.

Dated: January 21, 2015.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2015–01344 Filed 1–26–15; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Advisory Committee on Institutional Quality and Integrity: Notice of Membership

AGENCY: National Advisory Committee on Institutional Quality and Integrity, Office of Postsecondary Education, Department of Education

ACTION: List the members of the National Advisory Committee on Institutional Quality and Integrity (NACIQI). This notice is required under Section 114(e)(1) of the Higher Education Act (HEA) of 1965, as amended.

SUMMARY: The NACIQI is established under Section 114 of the HEA, and is composed of 18 members appointed—

(A) On the basis of the individuals' experience, integrity, impartiality, and good judgment;

(B) From among individuals who are representatives of, or knowledgeable concerning, education and training beyond secondary education, representing all sectors and types of institutions of higher education; and,

(C) On the basis of the individuals' technical qualifications, professional standing, and demonstrated knowledge in the fields of accreditation and administration of higher education.

The NACIQI meets at least twice a year and provides recommendations to the Secretary of Education pertaining to:

- The establishment and enforcement of the standards of accrediting agencies or associations under subpart 2 of part H of Title IV, HEA.
- The recognition of specific accrediting agencies or associations.
- The preparation and publication of the list of nationally recognized accrediting agencies and associations.
- The eligibility and certification process for institutions of higher education under Title IV of the HEA.
- The relationship between (1) accreditation of institutions of higher education and the certification and eligibility of such institutions, and (2) State licensing responsibilities with respect to such institutions.
- Any other advisory functions relating to accreditation and institutional eligibility that the Secretary may prescribe by regulation.

ADDRESSES: U.S. Department of Education, Office of Postsecondary Education, 1990 K Street NW., Room 8072, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Carol Griffiths, Executive Director, NACIQI, U.S. Department of Education, 1990 K Street NW., Room 8073, Washington, DC 20006–8129, telephone: (202) 219–7035, fax: (202) 502–7874, or email *Carol.Griffiths@ed.gov.*

What are the terms of office for the committee members?

The term of office of each member is six years. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which the member's predecessor was appointed is appointed for the remainder of the term.

Who are the current members of the committee?

The current members of the NACIQI are:

Members Appointed by Secretary of Education Arne Duncan With Terms Expiring September 30, 2019:

- Susan D. Phillips, Ph.D., NACIQI Chair, Vice President for Strategic Partnerships, University at Albany. Senior Vice President for Academic Affairs, SUNY Health Science Center at Brooklyn, New York.
- Simon J. Boehme, Mitchell Scholar studying for a Master's degree at Maynooth University in Maynooth, Ireland.
- Roberta L. Derlin, Ph.D., Associate Provost, New Mexico State University, Las Cruces, New Mexico.
- John Etchemendy, Ph.D., Provost, Stanford University, Stanford, California.
- Frank H. Wu, J.D., Chancellor and Dean, University of California, Hastings College of the Law, San Francisco, California.
- Federico Zaragoza, Ph.D., Vice Chancellor of Economic and Workforce Development, Alamo Community College District, San Antonio, Texas.

Members Appointed by the Speaker of the House of Representatives with Terms Expiring September 30, 2020:

- Arthur Keiser, Ph.D., NACIQI Vice-Chair, Chancellor, Keiser University, Fort Lauderdale, Florida.
- William Pepicello, Ph.D., President Emeritus, University of Phoenix, Phoenix, Arizona.
- Arthur J. Rothkopf, J.D., President Emeritus, Lafayette College, Easton, Pennsylvania.

Members Appointed by the President Pro Tempore of the Senate with Terms Expiring September 30, 2016:

- Jill Derby, Ph.D., Governance Consultant, Association of Governing

Boards of Colleges and Universities, Washington, D. C.

• Anne D. Neal, J.D., President, American Council of Trustees and Alumni, Washington, D.C.

• Richard F. O'Donnell, Chief Revenue Officer, The Fullbridge Program, Cambridge, Massachusetts.

• Cameron C. Staples, J.D., President and Chief Executive Officer (CEO), New England Association of Schools and Colleges, Bedford, Massachusetts.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Adobe Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site. You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Authority: 20 U.S.C. 1011c.

Arne Duncan,

Secretary of Education.

[FR Doc. 2015–01400 Filed 1–26–15; 8:45 am]

BILLING CODE P

DEPARTMENT OF EDUCATION

Corrections to Points Awarded for Competitive Preference Priorities and Updated Links to Two Studies; Student Support Services Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice.

Overview Information: Student Support Services (SSS) Program; Catalog of Federal Domestic Assistance (CFDA) Number: 84.042A.

SUMMARY: On December 18, 2014, we published a notice in the **Federal Register** (79 FR 75722) inviting applications for new awards for fiscal year (FY) 2015 for the SSS Program. The U.S. Department of Education (Department) is providing corrections to the point allocation information for Competitive Preference Priority (CPP) 1(a)—Influencing the Development of Non-Cognitive Factors; CPP 1(b)—Strategies to Influence the Development of Non-Cognitive Factors Supported by Moderate Evidence of Effectiveness; and CPP 2(a)—Providing Individualized Counseling for Personal, Career, and Academic Matters. In addition, the Department is providing updated links to two studies associated with the CPPs.

DATES: *Applications Available:* December 18, 2014.

Deadline for Transmittal of Applications: February 2, 2015.

Deadline for Intergovernmental Review: April 2, 2015.

FOR FURTHER INFORMATION CONTACT: ReShone Moore, Ph.D., U.S. Department of Education, 1990 K Street NW., Room 7000, Washington, DC 20006–8510. Telephone: (202) 502–7893 or by email: *reshone.moore@ed.gov* or, if unavailable, Lavelle Wright, U.S. Department of Education, 1990 K Street NW., Room 7000, Washington, DC 20006–8510. Telephone: (202) 502–7674 or by email: *Lavelle.wright@ed.gov.*

If you use a TDD or a TTY, call the FRS, toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: On December 18, 2014, we published a notice in the **Federal Register** (79 FR 75722) inviting applications for new awards for FY 2015 for the SSS Program. It has come to the Department's attention that information regarding the point allocation for CPPs 1(a), 1(b), and 2(a) is inaccurate. The December 18, 2014 notice inviting applications incorrectly states that ''up to'' one additional point is available for each of CPPs 1(a) and 2(a) and ''up to'' two additional points are available for CPP 1(b). Through this notice, the Department is providing a correction to CPPs 1(a), 1(b), and 2(a) by deleting the phrase ''up to'' from the point allocations for each of these CPPs. Under this competition, applicants will be able to earn one additional point for CPP 1(a) and two additional points for CPP 1(b). Additionally, under this competition, applicants will be able to earn one additional point for CPP 2(a) and two additional points for CPP 2(b). No partial points will be awarded for addressing any portion of the CPPs.

Lastly, it also has come to the Department's attention that the links to two studies associated with the CCPs are inoperable. Therefore, to assist potential applicants in responding to the CPPs, we are providing updated links to the two studies. The updated links are listed below:

Bettinger, E.P., & Baker, R. (2011). *The effects of student coaching in college: An evaluation of a randomized experiment in student mentoring.*
https://ed.stanford.edu/sites/default/files/bettinger_baker_030711.pdf

Walton, G.M. & Cohen, G.L. (2011). *A brief social-belonging intervention improves academic and health outcomes of minority students.* Science, 331, 1447–1451.
http://www.sciencemag.org/content/331/6023/1447.full

All other information in the December 18, 2014, notice remains unchanged, except for the CPP point corrections and the study link updates. The deadline for transmittal of applications of February 2, 2015 and the deadline for intergovernmental review of April 2, 2015 remain unchanged.

Accessible Format: 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 program contact person listed in this section.

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: January 22, 2015.

Ericka M. Miller,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 2015–01464 Filed 1–26–15; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Proposed Agency Information Collection

AGENCY: U.S. Department of Energy.

ACTION: Notice and Request for OMB Review and Comment.

SUMMARY: The Department of Energy (DOE) has submitted to the Office of Management and Budget (OMB) for clearance, a proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995. The

proposed collection will support a study on how consumers value vehicle fuel economy, compare the current results with those from a similar study conducted in 2003 (published in 2007), and estimate distributions of these valuation processes across the national population of car-owning and car-leasing households. The data derived from this study will be used to provide consumers with information that will help them value increased fuel economy as a means of reducing petroleum consumption, saving money on fuel, and reducing greenhouse gas emissions.

DATES: Comments regarding this collection must be received on or before February 26, 2015. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, please advise the DOE Desk Officer at OMB of your intention to make a submission as soon as possible. The Desk Officer may be telephoned at 202–395–4718.

ADDRESSES: Written comments should be sent to the DOE Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 735 17th Street NW., Washington, DC 20503.

And to Mr. Dennis A. Smith, U.S. Department of Energy, EE–2G, 1000 Independence Avenue SW., Washington, DC 20585–0121, Phone: 202–586–1791, Fax: 202–586–2476, Email: *dennis.a.smith@ee.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Dennis A. Smith, Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, EE–2G, 1000 Independence Avenue SW., Washington, DC 20585–0121, by phone at 202–586–1791, or by fax at 202–586–2476, or by email at *dennis.a.smith@ee.doe.gov.*

SUPPLEMENTARY INFORMATION: This information collection request contains: (1) OMB No. New; (2) *Information Collection Request Title:* Consumers and Fuel Economy; (3) *Type of Request:* New Collection; (4) *Purpose:* The Consumers and Fuel Economy Study is a follow-on study of consumers' valuation of automotive fuel economy conducted in 2003. The purpose is to provide both a qualitative description based on in-home interviews and a quantitative estimate based on a national sample survey of the prevalence of consumers' fuel economy valuations across the population of car-owning households in the United States. The goals include the description of similarities and differences from the 2003 study and the further development of theory, models, or heuristics to explain consumers' valuations of fuel economy. This information will be made available to the general public via the joint DOE and Environmental Protection Agency Web site *www.fueleconomy.gov;* (5) *Annual Estimated Number of Respondents:* 54 household interviews (not an annual collection); (6) *Annual Estimated Number of Total Responses:* 54; (7) *Annual Estimated Number of Burden Hours:* 108 (2 hours per Respondent); (8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* $0.

Statutory Authority: 42 U.S.C. 13233; 42 U.S.C. 13252(a)–(b); 42 U.S.C. 16191; 49 U.S.C. 32908(g)–(2)–(A).

Issued in Washington, DC, on January 20, 2015.

Patrick B. Davis,

Program Manager, Vehicle Technologies Program, Energy Efficiency and Renewable Energy.

[FR Doc. 2015–01402 Filed 1–26–15; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[OE Docket No. EA–404]

Application To Export Electric Energy; Chubu TT Energy Management Inc.

AGENCY: Office of Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of application.

SUMMARY: Chubu TT Energy Management Inc. (Chubu TT) has applied for authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests, or motions to intervene must be submitted on or before February 26, 2015.

ADDRESSES: Comments, protests, motions to intervene, or requests for more information should be addressed to: Office of Electricity Delivery and Energy Reliability, Mail Code: OE–20, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585–0350. Because of delays in handling conventional mail, it is recommended that documents be transmitted by overnight mail, by electronic mail to *Electricity.Exports@hq.doe.gov,* or by facsimile to 202–586–8008.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated by the Department of Energy (DOE) pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b), 7172(f)) and require authorization under section 202(e) of the Federal Power Act (16 U.S.C. 824a(e)).

On January 12, 2015, DOE received an application from Chubu TT for authority to transmit electric energy from the United States to Canada for five years using existing international transmission facilities. Chubu TT is in the process of becoming a licensed competitive electricity provider in Ontario, Canada. Chubu TT is also in the process of applying for market-based rate authority from the Federal Energy Regulatory Commission (''FERC'') in order to trade and market electricity in the United States. Chubu TT states that it will make all of the necessary commercial arrangements and will obtain any and all of the required regulatory approvals in order to effect any power exports.

The electric energy that Chubu TT proposes to export to Canada would be surplus energy purchased from electric utilities and other entities within the United States. The existing international transmission facilities to be utilized by Chubu TT have previously been authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties.

Procedural Matters: Any person desiring to be heard in this proceeding should file a comment or protest to the application at the address provided above. Protests should be filed in accordance with Rule 211 of the Federal Energy Regulatory Commission's (FERC) Rules of Practice and Procedures (18 CFR 385.211). Any person desiring to become a party to these proceedings should file a motion to intervene at the above address in accordance with FERC Rule 214 (18 CFR 385.214). Five copies of such comments, protests, or motions to intervene should be sent to the address provided above on or before the date listed above.

Comments and other filings concerning the Chubu TT Energy Management Inc. application to export electric energy to Canada should be clearly marked with OE Docket No. EA–404. An additional copy is to be provided directly to both Rob Coulbeck, Chubu TT Energy Management Inc., Goreway Power Station, 8600 Goreway Drive, Brampton, Ontario L6T 0A8 Canada and to Joseph H. Fagan, Day Pitney LLP, 1100 New York Avenue NW., Suite 300 E, Washington, DC 20005.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR

part 1021) and after a determination is made by DOE that the proposed action will not have an adverse impact on the sufficiency of supply or reliability of the U.S. electric power supply system.

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/node/11845,* or by emailing Angela Troy at *Angela.Troy@hq.doe.gov.*

Issued in Washington, DC, on January 22, 2015.

Brian Mills,

Director, Permitting and Siting, Office of Electricity Delivery and Energy Reliability.

[FR Doc. 2015–01412 Filed 1–26–15; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[Certification Notice—231;]

Notice of Filing of Self-Certification of Coal Capability Under the Powerplant and Industrial Fuel Use Act

AGENCY: Office of Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of filing.

SUMMARY: On December 18, 2014, Calpine Mid Merit II, LLC, York Energy Center—Block 2, as owner and operator of an additional new base load electric powerplant, submitted a coal capability self-certification to the Department of Energy (DOE) pursuant to § 201(d) of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended, and DOE regulations in 10 CFR 501.60, 61. FUA and regulations thereunder require DOE to publish a notice of filing of self-certification in the **Federal Register**. 42 U.S.C. 8311(d) and 10 CFR 501.61(c).

ADDRESSES: Copies of coal capability self-certification filings are available for public inspection, upon request, in the Office of Electricity Delivery and Energy Reliability, Mail Code OE–20, Room 8G–024, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Christopher Lawrence at (202) 586–5260.

SUPPLEMENTARY INFORMATION: Title II of FUA, as amended (42 U.S.C. 8301 *et seq.*), provides that no new base load electric powerplant may be constructed or operated without the capability to use coal or another alternate fuel as a primary energy source. Pursuant to FUA in order to meet the requirement of coal capability, the owner or operator of such a facility proposing to use natural gas or petroleum as its primary energy source shall certify to the Secretary of Energy (Secretary) prior to construction, or prior to operation as a base load electric powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with FUA section 201(a) as of the date it is filed with the Secretary. 42 U.S.C. 8311.

The following owner of a proposed additional new base load electric powerplant has filed a self-certification of coal-capability with DOE pursuant to FUA section 201(d) and in accordance with DOE regulations in 10 CFR 501.60, 61:

Owner: Calpine Mid Merit II, LLC, York Energy Center—Block 2
Capacity: 760 megawatts (MW)
Plant Location: York County, Peach Bottom Township, Pennsylvania
In-Service Date: On or before June 1, 2017

Issued in Washington, DC, on January 22, 2015.

Brian Mills,

Director, Permitting and Siting, Office of Electricity Delivery and Energy Reliability.

[FR Doc. 2015–01413 Filed 1–26–15; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2010–1064; 9921–72–OAR]

Federal Guidance Report No. 14: Radiation Protection Guidance for Diagnostic and Interventional X-Ray Procedures

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: This document announces the availability of the U.S. Environmental Protection Agency's (EPA) updated Federal Guidance Report No. 14: Radiation Protection Guidance for Diagnostic and Interventional X-Ray Procedures (EPA 402–R–10003, November 2014). Federal Guidance Report No. 14 provides federal facilities that use diagnostic and interventional x-ray equipment with recommendations for keeping patient doses as low as reasonably achievable without compromising the quality of patient care.

FOR FURTHER INFORMATION CONTACT: Mike Boyd, Radiation Protection Division (6608J), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone, 202–343–9353; fax, 202–343–2304; electronic mail, *boyd.mike@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. How can I get copies of this document and other related information?

1. *Docket.* EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2010–1064. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air and Radiation Docket in the EPA Docket Center, (EPA/DC) EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA Docket Center 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. As provided in EPA's regulations at 40 CFR part 2, and in accordance with normal EPA docket procedures, if copies of any docket materials are requested, a reasonable fee may be charged for photocopying.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/.*

II. Background

Federal Guidance Report No. 14: Radiation Protection Guidance for Diagnostic and Interventional X-Ray Procedures is an update to the 1976 x-ray guidance in Federal Guidance Report No. 9, which provides federal facilities that use diagnostic and interventional x-ray equipment with recommendations for keeping patient doses as low as reasonably achievable without compromising the quality of patient care.

The EPA-led Interagency Steering Committee on Radiation Standards (ISCORS) Work Group that developed Federal Guidance Report No. 14 included medical and radiation protection professionals from EPA, the Department of Health and Human Services, the Department of Veterans Affairs, the Department of Defense (Departments of the Army, Navy, and Air Force), the Occupational Safety and Health Administration and the Commonwealth of Pennsylvania.

On April 3, 2013, a proposed version of this guidance was published in the **Federal Register,** opening a 60 day public comment period. The ISCORS work group reviewed more than 900 comments, updating the document to

address the feedback from the public and medical community.

This guidance will be issued to all federal facilities that perform diagnostic or interventional x-ray procedures. The recommendations in this guidance are not binding on any agency, but, at an agency's discretion, may be incorporated in whole or in part into their standard operating procedures or orders. Likewise, EPA hopes that the states and the private sector will find this guidance to be a useful reference, but there is no legal obligation for them to make use of it in any way; however, if followed, this guidance will improve the safety of diagnostic and interventional imaging.

The complete Federal Guidance Report No. 14: Radiation Protection Guidance for Diagnostic and Interventional X-Ray Procedures (EPA 402–R–10003, November 2014), can be accessed at *http://www.epa.gov/radiation/federal/fgr-14.html.*

Dated: January 15, 2015.

Gina McCarthy,

Administrator.

[FR Doc. 2015–01468 Filed 1–26–15; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 15–54]

Notice of Intent To Terminate 214 Authorization

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This notice serves as final opportunity for ACT Telecommunications, Inc. (ACT) to respond to the Department of Justice, the Federal Bureau of Investigation, and the Department of Homeland Security (Agencies) request that the Commission terminate and declare null, void and no longer in effect, the international 214 authorization issued to ACT by the Commission. The Agencies state that ACT has failed to comply with commitments and undertakings with these Agencies, which is a condition on the 214 authorization issued by the Commission. The FCC now provides final notice to ACT that it intends to declare ACT's international 214 authorization terminated for failure to comply with conditions of its authorization.

DATES: Submit comments on or before February 11, 2015.

ADDRESSES: ACT should address its response to the Chief, International Bureau and file it in File No. ITC–214–20081201–00519 via IBFS at *http://licensing.fcc.gov/myibfs/pleading.do.* It should also copy the Associate Chief of the Policy Division, International Bureau at *David.Krech@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: David Krech, Policy Division, International Bureau, at (202) 418–7443 or *David.Krech@fcc.gov.*

SUPPLEMENTARY INFORMATION: The proceeding in this Notice is treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's ex parte rules.

Federal Communications Commission.

Howard Griboff,

Acting Chief, Policy Division, International Bureau.

[FR Doc. 2015–01441 Filed 1–26–15; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 15–53]

Notice of Intent To Terminate 214 Authorization

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This notice serves as final opportunity for Wypoint Telecom, Inc. (Wypoint) to respond to the Department of Justice, the Federal Bureau of Investigation, and the Department of Homeland Security (Agencies) request that the Commission terminate and declare null, void and no longer in effect, the international 214 authorization issued to Wypoint by the Commission. The Agencies state that Wypoint has failed to comply with commitments and undertakings with these Agencies, which is a condition on the 214 authorization issued by the Commission. The FCC now provides final notice to Wypoint that it intends to declare Wypoint's international 214 authorization terminated for failure to comply with conditions of its authorization.

DATES: Submit comments on or before February 11, 2015.

ADDRESSES: Wypoint should address its response to the Chief, International Bureau and file it in File No. ITC–214–20070601–00211 via IBFS at *http://licensing.fcc.gov/myibfs/pleading.do.* It should also copy the Associate Chief of the Policy Division, International Bureau at *David.Krech@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: David Krech, Policy Division, International Bureau, at (202) 418–7443 or *David.Krech@fcc.gov.*

SUPPLEMENTARY INFORMATION: The proceeding in this Notice is treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's ex parte rules.

Federal Communications Commission.

Howard Griboff,

Acting Chief, Policy Division, International Bureau.

[FR Doc. 2015–01440 Filed 1–26–15; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request

AGENCY: Federal Trade Commission (FTC or Commission).

ACTION: Notice.

SUMMARY: The information collection requirements described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act (PRA). The FTC seeks public comments on its proposal to extend, for three years, the current PRA clearance for information collection requirements contained in the rules and regulations under the Fur Products Labeling Act (''Fur Rules''), 16 CFR 301. This clearance expires on April 30, 2015.

DATES: Comments must be received on or before March 30, 2015.

ADDRESSES: Interested parties may file a comment online or on paper by following the instructions in the Request for Comments part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Fur Rules: FTC File No. P074201'' on your comment, and file your comment online at *https://ftcpublic.commentworks.com/ftc/furrulespra* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex J), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Requests for copies of the collection of information and supporting documentation should be addressed to Robert M. Frisby, 202–326–2098, or

Lemuel Dowdy, 202–326–2981, Attorneys, Division of Enforcement, Bureau of Consumer Protection, 600 Pennsylvania Ave., NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

Proposed Information Collection Activities

Under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501–3520, federal agencies must get OMB approval for each collection of information they conduct, sponsor, or require. ''Collection of information'' means agency requests or requirements to submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3); 5 CFR 1320.3(c). As required by Section 3506(c)(2)(A) of the PRA, the FTC is providing this opportunity for public comment before requesting that OMB extend the existing PRA clearance for the information collection requirements associated with the Commission's rules and regulations under the Fur Products Labeling Act (''Fur Rules''), 16 CFR part 301 (OMB Control Number 3084–0099).[1]

The FTC invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) 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. All comments must be received on or before March 30, 2015.

Burden Estimates

Staff's burden estimates are based on data from the Department of Labor's Bureau of Labor Statistics (''BLS'') and data or other input from the Fur Industry Council of America. The relevant information collection requirements in these rules and staff's corresponding burden estimates follow. The estimates address the number of hours needed and the labor costs incurred to comply with the requirements.

The Fur Products Labeling Act (''Fur Act'')[2] prohibits the misbranding and false advertising of fur products. The Fur Rules establish disclosure requirements that assist consumers in making informed purchasing decisions, and recordkeeping requirements that assist the Commission in enforcing the Rules. The Rules also provide a procedure for exemption from certain disclosure provisions under the Fur Act.

The Commission expects that recent amendments to the Fur Act have increased the cost of complying with the Fur Rules as amended.[3] Congress eliminated the Commission's power to exempt from the labeling requirements items where either the cost of the fur trim to the manufacturer or the manufacturer's selling price for the finished product is less than $150.[4] As a result, more garments are now subject to the Fur Act and Rules, which will impose higher recordkeeping and labeling costs on manufacturers, importers, and retailers.

Estimated annual hours burden: 249,541 hours (64,440 hours for recordkeeping + 185,101 hours for disclosure).

Recordkeeping: The Fur Rules require that retailers, manufacturers, processors, and importers of furs and fur products keep certain records in addition to those they may keep in the ordinary course of business. Staff estimates that 1,230 retailers incur an average recordkeeping burden of about 18 hours per year (22,140 hours total); 90 manufacturers incur an average recordkeeping burden of about 60 hours per year (5,400 hours total); and 1,230 importers of furs and fur products incur an average recordkeeping burden of 30 hours per year (36,900 hours total). The combined recordkeeping burden for the industry is approximately 64,440 hours annually.

Disclosure: Staff estimates that 1,320 respondents (90 manufacturers + 1,230 retail sellers of fur garments) each require an average of 30 hours per year to determine label content (39,600 hours total), and an average of ten hours per year to draft and order labels (13,200 hours total). Staff estimates that the total number of garments subject to the fur labeling requirements annually is approximately 1,610,000.[5] Staff estimates that for approximately 50 percent of these garments (805,000) labels are attached manually, requiring approximately four minutes per garment for a total of 53,667 hours annually. For the remaining 805,000, the process of attaching labels is semi-automated and requires an average of approximately five seconds per item, for a total of 1,118 hours. Thus, the total burden for attaching labels is 54,785 hours, and the total burden for labeling garments is 107,585 hours per year (39,600 hours to determine label content + 13,200 hours to draft and order labels + 54,785 hours to attach labels).

Staff estimates that the incremental burden associated with the Fur Rules' invoice disclosure requirement, beyond the time that would be devoted to preparing invoices in the absence of the Rules, is approximately one minute per invoice for garments and thirty seconds per invoice for pelts.[6] The invoice disclosure requirement applies to fur garments, which are generally sold individually, and fur pelts, which are generally sold in groups of at least 50, on average. Assuming invoices are prepared for sales of 1,610,000 garments, the invoice disclosure requirement entails an estimated burden of 26,833 hours (1,610,000 invoices × one minute). Based on information from the Fur Industry Council of America, staff estimates total sales of 8,900,000 pelts annually. Assuming invoices are prepared for sales of 178,000 groups (derived from an estimated 8,900,000 pelts ÷ 50) of imported and domestic pelts, the invoice disclosure requirement entails an estimated total burden of 1,483 hours (178,000 total invoices × thirty seconds). Thus, the total burden for invoice disclosures is 28,316 hours.

Staff estimates that the Fur Rules' advertising disclosure requirements impose an average burden of 40 hours per year for each of the approximately 1,230 domestic fur retailers, or a total of 49,200 hours.

Thus, staff estimates the total disclosure burden to be approximately 185,101 hours (107,585 hours for labeling + 28,316 hours for invoices + 49,200 hours for advertising).

Estimated annual cost burden: $4,657,902 (solely relating to labor costs). The chart below summarizes the total estimated costs.

[1] The Commission issued the Fur Rules to implement the Fur Products Labeling Act, 15 U.S.C. 69 *et seq.*

[2] 15 U.S.C. 69 *et seq.*

[3] *Final Rule,* 79 FR 30445 (May 28, 2014) (effective date of November 19, 2014).

[4] Truth in Fur Labeling Act, Public Law 111–313.

[5] The total number of imported fur garments, fur-trimmed garments, and fur accessories is estimated to be approximately 1,400,000 based on industry data. Estimated domestic production totals 210,000.

[6] The invoice disclosure burden for PRA purposes excludes the time that respondents would spend for invoicing, apart from the Fur Rules, in the ordinary course of business. *See* 5 CFR 1320.3(b)(2).

Task	Hourly rate	Burden hours	Labor cost
Determine label content	$ 26.00	39,600	$1,029,600
Draft and order labels	17.00	13,200	224,400
Attach labels	[7] 10.00	54,785	547,850
Invoice disclosures	17.00	28,316	481,372
Prepare advertising disclosures	26.00	49,200	1,279,200
Recordkeeping	17.00	64,440	1,095,480
Total			4,657,902

Staff believes that there are no current start-up costs or other capital costs associated with the Fur Rules. Because the labeling of fur products has been an integral part of the manufacturing process for decades, manufacturers have in place the capital equipment necessary to comply with the Rules' labeling requirements.[8] Industry sources indicate that much of the information required by the Fur Act and Rules would be included on the product label even absent the Rules. Similarly, invoicing, recordkeeping, and advertising disclosures are tasks performed in the ordinary course of business so that covered firms would incur no additional capital or other non-labor costs as a result of the Act or the Rules.

Request for Comments

You can file a comment online or on paper. Write ''Fur Rules: FTC File No. P074201'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, such as a Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, do not include any ''[t]rade secret or any commercial or financial information which is . . . privileged or confidential,'' as discussed in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you must follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c). Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest. Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, the Commission encourages you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/furrulespra* by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov,* you also may file a comment through that Web site.

If you file your comment on paper, write ''Fur Rules: FTC File No. P074201'' on your comment and on the envelope, and mail it to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610, (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610, (Annex J), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before March 30, 2015. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

David C. Shonka,

Principal Deputy General Counsel.

[FR Doc. 2015–01430 Filed 1–26–15; 8:45 am]

BILLING CODE 6750–01–P

[7] Per industry sources, most fur labeling is done in the United States. This rate is reflective of an average domestic hourly wage for such tasks performed in the United States, which is derived from recent BLS statistics.

[8] Although items previously exempt from the labeling requirements must now be labeled regarding their fur content, the Textile and Wool Rules, found at 16 CFR part 303 and 16 CFR part 300, respectively, already required many such items to have fiber content labels. Hence, manufacturers likely have in place the equipment needed to comply with the additional labeling requirements.

FINANCIAL STABILITY OVERSIGHT COUNCIL

Proposed Collections; Comment Requests

ACTION: Notice and request for comments.

SUMMARY: The Financial Stability Oversight Council (the ''Council'') invites members of the public and affected agencies to comment on continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). The Council is soliciting comments concerning its extension of a currently approved collection of information related to its authority to determine that certain nonbank financial companies shall be subject to supervision by the Board of Governors of the Federal Reserve System (Board of Governors) and enhanced prudential standards. Section 113 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the ''Dodd-Frank Act'') provides the Council the authority to determine that a nonbank financial company shall be subject to Board of Governors supervison and enhanced prudential standards if the Council determines that material financial stress at the nonbank financial company, or the nature, scope, size, scale, concentration,

interconnectedness, or the mix of activities of the nonbank financial company, could pose a threat to financial stability. On April 11, 2012, the Council published in the **Federal Register** a final rule and interpretive guidance (77 FR 21637), 12 CFR part 1310, that describe the manner in which the Council intends to apply the statutory standards and considerations, and the processes and procedures the Council intends to follow, in making determinations under Section 113 of the Dodd-Frank Act. The Council has made final determinations regarding four nonbank financial companies. The Council uses information collected under 12 CFR 1310.20 to assess whether a nonbank financial company meets the standards for a Council determination under Section 113 of the Dodd-Frank Act. The collection of information under 12 CFR 1310.21 affords a nonbank financial company an opportunity to submit materials to contest the Council's consideration of the company for a proposed determination and to contest a proposed determination. The collection of information in 12 CFR 1310.22 provides a nonbank financial company an opportunity to contest the Council's waiver or modification of the notice or other procedural requirements contained in 12 CFR 1310.21 by requesting a hearing. The Council uses information collected under 12 CFR 1310.23 in a reevaluation of its determination regarding a nonbank financial company subject to a Council determination.

DATES: Written comments must be received on or before March 30, 2015 to be assured of consideration.

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

Mail: Attn: Request for Comments (Financial Stability Oversight Council Proposed Information Collection), Office of the Financial Stability Oversight Council, Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Electronic Submission: FSOC.Comments@treasury.gov.

Instructions: All submissions received must include the agency name and the **Federal Register** document number that appears at the end of this document. Comments received will be made available to the public via regulations.gov without change, and including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Requests for additional information about the filings or procedures should be directed to Executive Director, Financial Stability Oversight Council, Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

SUPPLEMENTARY INFORMATION:

Title: Determinations Regarding Certain Nonbank Financial Companies.

OMB Control Number: 1505–0244.

Abstract: The Council uses information collected under 12 CFR 1310.20 to assess whether a nonbank financial company meets the standards for a Council determination under Section 113 of the Dodd-Frank Act. The collection of information under 12 CFR 1310.21 affords a nonbank financial company an opportunity to submit materials to contest the Council's consideration of the company for a proposed determination and to contest a proposed determination. The collection of information in 12 CFR 1310.22 provides a nonbank financial company an opportunity to contest the Council's waiver or modification of the notice or other procedural requirements contained in 12 CFR 1310.21 by requesting a hearing. The Council uses information collected under 12 CFR 1310.23 in its reevaluation of a determination regarding a nonbank financial company subject to a Council determination.

Type of Review: Extension of a currently approved collection.

Affected Public: Nonbank financial companies.

Estimated Total Annual Burden Hours for all Collections: 500 hours.

Request for Comments: Comments submitted in response to this notice will be summarized or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has 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; 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.

David G. Clunie,

Executive Secretary.

[FR Doc. 2015–00860 Filed 1–26–15; 8:45 am]

BILLING CODE 4810–25–P–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Research Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) has taken final action in the following case:

Dong Xiao, Ph.D., University of Pittsburgh: Based on the report of an inquiry conducted by the University of Pittsburgh (UP), additional analysis conducted by ORI in its oversight review, and an admission by the Respondent that he had ''intentionally fabricated data contained in a paper entitled 'Guggulsterone inhibits prostate cancer growth via inactivation of Akt regulated by ATP citrate signaling,' specifically Figure 6G,'' ORI found that Dr. Dong Xiao, former Research Assistant Professor, Department of Urology, UP, engaged in research misconduct in research supported by National Cancer Institute (NCI), National Institutes of Health (NIH), grant R01 CA157477.

ORI found that Respondent engaged in research misconduct by reporting falsified data in Figures 1, 4, 5, S2, and S3 in the following paper published online:

- Gao, Y., Zeng, Y., Tian, J., Kslam, M.S., Jiang, G., & Xiao, D., ''Gugglesterone inhibits prostate cancer growth via inactivation of Akt regulated by ATP citrate signaling.'' *Oncotarget,* June 26, 2014 [Epub ahead of print], PMID: 24980815; hereafter referred to as the ''*Oncotarget* paper.''

Specifically, in the *Oncotarget* paper, Respondent:

- Falsely stated that 10 mice per group were used to obtain data for tumor volume (Figure 1A) and tumor weight (Figure 1B) when data for only four mice per group were available
- falsified the results for C-caspase 3 and phosphorylated Akt in the Western blots presented in Figure 1D to claim that treatment of tumor bearing mice with Z-Gug significantly enhanced C-capase 3 activity and significantly inhibited Akt phorphorylation, while the original data showed no significant effect for either activity
- falsified Figure 4C by manipulating p-Akt bands to show that Z-Gug alone and in combination with PHTM significantly inhibited Akt phosphorylation in PC3 and LNCaP human prostate cancer cell lines; the

numbers above each band representing the fold change human prostate cancer cell lines; the numbers above each band representing the fold change in expression relative to the DMSO control also were falsified for p-ACLY (LNCaP cell line) and p-Akt (PC3 and LNCaP cell lines) compared to the values provided to the Respondent

- falsified Figure 4D by substituting bands for p-ACLY for those provided to him to allow Respondent to claim that Z-Gug significantly inhibited phosphorylation of ACLY in lysates of prostate tumors obtained from mice, when the original data showed no effect
- falsified Figures 5C and 5D to show that treatment of PC3 and LNCaP cells with Z-Gug alone and with Z-Gug plus si-RNA targets to ACLY stimulated Caspase 3/7 activity, when the original data provided to him showed no significant effect of either treatment in PC3 cells and no effect of Z-Gug alone in LNCaP cells
- falsified Figures 6G and 6H; these figures purported to show that N-acetyl-L-cysteine (NAC), an inhibitor of reactive oxygen species (ROS), reversed the inhibition of Akt phosphorylation caused by Z-Gug in PC3 cells (Figure 6G) and LNCaP cells (Figure 6G) when no Akt data for this protocol was available to the Respondent; Respondent admitted to falsifying Figure 6G
- falsified Figures S2B and S3B by altering data provided to him; these experiments are complementary to those shown in Figures 5C and 5D, except that the effect of Z-Gug and Z-gug plus si-RNA on Caspase 3/7 activity utilized on si-RNA was directed to Akt activity. The original data showed no significant effect of either treatment in PC3 cells and no effect of Z-Gug on LNCaP cells, while both treatments were claimed to be significant inducers of caspase activity in both cell lines in the published figures.

Dr. Xiao has entered into a Voluntary Settlement Agreement (Agreement) and has voluntarily agreed for a period of three (3) years, beginning on December 23, 2014:

(1) To have his research supervised; Respondent agreed to ensure that prior to the submission of an application for U.S. Public Health Service (PHS) support for a research project on which the Respondent's participation is proposed and prior to Respondent's participation in any capacity on PHS-supported research, the institution employing him must submit a plan for supervision of his duties to ORI for approval; the plan for supervision must be designed to ensure the scientific integrity of Respondent's research contribution; Respondent agreed that he will not participate in any PHS-supported research until such a supervision plan is submitted to and approved by ORI; Respondent agreed to maintain responsibility for compliance with the agreed upon plan for supervision;

(2) that any institution employing him must submit, in conjunction with each application for PHS funds, or report, manuscript, or abstract involving PHS-supported research in which Respondent is involved, a certification to ORI that the data provided by Respondent are based on actual experiments or are otherwise legitimately derived and that the data, procedures, and methodology are accurately reported in the application, report, manuscript, or abstract; and

(3) to exclude himself voluntarily from serving in any advisory capacity to PHS including, but not limited to, service on any PHS advisory committee, board, and/or peer review committee, or as a consultant.

FOR FURTHER INFORMATION CONTACT: Acting Director, Office of Research Integrity, 1101 Wootton Parkway, Suite 750, Rockville, MD 20852, (240) 453–8200.

Donald Wright,

Acting Director, Office of Research Integrity.

[FR Doc. 2015–01427 Filed 1–26–15; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of Interest Rate on Overdue Debts

Section 30.18 of the Department of Health and Human Services' claims collection regulations (45 CFR part 30) provides that the Secretary shall charge an annual rate of interest, which is determined and fixed by the Secretary of the Treasury after considering private consumer rates of interest on the date that the Department of Health and Human Services becomes entitled to recovery. The rate cannot be lower than the Department of Treasury's current value of funds rate or the applicable rate determined from the ''Schedule of Certified Interest Rates with Range of Maturities'' unless the Secretary waives interest in whole or part, or a different rate is prescribed by statute, contract, or repayment agreement. The Secretary of the Treasury may revise this rate quarterly. The Department of Health and Human Services publishes this rate in the **Federal Register**.

The current rate of 10½%, as fixed by the Secretary of the Treasury, is certified for the quarter ended December 31, 2014. This rate is based on the Interest Rates for Specific Legislation, ''National Health Services Corps Scholarship Program (42 U.S.C. 250(B)(1)(A))'' and ''National Research Service Award Program (42 U.S.C. 288(c)(4)(B)).'' This interest rate will be applied to overdue debt until the Department of Health and Human Services publishes a revision.

Dated: January 15, 2015.

David C. Horn,

Director, Office of Financial Policy and Reporting.

[FR Doc. 2015–01429 Filed 1–26–15; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Presidential Advisory Council on HIV/AIDS

AGENCY: Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the U.S. Department of Health and Human Service (DHHS) is hereby giving notice that the Presidential Advisory Council on HIV/AIDS (PACHA) will hold a meeting to discuss essential health benefits and provider networks, the integration of the Affordable Care Act (ACA) qualified health plan and the Ryan White Program; an update on the National HIV/AIDS Strategy; and a discussion on surveillance data. The meeting will be open to the public.

DATES: The meeting will be held on February 12, 2015, from 9 a.m. to approximately 5 p.m. (ET) and February 13, 2015, from 9:30 a.m. to approximately 12:30 p.m. (ET).

ADDRESSES: Renaissance Washington DC, Downtown Hotel, 999 Ninth Street NW., Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Ms. Caroline Talev, Public Health Analyst, Presidential Advisory Council on HIV/AIDS, U.S. Department of Health and Human Services, 200 Independence Avenue SW., Room 443H, Washington, DC 20201; (202) 205–1178. More detailed information about PACHA can be obtained by accessing the PACHA Web page on the AIDS.Gov Web site at *www.aids.gov/pacha.*

SUPPLEMENTARY INFORMATION: PACHA was established by Executive Order 12963, dated June 14, 1995, as amended by Executive Order 13009, dated June 14, 1996. The Council was established to provide advice, information, and recommendations to the Secretary regarding programs and policies intended to promote effective prevention of HIV disease and AIDS. The functions of the Council are solely advisory in nature.

The Council consists of not more than 25 members. Council members are selected from prominent community leaders with particular expertise in, or knowledge of, matters concerning HIV and AIDS, public health, global health, philanthropy, marketing or business, as well as other national leaders held in high esteem from other sectors of society. Council members are appointed by the Secretary or designee, in consultation with the White House Office on National AIDS Policy. The agenda for the upcoming meeting will be posted on the Council's Web site at *www.aids.gov/pacha.*

Public attendance at the meeting is limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the designated contact person. Due to space constraints, pre-registration for public attendance is advisable and can be accomplished by contacting Caroline Talev at *caroline.talev@hhs.gov* by close of business February 6, 2015. Members of the public will have the opportunity to provide comments at the meeting. Any individual who wishes to participate in the public comment session must register with Caroline Talev at *caroline.talev@hhs.gov* by close of business February 6, 2015; registration for public comment will not be accepted by telephone. Individuals are encouraged to provide a written statement of any public comment(s) for accurate minute taking purposes. Public comment will be limited to two minutes per speaker. Any members of the public who wish to have printed material distributed to PACHA members at the meeting should submit, at a minimum, 1 copy of the material(s) to Caroline Talev, no later than close of business close of business February 6, 2015.

Dated: January 12, 2015.

B. Kaye Hayes,

Executive Director, Presidential Advisory Council on HIV/AIDS.

[FR Doc. 2015–01428 Filed 1–26–15; 8:45 am]

BILLING CODE 4150–43–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Healthcare Infection Control Practices Advisory Committee: Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the Healthcare Infection Control Practices Advisory Committee, Department of Health and Human Services, has been renewed for a 2-year period through January 19, 2017.

For information, contact Jeffrey Hageman, M.H.S., Executive Secretary, Healthcare Infection Control Practices Advisory Committee, Department of Health and Human Services, 1600 Clifton Road NE., Mailstop A35, Atlanta, Georgia 30333, telephone 404/639–4951 or fax 404/639–2647.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2015–01381 Filed 1–26–15; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention (CDC)

Subcommittee on Procedures Review, Advisory Board on Radiation and Worker Health (ABRWH or Advisory Board), National Institute for Occupational Safety and Health (NIOSH)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting for the aforementioned subcommittee:

Time and Date: 11 a.m.–5 p.m., EST, February 18, 2015.

Place: Audio Conference Call via FTS Conferencing. The USA toll-free, dial-in number, 1–866–659–0537 and the passcode is 9933701.

Status: Open to the public. The public is welcome to submit written comments in advance of the meeting, to the contact person below. Written comments received in advance of the meeting will be included in the official record of the meeting. The public is also welcome to listen to the meeting by joining the teleconference at the USA toll-free, dial-in number, 1–866–659–0537 and the passcode is 9933701.

Background: The ABRWH was established under the Energy Employees Occupational Illness Compensation Program Act of 2000 to advise the President on a variety of policy and technical functions required to implement and effectively manage the compensation program. Key functions of the ABRWH include providing advice on the development of probability of causation guidelines that have been promulgated by the Department of Health and Human Services (HHS) as a final rule; advice on methods of dose reconstruction which have also been promulgated by HHS as a final rule; advice on the scientific validity and quality of dose estimation and reconstruction efforts being performed for purposes of the compensation program; and advice on petitions to add classes of workers to the Special Exposure Cohort (SEC).

In December 2000, the President delegated responsibility for funding, staffing, and operating the Advisory Board to HHS, which subsequently delegated this authority to CDC. NIOSH implements this responsibility for CDC. The charter was issued on August 3, 2001, renewed at appropriate intervals, and will expire on August 3, 2015.

Purpose: The ABRWH is charged with (a) providing advice to the Secretary, HHS, on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS, on the scientific validity and quality of dose reconstruction efforts performed for this program; and (c) upon request by the Secretary, HHS, providing advice to the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is a reasonable likelihood that such radiation doses may have endangered the health of members of this class. The Subcommittee on Procedures Review was established to aid the ABRWH in carrying out its duty to advise the Secretary, HHS, on dose reconstructions. The Subcommittee on Procedures Review is responsible for overseeing, tracking, and participating in the reviews of all procedures used in the dose reconstruction process by the NIOSH Division of Compensation Analysis and Support (DCAS) and its dose reconstruction contractor (Oak Ridge Associated Universities—ORAU).

Matters for Discussion: The agenda for the Subcommittee meeting includes: Discussion of procedures in the following ORAU and DCAS technical documents: Procedures for reconstructing dose associated with potential skin contamination, ORAU Team Technical Information Bulletin (OTIB) 0054 (''Fission and Activation Product Assignment for Internal Dose-Related Gross Beta and Gross Gamma Analyses''), OTIB 0082 (''Dose Reconstruction Method for Chronic Lymphocytic Leukemia''), Program

Evaluation Report (PER) 009 (''Target Organs for Lymphoma''); PER 011 (''K–25 [Technical Basis Document] TBD and TIB Revisions''), PER 018 (''Los Alamos National Laboratory TBD Revision, Rev. 00,''), PER 031 (''Y–12 TBD Revisions''), PER 042 (''Linde Ceramic Plant TBD Revision''), PER 043 (''Internal and External Dosimetry Organs and IREP Model Selection by ICD–9 Code Revision''), PER 045 (''Aliquippa Forge TBD Revision''), PER 0052 (''Westinghouse Nuclear Fuels Division''); Update on Review of ORAU Team Report 0053 (''Stratified Co-Worker Sets''); and a continuation of the comment-resolution process for other dose reconstruction procedures under review by the Subcommittee.

The agenda is subject to change as priorities dictate.

Contact Person for More Information: Theodore Katz, Designated Federal Officer, NIOSH, CDC, 1600 Clifton Road NE., Mailstop E–20, Atlanta Georgia 30333, Telephone (513)533–6800, Toll Free 1(800)CDC–INFO, Email *ocas@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office.

[FR Doc. 2015–01380 Filed 1–26–15; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Safety and Occupational Health Study Section (SOHSS), National Institute for Occupational Safety and Health (NIOSH or Institute)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Times and Dates:

8 a.m.–5 p.m., February 18, 2015 (Closed)

8 a.m.–5 p.m., February 19, 2015 (Closed)

8 a.m.–5 p.m., February 20, 2015 (Closed)

Place: Embassy Suites, 1900 Diagonal Road, Alexandria, Virginia 22314, Telephone: 703–684–5900, Fax: 703–684–0653.

Purpose: The Safety and Occupational Health Study Section will review, discuss, and evaluate grant application(s) received in response to the Institute's standard grants review and funding cycles pertaining to research issues in occupational safety and health, and allied areas.

It is the intent of NIOSH to support broad-based research endeavors in keeping with the Institute's program goals. This will lead to improved understanding and appreciation for the magnitude of the aggregate health burden associated with occupational injuries and illnesses, as well as to support more focused research projects, which will lead to improvements in the delivery of occupational safety and health services, and the prevention of work-related injury and illness. It is anticipated that research funded will promote these program goals.

Matters for Discussion: The meeting will convene to address matters related to the conduct of Study Section business and for the study section to consider safety and occupational health-related grant applications.

These portions of the meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, Centers for Disease Control and Prevention, pursuant to Section 10(d) Public Law 92–463.

Agenda items are subject to change as priorities dictate.

Contact Person For More Information: Price Connor, Ph.D., NIOSH Health Scientist, CDC, 2400 Executive Parkway, Mailstop E–20, Atlanta, Georgia 30345, Telephone: (404) 498–2511, Fax: (404) 498–2571.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2015–01379 Filed 1–26–15; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Information Collections for the Interim Final Rule on Standards to Prevent, Detect, and Respond to Sexual Abuse and Sexual Harassment Involving Unaccompanied Children.

OMB No.: New Collection.

Description: In accordance with section 1101(c) of the Violence Against Women Reauthorization Act of 2013, Public Law 113–4 (VAWA 2013), the Administration for Children and families (ACF), Office of Refugee Resettlement (ORR) published an interim final rule (IFR) on December 24, 2014 setting forth standards to prevent, detect, and respond to sexual abuse and sexual harassment involving unaccompanied children (UC). The IFR requires care provider facilities to collect, report, and retain information to ensure care provider facilities are properly preventing, detecting, and responding to all incidents of sexual abuse and sexual harassment that occur while a UC is in ORR care and custody. The proposed information collections solicit information to document a care provider facility's efforts to do so. The proposed information collections associated with this rule include the following:

(1) *Sexual Abuse Significant Incident Report Form:* ORR requires care provider facilities to use this form to report allegations related to sexual abuse and sexual harassment to ORR so that ORR may be able to monitor and track allegations of sexual abuse and sexual harassment as well as ensure proper follow-up. All care provider facility staff, volunteers, and contractors are required to report to ORR and third-parties: any knowledge, suspicion, or information regarding an incident of sexual abuse or sexual harassment; retaliation; staff neglect or violation of responsibilities that may have contributed to an incident or retaliation; and allegations of sexual abuse or sexual harassment that occurred while the UC was at another care provider facility.

(2) *Assessment of Risk Form:* ORR requires care provider facilities to use this form to assess a UC's risk of being sexually abused or harassed or being sexually abusive or harassing other UC while in ORR care and custody. Care provider facilities will use this information to inform a UC's service

assignments to reduce the risk of sexual abuse or sexual harassment by or upon a UC.

(3) *Care Provider Incident Review Form:* ORR requires care provider facilities to collect data and prepare a report at the conclusion of every investigation of sexual abuse and sexual harassment that was determined to be substantiated or unsubstantiated but not unfounded to ensure proper steps are taken following an investigation or allegation of sexual abuse and/or sexual harassment.

(4) *Written policies:* ORR requires care provider facilities to maintain written policies: mandating zero tolerance toward all forms of sexual abuse and sexual harassment and outlining the care provider facility's approach to detecting, preventing, and responding to such conduct that include outside agencies (*e.g.* victim advocates, counselors) in the facility's prevention and intervention protocols.

(5) *Previous misconduct of job applicants:* ORR requires care provider facilities to solicit information from job applicants and employees considered for promotion and in any written self-evaluations conducted as part of performance evaluations of current employees about previous misconduct related to sexual abuse and sexual harassment. This information will be used to ensure any previous misconduct is reviewed prior to hiring or promoting a potential or existing employee.

(6) *Background checks:* ORR requires care provider facilities to produce background investigation results and documentation to ORR upon request so that ORR can ensure background checks were conducted and to review background checks as necessary for potential employees at care provider facilities.

(7) *Reporting misconduct of former employees:* ORR requires care provider facilities to provide information on substantiated allegations of sexual abuse or sexual harassment involving a former employee upon request from another care provider facility or institutional employer from whom such individual is seeking employment. ORR requires this so that an employee with substantiated allegations against him/her at one ORR care provider facility is not employed at a different ORR care provider facility.

(8) *Reporting to investigating authorities:* ORR requires care provider facilities to report allegations of sexual abuse and sexual harassment, including allegations that occurred at another care provider facility, to ORR and all appropriate investigating authorities so allegations of sexual abuse and sexual harassment are investigated as appropriate.

(9) *Document retention:* ORR requires care provider facilities to maintain documentation related to sexual abuse and sexual harassment for at least 10 years.

(10) *MOUs with investigating authorities:* ORR requires care provider facilities to maintain agreements or documentation showing attempts to enter into agreements with local law enforcement, State or local Child Protective Services, and State or local licensing agencies. This is required to document completion of the requirement under the IFR.

(11) *Training documentation:* ORR requires care provider facilities to maintain written documentation that employees, contractors, volunteers, and medical and mental health practitioners employed or contracted by the care provider facility have completed required trainings on sexual abuse and sexual harassment prevention, detection, and response. This is required to document completion of the requirement under the IFR.

(12) *Information for UCs:* ORR requires care provider facilities to provide information to UCs regarding the care provider facility's zero tolerance policies, methods to report allegations, information on appropriate/inappropriate relationships, and to document the provision of such information. This is required of care provider facilities so that UCs know what to report, how to report, and the policies of the facility.

(13) *MOUs with reporting entities:* ORR requires care provider facilities to maintain agreements or document attempts to enter into agreements with external entities that can receive and immediately forward UC reports of sexual abuse and sexual harassment allegations to ORR. This is to ensure completion of the IFR requirements.

(14) *Grievance procedures:* ORR requires care provider facilities to maintain written procedures for identifying and handling time-sensitive grievances that involve immediate threats to a child's health, safety, or welfare related to sexual abuse and sexual harassment and reporting them to ORR. This is to ensure care provider facilities have procedures to handle time-sensitive grievances.

(15) *Agreements with community service providers:* ORR requires care provider facilities must maintain agreements or document attempts to enter into agreements with community service providers to provide legal advocacy and confidential emotional support services for victims of sexual abuse and sexual harassment. This is to ensure that care provider facilities comply with the IFR requirements.

(16) *Third party reporting:* ORR is required to establish a method to receive third-party reports of sexual abuse and sexual harassment that occur at ORR care provider facilities. This provides a way for third-parties to report allegations to ORR.

(17) *Reporting to parent/legal guardian:* ORR requires care provider facilities to disclose allegations of sexual abuse and sexual harassment to the victim's parents or legal guardian, except in cases where doing so would endanger the safety or well-being of the UC.

(18) *Reporting to attorney of record:* ORR requires care provider facilities to disclose allegations of sexual abuse and sexual harassment to the victim's attorney of record, if applicable.

(19) *Reporting staff, contractors, and volunteers to investigating authorities:* ORR requires care provider facilities to report to law enforcement agencies and to any relevant state or local licensing agency any staff, contractor, or volunteer who was terminated or resigned because of a violation of care provider facility sexual abuse or sexual harassment policies or procedures.

(20) *Annual reports:* ORR requires care provider facilities to conduct an annual review of all sexual abuse and sexual harassment investigations and provide the results to ORR so that ORR can gather aggregate data from all ORR care provider facilities.

(21) *Quarterly reporting:* ORR requires the care provider facility's PSA Compliance Manager to prepare a quarterly report for ORR compiling information and aggregate incident-based sexual abuse and sexual harassment data in order for ORR to review data on a regular basis.

(22) *Other data:* ORR requires care provider facilities to provide data or information to ORR upon request.

(23) *Audit report:* ORR requires one audit report for each facility within the first three years of the rule's publication and once every three years thereafter. Audits will certify that care provider facilities meet the standards required by the IFR. Audit reports will be provided to ORR so ORR can ensure that all care provider facilities are compliant with the IFR.

Respondents: Care provider facility service staff, contractors, volunteers, family members and friends of UC, and auditors.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Sexual Abuse Significant Incident Report Form	2,430	1 or more	0.5	1,215 or more.
Assessment of Risk Form	57,500	1	0.17	9,775.
Care Provider Incident Review Form	2,430	1	0.5	1,215.
Written policies	120	1	2	240.
Previous misconduct	7,479	1 or more	0.33	2,468.
Background checks	748	1 or more	0.1	74.8.
Reporting misconduct of former employees	75	1	0.33	25.
Reporting to investigating authorities	2,430	1 or more	0.33	802 or more.
MOUs with investigating authorities	120	2 or more	0.33	79 or more.
Training documentation	7,479	1	0.17	1,271.
Information for UCs	57,500	1	0.25	14,375.
MOUs with reporting entities	120	1	0.25	30.
Grievance procedures	120	1	0.5	60.
Agreements with local service providers	120	1 or more	1	120.
Third Party reporting	73 or more	1	0.25	18 or more.
Disclosure to parent/guardian	2,430	1	0.17	413.
Disclosure to atty of record	972	1	0.17	165.
Reporting staff, contractors, and volunteers to investigating authorities	25	1	0.25	6.
Annual reports	120	1	4	480.
Quarterly reports	120	4	2	960.
Other data	120	20 or more	0.25	600.
Audit report	40	1	8	320.

Estimated Total Annual Burden Hours: 34,713.

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. 2015–01372 Filed 1–26–15; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0194]

Agency Information Collection Activities; Proposed Collection; Comment Request; Biosimilars User Fee Cover Sheet; Form FDA 3792

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 information collection in Form FDA 3792, ''Biosimilars User Fee Cover Sheet''.

DATES: Submit either electronic or written comments on the collection of information by March 30, 2015.

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.

Biosimilars User Fee Cover Sheet; Form FDA 3792 (OMB Control Number 0910–0718)—Extension

The Patient Protection and Affordable Care Act (Pub. L. 111–148) contains a subtitle called the Biologics Price Competition and Innovation Act of 2009 (Title VII Subtitle A) (BPCI Act) that amends the Public Health Service Act (42 U.S.C. 262) (PHS Act) and other statutes to create an abbreviated approval pathway for biological products shown to be biosimilar to or interchangeable with an FDA-licensed reference biological product. Section 351(k) of the PHS Act, added by the BPCI Act, allows a company to submit an application for licensure of a biosimilar or interchangeable biological product. The BPCI Act also amends section 735 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 379g) to include 351(k) applications in the definition of ''human drug application'' for the purposes of the prescription drug user fee provisions. The BPCI Act directs FDA to develop recommendations for a biosimilar biological product user fee program for fiscal years 2013 through 2017. FDA's recommendations for a biosimilar biological product user fee program were submitted to Congress on January 13, 2012.

FDA's biosimilar biological product user fee program requires FDA to assess and collect user fees for certain meetings concerning biosimilar biological product development (BPD meetings), investigational new drug applications (INDs) intended to support a biosimilar biological product application, and biosimilar biological product applications and supplements. Form FDA 3792, the Biosimilars User Fee Cover Sheet, requests the minimum necessary information to determine the amount of the fee required, and to account for and track user fees. The form provides a cross-reference of the fees submitted for a submission with the actual submission by using a unique number tracking system. The information collected is used by FDA's Center for Drug Evaluation and Research and Center for Biologics Evaluation and Research to initiate the administrative screening of biosimilar biological product INDs, applications, and supplements, and to account for and track user fees associated with BPD meetings.

Respondents to this collection of information are manufacturers of biosimilar biological product candidates. Based on the number of Form FDA 3792s we have received, we estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

FDA form No.	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Biosimilars User Fee Cover Sheet; Form FDA 3792 ..	20	1	20	0.50 (30 minutes) ...	10

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: January 21, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–01404 Filed 1–26–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–1414]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Class II Special Controls Guidance Document: Labeling of Natural Rubber Latex Condoms

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by February 26, 2015.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0633. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Class II Special Controls Guidance Document: Labeling for Natural Rubber Latex Condoms Classified Under 21 CFR 884.5300—(OMB Control Number 0910–0633)—Extension

Under the Medical Device Amendments of 1976 (Pub. L. 94–295), class II devices were defined as those devices for which there was insufficient information to show that general controls themselves would provide a reasonable assurance of safety and effectiveness but for which there was sufficient information to establish performance standards to provide such assurance.

Condoms without spermicidal lubricant containing nonoxynol 9 are

classified in class II. They were originally classified before the enactment of provisions of the Safe Medical Devices Act of 1990 (Pub. L. 101–629), which broadened the definition of class II devices and now permit FDA to establish special controls beyond performance standards, including guidance documents, to help provide reasonable assurance of the safety and effectiveness of such devices.

In December 2000, Congress enacted Public Law 106–554, which directed FDA to ''reexamine existing condom labels'' and ''determine whether the labels are medically accurate regarding the overall effectiveness or lack of effectiveness in preventing sexually transmitted diseases * * *.'' In response, FDA recommended labeling intended to provide important information for condom users, including the extent of protection provided by condoms against various types of sexually transmitted diseases.

Respondents to this collection of information are manufacturers and repackagers of male condoms made of natural rubber latex without spermicidal lubricant. FDA expects approximately five new manufacturers or repackagers to enter the market yearly and to collectively have a third-party disclosure burden of 60 hours. The number of respondents cited in table 1 of this document is based on FDA's database of premarket submissions and the electronic registration and listing database. The average burden per disclosure was derived from a study performed for FDA by Eastern Research Group, Inc., an economic consulting firm, to estimate the impact of the 1999 over-the-counter (OTC) human drug labeling requirements final rule (64 FR 13254, March 17, 1999). Because the packaging requirements for condoms are similar to those of many OTC drugs, we believe the burden to design the labeling for OTC drugs is an appropriate proxy for the estimated burden to design condom labeling.

The special controls guidance document also refers to previously approved collections of information found in FDA regulations. The collections of information in 21 CFR part 801 have been approved under OMB control number 0910–0485; the collections of information in 21 CFR part 807 subpart E have been approved under OMB control number 0910–0120; and the collections of information in 21 CFR part 820 have been approved under OMB control number 0910–0073.

The collection of information under 21 CFR 801.437 does not constitute a ''collection of information'' under the Paperwork Reduction Act of 1995. Rather, it is a ''public disclosure of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public'' (5 CFR 1320.3(c)(2)).

In the **Federal Register** of October 15, 2014 (79 FR 61874), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN [1]

Activity	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure	Total hours
Class II Special Controls Guidance Document: Labeling for Natural Rubber Latex Condoms Classified Under 21 CFR 884.5300	5	1	5	12	60

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: January 21, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–01403 Filed 1–26–15; 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: 038

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) 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: 038'' (Recognition List Number: 038), 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 of this document for the effective date of the recognition of standards announced in this document.

ADDRESSES: An electronic copy of Recognition List Number: 038 is available on the Internet at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/Standards/ucm123792.htm.* See section VI of this document for electronic access to the searchable database for the current list of FDA recognized consensus standards, including Recognition List Number: 038 modifications and other standards related information.

Submit written requests for a single copy of the document entitled ''Modifications to the List of Recognized Standards, Recognition List Number: 038'' 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 one self-addressed adhesive label 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.

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 (FDAMA) (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 FDA would implement its 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 hypertext markup language (HTML) and portable document format (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: 038

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. FDA will incorporate these modifications in the list of FDA Recognized Consensus Standards in the Agency's searchable database. FDA will use the term ''Recognition List Number: 038'' to identify these current modifications.

In table 1, FDA describes 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, FDA lists 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	
1–57		ASTM F1101–90 (Reapproved 2003) Standard Specification for Ventilators Intended for Use During Anesthesia.	Withdrawn.
1–69		ASTM F1464–93 (Reapproved 2005) Standard Specification for Oxygen Concentrators for Domiciliary Use.	Withdrawn.
1–70		ASTM F1246–91 (Reapproved 2005) Standard Specification for Electrically Powered Home Care Ventilators—Part 1: Positive-Pressure Ventilators and Ventilator Circuits.	Withdrawn.
1–94		ISO 8359 Second edition 1996–12–15, Oxygen concentrators for medical use—safety requirements [including amendment 1 (2012)].	Withdrawn. See 1–102.
		B. Biocompatibility	
2–143	2–213	ASTM F1904–14 Standard Practice for the Biological Responses to Particles in vivo.	Withdrawn and replaced with newer version.
2–144	2–214	ASTM F619–14 Standard Practice for Extraction of Medical Plastics.	Withdrawn and replaced with newer version.
		C. Cardiovascular	
3–88		ASTM F2514–08 (Reapproved 2014) Standard Guide for Finite Element Analysis (FEA) of Metallic Vascular Stents Subjected to Uniform Radial Loading.	Reaffirmation.
3–123		IEC 80601–2–30 Edition 1.1 2013–07, Medical electrical equipment—Part 2–30: Particular requirements for the basic safety and essential performance of automated non-invasive sphygmomanometers.	Extent of recognition and Process impacted.
		D. Dental/ENT	
4–117		ANSI/ADA Specification No. 12: 2002 (Reaffirmed 2008) Denture base polymers.	Withdrawn.
4–134	4–213	ISO 7494–1 Second edition 2011–08–15 Dentistry—Dental units—Part 1: General requirements and test methods.	Withdrawn and replaced with newer version.
4–135	4–214	ISO 10139–1 Second edition 2005–02–15, Dentistry—Soft lining materials for removable dentures—Part 1: Materials for short-term use [Including: Technical Corrigendum 1 (2006)].	Withdrawn and replaced with newer version including technical corrigendum.
4–136		ASTM F2504–05 (Reapproved 2014) Standard Practice for Describing System Output of Implantable Middle Ear Hearing Devices.	Reaffirmation.

TABLE 1—MODIFICATIONS TO THE LIST OF RECOGNIZED STANDARDS—Continued

Old recognition No.	Replacement recognition No.	Title of standard [1]	Change
4–143	4–215	ANSI/ADA Standard No. 96: 2012 Dental Water-based Cements	Withdrawn and replaced with newer version.
4–159	4–216	ANSI/IEEE ANSI C63.19–2011 American National Standard Methods of Measurement of Compatibility between Wireless Communications Devices and Hearing Aids.	Withdrawn and replaced with newer version.
4–170	4–217	ANSI/ASA S3.36–2012 American National Standard Specification for a Manikin for Simulated in-situ Airborne Acoustic Measurements.	Withdrawn and replaced with newer version.
4–183		ANSI/ASA S3.2–2009 (Reaffirmed 2014) American National Standard Method for Measuring the Intelligibility of Speech over Communication Systems.	Reaffirmation.
4–185		ANSI/ASA S3.45–2009 (Reaffirmed 2014) American National Standard Procedures for Testing Basic Vestibular Function.	Reaffirmation.
		E. General I (Quality Systems/Risk Management (QS/RM))	
5–48		ANSI/ASQ Z1.9–2003 (R2013) Sampling Procedures and Tables for Inspection by Variables for Percent Nonconforming.	Reaffirmation.
5–57		ANSI/AAMI HE75:2009/(R)2013 Human factors engineering—Design of medical devices.	Reaffirmation.
5–62		ANSI/ASQ Z1.4–2003 (R2013) Sampling Procedures and Tables for Inspection by Attributes.	Reaffirmation.
		F. General Hospital/General Plastic Surgery (GH/GPS)	
6–199	6–335	ASTM F2101–14 Standard Test Method for Evaluating the Bacterial Filtration Efficiency (BFE) of Medical Face Mask Materials, Using a Biological Aerosol of Staphylococcus aureus.	Withdrawn and replaced with newer version.
6–217		ASTM F1670/F1670M–08 (Reapproved 2014) epsiv;1 Standard Test Method for Resistance of Materials Used in Protective Clothing to Penetration by Synthetic Blood.	Reaffirmation.
6–228	6–336	IEC 60601–2–2 Edition 5.0 2009–02 Medical Electrical Equipment—Part 2–2: Particular Requirements for the Basic Safety and Essential Performance of High Frequency Surgical Equipment and High Frequency Surgical Accessories [Including: Technical Corrigendum 1 (2014)].	Withdrawn and replaced with newer version including technical corrigendum.
6–231	6–337	ANSI/AAMI/IEC 60601–2–20:2009 Medical Electrical Equipment—Part 2–20: Particular Requirements for the Basic Safety and Essential Performance of Infant Transport Incubators [Including: Erratum (2012)].	Withdrawn and replaced with newer version including erratum.
		G. In Vitro Diagnostics (IVD)	
7–84		CEN 13640, Stability Testing of In Vitro Diagnostic Reagents	Withdrawn.
7–162		CLSI POCT14–A (Formerly H49–A) Point-Of-Care Monitoring of Anticoagulation Therapy; Approved Guideline.	Withdrawn duplicate. See 7–112.
7–184	7–250	CLSI M40–A2 Quality Control of Microbiological Transport Systems; Approved Standard—Second Edition.	Withdrawn and replaced with newer version.
		H. Materials	
8–111	8–380	ASTM F1160–14 Standard Test Method for Shear and Bending Fatigue Testing of Calcium Phosphate and Metallic Medical and Composite Calcium Phosphate/Metallic Coatings.	Withdrawn and replaced with newer version.
8–124	8–381	ASTM F2052–14 Standard Test Method for Measurement of Magnetically Induced Displacement Force on Medical Devices in the Magnetic Resonance Environment.	Withdrawn and replaced with newer version.
8–171		ASTM F1609–08 (Reapproved 2014) Standard Specification for Calcium Phosphate Coatings for Implantable Materials.	Reaffirmation.
8–198	8–382	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.
8–207	8–383	ASTM F1926/F1926M–14 Standard Test Method for Dissolution Testing of Calcium Phosphate Granules, Fabricated Forms, and Coatings.	Withdrawn and replaced with newer version.
8–340	8–384	ASTM F2026–14 Standard Specification for Polyetheretherketone (PEEK) Polymers for Surgical Implant Applications.	Withdrawn and replaced with newer version.
8–357	8–385	ASTM F648–14 Standard Specification for Ultra-High-Molecular-Weight Polyethylene Powder and Fabricated Form for Surgical Implants.	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
I. OB–GYN/Gastroenterology/Urology			
9–6	9–95	IEC 60601–2–36 Edition 2.0 2014–04 Medical electrical equipment—Part 2–36: Particular requirements for the basic safety and essential performance of equipment for extracorporeally induced lithotripsy.	Withdrawn and replaced with newer version.
9–45		ASTM F2528 – 06 (Reapproved 2014) Standard Test Methods for Enteral Feeding Devices with a Retention Balloon.	Reaffirmation.
9–62	9–96	IEC 60601–2–2 Edition 5.0 2009–02 Medical Electrical Equipment—Part 2–2: Particular Requirements for the Basic Safety and Essential Performance of High Frequency Surgical Equipment and High Frequency Surgical Accessories [Including: Technical Corrigendum 1 (2014)].	Withdrawn and replaced with newer version including technical corrigendum.
9–74	9–97	ISO 13958 Third edition 2014–04–01 Concentrates for haemodialysis and related therapies.	Withdrawn and replaced with newer version.
9–76	9–98	ISO 13959 Third edition 2014–04–01 Water for haemodialysis and related therapies.	Withdrawn and replaced with newer version.
9–77	9–99	ISO 23500 Second edition 2014–04–01 Guidance for the preparation and quality management of fluids for haemodialysis and related therapies.	Withdrawn and replaced with newer version.
9–78	9–100	ISO 11663 Second edition 2014–04–01 Quality of dialysis fluid for haemodialysis and related therapies.	Withdrawn and replaced with a newer version.
9–79	9–101	ISO 26722 Second edition 2014–04–01 Water treatment equipment for haemodialysis applications and related therapies.	Withdrawn and replaced with a newer version.
9–82	9–102	ISO 4074 Second edition 2014–08–15 Natural rubber latex male condoms—Requirements and test methods.	Withdrawn and replaced with newer version.
J. Ophthalmic			
10–49	10–90	ISO 11979–9 First edition 2006–09–01 Ophthalmic implants—Intraocular lenses—Part 9: Multifocal intraocular lenses [Including: Amendment 1(2014)].	Withdrawn and replaced with newer version including amendment.
10–50	10–91	ISO 11979–10 First edition 2006–08–15 Ophthalmic implants—Intraocular lenses—Part 10: Phakic intraocular lenses [Including: Amendment 1 (2014)].	Withdrawn and replaced with newer version including amendment.
10–80		ISO 18369–2 Second edition 2012–12–01 Ophthalmic optics—Contact lenses—Part 2: Tolerances.	Extent of recognition and relevant guidance.
K. Orthopedic			
11–196	11–281	ASTM F1672–14 Standard Specification for Resurfacing Patellar Prosthesis.	Withdrawn and replaced newer version.
11–213	11–282	ASTM F1223–14 Standard Test Method for Determination of Total Knee Replacement Constraint.	Withdrawn and replaced with newer version.
11–260	11–283	ASTM F2943–14 Standard Guide for Presentation of End User Labeling Information for Musculoskeletal Implants.	Withdrawn and replaced with newer version.
11–263	11–284	ASTM F2028–14 Standard Test Methods for Dynamic Evaluation of Glenoid Loosening or Disassociation.	Withdrawn and replaced with newer version.
L. Physical Medicine			
16–189	16–193	ASME A18.1–2014 Safety Standard for Platform Lifts and Stairway Chairlifts.	Withdrawn and replaced with newer version.
M. Radiology			
12–181	12–284	NEMA NU 1–2012 Performance Measurements of Gamma Cameras.	Withdrawn and replaced with newer version.
12–206	12–285	IEC 60601–2–1 Edition 3.1 2014–07 Medical electrical equipment—Part 2–1: Particular requirements for the basic safety and essential performance of electron accelerators in the range 1 MeV to 50 MeV.	Withdrawn and replaced with newer version.
12–230		NEMA XR 24–2008 (R2014) Primary User Controls for Interventional Angiography X-Ray Equipment.	Reaffirmation.
N. Sterility			
14–139		ISO 14644–1 First edition 1999–05–01 Cleanrooms and associated controlled environments—Part 1: Classification of air cleanliness.	Relevant guidance.

TABLE 1—MODIFICATIONS TO THE LIST OF RECOGNIZED STANDARDS—Continued

Old recognition No.	Replacement recognition No.	Title of standard [1]	Change
14–140		ISO 14644–2 First edition 2000–09–15 Cleanrooms and associated controlled environments—Part 2: Specifications for testing and monitoring to prove continued compliance with ISO 14644–1.	Relevant guidance.
14–141		ISO 14644–4 First edition 2001–04–01 Cleanrooms and associated controlled environments—Part 4: Design, construction and start-up.	Relevant guidance.
14–165		ISO 14644–5 First edition 2004–08–15 Cleanrooms and associated controlled environments—Part 5: Operations.	Relevant guidance.
14–166		ISO 14644–7 First edition 2004–10–01 Cleanrooms and associated controlled environments—Part 7: Separative devices (clean air hoods, gloveboxes, isolators and mini-environments).	Relevant guidance.
14–193		ANSI/AAMI/ISO 11607–1:2006/(R)2010, Packaging for terminally sterilized medical devices—Part 1: Requirements for materials, sterile barrier systems, and packaging systems.	Relevant guidance.
14–194		ANSI/AAMI/ISO 11607–2:2006/(R)2010, Packaging for terminally sterilized medical devices—Part 2: Validation requirements for forming, sealing and assembly processes.	Relevant guidance.
14–238		AAMI/ANSI/ISO 11140–5:2007/(R)2012, Sterilization of health care products—Chemical indicators—Part 5: Class 2 indicators for Bowie and Dick air removal test sheets and packs.	Relevant guidance.
14–242		ISO 14644–3 First edition 2005–12–15 Cleanrooms and associated controlled environments—Part 3: Test methods.	Relevant guidance.
14–243		ISO 14644–6 First edition Cleanrooms and associated controlled environments—Part 6: Vocabulary.	Relevant guidance.
14–274		ANSI/AAMI/ISO 15882:2008/(R)2013, Sterilization of health care products—Chemical indicators—Guidance for selection, use and interpretation of results.	Reaffirmation.
14–299	14–453	ASTM F2097–14 Standard Guide for Design and Evaluation of Primary Flexible Packaging for Medical Products.	Withdrawn and replaced with newer version.
14–355	14–454	ISO 11607–1 First edition 2006–04–15 Packaging for terminally sterilized medical devices—Part 1: Requirements for materials, sterile barrier systems and packaging systems [Including: Amendment 1 (2014)].	Withdrawn and replaced with newer version including amendment.
14–356	14–455	ISO 11607–2 First edition 2006–04–15 Packaging for terminally sterilized medical devices—Part 2: Validation requirements for forming, sealing and assembly processes [Including: Amendment 1 (2014)].	Withdrawn and replaced with newer version including amendment.
14–379		ISO 14644–8 Second edition 2013–02–15 Cleanrooms and associated controlled environments—Part 8: Classification of air cleanliness by chemical concentration (ACC).	Relevant guidance.
14–389		ISO 14644–9 First edition 2012–08–15 Cleanrooms and associated controlled environments—Part 9: Classification of surface cleanliness by particle concentration.	Relevant guidance.
14–390		ISO 14644–10 First edition 2013–03–01 Cleanrooms and associated controlled environments—Part 10: Classification of surface cleanliness by chemical concentration.	Relevant guidance.

[1] All standard titles in this table conform to the style requirements of the respective organizations.

III. Listing of New Entries

In table 2, FDA provides the listing of new entries and consensus standards added as modifications to the list of recognized standards under Recognition List Number: 038.

TABLE 2—NEW ENTRIES TO THE LIST OF RECOGNIZED STANDARDS

Recognition No.	Title of standard [1]	Reference No. and date
	A. Anesthesia	
1–102	Medical electrical equipment—Part 2–69: Particular requirements for basic safety and essential performance of oxygen concentrator equipment.	ISO 80601–2–69 First edition 2014–07–15.
	B. Cardiovascular	
3–133	International Standard-Cardiovascular implants—Cardiac valve prostheses—Part 3: Heart valve substitutes implanted by transcatheter techniques.	ISO 5840–3 First edition 2013–03–01.

TABLE 2—NEW ENTRIES TO THE LIST OF RECOGNIZED STANDARDS—Continued

Recognition No.	Title of standard [1]	Reference No. and date
C. Dental/Ear, Nose, and Throat		
4–218	International Standard–Dentistry—Brackets and tubes for use in orthodontics.	ISO 27020 First edition 2010–12–15.
4–219	International Standard–Dentistry–Adhesive–Notched Edge Sheer Bond Strength Test.	ISO 29022 First edition 2013–06–01.
D. General Hospital/General Plastic Surgery		
6–338	Standard Specification for Radiation Attenuating Protective Gloves.	ASTM D7866–14a.
6–339	Standard Consumer Safety Specification for Full-Size Baby Cribs.	ASTM F1169–13.
6–340	Standard Consumer Safety Performance Specification for Commercial Cribs.	ASTM F2710–13.
E. Nanotechnology		
18–3	Technical Specification—Surface characterization of gold nanoparticles for nanomaterial specific toxicity screening: FT–IR method.	ISO/TS 14101 First edition 2012–11–01.
F. Neurology		
17–13	IEEE Recommended Practice for Neurofeedback Systems ...	IEEE Std 2010–2012.
G. Ophthalmics		
10–92	American National Standard for Ophthalmics-Contact Lenses—Standard Terminology, Tolerances, Measurements and Physicochemical Properties.	ANSI Z80.20–2010 (Revision of ANSI Z80.20–2004) 12/06/2010.
10–93	American National Standard for Ophthalmics-Implantable Glaucoma Devices.	ANSI Z80.27–2014 (revision of ANSI Z80.27–2001 (R2011)) 01/27/2014.
H. Orthopedic		
11–285	Guide to Optimize Scan Sequences for Clinical Diagnostic Evaluation of Metal-on-Metal Hip Arthroplasty Devices using Magnetic Resonance Imaging.	ASTM F2978–13.
11–286	Guide For the Characterization of Wear from the Articulating Surfaces in Retrieved Metal-on-Metal and other Hard-on-Hard Prostheses.	ASTM F2979–14.
I. Radiology		
12–286	X-ray Equipment for Interventional Procedures—User Quality Control Mode.	NEMA XR–27–2013 with Amendment 1.
12–287	Supplemental Requirements for User Information and System Function Related to Dose in CT.	NEMA XR 28–2013.
12–288	Characterization of Phased Array Coils for Diagnostic Magnetic Resonance Images (MRI).	NEMA MS 9–2008.
J. Software/Informatics		
13–70	Application of risk management for IT-networks incorporating medical devices—Part 2–5: Application guidance—Guidance on distributed alarm systems.	IEC TR 80001–2–5 2014.
13–71	Logical Observation Identifiers Names and Codes (LOINC) ...	LOINC 2.48 2014–06–27.
13–72	Health informatics—Personal health device communication, Part 10425: Device Specialization—Continuous Glucose Monitor (CGM).	IEEE Std 11073–10425–2014.
K. Sterility		
14–456	Packaging for terminally sterilized medical devices—Guidance on the application of ISO 11607–1 and ISO 11607–2.	ISO/TS 16775 First edition 2014–05–15.

[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 FDA's Internet site at *http://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfStandards/search.cfm.* FDA 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. FDA 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, FDA no longer announces 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 *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, *http://www.fda.gov/MedicalDevices,* includes a link to standards-related documents including the guidance and the current list of recognized standards. After publication in the **Federal Register**, this notice announcing ''Modification to the List of Recognized Standards, Recognition List Number: 038'' will be available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/Standards/ucm123792.htm.* 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: 038. These modifications to the list of recognized standards are effective upon publication of this notice in the **Federal Register**.

Dated: January 22, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–01420 Filed 1–26–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–D–0198]

Current Good Manufacturing Practice Requirements for Combination Products; Draft Guidance for Industry and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry and FDA staff entitled ''Current Good Manufacturing Practice Requirements for Combination Products.'' The guidance describes and explains the final rule on current good manufacturing practice (CGMP) requirements for combination products, including presenting general considerations for CGMP compliance as well as analysis of hypothetical scenarios.

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 March 30, 2015.

ADDRESSES: Submit written requests for single copies of the draft guidance document entitled ''Current Good Manufacturing Practice Requirements for Combination Products'' to the Office of Combination Products, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5129, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request. 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. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: John Barlow Weiner, Office of Combination Products, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5129, Silver Spring, MD 20993–0002, 301–796–8930.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry and FDA staff entitled ''Current Good Manufacturing Practice Requirements for Combination Products.'' The guidance provides background on combination products, including an overview of the final rule on CGMP requirements for combination products (78 FR 4307, January 22, 2013) (21 CFR part 4) and the role of the lead center and other Agency components with respect to combination product CGMP issues. The guidance addresses general considerations for CGMP requirements for combination products and the purpose and content of specific CGMP provisions addressed in part 4. The guidance also contains hypothetical scenarios intended to clarify how to

comply with certain CGMP requirements addressed in part 4 by presenting compliance considerations for specific types of combination products. Throughout the guidance, reference is made to other existing guidance and additional sources of information addressing CGMP requirements for drugs, devices, biological products, and human cells, tissues, and cellular and tissue-based products (HCT/Ps). Concurrent with publication of this draft guidance, FDA is withdrawing the draft guidance for industry and FDA staff entitled ''Current Good Manufacturing Practice for Combination Products,'' which was issued in September 2004.

II. Significance of Guidance

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the Agency's current thinking on CGMP requirements for combination products. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Paperwork Reduction Act

This 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). We note that the information collected under the underlying CGMP regulations for drugs, devices, and biological products, including current good tissue practices for HCT/Ps, found at 21 CFR parts 211, 820, 600 through 680, and 1271, have already been approved and are in effect. The provisions of part 211 are approved under the Office of Management and Budget (OMB) control number 0910–0139. The provisions of part 820 are approved under OMB control number 0910–0073. The provisions of parts 606, 640, and 660 are approved under OMB control number 0910–0116. The provisions of part 610 are approved under OMB control number 0910–0116 and OMB control number 0910–0338 (also for part 680). The provisions of part 1271, subparts C and D, are approved under OMB control number 0910–0543.

IV. Comments

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.*

V. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/RegulatoryInformation/Guidances/ucm126198.htm* or *http://www.regulations.gov.*

Dated: January 21, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–01410 Filed 1–26–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–D–1849]

Medical Devices and Clinical Trial Design for the Treatment or Improvement in the Appearance of Fungally-Infected Nails; Draft Guidance for Industry and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance entitled ''Medical Devices and Clinical Trial Design for the Treatment or Improvement in the Appearance of Fungally-Infected Nails.'' This guidance is intended to provide recommendations when finalized regarding clinical trial design for medical devices intended either to provide improvement in the appearance of nails affected by onychomycosis or to treat onychomycosis (fungal nail infection). This draft guidance is not final nor is it in effect at this time.

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 of 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 April 27, 2015.

ADDRESSES: An electronic copy of the guidance document is available for download from the Internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the draft guidance document entitled ''Medical Devices and Clinical Trial Design for the Treatment or Improvement in the Appearance of Fungally-Infected Nails'' to the Office of the Center Director, Guidance and Policy Development, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request.

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. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Neil Ogden, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. G414, Silver Spring, MD 20993–0002, 301–796–6397.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry and FDA staff entitled ''Medical Devices and Clinical Trial Design for the Treatment or Improvement in the Appearance of Fungally-Infected Nails.'' This guidance is intended to provide recommendations when finalized regarding clinical trial design for medical devices intended either: (1) To provide improvement in the appearance of nails affected by onychomycosis, that is, to affect the structure/function of the nails or (2) to treat onychomycosis (fungal nail infection).

The FDA distinguishes these two conditions as target outcomes. The treatment of onychomycosis (an infectious disease) requires proof of stable elimination of the fungal organism, which is a medical endpoint. This outcome is distinct from outcomes limited to ''temporary increase in clear nail'' in nails which are fungally infected, which is considered an aesthetic endpoint, and does not connote successful eradication of fungal infection. The need for clinical performance data will be dependent on

the design and use of the device. This guidance is intended to provide information related to both indications, when the device is applied to nails with confirmed fungal infection.

II. Significance of Guidance

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the Agency's current thinking on clinical trial design for the treatment or improvement in the appearance of fungally infected nails. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the draft guidance may do so by downloading an electronic copy from the Internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm.* Guidance documents are also available at *http://www.regulations.gov.* Persons unable to download an electronic copy of ''Medical Devices and Clinical Trial Design for the Treatment or Improvement in the Appearance of Fungally-Infected Nails'' may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number 1400009 to identify the guidance you are requesting.

IV. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 812 have been approved under OMB control number 0910–0078; the collections of information in 21 CFR part 807, subpart E have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 814 have been approved under OMB control number 0910–0231; the collections of information regarding adverse events have been approved under OMB control number 0910–0471; and the collections of information in 21 CFR part 801 have been approved under OMB control number 0910–0485.

The labeling recommendations of this draft guidance are not subject to review by the Office of Management and Budget because they do not constitute a ''collection of information'' under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Rather, the recommended labeling is a ''public disclosure of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public.'' (see 5 CFR 1320.3(c)(2)).

V. Comments

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.*

Dated: January 21, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–01407 Filed 1–26–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–D–0068]

International Conference on Harmonisation; S10 Photosafety Evaluation of Pharmaceuticals; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled ''S10 Photosafety Evaluation of Pharmaceuticals.'' The guidance was prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). This guidance outlines details on when photosafety testing is warranted and on possible assessment strategies; it should be read in conjunction with the ICH M3(R2) guidance, section XIV(14) Photosafety Testing. The purpose of the guidance is to recommend international standards for photosafety assessment and to harmonize such assessments that support human clinical trials and marketing authorization for pharmaceuticals. This guidance finalizes the draft guidance issued on February 4, 2013.

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

ADDRESSES: Submit written requests for single copies of the guidance to the Division of Drug Information, Center for Drug Evaluation and Research (CDER), Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993; or 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. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit electronic comments on the guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: *Regarding the guidance:* Abigail Jacobs, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 6474, Silver Spring, MD 20993–0002;

Regarding the ICH: Michelle Limoli, Center for Drug Evaluation and Research, International Programs, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 1174, Silver Spring, MD 20993–0002, 301–796–8377.

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory Agencies.

ICH was organized to provide an opportunity for tripartite harmonization

initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission; the European Federation of Pharmaceutical Industries Associations; the Japanese Ministry of Health, Labour, and Welfare; the Japanese Pharmaceutical Manufacturers Association; CDER and CBER, FDA; and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, Health Canada, and the European Free Trade Area.

In the **Federal Register** of February 4, 2013 (78 FR 7786), FDA published a notice announcing the availability of a draft guidance entitled ''S10 Photosafety Evaluation of Pharmaceuticals.'' The notice gave interested persons an opportunity to submit comments by March 21, 2013. Changes made to the guidance took into consideration written comments received. In addition to editorial changes primarily for clarification, the major changes are as follows:

- The guidance further emphasizes the flexibility and optional nature of assessments for photosafety. This is reflected in revisions to Figure 1 and related text.
- The discussion about pharmaceuticals given via ocular routes was reduced because the ICH working group did not have useful guidance to provide for these products.

After consideration of the comments received and revisions to the guidance, a final draft of the guidance was submitted to the ICH Steering Committee and endorsed by the three participating regulatory Agencies in November 2013.

The ICH S10 guidance provides guidance on when photosafety testing is warranted, and on possible testing strategies. It represents the consensus that exists regarding assessment of photosafety to support clinical development and marketing authorization of pharmaceuticals. It supplements the ICH M3(R2) guidance,[1] which: (1) Provides certain information regarding timing of photosafety testing relative to clinical development and (2) recommends that an initial assessment of photoreactive potential be conducted and, if appropriate, an experimental evaluation be undertaken before exposure of large numbers of subjects.

The guidance describes a flexible, integrated process that involves photochemical characteristics, data from nonclinical studies, and human safety information. Although the strategy is flexible and the options selected are the developer's choice, characterization of the ultraviolet-visible absorption spectrum is recommended as the initial assessment and can obviate any further photosafety evaluation. Results of the evaluation determine the need for risk minimization measures to prevent adverse events in humans.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the Agency's current thinking on 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 requirements of the applicable statutes and regulations.

II. Comments

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.*

III. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.regulations.gov, http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm,* or *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/default.htm.*

[1] See the ICH guidance ''M3(R2) Nonclinical Safety Studies for the Conduct of Human Clinical Trials and Marketing Authorization for Pharmaceuticals,'' available on the Internet at *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm.*

Dated: January 22, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–01406 Filed 1–26–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–N–0045]

International Drug Scheduling; Convention on Psychotropic Substances; Single Convention on Narcotic Drugs; World Health Organization; Scheduling Recommendations; AH-7921; Gamma-Butyrolactone; 1,4-Butanediol; Ketamine; 9 Additional Substances; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing interested persons with the opportunity to submit written comments and to request an informal public meeting concerning recommendations by the World Health Organization (WHO) to impose international manufacturing and distributing restrictions, under international treaties, on certain drug substances. The comments received in response to this notice and/or public meeting will be considered in preparing the United States position on these proposals for a meeting of the United Nations Commission on Narcotic Drugs (CND) in Vienna, Austria, in March 2015. This notice is issued under the Controlled Substances Act (the CSA).

DATES: Submit either electronic or written comments by February 26, 2015. Submit requests for a public meeting on or before February 6, 2015. (For additional information, see also section IV of this document).

ADDRESSES: 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.

FOR FURTHER INFORMATION CONTACT: James R. Hunter, Center for Drug Evaluation and Research, Controlled Substance Staff, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 5150, Silver Spring, MD 20993–0002, 301–796–3156, *james.hunter@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The United States is a party to the 1971 Convention on Psychotropic Substances (Psychotropic Convention). Section 201(d)(2)(B) of the CSA (21 U.S.C. 811(d)(2)(B)) provides that when the United States is notified under Article 2 of the Psychotropic Convention that the CND proposes to decide whether to add a drug or other substance to one of the schedules of the Psychotropic Convention, transfer a drug or substance from one schedule to another, or delete it from the schedules, the Secretary of State must transmit notice of such information to the Secretary of Health and Human Services (Secretary of HHS). The Secretary of HHS must then publish a summary of such information in the **Federal Register** and provide opportunity for interested persons to submit comments. The Secretary of HHS must then evaluate the proposal and furnish a recommendation to the Secretary of State that shall be binding on the representative of the United States in discussions and negotiations relating to the proposal.

As detailed in the following paragraphs, the Secretary of State has received notification from the Secretary-General of the United Nations (the Secretary-General) regarding 13 substances to be considered for control under the Psychotropic Convention. This notification reflects the recommendation from the 36th WHO Expert Committee for Drug Dependence (ECDD), which met in June 2014. In the **Federal Register** of December 30, 2013 (78 FR 79465), FDA announced the WHO ECDD review and invited interested persons to submit information for WHO's consideration.

The full text of the notification from the Secretary-General is provided in section II of this document. Section 201(d)(2)(B) of the CSA requires the Secretary of HHS, after receiving a notification proposing scheduling, to publish a notice in the **Federal Register** to provide the opportunity for interested persons to submit information and comments on the proposed scheduling action.

The United States is also a party to the 1961 Single Convention on Narcotic Drugs (1961 Single Convention). The Secretary of State has received a notification from the Secretary-General regarding a substance to be considered for control under this convention. The CSA does not require HHS to publish a summary of such information in the **Federal Register**. Nevertheless, in an effort to provide interested and affected persons an opportunity to submit comments regarding the WHO recommendations for narcotic drugs, the notification regarding this substance is also included in this **Federal Register** notice. The comments will be shared with other relevant agencies to assist the Secretary of State in formulating the position of the United States on the control of this substance. The HHS recommendations are not binding on the representative of the United States in discussions and negotiations relating to the proposal regarding control of substances under the 1961 Single Convention.

II. United Nations Notification

The formal notification from the United Nations that identifies the drug substances and explains the basis for the recommendations is reproduced as follows:

Reference:
NAR/CL.11/2014
WHO/ECDD36; 1961C–Art.3; 1971C–Art.2
CU 2014/288/DTA/SGB

The Secretary-General of the United Nations presents his compliments to the Secretary of State of the United States of America and has the honour to inform the Government that the Director-General of the World Health Organization (WHO), pursuant to article 3, paragraphs 1 and 3 of the Single Convention on Narcotic Drugs of 1961 as amended by the 1972 Protocol (1961 Convention) and article 2, paragraphs 1and 4 of the Convention on Psychotropic Substances of 1971 (1971 Convention) notified the Secretary-General of the following recommendations:

AH-7921 be placed in Schedule I of the 1961 Convention
and
Gamma-butyrolactone (GBL)
1,4-butanediol
25B-NBOMe (2C-B-NBOMe)
25C-NBOMe (2C-C-NBOMe)
25I-NBOMe (2C-I-NBOMe)
be placed in Schedule I of the 1971 Convention
and
N-benzylpiperazine (BZP)
JWH-018
AM-2201
3,4-methylenedioxypyrovalerone (MDPV)
Methylone (beta-keto-MDMA)
Mephedrone
be placed in Schedule II of the 1971 Convention.

In accordance with the provisions of article 3, paragraph 2 of the 1961 Convention and article 2, paragraph 2 of the 1971 Convention, the Secretary-General hereby transmits the notification as annex I to the present note. Also in accordance with the same provisions, the notification from WHO will be brought to the attention of the fifty-eighth session of the Commission on Narcotic Drugs, 9–17 March 2015.

His Excellency
Mr. John Kerry
Secretary of State of the United States of America

In connection with the notification, WHO has also submitted the relevant extract from the report of the thirty-sixth session of the WHO Expert Committee on Drug Dependence which is hereby transmitted as annex II.

Reference is made to the notification concerning the proposed recommendation for international control of mephedrone (4-methylmethcathinone) by the Government of the United Kingdom of Great Britain and Northern Ireland and to the respective note NAR/CL.2/2014 of 7 February 2014 of the Secretary-General to all Member States.

Furthermore reference is made to the notification concerning the proposed recommendation for international control of ketamine by the Government of the People's Republic of China and to the respective note NAR/CL.4/2014 of 14 March 2014 by the Secretary-General to all Member States, as well as to the recommendation of the Expert Committee on Drug Dependence related to ketamine (see annex I, page 2).

In order to assist the Commission in reaching a decision, it would be appreciated if the Government could communicate any economic, social, legal, administrative or other factors that it considers relevant to the possible scheduling of the afore-mentioned substances under the 1961 Convention and the 1971 Convention, at the latest by 30 January 2015 to the Executive Director of the United Nations Office on Drugs and Crime, c/o Secretary, Commission on Narcotic Drugs, P.O. Box 500, 1400 Vienna, Austria, fax: +43–1–26060–5885, email: *sgb@unodc.org.*

17 December 2014
NAR/CL.11/2014
Annex I

Annex I

Letter Addressed to the Secretary-General of the United Nations From the Director-General of the World Health Organization

''With reference to Article 2, paragraphs 1, 4 and 6 of the Convention on Psychotropic Substances (1971) and Article 3, paragraphs 1, 3 and 5 of the Single Convention on Narcotic Drugs (1961), as amended by the 1972 Protocol, and following the 36th meeting of the Expert Committee on Drug Dependence in June 2014, I am pleased to submit recommendations of the World Health Organization.

The recommendations are that:

—AH-7921, be placed in Schedule I of the Single Convention on Narcotic Drugs (1961), that:
—Gamma-butyrolactone (GBL); 1,4-butanediol; 25B-NBOMe (2C-B-NBOMe); 25C-NBOMe (2C-C-NBOMe) and 25I-NBOMe (2C-I-NBOMe), be placed in Schedule I of the Convention on Psychotropic Substances (1971) and that:
—*N*-benzylpiperazine (BZP); JWH-018; AM-2201; 3,4-methylenedioxypyrovalerone (MDPV); Methylone (beta-keto-MDMA); Mephedrone, be placed in Schedule II of the Convention on Psychotropic Substances (1971).

The recommendations and the assessments and findings on which they are based are set out in detail in the Report of the 36th Expert Committee on Drug Dependence, which is

the Committee that advises me on these issues. An extract of the Committee's Report is attached in Annex 1 to this letter.

A notification has been made by the United Kingdom of Great Britain and Northern Ireland, pursuant to article 2, paragraphs 1 and 3 of the Convention on Psychotropic Substances, 1971 concerning a proposed recommendation for international control of mephedrone. The Expert Committee critically reviewed this substance and considered that the degree of risk to public health and society associated with the abuse liability of mephedrone is substantial and therefore considered that the evidence of its abuse warranted its placement under international control, in Schedule II of the Convention on Psychotropic Substances (1971).

Following a notification under Article 2, paragraph 1 of the Convention on Psychotropic Substances (1971) by the Government of the People's Republic of China concerning proposed recommendation for international control of ketamine, the Expert Committee critically reviewed this substance, following its previous critical reviews of ketamine at its 35th and 34th meeting and the pre-review undertaken at its 33rd meeting. The information provided by China with its notification to the Secretary-General was brought to the Expert Committee's attention. The Expert Committee's assessment was that ketamine ''is widely used as an anaesthetic in human and veterinary medicine, and is included in the WHO Model List of Essential Medicines and the WHO Model List of Essential Medicines for Children as well as in many national lists of essential medicines''. The Expert Committee found that it was presented with ''compelling evidence [. . .] about the prominent place of ketamine as an anaesthetic in developing countries and crisis situations''. While the Expert Committee ''acknowledged the concerns raised by some countries and UN organizations'', it stated that ''ketamine abuse currently does not appear to pose a sufficient public-health risk of global scale to warrant scheduling'' and recommended ''that ketamine not be placed under international control at this time''. ''Countries with serious abuse problems may decide to introduce or maintain control measures, but should ensure ready access to ketamine for surgery and anaesthesia for human and veterinary care''.

During its meeting, the Expert Committee also discussed the importance of having reliable and sufficient data that could inform the review process in particular for New Psychoactive Substances (NPS), acknowledging the fact that more and more NPS will likely be reviewed in the future, for which data will not always be readily available. UNODC and WHO will hold an international experts consultation in December 2014 to identify selection criteria for prioritisation of NPS to be reviewed by the Committee as well as relevant indicators, methods and tools for data collection on NPS.

I am very pleased with the ongoing collaboration between WHO, UNODC and INCB for improving access to controlled medicines while preventing misuse and trafficking and for preparing the Special Session of the United Nations General Assembly on the World Drug Problem in 2016.''

NAR/CL.11/2014

Annex II

Annex II

Extract From the Report of the 36th Expert Committee on Drug Dependence

Substance recommended to be scheduled in Schedule I of the Single Convention on Narcotic Drugs (1961), as amended by the 1972 Protocol:

AH-7921

AH-7921 is an *N*-substituted cyclohexylmethylbenzamide and is chemically 3,4-dichloro-*N*-{[1-(dimethylamino)cyclohexyl]methyl}benza mide.

AH-7921 had not been previously pre-reviewed or critically reviewed. A direct critical review was proposed based on information brought to WHO's attention that AH-7921 is clandestinely manufactured, of especially serious risk to public health and society, and of no recognized therapeutic use by any party. Preliminary data collected from literature and different countries indicated that this substance may cause substantial harm and that it has no medical use.

AH-7921 is an opioid with ''morphine-like'' effects. The Committee considered that the degree of risk to public health and society associated with the abuse liability and accompanying evidence warranted its placement under international control. The Committee recommended that AH-7921 be placed in Schedule I of the Single Convention on Narcotic Drugs (1961), as amended by the 1972 Protocol.

Substances recommended to be scheduled in Schedule I of the Convention on Psychotropic Substances (1971):

Gamma-butyrolactone (GBL)

Gamma-butyrolactone (GBL) is chemically oxolan-2-one. GBL can be synthesised from gamma-hydroxybutyric acid (GHB) or tetrahydrofuran.

During the discussion of GHB at the 34th Meeting of the WHO Expert Committee on Drug Dependence (ECDD), the Committee ''noted information relating to the abuse of GBL itself (convertible to GHB in the body) and suggested this substance for pre-review''. Based on the evidence presented in the pre-review of GBL during its 35th Meeting, given its close association with GHB, and the recommendation made by the Committee to reschedule GHB from Schedule IV to Schedule II of the Convention on Psychotropic Substances (1971), the Committee recommended that a critical review of GBL be undertaken.

The Committee considered that the degree of risk to public health and society associated with the abuse liability of GBL is especially serious. Whilst the Committee recognized widespread and important industrial use, it has no defined therapeutic usefulness. The Committee considered that the evidence of its abuse warranted its placement under international control within Schedule I of the Convention on Psychotropic Substances (1971).

1,4-butanediol

1,4-butanediol (butane-1,4-diol, 1,4-BDO or 1,4-BD) is one of four stable isomers of butanediol.

During the discussion of gamma-hydroxybutyric acid (GHB) at its 34th Meeting, the Committee ''noted information relating to the abuse of 1,4-BD itself (convertible to GHB in the body) and suggested this substance for pre-review''. Based on the evidence presented in the pre-review of GBL during its 35th Meeting, given its close association with GHB, and the recommendation made by the Committee to reschedule GHB from Schedule IV to Schedule II of the Convention on Psychotropic Substances (1971), the Committee recommended that a critical review of 1,4-BD be undertaken.

1,4-butanediol produces its effects in the body through the in vivo formation of the scheduled substance GHB. The Committee considered that the degree of risk to public health and society associated with the abuse liability of 1,4-butanediol is especially serious. Whilst the Committee recognized widespread and important industrial use, it has no defined therapeutic usefulness. The Committee considered that the evidence of its abuse warranted its placement under international control within Schedule I of the Convention on Psychotropic Substances (1971).

25B-NBOMe

25B-NBOMe (2C-B-NBOMe) is chemically 2-(4-bromo-2,5-dimethoxyphenyl)-*N*-[(2-methoxyphenyl)methyl]ethanamine.

25B-NBOMe had not been previously pre-reviewed or critically reviewed. A direct critical review was proposed based on information brought to WHO's attention that 25B-NBOMe is clandestinely manufactured, of especially serious risk to public health and society, and of no recognized therapeutic use by any party. Preliminary data collected from literature and different countries indicated that this substance may cause substantial harm and that it has no medical use.

The Committee noted the challenges associated with the evidence base concerning the substance. The Committee considered that the degree of risk to public health and society associated with the abuse liability of 25B-NBOMe is especially serious. Whilst the Committee noted its use in medical research, it has no recorded therapeutic use.

The Committee considered that the evidence of its abuse warranted its placement under international control and recommended that 25B-NBOMe be placed in Schedule I of the Convention on Psychotropic Substances (1971).

25C-NBOMe

25C-NBOMe (2C-C-NBOMe) is chemically 2-(4-chloro-2,5-dimethoxyphenyl)-*N*-[(2-methoxyphenyl)methyl]ethanamine.

25C-NBOMe had not been previously pre-reviewed or critically reviewed. A direct critical review was proposed based on information brought to WHO's attention that 25C-NBOMe is clandestinely manufactured, of especially serious risk to public health and society, and of no recognized therapeutic use

by any party. Preliminary data collected from literature and different countries indicated that this substance may cause substantial harm and that it has no medical use.

The Committee noted the challenges associated with the evidence base concerning the substance. The Committee considered that the degree of risk to public health and society associated with the abuse liability of 25C-NBOMe is especially serious. Whilst the Committee noted its use in medical research, it has no recorded therapeutic use. The Committee considered that the evidence of its abuse warranted its placement under international control and recommended that 25C-NBOMe be placed in Schedule I of the Convention on Psychotropic Substances (1971).

25I-NBOMe

25I-NBOMe (2C-I-NBOMe) is chemically 2-(4-iodo-2,5-dimethoxyphenyl)-*N*-[(2-methoxyphenyl)methyl]ethanamine.

25I-NBOMe had not been previously pre-reviewed or critically reviewed. A direct critical review was proposed based on information brought to WHO's attention that 25I-NBOMe is clandestinely manufactured, of especially serious risk to public health and society, and of no recognized therapeutic use by any party. Preliminary data collected from literature and different countries indicated that this substance may cause substantial harm and that it has no medical use.

The Committee noted the challenges associated with the evidence base concerning the substance. The Committee considered that the degree of risk to public health and society associated with the abuse liability of 25I-NBOMe is especially serious. Whilst the Committee noted its use in medical research, it has no recorded therapeutic use. The Committee considered that the evidence of its abuse warranted its placement under international control and recommended that 25I-NBOMe be placed in Schedule I of the Convention on Psychotropic Substances (1971).

Substances recommended to be scheduled in Schedule II of the Convention on Psychotropic Substances (1971):

N-benzylpiperazine (BZP)

N-benzylpiperazine (BZP) is an aryl-substituted piperazine and is chemically 1-benzyl-1,4-diazacyclohexane.

BZP was pre-reviewed at the 35th ECDD meeting and based on the reported psychostimulant effects, evidence of abuse and adverse effects, the Expert Committee concluded that a critical review was warranted.

BZP has been shown to have effects similar to amphetamine. The Committee considered that the degree of risk to public health and society associated with the abuse liability of BZP is substantial. Its therapeutic usefulness has been assessed to be little, as it is not currently licensed for use. The Committee considered that the evidence of its abuse warranted its placement under international control. The Committee recommended that BZP be placed in Schedule II of the Convention on Psychotropic Substances (1971).

JWH-018

JWH-018 is chemically naphthalen-1-yl(1-pentyl-1*H*-indol-3-yl)methanone.

JWH-018 had not been previously pre-reviewed or critically reviewed. A direct critical review was proposed based on information brought to WHO's attention that JWH-018 is clandestinely manufactured, of especially serious risk to public health and society, and of no recognized therapeutic use by any party. Preliminary data collected from literature and different countries indicated that this substance may cause substantial harm and that it has no medical use.

The Committee noted the challenges associated with the evidence base concerning the substance. The Committee noted analytically confirmed cases of non-fatal and fatal intoxications involving JWH-018. The Committee therefore considered that the degree of risk to public health associated with the abuse liability of JWH-018 is substantial. Its therapeutic usefulness has been assessed to be none. As per the Guidance on the WHO review of psychoactive substances for international control, higher regard was made to the substantial public health risk as opposed to the lack of therapeutic usefulness [p.18, paragraph 56, penultimate sentence]. The Committee recommended that JWH-018 be placed under international control in Schedule II of the Convention on Psychotropic Substances (1971).

AM-2201

AM-2201 is chemically [1-(5-fluoropentyl)-1*H*-indol-3-yl]-naphthalen-1-ylmethanone.

AM-2201 had not been previously pre-reviewed or critically reviewed. A direct critical review was proposed based on information brought to WHO's attention that AM-2201 is clandestinely manufactured, of especially serious risk to public health and society, and of no recognized therapeutic use by any party. Preliminary data collected from literature and different countries indicated that this substance may cause substantial harm and that it has no medical use.

The Committee noted the challenges associated with the evidence base concerning the substance. The Committee noted analytically confirmed cases of non-fatal and fatal intoxications involving AM-2201. The Committee therefore considered that the degree of risk to public health associated with the abuse liability of AM-2201 is substantial. Its therapeutic usefulness has been assessed to be none. As per the Guidance on the WHO review of psychoactive substances for international control, higher regard was made to the substantial public health risk as opposed to the lack of therapeutic usefulness [p.18, paragraph 56, penultimate sentence]. The Committee recommended that AM-2201 be placed under international control in Schedule II of the Convention on Psychotropic Substances (1971).

3,4-methylenedioxypyrovalerone (MDPV)

3,4-methylenedioxypyrovalerone (MDPV) is chemically *(R,S)*-1-(1,3-benzodioxol-5-yl)-2-(pyrrolidin-1-yl)pentan-1-one.

MDPV had not been previously pre-reviewed or critically reviewed. A direct critical review was proposed based on information brought to WHO's attention that MDPV is clandestinely manufactured, of especially serious risk to public health and society, and of no recognized therapeutic use by any party. Preliminary data collected from literature and different countries indicated that this substance may cause substantial harm and that it has no medical use.

The Committee considered that the degree of risk to public health and society associated with the abuse liability of MDPV is substantial. Its therapeutic usefulness has been assessed to be none. The Committee considered that the evidence of its abuse warranted its placement under international control. As per the Guidance on the WHO review of psychoactive substances for international control, higher regard was made to the substantial public health risk as opposed to the lack of therapeutic usefulness [p.18 paragraph 56, penultimate sentence]. The Committee recommended that MDPV be placed in Schedule II of the Convention on Psychotropic Substances (1971).

Methylone (bk-MDMA)

Methylone (beta-keto-MDMA) is chemically *(R,S)*-1-(1,3-benzodioxol-5-yl)-2-(methylamino)propan-1-one.

Methylone had not been previously pre-reviewed or critically reviewed. A direct critical review was proposed based on information brought to WHO's attention that methylone is clandestinely manufactured, of especially serious risk to public health and society, and of no recognized therapeutic use by any party. Preliminary data collected from literature and different countries indicated that this substance may cause substantial harm and that it has no medical use.

The Committee considered that the degree of risk to public health and society associated with the abuse liability of methylone is substantial. Its therapeutic usefulness has been assessed to be none. The Committee considered that the evidence of its abuse warranted its placement under international control. As per the Guidance on the WHO review of psychoactive substances for international control, higher regard was made to the substantial public health risk as opposed to the lack of therapeutic usefulness [p.18, paragraph 56, penultimate sentence]. The Committee recommended that methylone be placed in Schedule II of the Convention on Psychotropic Substances (1971).

Mephedrone

Mephedrone (4-methylmethcathinone, 4-MMC) is chemically *(R,S)*-2-(methylamino)-1-(4-methylphenyl)propan-1-one.

Mephedrone had not been previously pre-reviewed or critically reviewed. A direct critical review was proposed based on information brought to WHO's attention that mephedrone is clandestinely manufactured, of especially serious risk to public health and society, and of no recognized therapeutic use by any party. Preliminary data collected from literature and different countries indicated that this substance may cause substantial harm. A critical review was further undertaken by the Committee given that the Government of the United Kingdom of Great Britain and Northern Ireland had made a notification concerning a proposed recommendation for international control of mephedrone (4-methylmethcathinone), under

article 2, paragraphs 1 and 3 of the Convention on Psychotropic Substances, 1971.

The Committee considered that the degree of risk to public health and society associated with the abuse liability of mephedrone is substantial. Its therapeutic usefulness has been assessed to be none. The Committee considered that the evidence of its abuse warranted its placement under international control. As per the Guidance on the WHO review of psychoactive substances for international control, higher regard was made to the substantial public health risk as opposed to the lack of therapeutic usefulness [p.18, paragraph 56, penultimate sentence].

The Committee recommended that mephedrone be placed in Schedule II of the Convention on Psychotropic Substances (1971).

III. Discussion

Although WHO has made specific scheduling recommendations for each of the drug substances, the CND is not obliged to follow the WHO recommendations. Options available to the CND for substances considered for control under the Psychotropic Convention include the following: (1) Accept the WHO recommendations; (2) accept the recommendations to control, but control the drug substance in a schedule other than that recommended; or (3) reject the recommendations entirely.

AH-7921, or 1-(3,4-dichlorobenzamidomethyl) cyclohexyldimethylamine, is an opioid analgesic drug substance selective for the μ-opioid receptor. The WHO ECDD met in June 2014 and recommended that AH-7921 be placed in Schedule I of the 1961 Single Convention. AH-7921 is not controlled under the CSA in the United States. As such, additional controls will be necessary to fulfill U.S. obligations if AH-7921 is controlled under Schedule I of the 1961 Single Convention.

Gamma-butyrolactone (GBL) is used as an industrial solvent. GBL can be converted in the body to the central nervous system depressant drug gamma-hydroxybutyric acid (GHB). GBL is controlled as a List I chemical in the United States under the CSA. The WHO ECDD met in June 2014 and recommended that GBL be placed in Schedule I of the Psychotropic Convention. Additional controls will be necessary to fulfill U.S. obligations if GBL is controlled under Schedule I of the Psychotropic Convention.

1,4-Butanediol is used as an industrial solvent for manufacturing and also used for the synthesis of GBL. 1,4-Butanediol can also be converted to the central nervous depressant drug GHB. It has no medical use in the United States. 1,4-Butanediol is not controlled under the CSA in the United States, but it is subject to controls in several States under state law. 1,4-Butanediol was reviewed by the WHO ECDD at its 36th meeting, at which the WHO ECDD recommended that 1,4-butanediol be placed in Schedule I of the Psychotropic Convention. Additional controls will be necessary to fulfill U.S. obligations if 1,4-butanediol is controlled under Schedule I of the Psychotropic Convention.

The substances 25B-NBOMe (2C-B-NBOMe), 25C-NBOMe (2C-C-NBOMe), and 25I-NBOMe (2C-I-NBOMe) are synthetic 2C phenethylamine substances and were developed for use in mapping and investigating the serotonin receptors in the mammalian brain. The WHO ECDD at its 36th meeting recommended that 25B-NBOMe, 25C-NBOMe, and 25I-NBOMe be placed in Schedule I of the Psychotropic Convention. On November 15, 2013, 25B-NBOMe, 25C-NBOMe, and 25I-NBOMe were temporarily placed in Schedule I of the CSA under the temporary scheduling provision of section 201(h) of the CSA. These provisions provide the Attorney General with the authority to temporarily place a substance into Schedule I of the CSA for 2 years, without regard to the requirements of 21 U.S.C. 811(b), if he finds that such action is necessary to avoid an imminent hazard to the public safety. In addition, if proceedings to control a substance are initiated under 21 U.S.C. 811(a)(1), the Attorney General may extend the temporary scheduling for up to 1 year (21 U.S.C. 811(h)(2)). Therefore, considering the previously mentioned time limitations of temporary scheduling under section 201(h) of the CSA, additional controls will be necessary to fulfill U.S. obligations if 25B-NBOMe, 25C-NBOMe, and 25I-NBOMe are controlled under Schedule I of the Psychotropic Convention.

N-benzylpiperazine (BZP) is used as an intermediate in chemical synthesis but has been taken orally as either powder or tablets and by other routes, including smoking or snorting. It has no medical use in the United States. The WHO ECDD at its 36th meeting recommended that BZP be placed in Schedule II of the Psychotropic Convention on Psychotropic Substances (1971). BZP is controlled in Schedule I under the CSA in the United States. As such, no additional controls will be necessary to fulfill U.S. obligations if these substances are controlled under Schedule II of the Psychotropic Convention.

The substances 1-pentyl-1H-indol-3-yl)-1-naphthalenyl-methanone (JWH-018) and [1-(5-fluoropentyl)-1H-indol-3-yl]-1-naphthalenyl-methanone (AM-2201) are classified as synthetic cannabinoids with pharmacological properties like tetrahydrocannabinol. The WHO ECDD at its 36th meeting recommended that JWH-018 and AM-2201 be placed in Schedule II of the Psychotropic Convention. These two substances are controlled in Schedule I under the CSA in the United States. As such, no additional controls will be necessary to fulfill U.S. obligations if JWH-018 and AM-2201 are controlled under Schedule II of the Psychotropic Convention.

The substances 3,4-methylenedioxypyrovalerone (MDPV), 3,4-methylenedioxy-N-methylcathinone (beta-keto-MDMA; methylone), and 4-methylmethcathinone (4-MMC; mephedrone) are classified as synthetic cathinones in the phenethylamine class and are structurally and pharmacologically similar to amphetamine. The WHO ECDD at its 36th meeting recommended that MDPV, methylone, and mephedrone be placed in Schedule II of the Psychotropic Convention. MDPV, methylone, and mephedrone are controlled in Schedule I under the CSA in the United States. As such, no additional controls will be necessary to fulfill U.S. obligations if these three substances are controlled under Schedule II of the Psychotropic Convention.

In addition to the above substances recommended for international control by the WHO Expert Committee at its 36th meeting, the United Nations Economic and Social Council published recommendations for action to be taken by the CND at the March 2015 meeting (*http://www.un.org/Docs/journal/asp/ws.asp?m=E/CN.7/2015/7*). Among these recommendations is that the CND should decide whether it wishes to place ketamine in Schedule I of the Psychotropic Convention or, if not, what other action, if any, might be required. Pursuant to article 2, paragraph 1, of the Convention on Psychotropic Substances of 1971, the Government of China, in its correspondence dated 8 March 2014, notified the Secretary-General of the United Nations that China recommended that ketamine be placed in Schedule I of the 1971 Convention. In accordance with article 2 of the Psychotropic Convention, this proposal has been recommended for consideration by the CND.

Ketamine is classified as a rapid-acting general anesthetic agent used for short diagnostic and surgical procedures that do not require skeletal muscle relaxation. It is marketed in the United States as an injectable. Ketamine is controlled in Schedule III of the CSA in

the United States. It is not controlled internationally under the Convention on Psychotropic Substances or the Single Convention on Narcotic Drugs. The WHO Expert Committee on Drug Dependence reviewed ketamine at its 34th, 35th, and 36th meetings. Ketamine is controlled in schedule III of the CSA in the United States, and additional controls may be necessary to fulfill U.S. obligations if ketamine is controlled under Schedule I of the Psychotropic Convention. FDA, on behalf of the Secretary of HHS, invites interested persons to submit comments on the notifications from the United Nations concerning these drug substances. FDA, in cooperation with the National Institute on Drug Abuse, will consider the comments on behalf of HHS in evaluating the WHO scheduling recommendations. Then, under section 201(d)(2)(B) of the CSA, HHS will recommend to the Secretary of State what position the United States should take when voting on the recommendations for control of substances under the Psychotropic Convention at the CND meeting in March 2015.

Comments regarding the WHO recommendations for control of AH-7921 under the 1961 Single Convention will also be forwarded to the relevant Agencies for consideration in developing the U.S. position regarding narcotic substances at the CND meeting.

IV. Submission of Comments and Opportunity for Public Meeting

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 does not presently plan to hold a public meeting. If any person believes that, in addition to written comments, a public meeting would contribute to the development of the U.S. position on the substances to be considered for control under the Psychotropic Convention, a request for a public meeting and the reasons for such a request should be sent to James R. Hunter (see **FOR FURTHER INFORMATION CONTACT**) on or before February 6, 2015.

The short time period for the submission of comments and requests for a public meeting is needed to ensure that HHS may, in a timely fashion, carry out the required action and be responsive to the United Nations.

Dated: January 21, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–01408 Filed 1–26–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–N–0001]

American Association of Pharmaceutical Scientists/American College of Clinical Pharmacology/American Society for Clinical Pharmacology and Therapeutics/Food and Drug Administration Cosponsored Workshop on ''Evaluating and Modernizing Our Approaches for Food-Effect Assessment''

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

The Food and Drug Administration (FDA) is announcing a public workshop entitled ''Evaluating and Modernizing our Approaches for Food-Effect Assessment,'' cosponsored with the American Association of Pharmaceutical Scientists (AAPS), the American College of Clinical Pharmacology (ACCP), and the American Society for Clinical Pharmacology and Therapeutics (ASCPT). The goals of this public workshop are to facilitate discussion on current scientific approaches on assessing the effect of food on the pharmacokinetics and pharmacodynamics of drugs and to initiate constructive discussion and information sharing among relevant stakeholders on the influence of food-effects on the pharmacokinetic properties of therapeutics in order to optimize dose and dosing regimens.

Date and Time: The workshop will be held on February 2, 2015, from 8 a.m. to 5 p.m., February 3, 2015, from 8 a.m. to 5 p.m., and February 4, 2015, from 8 a.m. to 12:15 p.m.

Location: The workshop will be held at the Renaissance Baltimore Harborplace Hotel, 202 East Pratt St., Baltimore, MD 21202.

Contacts: FDA: Padmaja Mummaneni, Food and Drug Administration, Center for Drug Evaluation and Research, 10903 New Hampshire Ave., Bldg. 51, Rm. 2164, Silver Spring, MD 20993, 301–796–2027, *padmaja.mummaneni@fda.hhs.gov.*

AAPS: For questions related to this event, please contact AAPS at *registration@aaps.org.*

Registration: Workshop information and the registration link are posted at the AAPS meetings and professional development conference site. To register for the workshop, please visit *http://www.aaps.org/Meetings_and_Professional_Development/Conference_Mini_Sites/AAPS_WS_Food/Register/.* The cost of registration is as follows:

Member $1,690
Nonmember $2,070
Government $650
Student $100

The registration fee will be waived for 50 FDA employees. If you need special accommodations because of disability, please contact AAPS at *registration@aaps.org.* Onsite registration on the day of the workshop is available.

Additional Information about the Workshop: The workshop agenda and additional background materials will be accessible at *http://www.fda.gov/Drugs/NewsEvents/ucm428914.htm* to all registrants.

SUPPLEMENTARY INFORMATION:

I. Background

FDA's guidance for industry entitled ''Food-Effect Bioavailability and Fed Bioequivalence Studies'' (Food-Effect Guidance) is an important tool in the development of new oral therapeutics. Studies are conducted according to the principles described for every new drug that is intended to be administered by the oral route. The Food-Effect Guidance was first published in 2002. Since that time, numerous studies have been reported in the literature in an effort to address a number of different aspects related to assessing the effect of food on the pharmacokinetics and pharmacodynamics of drugs. Predominantly, these studies have addressed the impact of food composition on the physiology of drug absorption. In vitro studies have aimed at elucidating the individual mechanism(s) of drug absorption, and a number of in vivo studies have addressed the effects of different meal compositions on the pharmacokinetics of drugs.

FDA has undertaken an effort to revise the 2002 Food-Effect Guidance and is seeking feedback from academia, industry, and other stakeholders on several issues. FDA, AAPS, ACCP, and ASCPT agreed to cosponsor this workshop to provide a forum for input on the best available science on this topic from academia, industry, other stakeholders, and regulators.

II. Goals and Objectives

- To provide a forum for open discussion between industry, academia, other stakeholders, and FDA around proposed changes to the Food-Effect Guidance.
- To seek feedback from industry, academia, and other stakeholders on FDA's proposals and to seek any additional input that will benefit decision making on a guidance revision on the topic.

Dated: January 21, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–01409 Filed 1–26–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–N–0001]

Food and Drug Administration/Xavier University PharmaLink Conference—Leadership in a Global Supply Chain

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public conference.

SUMMARY: The Food and Drug Administration (FDA) Cincinnati District, in cosponsorship with Xavier University, is announcing a public conference entitled ''FDA/Xavier University PharmaLink Conference: Leadership in a Global Supply Chain.'' The PharmaLink conference seeks solutions to important and complicated issues by aligning with the strategic priorities of FDA and includes presentations from key FDA officials, global regulators, and industry experts. Each presentation challenges the status quo and conventional wisdom to create synergies focused on finding solutions which make a difference. The experience level of the audience has fostered engaged dialog that has led to innovative initiatives.

Dates and Times: The public conference will be held on March 25, 2015, from 8:30 a.m. to 5 p.m.; March 26, 2015, from 8:30 a.m. to 5 p.m.; and March 27, 2015, from 8:30 a.m. to 12:45 p.m.

Location: The public conference will be held on the campus of Xavier University, 3800 Victory Pkwy., Cincinnati, OH 45207, 513–745–3073 or 513–745–3020.

Contact Persons: For information regarding this notice: Steven Eastham, Food and Drug Administration, Cincinnati South Office, 36 East 7th Street, Cincinnati, OH 45202, 513–246–4134, email: *steven.eastham@fda.hhs.gov.*

For information regarding the conference and registration: Marla Phillips, Xavier University, 3800 Victory Pkwy., Cincinnati, OH 45207–5471, 513–745–3073, email: *phillipsm4@xavier.edu.*

Registration: There is a registration fee. The conference registration fees cover the cost of the presentations, training materials, receptions, breakfasts, lunches, and dinners for the 2½ days of the conference. There will be onsite registration. The cost of registration is as follows:

TABLE 1—REGISTRATION FEES [1]

Attendee type	Early rate (on or before 1/24/15)	Advanced rate (1/25/15 to 2/24/15)	Standard rate (after 2/24/15)
Industry	$1,295	$1,695	$1,895
Small Business (<100 employees)	995	1,195	1,295
Startup Manufacturer	200	250	300
Academic	200	250	300
Media	Free	Free	Free
Government	Free	Free	Free

[1] The fourth registration from the same company is free—all four attendees must register at the same time.

The following forms of payment will be accepted: American Express, Visa, Mastercard, and company checks.

To register online for the public conference, please visit the ''Registration'' link on the conference Web site at *http://www.XavierPharmaLink.com.* FDA has verified the Web site address, but is not responsible for subsequent changes to the Web site after this document publishes in the **Federal Register**.

To register by mail, please send your name, title, firm name, address, telephone and fax numbers, email, and payment information for the fee to Xavier University, Attention: Mason Rick, 3800 Victory Pkwy., Cincinnati, OH 45207–5471. An email will be sent confirming your registration.

Attendees are responsible for their own accommodations. The conference headquarter hotel is the Downtown Cincinnati Hilton Netherlands Plaza, 35 West 5th Street, Cincinnati, OH 45202, 513–421–9100. To make reservations online, please visit the ''Venue & Logistics'' link at *http://www.XavierPharmaLink.com.* The hotel is expected to sellout during this timeframe, so early reservation in the conference room-block is encouraged.

If you need special accommodations due to a disability, please contact Marla Phillips (see *Contact Persons*) at least 7 days in advance of the conference.

SUPPLEMENTARY INFORMATION: The public conference helps fulfill the Department of Health and Human Services' and FDA's important mission to protect the public health. The conference will engage those involved in FDA-regulated global supply chain quality and management through the following topics:

- Major Changes at FDA Affecting You
- FDA-Driven Initiatives through Food and Drug Administration Safety and Innovation Act Implementation
- Held at the Border? Understand Why
- Toyota Production System—Cultural Requirements
- Barriers to Quality and Supply Chain Excellence
- Establishing Good Supply Practices
- Medicines and Healthcare Products Regulatory Agency Perspective on Global Supply Chain Challenges
- Systematic Approach to Managing Your Global Supply Chain
- Deep Dive Lunch Session—Clinically Relevant Metrics
- Deep Dive Lunch Session—Data Integrity: How To Verify You Are Okay
- Deep Dive Lunch Session—Integrity of Supply Workshop
- Nobel Prize-Based Alignment Optimization

- Quality Metrics Beyond Compliance To Drive Strategic Value
- Risk Categorization of Your Company
- Challenges That Lie Outside U.S. Borders
- Global Supply Chain Risk Management Case Studies
- FDA Investigator Insights

The conference includes:

- Networking by topic
- Case studies
- Small group discussions
- Action plans
- Keynote dinner at the Newport Aquarium

The most pressing challenges of the global pharmaceutical industry require solutions which are inspired by collaboration to ensure the ongoing health and safety of patients. These challenges include designing products with the patient in mind, building quality into the product from the onset, selecting the right suppliers, and considering total product lifecycle systems. Meeting these challenges requires vigilance, innovation, supply chain strategy, relationship management, proactive change management, and a commitment to doing the job right the first time. FDA has made education of the drug and device manufacturing community a high priority to help ensure the quality of FDA-regulated drugs and devices.

The conference helps to achieve objectives set forth in section 406 of the Food and Drug Administration Modernization Act of 1997 (21 U.S.C. 393), which includes working closely with stakeholders and maximizing the availability and clarity of information to stakeholders and the public. The conference also is consistent with the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) by providing outreach activities by Government Agencies to small businesses.

Dated: January 21, 2015.

Leslie Kux,

Associate Comissioner for Policy.

[FR Doc. 2015–01418 Filed 1–26–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Discretionary Advisory Committee on Heritable Disorders in Newborns and Children; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, codified at 5 U.S.C. App.), notice is hereby given of the following meeting:

Name: Discretionary Advisory Committee on Heritable Disorders in Newborns and Children.

Dates and Times: February 12, 2015, 8:30 a.m. to 5:00 p.m.; February 13, 2015, 9:00 a.m. to 4:00 p.m.

Place: Webinar and In-Person, National Institutes of Health, 5635 Fishers Lane, Rockville, Maryland 20857.

Status: The meeting will be open to the public with attendance limited to space availability. Participants also have the option of viewing the meeting via webinar. Whether attending in-person or via webinar, all participants must register for the meeting. The registration link will be made available at *http://www.hrsa.gov/advisorycommittees/mchbadvisory/heritabledisorders/.* The registration deadline is Friday, January 30, 2015, 11:59 p.m. Eastern Time.

Purpose: The Discretionary Advisory Committee on Heritable Disorders in Newborns and Children (Committee), as authorized by Public Health Service Act (PHS), 42 U.S.C. 217a: Advisory councils or committees, was established to advise the Secretary of the Department of Health and Human Services about the development of newborn screening activities, technologies, policies, guidelines, and programs for effectively reducing morbidity and mortality in newborns and children having, or at risk for, heritable disorders. In addition, the Committee's recommendations regarding additional conditions/inherited disorders for screening that have been adopted by the Secretary are included in the Recommended Uniform Screening Panel (RUSP) and constitute part of the comprehensive guidelines supported by the Health Resources and Services Administration. Pursuant to section 2713 of the Public Health Service Act, codified at 42 U.S.C. 300gg–13, non-grandfathered health plans are required to cover screenings included in the HRSA-supported comprehensive guidelines without charging a co-payment, co-insurance, or deductible for plan years (*i.e.,* policy years) beginning on or after the date that is 1 year from the Secretary's adoption of the condition for screening.

Agenda: The meeting will include: (1) A final report on the Mucopolysaccharidosis 1 (MPS 1) Condition Nomination for inclusion on the Recommended Uniform Screening Panel (RUSP), (2) a final report on the Laboratory Procedures and Standards Subcommittee's Timely Newborn Screening Project, (3) a presentation from the U.S. Preventive Services Task Force on the transfer of newborn screening topics (sickle cell disease, phenylketonuira, congenital hypothyroidism) to the Committee, (4) update on the condition review of Adrenoleukodystrophy (ALD), (5) update from the Pilot Study Workgroup and discussion on the different mechanisms and challenges for implementing pilot studies, (6) presentation on analyzing costs when implementing screening for a new condition, (7) presentation by the Newborn Screening Translational Research Network Long-term Follow-up Project, and (8) updates on priority projects from the Committee's subcommittees on Laboratory Standards and Procedures, Follow-up and Treatment, and Education and Training.

The Committee is expected to vote on whether or not to recommend to the Secretary the addition of MPS 1 to the RUSP. Tentatively, the Committee is expected to review and/or vote on the final recommendations on timely newborn screening. Agenda items are subject to change as necessary or appropriate. The agenda, webinar information, Committee Roster, Charter, presentations, and other meeting materials will be located on the Advisory Committee's Web site at *http://www.hrsa.gov/advisorycommittees/mchbadvisory/heritabledisorders.*

Public Comments: Members of the public may present oral comments and/or submit written comments. Comments are part of the official Committee record. The public comment period is tentatively scheduled for both days of the meeting. Advance registration is required to present oral comments and/or submit written comments. Registration information will be on the Committee Web site at *http://www.hrsa.gov/advisorycommittees/mchbadvisory/heritabledisorders.* The registration deadline is Friday, January 30, 2015, 11:59 p.m. Eastern Time. Written comments must be received by the deadline in order to be included in the February meeting briefing book. Written comments should identify the individual's name, address, email, telephone number, professional or business affiliation, type of expertise (*i.e.,* parent, researcher, clinician, public health, etc.), and the topic/subject matter of comments. To ensure that all individuals who have registered to make oral comments can be accommodated, the allocated time may be limited. Individuals who are associated with groups or have similar interests may be requested to combine their comments and present them through a single

representative. No audiovisual presentations are permitted. For additional information or questions on public comments, please contact Lisa Vasquez, Maternal and Child Health Bureau, Health Resources and Services Administration; email: *lvasquez@hrsa.gov.*

Contact Person: Anyone interested in obtaining other relevant information should contact Debi Sarkar, Maternal and Child Health Bureau, Health Resources and Services Administration, Room 18A–19, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857; email: *dsarkar@hrsa.gov.*

More information on the Advisory Committee is available at *http://www.hrsa.gov/advisorycommittees/mchbadvisory/heritabledisorders.*

Jackie Painter,

Acting Director, Division of Policy and Information Coordination.

[FR Doc. 2015–01351 Filed 1–26–15; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; 60 Day Comment Request; Evaluation of the NHLBI Proteomics Centers Program: Qualitative Interviews (NHLBI)

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 Heart, Lung, and Blood Institute (NHLBI), the National Institutes of Health (NIH), will publish periodic summaries of proposed projects 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 on 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: Pothur Srinivas, Ph.D., Project Officer/ICD Contact, Two Rockledge Center, 6701 Rockledge Drive, Room 10188, MSC 10193, Bethesda, MD 20892, or call non-toll-free number (301) 435–0550, or Email your request to: *srinivap@nhlbi.nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

Comments 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 NHLBI Proteomics Centers Program: Qualitative Interviews 0925–New, National Heart, Lung, and Blood Institute (NHLBI), the National Institutes of Health (NIH).

Need and Use of Information Collection: The Proteomics Centers Program was established in 2010 with the goal of applying proteomic approaches to gain a better mechanistic understanding of the physiologic pathways underlying defined clinical conditions related to heart, lung, and blood diseases. The primary goal of the program is to help facilitate a better understanding of the underlying mechanisms in heart, lung, and blood diseases which could contribute to more effective diagnoses, risk stratification, intervention, and prevention. Given the rapid developments in proteomic technologies and approaches in the last five years, it is important to determine the extent to which the efforts of the centers have matured, leading to discovery of new targets for intervention and clinically actionable tool sets. An eighteen-month outcome evaluation will coincide with the completion of funding for the program. This information collection request is being made for one component of this evaluation: Semi-structured interviews with key informants across four targeted groups, internal and external to the program. The results of the evaluation will help determine the extent to which these desired outcomes were achieved as well as to inform future of proteomics research funding and commitments by the NHLBI. The key informant interviews are necessary to understand the perspectives of internal and external program stakeholders as it relates to the success, limitations, and opportunities that can shape future research funding.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 48.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual burden hours
Principal investigators and key personnel	27	1	50/60	23
External Proteomics investigators	9	1	50/60	8
Trainees and junior investigators	20	1	50/60	17

Dated: January 14, 2015.

Lynn Susulske,

NHLBI Project Clearance Liaison, National Institutes of Health.

[FR Doc. 2015–01421 Filed 1–26–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Peer Review Meeting.

Date: February 20, 2015.

Time: 11 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Room 3F100, 5601 Fisher Lane, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Raymond R. Schleef, Ph.D., Scientific Review Officer Scientific Review Program Division of Extramural Activities, National Institutes of Health/ NIAID, 5601 Fishers Lane, Rockville, MD 20892–7616, 240–669–5019, *schleefrr@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: January 21, 2015.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–01359 Filed 1–26–15; 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 Panel: Physical Activity and Weight Control Interventions Among Cancer Survivors: Effects on Biomarkers of Prognosis.

Date: February 18, 2015.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Denise Wiesch, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3138, MSC 7770, Bethesda, MD 20892, (301) 437–3478, *wieschd@csr.nih.gov.*

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group; Prokaryotic Cell and Molecular Biology Study Section.

Date: February 18–19, 2015.

Time: 11 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Dominique Lorang-Leins, Ph.D., Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Room 5108, MSC 7766, Bethesda, MD 20892, (301) 326–9721, *Lorangd@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Population Sciences and Epidemiology.

Date: February 19, 2015.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Denise Wiesch, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3138, MSC 7770, Bethesda, MD 20892, (301) 437–3478, *wieschd@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: January 21, 2015.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–01367 Filed 1–26–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Advisory Council on Alcohol Abuse and Alcoholism, February 04, 2015, 9 a.m. to February 05, 2015, 2 p.m., National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892 which was published in the **Federal Register** on January 09, 2015, 80 FR 1427.

The meeting notice is amended to reflect that that the open session of the meeting will be available via *http://videocast.nih.gov/summary.asp?live=15490&bhcp=1.* The meeting is partially closed to the public.

Dated: January 21, 2015.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–01370 Filed 1–26–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed 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, contract proposals, and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel;

NHLBI Program Project for Genetics and Atherosclerosis.

Date: February 18, 2015.

Time: 1 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Room 7202, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Melissa E Nagelin, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7202, Bethesda, MD 20892, 301–435–0297 *nagelinmh2@nhlbi.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Women's Health Initiative—Regional Centers.

Date: February 19, 2015.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Hilton Crystal City, 2399 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Susan Wohler Sunnarborg, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA National, Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7182, Bethesda, MD 20892 *sunnarborgsw@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: January 21, 2015.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–01366 Filed 1–26–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Minority Health and Health Disparities; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Minority Health and Health Disparities Special Emphasis Panel; NIMHD Support for Conferences and Scientific Meeting (R13).

Date: February 26, 2015.

Time: 12 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6707 Democracy Blvd., Suite 800, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Hui Chen, MD, Scientific Review Officer, National Institute on Minority Health and Health Disparities, National Institutes of Health, 6707 Democracy Blvd., Suite 800, Bethesda, MD 20892, (301) 594–7784, *chenhui@mail.nih.gov.*

Dated: January 21, 2015.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–01357 Filed 1–26–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in section 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: Heart, Lung, and Blood Initial Review Group; NHLBI Mentored Patient-Oriented Research Review Committee.

Date: February 24–25, 2015.

Time: 8:30 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, Montgomery County Conference Center Facility, 5701 Marinelli Road, North Bethesda, MD 20852.

Contact Person: Stephanie Johnson Webb, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7196, Bethesda, MD 20892, 301–435–0291, *stephanie.webb@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: January 21, 2015.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–01364 Filed 1–26–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; SBIR—Review of Novel Methods for Protein Delivery.

Date: February 19, 2015.

Time: 11 a.m. to 2 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6701 Rockledge Drive, Room 7196, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Stephanie J. Webb, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7196, Bethesda, MD 20892, 301–435–0291 *stephanie.webb@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: January 21, 2015.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–01365 Filed 1–26–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; 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: National Institute of Child Health and Human Development Initial Review Group; Biobehavioral and Behavioral Sciences Subcommittee.

Date: February 26–27, 2015.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Washington Dupont Circle Hotel, Washington, DC 20037.

Contact Person: Marita Hopmann, Ph.D., Scientific Review Administrator, Scientific Review Branch, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, (301) 435–6884, *leszczyd@mail.nih.gov.*

Name of Committee: National Institute of Child Health and Human Development Initial Review Group; Developmental Biology Subcommittee.

Date: March 9–10, 2015.

Time: 8 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW., Washington, DC 20015.

Contact Person: Cathy J. Wedeen, Ph.D., Scientific Review Officer, Scientific Review Branch, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, DHHS, 6100 Executive Blvd., Room 5B01–G, Bethesda, MD 20892, 301–435–6878, *wedeenc@mail.nih.gov.*

Name of Committee: National Institute of Child Health and Human Development Initial Review Group; Pediatrics Subcommittee.

Date: March 12, 2015.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Rita Anand, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute Of Child Health and Human Development, NIH, 6100 Executive Blvd. Room 5B01, Bethesda, MD 20892, (301) 496–1487, *anandr@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: January 21, 2015.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–01362 Filed 1–26–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Minority Health and Health Disparities; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Council on Minority Health and Health Disparities.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council on Minority Health and Health Disparities.

Date: February 24, 2015.

Open: 8:30 a.m. to 12:30 p.m.

Agenda: The agenda will include opening remarks, administrative matters, Director's Report, NIH Health Disparities update, and other business of the Council.

Place: National Institutes of Health, National Institute on Minority Health and Health Disparities, 31 Center Drive, Building 31, Conference Room 6, Bethesda, MD 20892.

Closed: 1:30 p.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute on Minority Health and Health Disparities, 31 Center Drive, Building 31, Conference Room 6, Bethesda, MD 20892.

Contact Person: Donna Brooks, Executive Officer, National Institutes of Health, National Institute on Minority Health and Heath Disparities, 6707 Democracy Blvd., Suite 800, Bethesda, MD 20892, (301) 435–2135, *brooksd@mail.nih.gov.*

Any member of the public interested in presenting oral comments to the committee may notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding their statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxis, hotel, and airport shuttles, will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Dated: January 21, 2015.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–01358 Filed 1–26–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposal and

the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposal, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Impact of Diet, Exercise and Lifestyle on Fertility: The IDEAL Fertility Study.

Date: February 18, 2015.

Time: 12 p.m. to 4 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Sathasiva B. Kandasamy, Ph.D., Scientific Review Officer, Division of Scientific Review, National Institute of Child Health, and Human Development, 6100 Executive Boulevard, Rockville, MD 20892–9304, (301) 435–6680, *skandasa@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: January 21, 2015.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–01363 Filed 1–26–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; Review of R24 Legacy.

Date: February 26, 2015.

Time: 12 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Room 3An.12K, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Nina Sidorova, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3An.12K, Bethesda, MD 20892, 301–402–2783, *sidorova@nigms.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: January 21, 2015.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–01368 Filed 1–26–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Microbiology, Infectious Diseases and AIDS Initial Review Group; Microbiology and Infectious Diseases Research Committee.

Date: February 19–20, 2015.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Frank S. De Silva, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 5601 Fishers Lane, Rockville, MD 20892–7616, 240–669–5023, *fdesilva@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: January 21, 2015.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–01360 Filed 1–26–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; 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: National Institute on Alcohol Abuse and Alcoholism Initial Review Group Biomedical Research Review Subcommittee.

Date: March 3, 2015.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: NIAAA, NIH, 5635 Fishers Lane, Terrace Level Conference Room, Rockville, MD 20852.

Contact Person: Philippe Marmillot, Ph.D., Scientific Review Officer, National Institute on Alcohol Abuse and Alcoholism, NIH, 5635 Fishers Lane; Room 2019, Rockville, MD 20852, (301) 443–2861, *marmillotp@mail.nih.gov.*

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Initial Review Group Neuroscience Review Subcommittee.

Date: March 17, 2015.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: NIAAA, NIH, 5635 Fishers Lane, Terrace Level Conference Room, Rockville, MD 20852.

Contact Person: Beata Buzas, Ph.D., Scientific Review Officer, National Institute

on Alcohol Abuse and Alcoholism, NIH, 5635 Fishers Lane; Room 2081, Rockville, MD 20852, (301) 443–0800, *bbuzas@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 92.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; 93.701, ARRA Related Biomedical Research and Research Supports Awards, National Institutes of Health, HHS)

Dated: January 21, 2015.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–01369 Filed 1–26–15; 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: Vascular and Hematology Integrated Review Group; Hemostasis and Thrombosis Study Section.

Date: February 19, 2015.

Time: 8 a.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Garden Inn, Bethesda, 7301 Waverly Street, Bethesda, MD 20814.

Contact Person: Bukhtiar H. Shah, Ph.D., DVM, Scientific Review Officer, Vascular and Hematology IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4120, MSC 7802, Bethesda, MD 20892, (301) 806–7314, *shahb@csr.nih.gov.*

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group; Cellular Aspects of Diabetes and Obesity Study Section.

Date: February 19–20, 2015.

Time: 8 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Robert Garofalo, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 6156, MSC 7892, Bethesda, MD 20892, (301) 435–1043, *garofalors@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; NRCS Palliative Care and Survivorship.

Date: February 19, 2015.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The St. Regis Washington DC, 923 16th Street NW., Washington, DC 20006.

Contact Person: Martha L. Hare, Ph.D., RN, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3154, Bethesda, MD 20892, (301) 451–8504, *harem@mail.nih.gov.*

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group; Genetic Variation and Evolution Study Section.

Date: February 19–20, 2015.

Time: 8:30 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance M Street Hotel, 1143 New Hampshire Avenue NW., Washington, DC 20037.

Contact Person: Ronald Adkins, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2206, MSC 7890, Bethesda, MD 20892, (301) 435–4511, *ronald.adkins@nih.gov.*

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group; Virology—A Study Section.

Date: February 19–20, 2015.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites Alexandria, 1900 Diagonal Road, Alexandria, VA 22314.

Contact Person: Kenneth M. Izumi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3204, MSC 7808, Bethesda, MD 20892, (301) 496–6980, *izumikm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Urological and Urogynecologic Applications including Small Business.

Date: February 20, 2015.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Crowne Plaza Washington National Airport, 1489 Jefferson Davis Hwy, Arlington, VA 22202.

Contact Person: Ryan G Morris, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4205, MSC 7814, Bethesda, MD 20892, (301) 435–1501, *morrisr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR 13–293: Gut Microbiota-derived Factors in the Integrated Physiology and Pathophysiology of Diseases within NIDDK's Mission.

Date: February 20, 2015.

Time: 8 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: Mayflower Park Hotel, 405 Olive Way, Seattle, WA 98101.

Contact Person: Jonathan K. Ivins, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4040A, MSC 7806, Bethesda, MD 20892, (301) 594–1245, *ivinsj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA Panel: Molecular Probes.

Date: February 20, 2015.

Time: 10 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Monaco Alexandria, 480 King Street, Alexandria, VA 22314.

Contact Person: Mary Custer, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7850, Bethesda, MD 20892, (301) 435–1164, *custerm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–14–166: Early Phase Clinical Trials in Imaging and Image-Guided Interventions.

Date: February 20, 2015.

Time: 10 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Chiayeng Wang, Ph.D., Scientific Review Officer, Center for Scientific Review, 6701 Rockledge Drive, Room 5213, MSC 7852, Bethesda, MD 20892, (301) 435–2397, *chiayeng.wang@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR 14–242: Role of the Microflora in the Etiology of Gastrointestinal Cancer.

Date: February 20, 2015.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Mayflower Park Hotel, 405 Olive Way, Seattle, WA 98101.

Contact Person: Jonathan K Ivins, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4040A, MSC 7806, Bethesda, MD 20892, (301) 594–1245, *ivinsj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Development of Appropriate Pediatric Formulations and Pediatric Drug Delivery System.

Date: February 20, 2015.

Time: 11 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Robert C. Elliott, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3130,

MSC 7850, Bethesda, MD 20892, (301) 435–3009, *elliotro@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Collaborative Applications: Adult Psychopathology.

Date: February 20, 2015.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Crowne Plaza National Airport, 1480 Crystal Drive, Arlington, VA 22202.

Contact Person: Serena Chu, Ph.D., Scientific Review Officer, BBBP IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3178, MSC 7848, Bethesda, MD 20892, (301) 500–5829, *sechu@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR14–143/144: Behavioral and Social Measures for Dental, Oral and Craniofacial Research.

Date: February 20, 2015.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: New Orleans Marriott Convention Center, 859 Convention Center Boulevard, New Orleans, LA 70130.

Contact Person: Wenchi Liang, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3150, MSC 7770, Bethesda, MD 20892, (301) 435–0681, *liangw3@csr.nih.gov.*

(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: January 21, 2015.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–01361 Filed 1–26–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Genetics Based Targets of Human Longevity.

Date: February 23, 2015.

Time: 12 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, Suite 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Elaine Lewis, Ph.D., Scientific Review Branch, National Institute on Aging, Gateway Building, Suite 2C212, MSC–9205, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301–402–7707 *elainelewis@nia.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: January 21, 2015.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–01356 Filed 1–26–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2015–0002]

Notice of Adjustment of Statewide Per Capita Indicator for Recommending a Cost Share Adjustment

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: FEMA gives notice that the statewide per capita indicator for recommending cost share adjustments for major disasters declared on or after January 1, 2015, through December 31, 2015, is $136.

DATES: This notice applies to major disasters declared on or after January 1, 2015.

FOR FURTHER INFORMATION CONTACT: William Roche, Recovery Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3834.

SUPPLEMENTARY INFORMATION: Pursuant to 44 CFR 206.47, the statewide per capita indicator that is used to recommend an increase of the Federal cost share from seventy-five percent (75%) to not more than ninety percent (90%) of the eligible cost of permanent work under section 406 and emergency work under section 403 and section 407 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act is adjusted annually. The adjustment to the indicator is based on the Consumer Price Index for All Urban Consumers published annually by the U.S. Department of Labor. For disasters declared on January 1, 2015, through December 31, 2015, the qualifying indicator is $136 per capita of state population.

This adjustment is based on an increase of 0.8 percent in the Consumer Price Index for All Urban Consumers for the 12-month period that ended December 2014. The Bureau of Labor Statistics of the U.S. Department of Labor released the information on January 16, 2015.

(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. 2015–01411 Filed 1–26–15; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0075]

Agency Information Collection Activities: Affidavit of Support, Forms I–864; I–864A; I–864EZ; I–864W; Revision of a Currently Approved Collection.

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 60-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) invites the general public and other Federal agencies to comment upon this proposed revision of a currently approved collection of information. In accordance with the Paperwork

Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (*i.e.* the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until March 30, 2015.

ADDRESSES: All submissions received must include the OMB Control Number 1615–0075 in the subject box, the agency name and Docket ID USCIS-2007-0029. To avoid duplicate submissions, please use only one of the following methods to submit comments:

(1) *Online.* Submit comments via the Federal eRulemaking Portal Web site at *www.regulations.gov* under e-Docket ID number USCIS–2007–0029;

(2) *Email.* Submit comments to *USCISFRComment@uscis.dhs.gov;*

(3) *Mail.* Submit written comments to DHS, USCIS, Office of Policy and Strategy, Chief, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2140.

FOR FURTHER INFORMATION CONTACT: If you need a copy of the information collection instrument with instructions, or additional information, please visit the Federal eRulemaking Portal site at: *http://www.regulations.gov.* We may also be contacted at: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Laura Dawkins, Chief, 20 Massachusetts Avenue NW., Washington, DC 20529–2140, Telephone number 202–272–8377.

SUPPLEMENTARY INFORMATION:

Comments

Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

Note: The address listed in this notice should only be used to submit comments concerning this information collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check ''My Case Status'' online at:

https://egov.uscis.gov/cris/Dashboard.do, or call the USCIS National Customer Service Center at 1–800–375–5283.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Affidavit of Support under Section 213A of the Act.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–864; I–864A; I–864EZ; I–864W; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. These forms are used by family-based and certain employment-based immigrants to have the petitioning relative execute an Affidavit of Support on their behalf.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form I–864, 439,500 responses at 6 hours per response; Form I–864A, 215,800 responses at 1.75 hours per response; Form I–864EZ, 100,000 responses at 2.5 hours per response; Form I–864W, 1,000 responses at 1 hour per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 3,265,650 hours.

Dated: January 21, 2015.

Laura Dawkins,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2015–01374 Filed 1–26–15; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0061]

Agency Information Collection Activities: Application for Regional Center Under the Immigrant Investor Program and Supplement, Form I–924 and I–924A; Extension Without Change of a Currently Approved Information Collection.

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 30-Day Notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection notice was previously published in the **Federal Register** on October 22, 2014, at 79 FR 63157, allowing for a 60-day public comment period for proposed revisions to the information collection. USCIS is, however, postponing implementation of any revisions to this information collection (projected until later in 2015 to early 2016), and is therefore requesting to extend the currently approved edition of this information collection without change at this time. USCIS received five comment submissions from four commenters on the proposed revisions to this information. USCIS acknowledges receipt of the comments and will be addressing the public comments received in response to the 60-day revision notice published on October 22, 2014, when it publishes a new 60-day notice with the proposed revisions.

DATES: The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until February 26, 2015. This process is conducted in accordance with 5 CFR 1320.10.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be directed to the OMB USCIS Desk Officer via email at *oira_submission@omb.eop.gov.* Comments may also be submitted via fax at (202) 395–5806. All submissions received must include the agency name and the OMB Control Number 1615–0061.

You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make. For additional information please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: If you need a copy of the information collection instrument with instructions, or additional information, please visit the Federal eRulemaking Portal site at: *http://www.regulations.gov,* e-Docket number USCIS–2007–0046. We may also be contacted at: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Laura Dawkins, Chief, 20 Massachusetts Avenue NW., Washington, DC 20529–2140, Telephone number 202–272–8377.

SUPPLEMENTARY INFORMATION:

Comments:

Note: The address listed in this notice should only be used to submit comments concerning this information collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check ''My Case Status'' online at: *https://egov.uscis.gov/cris/Dashboard.do,* or call the USCIS National Customer Service Center at 1–800–375–5283.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this Information Collection

(1) *Type of Information Collection Request:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Regional Center under the Immigrant Investor Program and Supplement.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* Form I–924 and I–924A; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households, for-profit organizations, and not-for-profit organizations. This collection will be used by individuals, for-profit organizations, and not-for-profit organizations to file a request for USCIS approval and designation as a regional center on behalf of an entity under the Immigrant Investor Program.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form I–924 is 311 and the estimated hour burden per response is 40 hours; and for Form I–924A 380 at 3 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 13,580 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $852,876.

Dated: January 21, 2015.

Laura Dawkins,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2015–01338 Filed 1–26–15; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

Customs and Border Protection

[1651–0055]

Agency Information Collection Activities: Harbor Maintenance Fee

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 30-Day notice and request for comments; extension of an existing collection of information.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Harbor Maintenance Fee. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours or to the information collected. This document is published to obtain comments from the public and affected agencies.

DATES: Written comments should be received on or before February 26, 2015 to be assured of consideration.

ADDRESSES: Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: This proposed information collection was previously published in the **Federal Register** (79 FR 68459) on November 17, 2014, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10. CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction

Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3507). The comments should address: (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 estimates 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, including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs to respondents or record keepers from the collection of information (total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for OMB approval. All comments will become a matter of public record. In this document, CBP is soliciting comments concerning the following information collection:

Title: Harbor Maintenance Fee.

OMB Number: 1651–0055.

Form Number: Forms 349 and 350.

Abstract: The Harbor Maintenance Fee (HMF) and Trust Fund is used for the operation and maintenance of certain U.S. channels and harbors by the Army Corps of Engineers. U.S. Customs and Border Protection (CBP) is required to collect the HMF from importers, domestic shippers, and passenger vessel operators using federal navigation projects. Commercial cargo loaded on or unloaded from a commercial vessel is subject to a port use fee of 0.125 percent of its value if the loading or unloading occurs at a port that has been designated by the Army Corps of Engineers. The HMF also applies to the total ticket value of embarking and disembarking passengers and on cargo admissions into a Foreign Trade Zone (FTZ).

CBP Form 349, *Harbor Maintenance Fee Quarterly Summary Report,* and CBP Form 350, *Harbor Maintenance Fee Amended Quarterly Summary Report* are completed by domestic shippers, foreign trade zone applicants, and passenger vessel operators and submitted with payment to CBP. CBP proposes to amend Form 349 to add the respondent's email address and fax number.

CBP uses the information collected on CBP Forms 349 and 350 to verify that the fee collected is timely and accurately submitted. These forms are authorized by the Water Resources Development Act of 1986 (26 U.S.C. 4461, *et seq.*) and provided for by 19 CFR 24.24, which also includes the list of designated ports. CBP Forms 349 and 350 are accessible at *http://www.cbp.gov/newsroom/publications/forms* or they may be completed and filed electronically at *www.pay.gov.*

Current Actions: CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to Forms 349 and 350.

Type of Review: Extension (without change).

Affected Public: Businesses.

CBP Form 349

Estimated Number of Respondents: 560.

Estimated Number of Total Annual Responses: 2,240.

Estimated Time per Response: 30 minutes.

Estimated Total Annual Burden Hours: 1,120.

CBP Form 350

Estimated Number of Respondents: 15.

Estimated Number of Total Annual Responses: 60.

Estimated Time per Response: 30 minutes.

Estimated Total Annual Burden Hours: 30.

Recordkeeping

Estimated Number of Respondents: 575.

Estimated Number of Total Annual Responses: 575.

Estimated Time per Response: 10 minutes.

Estimated Total Annual Burden Hours: 96.

Dated: January 21, 2015.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2015–01488 Filed 1–26–15; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Customs and Border Protection

[1651–0012]

Agency Information Collection Activities: Lien Notice

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 30-Day notice and request for comments; extension of an existing collection of information.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Lien Notice (CBP Form 3485). This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours or to the information collected. This document is published to obtain comments from the public and affected agencies.

DATES: Written comments should be received on or before February 26, 2015 to be assured of consideration.

ADDRESSES: Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: This proposed information collection was previously published in the **Federal Register** (79 FR 64209) on October 28, 2014, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10. CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3507). The comments should address: (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 estimates 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, including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs to respondents or record keepers from the collection of information (total capital/startup costs and operations and

maintenance costs). The comments that are submitted will be summarized and included in the CBP request for OMB approval. All comments will become a matter of public record. In this document, CBP is soliciting comments concerning the following information collection:

Title: Lien Notice.

OMB Number: 1651–0012.

Form Number: 3485.

Abstract: Section 564, Tariff Act of 19, as amended (19 U.S.C. 1564) provides that the claimant of a lien for freight can notify CBP in writing of the existence of a lien, and CBP shall not permit delivery of the merchandise from a public store or a bonded warehouse until the lien is satisfied or discharged. The claimant shall file the notification of a lien on CBP Form 3485, Lien Notice. This form is usually prepared and submitted to CBP by carriers, cartmen and similar persons or firms. The data collected on this form is used by CBP to ensure that liens have been satisfied or discharged before delivery of the freight from public stores or bonded warehouses, and to ensure that proceeds from public auction sales are distributed to the lienholder. CBP Form 3485 is provided for by 19 CFR 141.112, and is accessible at *http://forms.cbp.gov/pdf/CBP_Form_3485.pdf.*

Current Actions: This submission is being made to extend the expiration date with no change to the burden hours. There are no changes to the information collected or to Form 3485.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 112,000.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 28,000.

Dated: January 21, 2015.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2015–01476 Filed 1–26–15; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Notice of Revocation of Customs Broker's License

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Customs broker's license revocation.

SUMMARY: This document provides notice of the revocation of a customs broker's license.

SUPPLEMENTARY INFORMATION: This document provides notice that, pursuant to section 641 of the Tariff Act of 1930, as amended (codified at 19 U.S. Code 1641), and section 111.30(d) of title 19 of the Code of Federal Regulations (19 CFR 111.30(d)), the following customs broker's license is revoked by operation of law without prejudice for failure to file a triennial status report.

Company name	License No.	Port of issuance
Brian D. Stacy	21354	Seattle

Dated: January 22, 2015.

Brenda Smith,

Assistant Commissioner, Office of International Trade.

[FR Doc. 2015–01439 Filed 1–26–15; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–MB–2015–N019; FXMB37660900000–14X–FF09M12000]

Information Collection Request Sent to the Office of Management and Budget (OMB) for Approval; Migratory Birds and Wetlands Conservation Grant Programs

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (U.S. Fish and Wildlife Service) have sent an Information Collection Request (ICR) to OMB for review and approval. We summarize the ICR below and describe the nature of the collection and the estimated burden and cost. This information collection is scheduled to expire on January 31, 2015. We may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. However, under OMB regulations, we may continue to conduct or sponsor this information collection while it is pending at OMB.

DATES: You must submit comments on or before February 26, 2015.

ADDRESSES: Send your comments and suggestions on this information collection to the Desk Officer for the Department of the Interior at OMB–OIRA at (202) 395–5806 (fax) or *OIRA_Submission@omb.eop.gov* (email). Please provide a copy of your comments to the Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS BPHC, 5275 Leesburg Pike, Falls Church, VA 22041–3803 (mail), or *hope_grey@fws.gov* (email). Please include ''1018–0100'' in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Hope Grey at *hope_grey@fws.gov* (email) or 703–358–2482 (telephone). You may review the ICR online at *http://www.reginfo.gov.* Follow the instructions to review Department of the Interior collections under review by OMB.

SUPPLEMENTARY INFORMATION:

Information Collection Request

OMB Control Number: 1018–0100.

Title: Migratory Birds and Wetlands Conservation Grant Programs.

Service Form Number(s): None.

Type of Request: Extension of a currently approved collection.

Description of Respondents: Domestic and foreign individuals, businesses, and other for-profit organizations; educational organizations; not-for-profit institutions; and Federal, State, tribal and local governments

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Activity	Number of respondents	Number of responses	Completion time per response (hours)	Total annual burden hours
NAWCA Small Grants—Applications	71	71	40	2,840

Activity	Number of respondents	Number of responses	Completion time per response (hours)	Total annual burden hours
NAWCA Small Grants—Reports	99	99	33	3,267
NAWCA U.S. Standard Grants—Applications	69	69	203	14,007
NAWCA Canadian and Mexican Standard Grants—Applications	27	27	80	2,160
NAWCA Standard Grants—Reports	177	177	30	5,310
NMBCA Grant Applications	84	84	60	5,040
NMBCA Reports	71	71	40	2,840
Totals	598	598		35,464

Estimated Annual Nonhour Burden Cost: None.

Abstract: The Division of Bird Habitat Conservation administers grant programs associated with the North American Wetlands Conservation Act (NAWCA), Public Law 101–233, and the Neotropical Migratory Bird Conservation Act (NMBCA), Public Law 106–247.

North American Wetlands Conservation Act Grants

NAWCA provides matching grants to organizations and individuals who have developed partnerships to carry out wetlands conservation projects in the United States, Canada, and Mexico for the benefit of wetlands-associated migratory birds and other wildlife. There is a Standard and a Small Grants Program. Both are competitive grants programs and require that grant requests be matched by partner contributions at no less than a 1-to-1 ratio. Funds from U.S. Federal sources may contribute to a project, but are not eligible as a match.

The Standard Grants Program supports projects in Canada, the United States, and Mexico that involve long-term protection, restoration, and enhancement of wetlands and associated uplands habitats. In Mexico, partners may also conduct projects involving technical training, environmental education and outreach, organizational infrastructure development, and sustainable-use studies.

The Small Grants Program operates only in the United States. It supports the same types of projects and adheres to the same selection criteria and administrative guidelines as the U.S. Standard Grants Program. However, project activities are usually smaller in scope and involve fewer project dollars. Grant requests may not exceed $75,000, and funding priority is given to grantees or partners new to the NAWCA Grants Program.

We publish notices of funding availability on Grants.gov (*http://www.grants.gov*), as well as in the Catalog of Federal Domestic Assistance (*https://www.cfda.gov*). To compete for grant funds, partnerships submit applications that describe in substantial detail project locations, project resources, future benefits, and other characteristics that meet the standards established by the North American Wetlands Conservation Council and the requirements of NAWCA. Materials that describe the program and assist applicants in formulating project proposals are available on our Web site at *http://www.fws.gov/birdhabitat/Grants/NAWCA.* Persons who do not have access to the Internet may obtain instructional materials by mail. We have not made any major changes in the scope and general nature of the instructions since OMB first approved the information collection in 1999.

Neotropical Migratory Bird Conservation Act

NMBCA establishes a matching grant program to fund projects that promote the long-term conservation of neotropical migratory birds and their habitats in the United States, Canada, Latin America, and the Caribbean. Principal conservation actions supported are:

- Protection and management of populations.
- Maintenance, management, protection, and restoration of habitat.
- Research and monitoring.
- Law enforcement.
- Community outreach and education.

We publish notices of funding availability on Grants.gov as well as in the Catalog of Federal Domestic Assistance. To compete for grant funds, partnerships submit applications that describe in substantial detail project locations, project resources, future benefits, and other characteristics that meet the standards established by the U.S. Fish and Wildlife Service and the requirements of NMBCA.

Materials that describe the program and assist applicants in formulating project proposals for consideration are available on our Web site at *http://www.fws.gov/birdhabitat/Grants/NMBCA.* Persons who do not have access to the Internet may obtain instructional materials by mail. We have not made any major changes in the scope and general nature of the instructions since OMB first approved the information collection in 2002.

Comments Received and Our Responses

Comments: On October 22, 2014, we published in the **Federal Register** (79 FR 63159) a notice of our intent to request that OMB renew approval for this information collection. In that notice, we solicited comments for 60 days, ending on December 22, 2014. We received one comment. The commenter objected to the grant programs, but did not address the information collection requirements. We have not made any changes to the information collection.

Request for Public Comments

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: January 21, 2015.

Tina A. Campbell,

Chief, Division of Policy and Directives Management, U.S. Fish and Wildlife Service.

[FR Doc. 2015–01341 Filed 1–26–15; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R7–R–2012–N207; FXRS1265070000S3–134–FF07R06000]

Arctic National Wildlife Refuge, Alaska; Revised Comprehensive Conservation Plan and Final Environmental Impact Statement

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of a revised comprehensive conservation plan (plan/CCP) and final environmental impact statement (EIS) for the Arctic National Wildlife Refuge (refuge, NWR) for a 30-day public review. In this revised plan and final EIS, we describe how we propose to manage the refuge for the next 15 years.

DATES: The review period will end February 26, 2015. We are not soliciting comments on the plan during this review period.

ADDRESSES: You may submit questions or requests for more information by any one of the following methods:

- *Email: ArcticRefugeCCP@fws.gov.* Include ''Arctic National Wildlife Refuge Revised CCP and Final EIS'' in the subject line of the message.
- *Fax:* Attention: Arctic CCP, Planning Team Leader, Arctic National Wildlife Refuge, (907) 456–0428.
- *U.S. Mail:* Attention: Stephanie Brady, Arctic CCP, Arctic National Wildlife Refuge, 101 12th Ave., Rm. 236, Fairbanks, AK 99701.
- *In-Person Drop Off:* You may drop off questions during regular business hours at the above addresses.

You will find the plan and EIS, as well as information about the planning process and a summary of the revised plan, on the planning Web site: *http://arctic.fws.gov/ccp.htm.*

FOR FURTHER INFORMATION CONTACT: Stephanie Brady, (907) 306–7448.

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we continue the comprehensive conservation planning process for Arctic National Wildlife Refuge, which we began by publishing a notice of intent in the **Federal Register** (75 FR 17763) on April 7, 2010. For more about the initial process and the history of this refuge, see that notice.

Background

The Alaska National Interest Lands Conservation Act (ANILCA) requires us to develop a CCP for each national wildlife refuge in Alaska. The purpose of developing a CCP is to provide refuge managers with a strategy for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System (NWRS), consistent with sound principles of fish and wildlife management, conservation, legal mandates, and Service policies. In addition to outlining broad management direction for conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. In general, we review and update CCPs in Alaska every 15 to 20 years.

ANILCA lists specific purposes for each refuge in Alaska. These purposes provide the foundation for developing and prioritizing the management goals and objectives for each Alaskan refuge. The planning process is a way for us and the public to evaluate management goals and objectives that will ensure the best possible approach to wildlife, plant, and habitat conservation while providing for wildlife-dependent recreation opportunities that are compatible with each refuge's establishing purposes and the mission of the NWRS.

Additional Information

The revised plan may be found at *http://arctic.fws.gov/ccp.htm.* The document incorporates an EIS, prepared in accordance with the National Environmental Policy Act (NEPA) (43 U.S.C. 4321 *et seq.*).

Alternatives Considered

The revised plan and final EIS includes detailed information about the refuge, planning process, issues, and management alternatives considered. The final EIS includes discussions of six alternatives for refuge management. All six alternatives address three significant issues: Wilderness recommendations, Wild and Scenic River recommendations, and Kongakut River visitor use management. The Service's preferred alternative is described in the revised Plan and final EIS.

Alternative A: Current Management (No Action)

This alternative reflects the current management direction of Arctic NWR. It provides the baseline against which to compare other alternatives. Under Alternative A, the refuge would continue to be managed according to the direction included in the 1988 plan. Current goals and objectives would not be changed.

- *Wilderness*—No new areas would be recommended for Wilderness designation.
- *Wild and Scenic Rivers*—No new rivers would be recommended for inclusion in the Wild and Scenic Rivers System.
- *Kongakut River Visitor Use Management*—Managers would continue to manage visitors using the following practices: Group size limits for guided groups (7 hikers, 10 floaters); and No group size limits for non-guided groups, although we recommend using commercial limits; Information on low-impact camping and other best practices would continue to be available on the Refuge Web site. Commercial service providers would continue to have special use permits with occasional compliance checks by the Service.

Monitoring of physical and social conditions and visitor impacts would continue to occur occasionally. Air operator permit holders would be required to land on non-vegetated surfaces and asked to follow all Federal Aviation Administration (FAA) advisories during flight operations. The Service would prepare a Public Use Management Plan (as required by the 1988 plan).

Alternative B

- *Wilderness*—Recommend the Brooks Range Wilderness Study Area to Congress for Wilderness designation.
- *Wild and Scenic Rivers*—Recommend the Hulahula, Kongakut, and Marsh Fork Canning Rivers to Congress for inclusion into the National Wild and Scenic Rivers System.
- *Kongakut River Visitor Use Management*—Under this alternative, and immediately upon plan approval, we would proceed with two concurrent step-down plans: A Visitor Use Management Plan (VUMP) and a Wilderness Stewardship Plan (WSP). In addition to the practices identified under Alternative A, we would implement interim measures. The refuge would expand monitoring of degraded sites, work with guides to reduce visitor volume, work with air operators to disperse flights over high-use areas, publish a schedule of when guides will

be launching trips, step up enforcement of permit conditions and Refuge regulations, and set an interim cap on commercial recreation guides from 2013 through 2016 or through completion of the VUMP/WSP, whichever comes first.

Alternative C

- *Wilderness*—Recommend the Coastal Plain Wilderness Study Area to Congress for Wilderness designation.
- *Wild and Scenic Rivers*—Recommend the Atigun River to Congress for inclusion into the National Wild and Scenic Rivers System.
- *Kongakut River Visitor Use Management*—Under this alternative, management would be the same as under Alternative B.

Alternative D

- *Wilderness*—Recommend the Brooks Range and Porcupine Plateau Wilderness Study Areas to Congress for Wilderness designation.
- *Wild and Scenic Rivers*—Recommend the Atigun, Kongakut, and Marsh Fork Canning Rivers, and those portions of the Hulahula River managed by the Refuge, to Congress for inclusion into the National Wild and Scenic Rivers System.
- *Kongakut River Visitor Use Management*—Under this alternative, management would be the same as Alternative B, except there would be no interim cap on commercial recreation guides.

Alternative E

- *Wilderness*—Recommend the Brooks Range, Porcupine Plateau, and Coastal Plain Wilderness Study Areas to Congress for Wilderness designation.
- *Wild and Scenic Rivers*—Recommend the Atigun, Hulahula, Kongakut, and Marsh Fork Canning Rivers to Congress for inclusion into the National Wild and Scenic Rivers System.
- *Kongakut River Visitor Use*—Under this alternative, management would be the same as under Alternative D.

Alternative F

Under Alternative F much of the management direction outlined in Alternative A would continue. The goals and objectives and management policies and guidelines described in the plan would be adopted.

- *Wilderness*—No new areas would be recommended for Wilderness designation.
- *Wild and Scenic River*—No new rivers would be recommended for inclusion into the Wild and Scenic Rivers System.
- *Kongakut River Visitor Use*—Under this alternative, management would be the same as under Alternative D.

Preferred Alternative

The Service selected Alternative E as the Preferred Alternative for the revised plan for Arctic Refuge. Alternative E addresses the key issues and concerns identified during the planning process and will best achieve the purposes of the refuge, the mission of the NWRS, and maintain the refuge's special values.

Wilderness: Alternative E recommends the qualified and suitable lands and waters in three Wilderness Study Areas (nearly 12.28 million acres) for inclusion in the National Wilderness Preservation System. If Congress were to designate these acres as Wilderness, nearly the entire refuge would be managed to preserve Wilderness character while providing for the public purposes of recreational, scenic, scientific, educational, conservation, and historical use. Wilderness Act purposes would be within and supplemental to the purposes of the refuge. Wilderness designation would provide statutory protection for resources in the refuge and represents a more permanent commitment to perpetuating the refuge's natural conditions, ecological processes, and wilderness-associated recreational opportunities. Until Congress makes a decision regarding this recommendation, the Wilderness Study Areas will continue to be managed under Minimal Management.

Wild and Scenic Rivers: Four rivers are recommended for inclusion in the National Wild and Scenic Rivers System: The Atigun, Marsh Fork Canning, Hulahula, and Kongakut rivers. The Refuge will implement the interim management prescriptions described in the revised plan (Appendix I) to maintain the outstandingly remarkable and other values of these rivers until Congress makes a decision regarding the recommendation. If Congress were to designate these four rivers, the refuge would prepare a Comprehensive River Management Plan specific to each of the four rivers. These plans would: Describe the existing resource conditions in the river corridor; define the goals and desired conditions for protecting river values; address the types and amounts of public use the river area can sustain (*i.e.,* user capacities); address water quality issues and instream flow requirements; and include a monitoring strategy to maintain desired conditions.

Kongakut River Visitor Management: The refuge will implement interim management measures (not including a cap on commercial recreation guides) to better manage visitor use of the Kongakut River pending completion of a refuge-wide Visitor Use Management Plan. These interim measures include: Working with guides to reduce visitor volume and to disperse flights; publishing a launch schedule; developing new outreach materials with targeted messages; increasing enforcement of permit conditions and refuge regulations; and identifying and repairing degraded sites.

Summary: Arctic Refuge serves a distinctive function in the NWRS as a landscape that is essentially unaltered and free-functioning, contains outstanding natural diversity, and provides a benchmark for wilderness qualities and for perpetuating biological integrity, diversity, and environmental health. Alternative E provides assurance that the refuge's special values and distinctive function will be protected and perpetuated for future generations. This alternative adopts the management goals and objectives and revised management policies and guidelines (Chapter 2). Our implementation of Alternative E will occur over the next 15 to 20 years, depending on future staffing levels and funding.

Factors Considered in Making the Decision

The decision was based on a thorough analysis of the environmental, social, and economic considerations presented in the revised plan and final EIS. The Service reviewed and considered the impacts identified in Chapter 5 of the draft plan/EIS; relevant issues, concerns, and opportunities; input received throughout the planning process, including advice from technical experts and public comments on the draft plan/EIS; and other factors, including refuge purposes and relevant laws, regulations, and policies. The revised plan and final EIS addresses a variety of needs, including protection of fish and wildlife populations and their habitats and providing opportunities for fish and wildlife-dependent recreation, subsistence, and other public uses. Alternative E contributes significantly to achieving refuge purposes and goals. Alternative E also strengthens the monitoring of fish, wildlife, habitat, and public uses on the refuge to provide means to better respond to changing conditions in the surrounding landscape.

Public Involvement

We are releasing the revised plan and final EIS for a 30-day public review period. We are not soliciting public comments at this time. The Service has

afforded government agencies, tribes, and the public extensive opportunity to participate in the preparation of this EIS.

We began the planning process with formal notification to nine federally recognized tribes, two Native village councils, the State of Alaska, four Federal agencies, two Regional Native corporations, one village corporation, and the North Slope Borough. We prepared the revised Plan/final EIS in coordination with the Alaska Department of Natural Resources, the Alaska Department of Fish and Game, the Arctic Slope Regional Corporation, and the Native Village of Kaktovik, all of which had one or more representatives on the planning team. The National Aeronautics and Space Administration (NASA) joined the planning team as a cooperating agency during preparation of the final EIS. We informally consulted with the Gwichyaa Zhee Gwich'in Tribal Government, the Native Village of Kaktovik, the Native Village of Venetie Tribal Government, the Arctic Village Council, and the Venetie Village Council on several occasions throughout the planning process, encouraging their participation in the revised plan. We formally consulted with the Gwichyaa Zhee Gwich'in Tribal Government, the Native Village of Kaktovik, and the Native Village of Venetie Tribal Government in June 2012. We formally consulted with Regional Native Corporation Doyon Limited in September 2012.

The Service published a notice of intent to prepare the plan/EIS in the **Federal Register** on April 7, 2010 (75 FR 17763). Scoping comments were accepted for 60 days. Open-house style meetings were held in Anchorage, Arctic Village, Barrow, Fairbanks, Fort Yukon, Kaktovik, and Venetie, Alaska. Public hearings were held in all these locations, as well as in Washington, DC The Service received 94,061 written and oral comments during the scoping process.

A notice of availability for the draft plan/EIS was published in the **Federal Register** on August 15, 2011 (76 FR 50490). The draft EIS was available for public comment from August 15 to November 15, 2011—a 90-day public comment period. The Service held open-house style meetings in Anchorage (September 20, 2011), Arctic Village (November 14, 2011), Fairbanks (August 24, 2011), Fort Yukon (October 28, 2011), Kaktovik (October 25, 2011), and Venetie, Alaska (November 15, 2011). In addition, we held six public hearings on the draft in Anchorage (September 21, 2011), Arctic Village (November 14, 2011), Fairbanks (October 19, 2011), Fort Yukon (October 28, 2011), Kaktovik (November 3, 2011), and Venetie (November 15, 2011).

The Service received 612,285 communications (an example of a communication could be an individual piece of mail, Web site submission, form letter, statement at a public hearing, etc.) during the public review period on the draft plan/EIS. We have considered all public comments throughout the process and have incorporated them in various ways, such as in identifying the significant planning issues and the different alternatives addressed in the revised plan/final EIS.

Changes to the Revised Plan and Final EIS

We made the following changes in the revised plan and final EIS from the draft plan/EIS:

Wilderness Terminology—We added a ''Note about Wilderness Terminology'' to the front pages of Volumes 1, 2, and 3 to explain how we use wilderness-related terms throughout the revised plan. ''Wilderness'' (with a capital ''W'') refers to designated Wilderness lands, and ''wilderness'' (not capitalized) is used as an adjective to describe wilderness-related qualities across the Refuge, including in Minimal Management areas.

Acreages—Many of the acreages listed in the revised plan/final EIS differ from those published elsewhere, including the draft plan. The revised acreages reflect our ability to more accurately measure land areas using such technologies as Geographic Information Systems (GIS). We added a ''Note about Acreages'' to the front pages of Volumes 1, 2, and 3 to explain our approach.

ANILCA—ANLICA Section 1004 does not apply to Arctic Refuge, and all references to it were removed from the revised plan/final EIS.

Cooperating Agencies—Since the draft plan was released, we welcomed the National Aeronautics and Space Administration (NASA) as a cooperating agency.

Refuge Purposes—We recently received clarification on how Refuge purposes guide management. Established in 1960, the Arctic National Wildlife Range (Range) was created ''for the purpose of preserving unique wildlife, wilderness, and recreational values.'' In 1980, ANILCA re-designated the Range as part of the Arctic National Wildlife Refuge and provided four purposes that guide management of the entire Refuge. Under the provisions of Section 305 of ANILCA, the Range purposes from 1960 remain in force and effect on the lands and waters in the original Range only to the extent they are consistent with ANILCA and the Alaska Native Claims Settlement Act (ANCSA). ANILCA purposes apply to the entire Refuge. The revised plan was edited to fully reflect this interpretation of Refuge purposes.

Goals and Objectives—The goals and objectives included in the draft plan were revised based on public comment and Service review. Changes range from minor clarifications to major rewrites of goals and objectives. In some cases, multiple objectives in the draft plan were combined into one. Additionally, several new objectives were added to the revised plan. These objectives discuss restoration and rehabilitation of degraded and/or impaired sites; management of the Refuge's Marine Protected Area; modifications to the Refuge's management approach to climate change providing more flexibility in the range of available responses to climate change; assessment and inventory of water resources; and formal consultation with tribes and Alaska Native Regional Corporations on a wide range of environmental, biological, cultural, and subsistence issues and concerns.

Management Policies and Guidelines—We made several changes to the Refuge's management policies and guidelines, including rewriting the introduction to better explain how the guidelines were developed to meet the needs of Arctic Refuge, clarifying the authorities of the State of Alaska and the Service, expanding the discussion on U.S. government relations with tribal governments, and clarifying our intent to refrain from activities intended to resist the effects of climate change. We expanded the section on human safety and management emergencies to include threats to refuge resources; restriction of domestic animals such as sheep, goats, and camelids (llamas and alpacas) to prevent the spread of disease to wildlife; prohibition of the use of straw and hay for bedding for dogs; and prohibition of all except pelletized weed-free feed for pack animals, to reduce the potential introduction and spread of invasive plants. Finally, we removed the proposed permit and fees for temporary facilities related to the taking of fish and wildlife left in designated Wilderness from one season to the next.

Alternatives—The projected budget to implement each of the alternatives was revised and is now lower than what was published in the draft plan. The options considered for management of visitor use on the Kongakut River were revised. A Public Use or Visitor Use Management Plan would be completed under all the alternatives, including

Alternative A (No Action), and two of the alternatives now include an interim cap on commercial recreation guides from 2013 to 2016, or until step-down plans are completed. Step-down planning would begin immediately upon approval of the revised plan/final EIS, rather than 2 years after approval, and all management prescriptions put in place pending the step-down plans would be considered interim.

Other Chapters and Appendices—Various chapters and appendices were revised and reworked since the draft plan and draft EIS. Chapter 1, Introduction, was updated with details about the public comment period on the draft plan and contains a new section entitled ''Concerns Regarding Fish, Wildlife, and Habitats,'' as required by ANILCA. Chapter 4, Affected Environment, has a new section on soundscape and a new section on cabins; in addition, subsections on climate change were added to the descriptions of water resources, vegetation, fish, birds, and mammals. Socioeconomic data were updated with 2010 Census data, where available, and a new section on the Poker Flat Research Range and NASA's Sounding Rockets Program was added. Chapter 5, Environmental Consequences, was reworked to provide more consistency, and to identify reasonably foreseeable future actions. Additionally, the chapter considers the effects of each proposed action on the Poker Flat Research Range. Step-down plans were reprioritized in Chapter 6, and the compatibility determinations were finalized and signed (Appendix G). The eligibility and suitability studies for the wild and scenic river review (Appendix I) were combined into a single report, and we added information about the Wild and Scenic Rivers Act and its management implications.

Two New Volumes—A major change made since the draft plan is the addition of Volumes 3 and 4. Volume 3 summarizes all the public comments received on the draft plan/EIS, presents the substantive comments we received, and includes the Service's responses to each substantive comment. Volume 4 contains indices to help the reader navigate through Volume 3 and contains full text samples of communications received on the draft plan.

Comments

We are not soliciting comments at this time. This release is intended to allow the public a period of review. Appendix J in Volume 2 of the plan includes a summary report of public comments received during the scoping period. Volume 3 of the revised plan contains a summary of public comments received on the draft plan/EIS and the Service's responses to substantive comments. Volume 4 of the revised plan includes samples of public comments received on the draft plan/EIS.

Next Steps

Following conclusion of the 30-day public review period, a Record of Decision (ROD) will be signed in which we disclose the Service's final decision and any conditions of approval. Availability of the ROD will be announced through the **Federal Register**, a press release, the Refuge's Web site, and communications with those on the CCP mailing list.

Geoffrey L. Haskett,

Regional Director, U.S. Fish and Wildlife Service, Anchorage, Alaska.

[FR Doc. 2015–01514 Filed 1–26–15; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

U.S. Geological Survey

[GX15LR000F60100]

Agency Information Collection Activities: Request for Comments

AGENCY: U.S. Geological Survey (USGS), Interior.

ACTION: Notice of an extension and revision of a currently approved information collection (1028–0053).

SUMMARY: We (the U.S. Geological Survey) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. The collection will consist of 27 forms. As part of the requested extension we will make several revisions to the number of the associated collection instruments. These revisions include: (1) Deleting USGS Form 9–4053–A, USGS Form 9–4073–A, and USGS Form 9–4097–A; (2) changing USGS Form 9–4094–A and USGS Form 9–4095–A from monthly and annual to annual-only reporting forms; (3) changing USGS Form 9–4057–A and USGS Form 9–4060–A from quarterly and annual to annual-only reporting forms; and (4) decreasing the average burden time for USGS Form 9–4074–A from 2 hours to 1 hour. As required by the Paperwork Reduction Act (PRA) of 1995, and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC. This collection is scheduled to expire on August 31, 2015.

DATES: To ensure that your comments are considered, we must receive them on or before March 30, 2015.

ADDRESSES: Please submit a copy of your comments to the Information Collection Clearance Officer, U.S. Geological Survey, 807 National Center, 12201 Sunrise Valley Drive, Reston, VA 20192 (mail); 703–648–7195 (fax); or *gs-info_collections@usgs.gov* (email). Reference 'Information Collection 1028–0053, Nonferrous Metals Surveys' in all correspondence.

FOR FURTHER INFORMATION CONTACT: Elizabeth Sangine at 703–648–7720 (telephone); *escottsangine@usgs.gov* (email); or by mail at U.S. Geological Survey, 989 National Center, 12201 Sunrise Valley Drive, Reston, VA 20192.

SUPPLEMENTARY INFORMATION:

I. Abstract

Respondents to these forms supply the USGS with domestic production and consumption data for 22 ores, concentrates, and metals, some of which are considered strategic and critical. These data and derived information will be published as chapters in Minerals Yearbooks, monthly and quarterly Mineral Industry Surveys, annual Mineral Commodity Summaries, and special publications, for use by Government agencies, industry, education programs, and the general public.

II. Data

OMB Control Number: 1028–0053.

Form Number: Various (27 forms).

Title: Nonferrous Metals Surveys.

Type of Request: Extension and revision of a currently approved collection.

Affected Public: Business or Other-For-Profit Institutions: U.S. nonfuel minerals producers and consumers of nonferrous metals and related materials.

Respondent Obligation: None. Participation is voluntary.

Frequency of Collection: Monthly, Quarterly, or Annually.

Estimated Number of Annual Responses: 4,252.

Estimated Time per Response: For each form, we will include an average burden time ranging from 20 minutes to 1 hour.

Annual Burden Hours: 3,212 hours.

Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden: There are no ''non-hour cost'' burdens associated with this collection of information.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it

displays a currently valid OMB control number and current expiration date.

III. Request for Comments

We are soliciting comments as to: (a) Whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) the accuracy of the agency's estimate of the burden time to the proposed collection of information; (c) how to enhance the quality, usefulness, and clarity of the information to be collected; and (d) how to minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Please note that the comments submitted in response to this notice are a matter of public record. Before including your personal mailing address, phone number, email address, or other personally identifiable information in your comment, you should be aware that your entire comment, including your personally identifiable information, may be made publicly available at any time. While you can ask us in your comment to withhold your personally identifiable information from public view, we cannot guarantee that we will be able to do so.

Michael J. Magyar,

Associate Director, National Minerals Information Center, U.S. Geological Survey.

[FR Doc. 2015–01382 Filed 1–26–15; 8:45 am]

BILLING CODE 4311–AM–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[AAK4004200/A0R5C4040.999900/134A2100DD]

Land Acquisitions; Transfer of Excess Federal Real Property

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of final agency determination.

SUMMARY: This notice provides notification of the Department of the Interior's final agency determination to acquire approximately 226.49 acres, more or less, of land into trust for the Cherokee Nation. This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 Department Manual 8.1.

FOR FURTHER INFORMATION CONTACT: Ms. Robin White, Bureau of Indian Affairs, Acting Chief, Division of Real Estate Services, 1849 C Street NW., MS 4642–MIB, Washington, DC 20240, telephone number (202) 208–1110.

SUPPLEMENTARY INFORMATION: On June 15, 1989, and on December 2, 1993, pursuant to authority contained in the Federal Property and Administrative Services Act of 1949, as amended by Public Law 93–599 dated January 2, 1975 (88 Stat. 1954), the below described property was transferred by the Local GSA Regional (7) Administrator of the General Services Administration without compensation or reimbursement to the Secretary of the Department of the Interior, to be held in trust for the benefit and use of the Cherokee Nation.

Description of the real property according to Bureau of Land Management Cadastral Survey Plat approved on April 24, 2007, known as Sequoyah High School (GSA Control No. 7–1–OK–542–A & 7–1–OK–542–B), is as follows:

Indian Meridian, Cherokee County, Oklahoma

Lots 5 and 6 less the West 1120 feet thereof in Section 19, Township 16 North, Range 22 East of the Indian Meridian, Cherokee County, Oklahoma, AND

The SE ¼ SW ¼; NW ¼ SE ¼; N ½ SW ¼ SE ¼ SE ¼; Lots 3, 5, 6 and 7 less that portion of the SW ¼ SW ¼ SW ¼ lying West of the blacktop road in Section 20, Township 16 North, Range 22 East of the Indian Meridian, Cherokee County, Oklahoma.

The SW ¼ NW ¼ NW ¼ in Section 29, Township 16 North, Range 22 East of the Indian Meridian, Cherokee County, Oklahoma.

The above described lands contain a total 226.49 acres, more or less, which is transferred subject to compliance with the provisions of the National Environmental Policy Act of 1969, as amended; Section 106 of the National Historic Preservation Act of 1966, as amended; Executive Order 11593, Protection and Enhancement of the Cultural Environment; Executive Orders 11988 and 11990, Subject: Floodplain Management and Protection of Wetlands; and other appropriate guidelines, valid rights, reservations, rights-of-way, easements of record, regulations, laws, and Executive Orders pertaining to the future use of this property.

This notice does not affect title to the land described above, nor does it affect any valid existing easements for public roads and highways, public utilities, railroads and pipelines, and any other rights-of-way or reservations of record.

Dated: January 21, 2015.

Kevin K. Washburn,

Assistant Secretary—Indian Affairs.

[FR Doc. 2015–01467 Filed 1–26–15; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNMF01000 L13110000.PP0000 15XL1109PF]

Notice of Public Meeting, Farmington District Resource Advisory Council Meeting, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Public Meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act, the Bureau of Land Management's (BLM) Farmington District Resource Advisory Council (RAC) will meet as indicated below.

DATES: The RAC will meet on February 25 and 26, 2015, at the Farmington District Office, 6251 College Blvd., Suite A, Farmington, NM 87402, from 9 a.m.–4 p.m. The public may send written comments to the RAC at the BLM Farmington District Office, 6251 College Blvd., Suite A, Farmington, NM 87402.

FOR FURTHER INFORMATION CONTACT: Christine Horton, BLM Farmington District Office, 6251 College Blvd., Suite A, Farmington, NM 87402, 505–564–7633. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8229 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The 10-member Farmington District RAC advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in the BLM's Farmington District. Planned agenda items include: opening remarks from the BLM Farmington District Manager; updates on ongoing planning efforts; and briefings on the Mancos/Gallup Shale Environmental Assessment/Environmental Impact Statement and drilling permits, the Glade Run Recreation Area Recreation and Travel Management Plan, the Piñon Pipeline, the Chaco Canyon leases, and the wild

horse management plan. The Taos Field Office will provide planning updates and briefings on the Río Grande del Norte National Monument Plan, recreation permits within Río Grande del Norte National Monument, and the Cebolla oil and gas leases. A conference telephone line has been set up for the meeting. Contact Christine Horton at 505–564–7633 at least 2 days before the meeting to reserve a line. Due to a limited number of available lines, the conference line is available on a first-come first-served basis. All RAC meetings are open to the public. On Thursday, February 26, 2015, at 2 p.m., members of the public will have the opportunity to make comments to the RAC, during a half-hour public comment period. Persons wishing to make comments during the public comment period should register in person with the BLM by 1 p.m. on February 26, 2015, at the meeting location. If you wish to make a comment during the comment period through the conference line, inform Christine Horton when you call to reserve the conference line. Depending on the number of commenters, the length of comments may be limited; this time may vary. The BLM appreciates all comments.

Michael H. Tupper,

Deputy State Director, Lands and Resources.

[FR Doc. 2015–01399 Filed 1–26–15; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Office of Natural Resources Revenue

[Docket No. ONRR–2011–0008; DS63610000 DR2PS0000.CH7000 156D0102R2]

Agency Information Collection Activities: Suspensions Pending Appeal and Bonding—OMB Control Number 1012–0006; Comment Request

AGENCY: Office of Natural Resources Revenue (ONRR), Interior.

ACTION: Notice of a renewal for an existing Information Collection.

SUMMARY: Final regulations that ONRR published May 13, 1999 (64 FR 26240, RIN 1010–AC21), govern the appeal of orders from Minerals Management Service's Royalty Management Program (now ONRR). To comply with the Paperwork Reduction Act of 1995 (PRA), ONRR is notifying the public that we have submitted to the Office of Management and Budget (OMB) an information collection request (ICR) to renew approval of the paperwork requirements in the regulations under 30 CFR part 1243. This notice provides the public a second opportunity to comment on the burden of these regulatory requirements.

DATES: OMB has up to 60 days to approve or disapprove this information collection request but may respond after 30 days; therefore, you should submit your public comments to OMB by February 26, 2015 for the assurance of consideration.

ADDRESSES: You may submit your written comments directly to the Desk Officer for the Department of the Interior (OMB Control Number 1012–0006), Office of Information and Regulatory Affairs, OMB, by email to *OIRA_Submission@omb.eop.gov* or telefax at (202) 395–5806. Please also mail a copy of your comments to Mr. Luis Aguilar, Regulatory Specialist, ONRR, P.O. Box 25165, MS 61030A, Denver, Colorado 80225–0165, or by email to *Luis.Aguilar@onrr.gov.* Please reference ICR 1012–0006 in your comments.

FOR FURTHER INFORMATION CONTACT: For questions on technical issues, contact Ms. Kimberly Werner, Office of Enforcement and Appeals (OEA), ONRR, telephone (303) 231–3801 or email *kimberly.werner@onrr.gov.* For other questions, contact Mr. Luis Aguilar, telephone (303) 231–3418, or email *luis.aguilar@onrr.gov.* You may also contact Mr. Aguilar to obtain copies (free of charge) of (1) the ICR, (2) any associated forms, and (3) the regulations that require the subject collection of information. To see a copy of the entire ICR submitted to OMB, go to *http://www.reginfo.gov/public/PRAMain* and select ''Information Collection Review,'' then select ''Department of the Interior'' in the drop-down box under ''Currently Under Review.''

SUPPLEMENTARY INFORMATION:

Title: Suspensions Pending Appeal and Bonding—30 CFR part 1243

OMB Control Number: 1012–0006.

Bureau Form Numbers: ONRR–4435, ONRR–4436, and ONRR–4437.

Abstract: The Secretary of the United States Department of the Interior is responsible for overseeing mineral resource development on Federal and Indian lands and the Outer Continental Shelf (OCS). Under various laws, the Secretary's responsibilities are to manage mineral resources production from Federal and Indian lands and the OCS, collect the royalties and other mineral revenues due, and distribute the funds collected under these laws. The Secretary also has a trust responsibility to manage Indian lands and seek advice and input from Indian beneficiaries. ONRR performs the minerals revenue management functions for the Secretary and assists the Secretary in carrying out the Department's trust responsibility for Indian lands. We have posted these laws pertaining to mineral leases on Federal and Indian lands and the OCS at *http://onrr.gov/Laws_R_D/PubLaws/default.htm.*

If ONRR determines that a lessee has not properly reported or paid Royalties and other mineral revenues, we may issue an order to pay additional royalties, a Notice of Noncompliance, or a Civil Penalty Notice requiring correct reporting or payment. Lessees then have a right to appeal ONRR determinations.

Regulations at 30 CFR part 1243 govern the submission of appropriate surety instruments to suspend compliance with orders or decisions and to stay the accrual of civil penalties (if the Office of Hearings and Appeals grants a lessee's petition to stay accrual of civil penalties), pending administrative appeal for Federal and Indian leases. For Federal oil and gas leases, under 30 U.S.C. 1724(l) and its implementing regulations in 30 CFR part 1243, appellants who are requesting a suspension without providing a surety must submit information to demonstrate financial solvency. This ICR covers the burden hours associated with submitting financial statements or surety instruments required to stay an ONRR order, decision, or accrual of civil penalties.

Stay of Payment Pending Appeal

Title 30 CFR 1243.1 states that lessees or recipients of ONRR orders may suspend compliance with an order if they appeal under 30 CFR part 1290. Pending appeal, ONRR may suspend the payment requirement if the appellant submits a formal agreement of payment in case of default such as a bond or other surety; for Federal oil and gas leases, the appellant may demonstrate financial solvency. If the Office of Hearings and Appeals grants a lessee's, or other recipient of a Notice of Noncompliance or Civil Penalty Notice, request to stay the accrual of civil penalties under 30 CFR 1241.55(b)(2) and 1241.63(b)(2), the lessee or other recipient must post a bond or other surety, or for Federal oil and gas leases, demonstrate financial solvency.

ONRR accepts the following surety types: Form ONRR–4435, Administrative Appeal Bond; Form ONRR–4436, Letter of Credit; Form ONRR–4437, Assignment of Certificate of Deposit; Self-bonding; and U.S. Treasury Securities.

When an appellant selects and puts one of the surety types in place, the appellant must maintain the surety until

completion of the appeal. If the appeal is decided in favor of the appellant, ONRR returns the surety to the appellant. If the appeal is decided in favor of ONRR, then we will take action to collect the total amount due or draw down on the surety. We draw down on a surety if the appellant fails to comply with requirements relating to the amount due, timeframe, or surety submission or resubmission. Whenever ONRR must draw down on a surety, we must draw down the total amount due, which is defined as unpaid principal plus the interest accrued to the projected receipt date of the surety payment. Appellants may refer to the Surety Instrument Posting Instructions, which are at *http://www.onrr.gov/compliance/appeals.htm.*

Forms and Other Surety Types

Form ONRR–4435, Administrative Appeal Bond

Appellants may file Form ONRR–4435, Administrative Appeal Bond, which ONRR uses to secure the financial interests of the public and Indian lessors during the entire administrative and judicial appeal process. Under 30 CFR 1243.4, appellants must submit their contact and surety amount information on the bond to obtain the benefit of suspension of an obligation to comply with an order. A surety company that the U.S. Department of the Treasury approves (see Department of the Treasury Circular No. 570, as revised periodically in the **Federal Register**) must issue the bond. The ONRR Director or the ONRR-delegated bond-approving officer maintains these bonds in a secure facility. After the appeal has concluded, ONRR may release and return the bond to the appellant or collect payment on the bond. If collection is necessary for a remaining balance, ONRR will issue a demand for payment to the surety company with a notice to the appellant. We also will include all interest accrued on the affected bill.

Form ONRR–4436, Letter of Credit

Appellants may choose to file Form ONRR–4436, Letter of Credit (LOC), with no modifications. Requirements at 30 CFR 1243.4 continues to apply. The ONRR Director or the ONRR-delegated bond-approving officer maintains the LOC in a secure facility.

The appellant is responsible for verifying that the bank provides a current Fitch rating to ONRR. After the appeal has been concluded, ONRR may release and return the LOC to the appellant or collect payment on the LOC. If collection is necessary for a remaining balance, we will issue a demand for payment, which includes all interest assessed on the affected bill, to the bank with a notice to the appellant.

Form ONRR–4437, Assignment of Certificate of Deposit

Appellants may choose to secure a debt using a Certificate of Deposit (CD) from a bank with the required minimum Fitch rating and by submitting Form ONRR–4437, Assignment of Certificate of Deposit. Appellants must file the request with ONRR prior to the invoice due date. We will accept a book-entry CD that explicitly assigns the CD to the Director. If collection of the CD is necessary for an unpaid balance, we will return unused CD funds to the appellant after total settlement of the appealed issues including applicable interest charges.

Self-Bonding

For Federal oil and gas leases, regulations at 30 CFR 1243.201 provides that no surety instrument is required when a person representing the appellant periodically demonstrates to the satisfaction of ONRR, that the guarantor or appellant is financially solvent or otherwise able to pay the obligation. Appellants must submit a written request to ''self-bond'' every time a new appeal is filed. To evaluate the financial solvency and exemption from requirements of appellants to maintain a surety related to an appeal, ONRR requires appellants to submit a consolidated balance sheet subject to annual audit. In some cases, we also require copies of the most recent tax returns (up to 3 years) that appellants file.

In addition, appellants must annually submit financial statements, subject to audit, to support their net worth. ONRR uses the consolidated balance sheet or business information supplied to evaluate the financial solvency of a lessee, designee, or payor seeking a stay of payment obligation pending review. If appellants do not have a consolidated balance sheet documenting their net worth or if they do not meet the $300 million net worth requirement, ONRR selects a business information or credit reporting service to provide information concerning an appellant's financial solvency. We charge the appellant a $50 fee each time we need to review data from a business information or credit reporting service. The fee covers our costs in determining an appellant's financial solvency.

U.S. Treasury Securities

Appellants may choose to secure their debts by requesting to use a U.S. Treasury Security (TS). Appellants must file the letter of request with ONRR prior to the invoice due date. The TS must be a U.S. Treasury note or bond with maturity equal to or greater than 1 year. The TS must equal 120 percent of the appealed amount plus 1 year of estimated interest (necessary to protect ONRR against interest rate fluctuations). ONRR only accepts a book-entry TS.

OMB Approval

We are requesting OMB's approval to continue to collect this information. Not collecting this information would limit the Secretary's ability to discharge the fiduciary duties of the office and also may result in loss of royalty and other payments.

ONRR protects proprietary information submitted under this collection. We do not collect information of a sensitive nature in this ICR. We require response from appellants to suspend compliance with an order pending appeal.

Frequency: Annually and on occasion.

Estimated Number and Description of Respondents: 105 Federal or Indian appellants.

Estimated Annual Reporting and Recordkeeping ''Hour'' Burden: 210 hours.

We have not included in our estimates certain requirements performed in the normal course of business and considered usual and customary. The following table shows the estimated burden hours by CFR section and paragraph:

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS

Citation 30 CFR part 1243	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
1243.4(a)(1)	How do I suspend compliance with an order? (a) If you timely appeal an order, and if that order or portion of that order: (1) Requires you to make a payment, and you want to suspend compliance with that order, you must post a bond or other surety instrument or demonstrate financial solvency * * *.	2 hours	40 (Forms ONRR–4435, ONRR–4436, ONRR–4437; or TS).	80
1243.6	When must I or another person meet the bonding or financial solvency requirements under this part? If you must meet the bonding or financial solvency requirements under § 1243.4(a)(1), or if another person is meeting your bonding or financial solvency requirements, then either you or the other person must post a bond or other surety instrument or demonstrate financial solvency within 60 days after you receive the order or the Notice of Order.	Burden hours covered under § 1243.4(a)(1).		
1243.7(a)	What must a person do when posting a bond or other surety instrument or demonstrating financial solvency on behalf of an appellant? If you assume an appellant's responsibility to post a bond or other surety instrument or demonstrate financial solvency * * * (a) Must notify ONRR in writing * * * that you are assuming the appellant's responsibility * * *.	Burden hours covered under § 1243.4(a)(1).		
1243.8(a)(2) and (b)(2).	When will ONRR suspend my obligation to comply with an order? (a) *Federal leases.* * * * (2) If the amount under appeal is $10,000 or more, ONRR will suspend your obligation to comply with that order if you: (i) Submit an ONRR-specified surety instrument under subpart B of this part within a time period ONRR prescribes; or (ii) Demonstrate financial solvency under subpart C. (b) *Indian leases.* * * * (2) If the amount under appeal is $1,000 or more, ONRR will suspend your obligation to comply with that order if you submit an ONRR-specified surety instrument under subpart B of this part within a time period ONRR prescribes.	Burden hours covered under § 1243.4(a)(1).		
1243.101(b)	How will ONRR determine the amount of my bond or other surety instrument? * * * (b) If your appeal is not decided within 1 year from the filing date, you must increase the surety amount to cover additional estimated interest for another 1-year period. You must continue to do this annually * * *.	Burden hours covered under § 1243.4(a)(1).		
1243.200(a) and (b)	How do I demonstrate financial solvency? (a) To demonstrate financial solvency under this part, you must submit an audited consolidated balance sheet, and, if requested by the ONRR bond-approving officer, up to 3 years of tax returns to the ONRR, * * *. (b) You must submit an audited consolidated balance sheet annually, and, if requested, additional annual tax returns on the date ONRR first determined that you demonstrated financial solvency as long as you have active appeals, or whenever ONRR requests. * * *	2 hours	65 (Self-bonding submissions).	130

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

Citation 30 CFR part 1243	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
1243.201(c)(1), (c)(2)(i) and (c)(2)(ii) and (d)(2).	How will ONRR determine if I am financially solvent? * * * (c) If your net worth, minus the amount we would require as surety under subpart B for all orders you have appealed is less than $300 million, you must submit * * *: (1) A written request asking us to consult a business-information, or credit-reporting service or program to determine your financial solvency; and (2) A nonrefundable $50 processing fee: (i) You must pay the processing fee * * *; (ii) You must submit the fee with your request * * * and then annually on the date we first determined that you demonstrated financial solvency, as long as you are not able to demonstrate financial solvency * * * and you have active appeals. (d) * * * (2) For us to consider you financially solvent, the business-information or credit–reporting service or program must demonstrate your degree of risk as low to moderate: * * *	Burden hours covered under §§ 1243.4(a)(1) and 1243.200(a) and (b).		
1243.202(c)	When will ONRR monitor my financial solvency? * * * (c) If our bond-approving officer determines that you are no longer financially solvent, you must post a bond or other ONRR-specified surety instrument under subpart B.	Burden hours covered under § 1243.4(a)(1).		
Total Burden	.....	.....	105	210

Estimated Annual Reporting and Recordkeeping "Non-hour" Cost Burden: There are no additional recordkeeping costs associated with this information collection. However, ONRR estimates five appellants per year will pay a $50 fee to obtain credit data from a business information or credit reporting service, which is a total "non-hour" cost burden of $250 per year (5 appellants per year × $50 = $250).

Public Disclosure Statement: The PRA (44 U.S.C. 3501 *et seq.*) provides that 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.

Comments: Section 3506(c)(2)(A) of the PRA requires each agency to "* * * provide 60-day notice in the **Federal Register** * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *." Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information that ONRR collects; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, we published a notice in the **Federal Register** on February 19, 2014 (79 FR 9475), announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. We received no comments in response to the notice.

If you wish to comment in response to this notice, you may send your comments to the offices listed under the **ADDRESSES** section of this notice. OMB has up to 60 days to approve or disapprove the information collection, but they may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by February 26, 2015.

Public Comment Policy: ONRR will post all comments, including names and addresses of respondents, at *http://www.regulations.gov.* Before including Personally Identifiable Information (PII), such as address, phone number, email address, or other PII in your comment(s), you should be aware that your entire comment (including PII) may be made available to the public at any time. While you may ask us in your comment to withhold PII from public view, we cannot guarantee that we will be able to do so.

Dated: January 22, 2015.

Gregory J. Gould,

Director, Office of Natural Resources Revenue.

[FR Doc. 2015–01447 Filed 1–26–15; 8:45 am]

BILLING CODE 4335–30–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–528–529 and 731–TA–1264–1268 (Preliminary)]

Certain Uncoated Paper From Australia, Brazil, China, Indonesia, and Portugal; Institution of Antidumping and Countervailing Duty Investigations and Scheduling of Preliminary Phase Investigations.

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping and countervailing duty investigation Nos. 701–TA–528–529 and 731–TA–1264–1268 (Preliminary) under sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Australia, Brazil, China, Indonesia, and Portugal of certain uncoated paper, provided for in subheadings 4802.56, 4802.57, 4802.62, and 4802.69 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value and that are

alleged to be subsidized by the Governments of China and Indonesia. Unless the Department of Commerce extends the time for initiation pursuant to sections 702(c)(1)(B) or 732(c)(1)(B) of the Act (19 U.S.C. 1671a(c)(1)(B) or 1673a(c)(1)(B)), the Commission must reach a preliminary determination in antidumping and countervailing duty investigations in 45 days, or in this case by Monday, March 9, 2015. The Commission's views must be transmitted to Commerce within five business days thereafter, or by Monday, March 16, 2015.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

DATES: *Effective Date:* Wednesday, January 21, 2015.

FOR FURTHER INFORMATION CONTACT: Nathanael N. Comly ((202) 205–3174), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background. These investigations are being instituted in response to a petition filed on Wednesday, January 21, 2015, by United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, Pittsburg, PA; Domtar Corporation, Ft. Mill, SC; Finch Paper LLC, Glen Falls, NY; P.H. Glatfelter Company, York, PA; and Packaging Corporation of America, Lake Forest, IL.

Participation in the investigation and public service list. Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping duty and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list. Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference. The Commission's Director of Investigations has scheduled a conference in connection with these investigations for 9:30 a.m. on Wednesday, February 11, 2015, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Requests to appear at the conference should be emailed to *William.bishop@usitc.gov* and *Sharon.bellamy@usitc.gov* (DO NOT FILE ON EDIS) on or before Monday, February 9, 2015. Parties in support of the imposition of countervailing and antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions. As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before Tuesday, February 17, 2015, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. Please consult the Commission's rules, as amended, 76 FR 61937 (Oct. 6, 2011) and the Commission's Handbook on Filing Procedures, 76 FR 62092 (Oct. 6, 2011), available on the Commission's Web site at *http://edis.usitc.gov.*

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.
Issued: January 22, 2015.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2015–01417 Filed 1–26–15; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–510 and 731–TA–1245 (Final)]

Calcium Hypochlorite From China

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (''Commission'') determines, pursuant to sections 705(b) and 735(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b) and 19 U.S.C. 1673d(b)) (''the Act''), that an industry in the United States is materially injured by reason of imports of calcium hypochlorite from China, provided for in subheadings 2828.10.00, 3808.94.50, or 3808.99.95 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (''LTFV''), and to be subsidized by the government(s) of China.[2]

Background

The Commission instituted these investigations effective December 18, 2013, following receipt of a petition filed with the Commission and Commerce by Arch Chemicals, Inc., a Lonza Company, Atlanta, GA. The final phase of the investigations was

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] All six Commissioners voted in the affirmative.

scheduled by the Commission following notification of preliminary determinations by Commerce that imports of calcium hypochlorite from China were subsidized within the meaning of section 703(b) of the Act (19 U.S.C. 1671b(b)) and dumped within the meaning of 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on August 29, 2014 (79 FR 51605). The hearing was held in Washington, DC, on November 25, 2014, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission completed and filed its determinations in these investigations on January 21, 2015. The views of the Commission are contained in USITC Publication 4515 (January 2015), entitled *Calcium Hypochlorite from China: Investigation Nos. 701–TA–510 and 731–TA–1245 (Final).*

By order of the Commission.

Issued: January 21, 2015.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2015–01378 Filed 1–26–15; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–945]

Certain Network Devices, Related Software and Components Thereof (II); Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on December 19, 2014, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Cisco Systems, Inc. of San Jose, California. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain network devices, related software and components thereof by reason of infringement of certain claims of U.S. Patent No. 7,023,853 (''the '853 patent''); U.S. Patent No. 6,377,577 (''the '577 patent''); U.S. Patent No. 7,460,492 (''the '492 patent''); U.S. Patent No. 7,061,875 (''the '875 patent''); U.S. Patent No. 7,224,668 (''the '668 patent''); and U.S. Patent No. 8,051,211 (''the '211 patent''), and alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and a cease and desist order.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

SUPPLEMENTARY INFORMATION: Institution of investigation pursuant to 19 U.S.C. 1337.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2014).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on January 20, 2015, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain network devices, related software and components thereof by reason of infringement of one or more of claims 46–52, 54, 56, and 59–63 of the '853 patent; claims 1, 2, 5, 7–10, 12–16, 18–22, 25, and 28–31 of the '577 patent; claims 1–4, 9–14, 17, and 18 of the '492 patent; claims 1–4, 10–13, and 15 of the '875 patent; claims 1–10, 12, 13, 15–28, 30, 31, 33–43, 45–49, 51–64, 66, 67, and 69–72 of the '668 patent; and claims 1, 2, 6–9, 12, 13, and 17–20 of the '211 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: Cisco Systems, Inc., 170 W Tasman Drive, San Jose, CA 95134.

(b) The respondent is the following entity alleged to be in violation of section 337, and is the party upon which the complaint is to be served: Arista Networks, Inc., 5453 Great America Parkway, Santa Clara, CA 95054.

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge, and the Chief Administrative Law Judge is authorized to consider whether to consolidate Inv. No. 337–TA–944 with Inv. No. 337–TA–945, and to consolidate them if he deems it appropriate.

Responses to the complaint and the notice of investigation must be submitted by the named respondent in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of the respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing

such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

Issued: January 21, 2015.

By order of the Commission.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2015–01349 Filed 1–26–15; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–944]

Certain Network Devices, Related Software and Components Thereof (I) Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on December 19, 2014, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Cisco Systems, Inc. of San Jose, California. A supplement was filed on January 8, 2015. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain network devices, related software and components thereof by reason of infringement of certain claims of U.S. Patent No. 7,162,537 (''the '537 patent''); U.S. Patent No. 8,356,296 (''the '296 patent''); U.S. Patent No. 7,290,164 (''the '164 patent''); U.S. Patent No. 7,340,597 (''the '597 patent''); U.S. Patent No. 6,741,592 (''the '592 patent''); and U.S. Patent No. 7,200,145 (''the '145 patent''), and alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and a cease and desist order.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2014).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on January 20, 2015, *Ordered That*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain network devices, related software and components thereof by reason of infringement of one or more of claims 1, 2, 8–11, and 17–19 of the '537 patent; claims 1, 6, and 12 of the '296 patent; claims 1, 5, 6, 9, and 18 of the '164 patent; claims 1, 14, 15, 29, 39–42, 63, 64, 71–73, and 84–86 of the '597 patent; claims 6–10, 17, 18, 20, 21, 23, and 24 of the '592 patent; claims 1, 3, 5, 7–11, 13, 15–29, 33–37, and 39–46 of the '145 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: Cisco Systems, Inc., 170 W Tasman Drive, San Jose, CA 95134.

(b) The respondent is the following entity alleged to be in violation of section 337, and is the party upon which the complaint is to be served: Arista Networks, Inc., 5453 Great America Parkway, Santa Clara, CA 95054.

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge, and the Chief Administrative Law Judge is authorized to consider whether to consolidate Inv. No. 337–TA–944 with Inv. No. 337–TA–945, and to consolidate them if he deems it appropriate.

Responses to the complaint and the notice of investigation must be submitted by the named respondent in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of the respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: January 21, 2015.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2015–01347 Filed 1–26–15; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–946]

Certain Ink Cartridges and Components Thereof: Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on December 23, 2014, under section 337 of

the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Epson Portland Inc. of Hillsboro, Oregon; Epson America, Inc. of Long Beach, California; and Seiko Epson Corporation of Japan. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain ink cartridges and components thereof by reason of infringement of certain claims of U.S. Patent No. 8,366,233 (''the '233 patent''); U.S. Patent No. 8,454,116 (''the '116 patent''); U.S. Patent No. 8,794,749 (''the '749 patent''); U.S. Patent No. 8,801,163 (''the '163 patent''); and U.S. Patent No. 8,882,513 (''the '513 patent''). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainants request that the Commission institute an investigation and, after the investigation, issue a general exclusion order, or in the alternative a limited exclusion order, and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

SUPPLEMENTARY INFORMATION:

Institution of Investigation Pursuant to 19 U.S.C. 1337

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2014).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on January 20, 2015, ORDERED THAT—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain ink cartridges and components thereof by reason of infringement of one or more of claims 1, 4, and 10 of the '233 patent; claims 1, 5, 9, 14, 16, 18, 21, 24, 25, and 28 of the '116 patent; claims 1, 3, 14, 15, 17, 18, 20, 30, 36, 49, 60, and 61 of the '749 patent; claims 1, 6, and 13 of the '163 patent; and claims 1, 3, 7, 14, 15, and 19 of the '513 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are:

Epson Portland Inc., 3950 NW Aloclek Place, Hillsboro, Oregon 97124.

Epson America, Inc., 3840 Kilroy Airport Way, Long Beach, California 90806.

Seiko Epson Corporation, 3–3–5 Owa, Suwa, Nagano 392–8502, Japan.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Zhuhai Nano Digital Technology Co., Ltd., No. 3 factory building, 2/F, 3 Pingxi 5th Road, Nanping State Hi-Tech Park, Zhuhai, Guangdong, China 519060.

Nano Business & Technology, Inc., d/b/a Nano Digital, d/b/a Nano Ink Spot, d/b/a Dinsink, 650 North State Street, Lake Oswego, OR 97034.

Zhuhai National Resources & Jingjie Imaging Products Co., Ltd., d/b/a Ink-Tank, Workshop 2, 1–3/F, No. 3 Qingwan 3rd Rd, Qingwan Industrial Zone, Zhuhai, Guangdong, China.

Huebon Co., Ltd., Room 1207, Wing Tuck Commercial Centre, 177–183 Wing Lok Street, Sheung Wan, Hong Kong.

Chancen Co., Ltd., Room 1207, Wing Tuck Commercial Centre,177–183 Wing Lok Street, Sheung Wan, Hong Kong.

Zhuhai Rich Imaging Technology Co., Ltd., Block 1, 3–5/F, 3 Qingwan 3rd Rd, Qingwan Industrial Zone, Sanzao, Zhuhai, Guangdong, China 519040.

Shanghai Orink Infotech International Co., Ltd., Room 307, No. 275–8 East Guoding Road, Shanghai, China 200433.

Orink Infotech International Co., Ltd., Unit 1205, 12F/L., Sino Plaza, 255 Gloucester Road, Causewat Bay, Hong Kong.

Zinyaw LLC, d/b/a TonerPirate.com, 1321 Upland Dr. # 1359, Houston, TX 77043.

Yotat Group Co., Ltd., Flat/Room 704, Bright Way Tower, 33 Mong Kok Road, Kowloon, Hong Kong.

Yotat (Zhuhai) Technology Co., Ltd., No. 127 People's East Road, Xiangzhou, Zhuhai, China.

Ourway Image Co., Ltd., Room 403, 4/F, Rirong Edifice, Building 5, No. 291 Remin West Road, Xiangzhou, Zhuhai, China.

Kingway Image Co., Ltd., 4/F, Building 1, No. 1 Ping Dong Road 2, Nanping Industry Park, Zhuhai, China.

Zhuhai Chinamate Technology, Co., Ltd., Room 1504/1508/1511, No# 125 Renmin East Road, Xiangzhou, Zhuhai, China.

InkPro2day, LLC, 1200 Santee Street, Suite 1006, Los Angeles, CA 90015.

Dongguan OcBestjet Printer Consumables Co., Ltd., Block F01, 4/F, Jingyefang Industrial Park, No. 351, Jian'an Road, Wusha Village, Chang'an Town, Dongguan, China.

OcBestjet Printer Consumables (HK) Co., Ltd., RM 2301, 23 F/L, Worldwide House, 19 Des Voeux Road Central, Hong Kong.

Aomya Printer Consumables (Zhuhai) Co., Ltd, Rm #412, Henghe Business Building, No. 313 East Renmin Road, Xiangzhou, Zhuhai, Guangdong, China.

Zhuhai Richeng Development Co., Ltd., d/b/a Richeng Technology, Building No. 5, Nanshan Industrial Zone, 10 Shihua 3rd Street, Jida, Zhuhai, China 519015.

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

Issued: January 21, 2015.

By order of the Commission.

Lisa R. Barton,

Secretary to the Commission

[FR Doc. 2015–01353 Filed 1–26–15; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1103–0098]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Revision of a Previously Aapproved Collection COPS Application Package

AGENCY: Community Oriented Policing Services (COPS) Office, Department of Justice.

ACTION: 30-day Notice.

SUMMARY: The Department of Justice (DOJ), Community Oriented Policing Services (COPS) Office, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. This proposed information collection was previously published in the **Federal Register** at 79 FR 69881, November 24, 2014, allowing for a 60 day comment period.

DATES: Comments are encouraged and will be accepted for an additional days until February 26, 2015.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Kimberly J. Brummett, Program Specialist, Department of Justice, Community Oriented Policing Services (COPS) Office, 145 N Street NE., Washington, DC 20530 (202–353–9769). Written comments and/or suggestions can also be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20530 or sent to *OIRA_submissions@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

— Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

— Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

— Enhance the quality, utility, and clarity of the information to be collected; and/or

— Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Revision of a currently approved collection, with change; comments requested.

(2) *The Title of the Form/Collection:* COPS Application Package.

(3) *The agency form number:* None.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Law enforcement agencies and other public and private entities that apply for COPS Office grants or cooperative agreements will be asked complete the COPS Application Package. The COPS Application Package includes all of the necessary forms and instructions that an applicant needs to review and complete to apply for COPS grant funding. The package is used as a standard template for all COPS programs.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 5000 respondents annually will complete the form within 11 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 55,000 total annual burden hours associated with this collection. It is estimated that respondents will take 11 hours to complete a questionnaire. The burden hours for collecting respondent data sum to 55,000 hours (5000 respondents × 11 hours = 55,000 hours).

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E.405B, Washington, DC 20530.

Dated: January 22, 2015.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2015–01395 Filed 1–26–15; 8:45 am]

BILLING CODE 4410–AT–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Employee Retirement Income Security Act Prohibited Transaction Exemption 1986–128 for Securities Transactions Involving Employee Benefit Plans and Broker-Dealers

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employee Benefits Security Administration (EBSA) sponsored information collection request (ICR) titled, ''Employee Retirement Income Security Act Prohibited Transaction Exemption 1986–128 For Securities Transactions Involving Employee Benefit Plans and Broker-Dealers,'' 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 February 26, 2015.

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=201412-1210-005 (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–EBSA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (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, 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 information collection requirements in Employee Retirement Income Security Act (ERISA) Prohibited Transaction Exemption (PTE) 1986–128, which applies to securities transactions involving an employee benefit plan and a broker-dealer. PTE 1986–128 permits a person who serves as fiduciary for an employee benefit plan to effect or execute securities transactions on behalf of the employee benefit plan. The PTE also allows sponsors of pooled separate accounts and other pooled investment funds to use their affiliates to effect or execute securities transactions for such accounts in order to recapture brokerage commissions for the benefit of employee benefit plans whose assets are maintained in pooled separate accounts managed by insurance companies. This exemption provides relief from certain prohibitions in ERISA section 406(b) (*see* 29 U.S.C. 1106(b)) and from the taxes imposed by Internal Revenue Code of 1986 (Code) section 4975(a) and (b) by reason of Code section 4975(c)(1)(E) or (F) (see 26 U.S.C. 4975(a), (b), and (c)(1)(E) and (F)).

PTE 1986–128 section III imposes the following information collection requirements on a fiduciary of an employee benefit plan that effects or executes securities transactions (*i.e.,* a broker-dealer) and the independent plan fiduciary authorizing the plan to engage in the transactions with the broker-dealer (*i.e.,* an authorizing fiduciary) under the conditions contained in the exemption: (1) The authorizing plan fiduciary must provide the broker-dealer with an advance written authorization for the transactions; (2) the broker-dealer must provide the authorizing fiduciary with information necessary to determine whether an authorization should be made, including a copy of the exemption, a form for termination, a description of the broker-dealer's brokerage placement practices, and any other reasonably available information regarding the matter that the authorizing fiduciary requests; (3) the broker-dealer must provide the authorizing fiduciary with a termination form, at least annually, explaining that the authorization is terminable at will, without penalty to the plan, and that failure to return the form will result in continued authorization for the broker-dealer to engage in securities transactions on behalf of the plan; (4) the broker-dealer must provide the authorizing fiduciary with either (a) a confirmation slip for each individual securities transaction within ten (10) days of the transaction containing the information described in regulations 17 CFR 240.10b–10, or (b) a quarterly report containing certain financial information including the total of all transaction-related charges incurred by the plan; (5) the broker-dealer must provide the authorizing fiduciary with an annual summary of the confirmation slips or quarterly reports, containing all security transaction-related charges, the brokerage placement practices (if changed), and a portfolio turnover ratio; and (6) a broker-dealer who is a discretionary plan trustee must provide the authorizing fiduciary with an annual report showing separately the commissions paid to affiliated brokers and non-affiliated brokers, on both a total dollar basis and a cents-per-share basis. These requirements are designed as appropriate safeguards to ensure protection of plan assets involved in the transactions, which, in the absence of the class exemption, would not be permitted. These safeguards rely on the prior authorization and monitoring of the broker-fiduciary's activities by a second plan fiduciary that is independent of the first. This information collection is authorized by ERISA section 408. *See* 29 U.S.C. 1108.

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 1210–0059.

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 January 31, 2015. 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 October 15, 2014 (79 FR 61903).

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 1210–0059. 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–EBSA.

Title of Collection: Employee Retirement Income Security Act

Prohibited Transaction Exemption 1986–128 For Securities Transactions Involving Employee Benefit Plans and Broker-Dealers.

OMB Control Number: 1210–0059.

Affected Public: Private sector—businesses or other for-profits and not-for-profit institutions.

Total Estimated Number of Respondents: 17,800.

Total Estimated Number of Responses: 1,300,000.

Total Estimated Annual Time Burden: 35,000 hours.

Total Estimated Annual Other Costs Burden: $1,100,000.

Dated: January 21, 2015.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2015–01354 Filed 1–26–15; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; General Provisions and Confined and Enclosed Spaces and Other Dangerous Atmospheres in Shipyard Employment Standards

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Occupational Safety and Health Administration (OSHA) sponsored information collection request (ICR) titled, ''General Provisions and Confined and Enclosed Spaces and Other Dangerous Atmospheres in Shipyard Employment Standards'' 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 February 26, 2015.

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=201411-1218-004* (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–OSHA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (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, 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 General Provisions and Confined and Enclosed Spaces and Other Dangerous Atmospheres in Shipyard Employment Standards information collection requirements codified in regulations 29 CFR part 1915. The Occupational Safety and Health Act (OSHAct) requires an employer who is subject to the Standards: (1) to ensure a competent person conducts inspections and atmospheric testing prior to a worker entering a confined or enclosed space (§ 1915.12(a)–(c)); (2) to warn workers not to enter a hazardous space or other dangerous atmosphere (§§ 1915.12 (a)–(c), 1915.16); (3) to train a worker who will be entering a confined or enclosed space and certify such training has been provided (§ 1915.12(d)); (4) to establish and train shipyard rescue teams or arrange for outside rescue teams and provide them with information (§ 1915.12(e)); (5) to ensure one person on each rescue team maintains a current first aid training certificate (§ 1915.12(e)); (6) to exchange information regarding hazards, safety rules, and emergency procedures concerning these spaces and atmospheres with other employers whose workers may enter these spaces and atmospheres (§ 1915.12(f)); (7) to ensure testing of a space having contained a combustible or flammable liquid or gas or toxic, corrosive, or irritating substance, or other dangerous atmosphere, boundary or pipeline before cleaning or other cold work is started and, as necessary thereafter, while the operation is ongoing (§ 1915.13(b)(2) and (4)); (8) to post signs prohibiting ignition sources within or near a space that contains bulk quantities of a flammable or combustible liquid or gas (§ 1915.13(b)(10)); (9) to ensure a confined or enclosed space is tested before a worker performs hot work in the work area (§ 1915.14(a)); (10) to post warnings of testing conducted by a competent person and certificates of testing conducted by a Marine Chemist or Coast Guard authorized person in the immediate vicinity of the hot-work operation while the operation is in progress (§ 1915.14(a) and (b)); and (11) to retain the certificate of testing on file for at least three months after completing the operation (§ 1915.14(a)(2)). OSHAct sections 2(b), 6, and 8 authorize this information collection. *See* 29 U.S.C. 651(b), 655, & 657.

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 1218–0011.

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 January 31, 2015. 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 October 22, 2014 (79 FR 63171).

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

1218–0011. 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–OSHA.

Title of Collection: General Provisions and Confined and Enclosed Spaces and Other Dangerous Atmospheres in Shipyard Employment Standards.

OMB Control Number: 1218–0011.

Affected Public: Private Sector—Businesses or other for-profits.

Total Estimated Number of Respondents: 2,759.

Total Estimated Number of Responses: 2,098,133.

Total Estimated Annual Time Burden: 338,981 hours.

Total Estimated Annual Other Costs Burden: $0.

Dated: January 21, 2015.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2015–01352 Filed 1–26–15; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Environmental Research and Education; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Environmental Research and Education (#9487).

Dates: March 11 & March 12, 2015; 8:00 a.m.–5:00 p.m.

Place: Stafford I, Room 1235, National Science Foundation, 4201Wilson Blvd., Arlington, Virginia 22230.

Type of Meeting: Open.

Contact Person: Linda Deegan, National Science Foundation, Suite 655, 4201 Wilson Blvd., Arlington, Virginia 22230. Email: *ldeegan@nsf.gov.*

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice, recommendations, and oversight concerning support for environmental research and education.

Agenda

Wednesday, March 11, 2015

Approval of minutes from past meetings

- Updates on recent NSF and other agency environmental activities.
- Discuss and refine draft of the Decadal Vision for Environmental Research and Education document.
- Meet with NSF Assistant Directors.

Thursday, March 12, 2015

Discuss and refine draft of the Decadal Vision for Environmental Research and Education document (Continued)

- Meet with the NSF Director.
- AC Business—Set date for next meeting.

Dated: January 22, 2015.

Suzanne Plimpton,

Acting, Committee Management Officer.

[FR Doc. 2015–01419 Filed 1–26–15; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Networking and Information Technology Research and Development Big Data Strategic Initiative Workshop

AGENCY: The National Coordination Office (NCO) for Networking and Information Technology Research and Development (NITRD).

ACTION: Notice—2015 NITRD Big Data Strategic Initiative Workshop.

SUMMARY: The BDSI–2015 Workshop is designed to gather input from private industry, academia, and Federal research laboratories regarding the drafting of a Federal Big Data Research Agenda.

DATES: January 22–23, 2015.

ADDRESSES: The 2015 NITRD Big Data Strategic Initiative Workshop (BDSI–2015) will begin with a dinner reception on Thursday, January 22nd at 6 p.m. The workshop will take place on Friday, January 23rd from 9 a.m.–5 p.m. Workshop check-in/registration will take place from 8:30 a.m.–9 a.m. on January 23rd. BDSI–2015 will take place at Georgetown University in Washington, DC. For directions, please consult the Web site listed below.

FOR FURTHER INFORMATION CONTACT: Please visit the Web site at: *http://workshops.cs.georgetown.edu/BDSI-2015/* or contact: Wendy Wigen at 703–292–4873 or *wigen@nitrd.gov.* Capacity is limited but the workshop will be webcast. Information regarding the webcast will be available on the Web site starting the week of January 19th. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Overview: The growth in scale, diversity, and complexity of data has increased the demand for understanding large amounts of heterogeneous data. This presents new challenges to the way data and information are used and managed. A need exists to understand ways to design systems for processing big data, develop sophisticated analytics using large-scale data, consider privacy issues arising from use of this massive data, and determine ways to teach big data analytics across disciplines. This workshop will bring together academic and industry leaders across disciplines to further inform the development of an effective Federal Big Data Research Agenda.

Background: Given the large number of overlapping data challenges many federal agencies are facing, a National Big Data R&D Initiative was launched in March 2012. As part of this Initiative, a Federal Big Data Research Agenda is under development. This workshop is part of the process to collect input from those in academia and industry that are working on big data research and new technologies.

The purpose of drafting a Federal Big Data Research Agenda is to assist Federal Agencies in planning their individual Big Data R&D programs and initiatives. The Agenda is expected to be released in late 2015.

Submitted by the National Science Foundation for the National Coordination Office (NCO) for Networking and Information Technology Research and Development (NITRD) on January 22, 2015.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2015–01390 Filed 1–26–15; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on the Medical Uses of Isotopes: Meeting Notice

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: NRC will convene a meeting of the Advisory Committee on the Medical Uses of Isotopes (ACMUI) on March 19–20, 2015. A sample of agenda items to be discussed during the public session includes: (1) An update on the staff's efforts related to the release of patients administered radioactive material; (2) an update on medical-related events; (3) a discussion on the use of iodine-125 and palladium-103 seeds for localization of non-palpable lesions; (4) a discussion related to the decommissioning funding plan for germanium/gallium-68 generators; (5) a discussion on the compatibility category for permanent brachytherapy reportable medical events; (6) an update on the Abnormal Occurrence Criteria, and (7) an update on title 10 of the Code of Federal Regulations (10 CFR) part 35 Proposed Rule. The agenda is subject to change. The current agenda and any updates will be available at *http://www.nrc.gov/reading-rm/doc-collections/acmui/meetings/2015.html* or by emailing Ms. Sophie Holiday at the contact information below.

Purpose: Discuss issues related to 10 CFR part 35 Medical Use of Byproduct Material.

Date and Time for Open Sessions: March 19, 2015, from 8:30 a.m. to 5 p.m. and March 20, 2015, from 8:30 a.m. to 12:15 p.m.

Address for Public Meeting: U.S. Nuclear Regulatory Commission, Two White Flint North Building, Room T2–B3, 11545 Rockville Pike, Rockville, Maryland 20852.

Public Participation: Any member of the public who wishes to participate in the meeting in person or via phone should contact Ms. Holiday using the information below. The meeting will also be webcast live: *video.nrc.gov.*

Contact Information: Sophie J. Holiday, email: *sophie.holiday@nrc.gov,* telephone: (301) 415–7865.

Conduct of the Meeting

Bruce R. Thomadsen, Ph.D., will chair the meeting. Dr. Thomadsen will conduct the meeting in a manner that will facilitate the orderly conduct of business. The following procedures apply to public participation in the meeting:

1. Persons who wish to provide a written statement should submit an electronic copy to Ms. Holiday at the contact information listed above. All submittals must be received by March 12, 2015, and must pertain to the topic on the agenda for the meeting.

2. Questions and comments from members of the public will be permitted during the meeting, at the discretion of the Chairman.

3. The draft transcript and meeting summary will be available on ACMUI's Web site *http://www.nrc.gov/reading-rm/doc-collections/acmui/meetings/2014.html* on or about May 01, 2015.

4. Persons who require special services, such as those for the hearing impaired, should notify Ms. Holiday of their planned attendance.

This meeting will be held in accordance with the Atomic Energy Act of 1954, as amended (primarily section 161a); the Federal Advisory Committee Act (5 U.S.C. App); and the Commission's regulations in 10 CFR part 7.

Dated at Rockville, Maryland, this 21st day of January, 2015.

For the Nuclear Regulatory Commission.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 2015–01451 Filed 1–26–15; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request Copies Available From: U.S. Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736.

New Information Collection: Supplier Diversity Business Management System, SEC File No. 270–663, OMB Control No. 3235–XXXX.

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 comments on a new collection of information summarized below. The Commission plans to submit this proposed collection of information to the Office of Management and Budget for approval.

The Commission is required under Section 342 of the Dodd Frank Wall Street and Reform Act to develop standards and processes for ensuring the fair inclusion of women-owned and minority-owned businesses in all of the Commission's business activities. The effort to implement this mandate includes the development of a new electronic Supplier Diversity Business Management System (the System) to collect up-to-date business information and capabilities statements from diverse suppliers interested in doing business with the Commission. This information will allow the Commission to update and more effectively manage its current internal repository. It will also allow the Commission to measure the effectiveness of its technical assistance and outreach efforts, and target areas where additional program efforts are necessary.

The Commission invites comment on the System. Information will be collected in the System via web-based, e-filed, dynamic form-based technology. The company point of contact will complete a profile consisting of basic contact data and information on the capabilities of the business. The profile will include a series of questions, some of which are based on the data that the individual enters. Drop-down lists will be included where appropriate to increase ease of use.

The information collection is voluntary. The System is scheduled to be released in May 2015. There are no costs associated with this collection. The public interface to the System will be available via a web-link provided by the agency.

Estimated number of annual responses = 500

Estimated annual reporting burden = 250 hours (30 minutes per submission)

Written comments are invited on: (a) Whether this collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication. Please direct your written comments to Pamela Dyson, Acting 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: January 21, 2015.

Brent J. Fields,

Secretary.

[FR Doc. 2015–01377 Filed 1–26–15; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74116; File No. 10–214]

Automated Matching Systems Exchange, LLC; Notice of Designation of a Longer Period for Commission Action on Proceedings To Determine Whether To Grant or Deny a Limited Volume Exemption From Registration as a National Securities Exchange Under Section 5 of the Securities Exchange Act of 1934

January 22, 2015.

On July 7, 2014, Automated Matching Systems Exchange, LLC (''AMSE'') submitted to the Securities and Exchange Commission (''Commission'') an application seeking a limited volume exemption under Section 5 of the Securities Exchange Act (''Exchange Act'') from registration as a national securities exchange under Section 6 of the Exchange Act.[1] Notice of AMSE's exemption application was published for comment in the **Federal Register** on July 29, 2014.[2] On October 23, 2014, the Commission issued an order instituting proceedings to determine whether to grant or deny AMSE's exemption application.[3] On November 10, 2014, AMSE submitted Amendment No. 1 to its exemption application. Notice of Amendment No. 1 to AMSE's exemption application was published for comment in the **Federal Register** on December 30, 2014.[4]

Section 19(a) of the Exchange Act provides that the Commission shall, upon the filing of an application for registration as a national securities exchange pursuant to Section 6 of the Exchange Act,[5] publish notice of such filing and afford interested persons an opportunity to submit written data, views, and arguments concerning such application, and within 90 days of the date of publication of such notice (or within such longer period as to which the applicant consents), by order grant such registration or institute proceedings to determine whether such registration should be denied. Such proceedings must be concluded within 180 days of the date of a publication of notice of the filing of the application for registration.[6] However, the Commission may extend the time for conclusion of such proceedings for up to 90 days if it finds good cause for such extension and publishes its reasons for so finding or for such longer period as to which the applicant consents. AMSE's exemption application was published for notice and comment in the **Federal Register** on July 29, 2014.[7] The 180th day after publication of the notice of AMSE's exemption application in the **Federal Register** is January 25, 2014, and the 270th day after publication of the notice of AMSE's exemption application in the **Federal Register** is April 25, 2015.

The Commission finds that good cause exists to extend the time for conclusion of the proceedings to determine whether to grant or deny AMSE's exemption application in order for the Commission to have sufficient time to consider AMSE's amended exemption application, including any comment letters received on AMSE's amended exemption application.[8] Accordingly, pursuant to Section 19(a)(1)(B) of the Exchange Act, the Commission extends the time for conclusion of the proceedings to determine whether to grant or deny AMSE's exemption application to April 24, 2015.

By the Commission.

Brent J. Fields,

Secretary.

[FR Doc. 2015–01426 Filed 1–26–15; 8:45 am]

BILLING CODE 8011–01–P

[1] The Commission notes that AMSE's application only seeks a limited volume exemption under Section 5 of the Exchange Act from registration as a national securities exchange under Section 6 of the Exchange Act. AMSE's application does not seek to register as a national securities exchange.

[2] *See* Securities Exchange Act Release No. 72661 (July 23, 2014), 79 FR 44070 (''Notice'').

[3] *See* Securities Exchange Act Release No. 73419 (October 23, 2014), 79 FR 64421 (October 29, 2014) (''Order Instituting Proceedings'').

[4] *See* Securities Exchange Act Release No. 73991 (December 22, 2014), 79 FR 78507 (action by delegated authority) (''Amendment Notice'').

[5] AMSE's exemption application has been filed pursuant to Section 5 of the Exchange Act. The Commission is affording AMSE's exemption application a process similar to that for exchange registration applications under Section 19(a) of the Exchange Act.

[6] *See id.* and Section 19(a) of the Exchange Act.

[7] *Id.*

[8] *See supra* note 4.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74110; File No. 4–631]

Joint Industry Plan; Notice of Filing of the Eighth Amendment to the National Market System Plan To Address Extraordinary Market Volatility by BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Board Options Exchange, Inc., Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, The Nasdaq Stock Market LLC, National Stock Exchange, Inc., New York Stock Exchange LLC, NYSE MKT LLC, and NYSE Arca, Inc.

January 21, 2015.

I. Introduction

On December 24, 2014, Financial Industry Regulatory Authority, Inc. (''FINRA''), on behalf of the following parties to the National Market System Plan: BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, the Nasdaq Stock Market LLC, and National Stock Exchange, Inc., New York Stock Exchange LLC, NYSE MKT LLC, and NYSE Arca, Inc. (collectively with FINRA, the ''Participants''), filed with the Securities and Exchange Commission (''Commission'') pursuant to Section 11A of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 608 thereunder,[2] a proposal to amend the Plan to Address Extraordinary Market Volatility (''Plan'').[3] The proposal represents the eighth amendment to the Plan (''Eighth Amendment''), and reflects changes unanimously approved by the Participants. The Eighth Amendment to the Plan proposes to: (i) Establish a requirement for the Participants to submit a supplemental joint assessment to the Commission by May 29, 2015; and (ii) extend the end date of the pilot period of the Plan from February 20, 2015 to October 23, 2015. A copy of the Plan, as proposed to be amended is attached as Exhibit A hereto. The Commission is publishing this notice to solicit comments from interested

[1] 15 U.S.C. 78k–1.

[2] 17 CFR 242.608.

[3] *See* Letter from Christopher B. Stone, Vice President, FINRA, to Brent Fields, Secretary, Commission, dated December 24, 2014 (''Transmittal Letter'').

persons on the Eighth Amendment to the Plan.[4]

II. Description of the Proposal

A. Purpose of the Plan

The Participants filed the Plan in order to create a market-wide limit up-limit down mechanism that is intended to address extraordinary market volatility in ''NMS Stocks,'' as defined in Rule 600(b)(47) of Regulation NMS under the Act.[5] The Plan sets forth procedures that provide for market-wide limit up-limit down requirements that are designed to prevent trades in individual NMS Stocks from occurring outside of the specified price bands.[6] These limit up-limit down requirements are coupled with Trading Pauses, as defined in Section I(Y) of the Plan, to accommodate more fundamental price moves (as opposed to erroneous trades or momentary gaps in liquidity).

As set forth in Section V of the Plan, the price bands consist of a Lower Price Band and an Upper Price Band for each NMS Stock.[7] The price bands are calculated by the Securities Information Processors (''SIPs'' or ''Processors'') responsible for consolidation of information for an NMS Stock pursuant to Rule 603(b) of Regulation NMS under the Act.[8] Those price bands are based on a Reference Price[9] for each NMS Stock that equals the arithmetic mean price of Eligible Reported Transactions for the NMS Stock over the immediately preceding five-minute period. The price bands for an NMS Stock are calculated by applying the Percentage Parameter for such NMS Stock to the Reference Price, with the Lower Price Band being a Percentage Parameter[10] below the Reference Price, and the Upper Price Band being a Percentage Parameter above the Reference Price. Between 9:30 a.m. and 9:45 a.m. ET and 3:35 p.m. and 4:00 p.m. ET, the price bands are calculated by applying double the Percentage Parameters as set forth in Appendix A of the Plan.

The Processors also calculate a Pro-Forma Reference Price for each NMS Stock on a continuous basis during Regular Trading Hours. If a Pro-Forma Reference Price does not move by one percent or more from the Reference Price in effect, no new price bands are disseminated, and the current Reference Price remains the effective Reference Price. If the Pro-Forma Reference Price moves by one percent or more from the Reference Price in effect, the Pro-Forma Reference Price becomes the Reference Price, and the Processors disseminate new price bands based on the new Reference Price. Each new Reference Price remains in effect for at least 30 seconds.

When one side of the market for an individual security is outside the applicable price band, the Processors are required to disseminate such National Best Bid[11] or National Best Offer[12] with an appropriate flag identifying it as non-executable. When the other side of the market reaches the applicable price band, the market for an individual security enters a Limit State,[13] and the Processors are required to disseminate such National Best Offer or National Best Bid with an appropriate flag identifying it as a Limit State Quotation.[14] All trading immediately enters a Limit State if the National Best Offer equals the Lower Limit Band and does not cross the National Best Bid, or the National Best Bid equals the Upper Limit Band and does not cross the National Best Offer. Trading for an NMS Stock exits a Limit State if, within 15 seconds of entering the Limit State, all Limit State Quotations are executed or canceled in their entirety. If the market does not exit a Limit State within 15 seconds, then the Primary Listing Exchange declares a five-minute Trading Pause, which is applicable to all markets trading the security.

These limit up-limit down requirements are coupled with Trading Pauses[15] to accommodate more fundamental price moves (as opposed to erroneous trades or momentary gaps in liquidity). As set forth in more detail in the Plan, all trading centers[16] in NMS Stocks, including both those operated by Participants and those operated by members of Participants, are required to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with the limit up-limit down and Trading Pause requirements specified in the Plan.

Under the Plan, all trading centers are required to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the display of offers below the Lower Price Band and bids above the Upper Price Band for an NMS Stock. The Processors disseminate an offer below the Lower Price Band or bid above the Upper Price Band that nevertheless inadvertently may be submitted despite such reasonable policies and procedures, but with an appropriate flag identifying it as non-executable; such bid or offer would not be included in National Best Bid or National Best Offer calculations. In addition, all trading centers are required to develop, maintain, and enforce policies and procedures reasonably designed to prevent trades at prices outside the price bands, with the exception of single-priced opening, reopening, and closing transactions on the Primary Listing Exchange.

As stated by the Participants in the Plan, the limit up-limit down mechanism is intended to reduce the negative impacts of sudden, unanticipated price movements in NMS

[4] ''Any two or more self-regulatory organizations, acting jointly, . . . may propose an amendment to an effective national market system plan [] by submitting the text of the plan or amendment to the Secretary of the Commission, together with a statement of the purpose of such plan or amendment . . .'' 17 CFR 242.608(a)(1) The Commission is required to publish notice of the filing of any proposed amendment to any effective national market system plan, together with the terms of substance of the filing or a description of the subjects and issues involved, and shall provide interested persons an opportunity to submit written comments. *See* 17 CFR 242.608(b)(1). No amendment to a national market system plan shall become effective unless approved by the Commission or otherwise permitted in accordance with Rule 608(b)(3). *See id.*

[5] 17 CFR 242.600(b)(47). *See also* Section I(H) of the Plan.

[6] *See* Section V of the Plan.

[7] Capitalized terms used herein but not otherwise defined shall have the meaning ascribed to such terms in the Plan. *See* Exhibit A, *infra.*

[8] 17 CFR 242.603(b). The Plan refers to this entity as the Processor.

[9] *See* Section I(T) of the Plan.

[10] As initially proposed by the Participants, the Percentage Parameters for Tier 1 NMS Stocks (*i.e.,* stocks in the S&P 500 Index or Russell 1000 Index and certain ETPs) with a Reference Price of $1.00 or more would be five percent and less than $1.00 would be the lesser of (a) $0.15 or (b) 75 percent. The Percentage Parameters for Tier 2 NMS Stocks (*i.e.,* all NMS Stocks other than those in Tier 1) with a Reference Price of $1.00 or more would be 10 percent and less than $1.00 would be the lesser of (a) $0.15 or (b) 75 percent. The Percentage Parameters for a Tier 2 NMS Stock that is a leveraged ETP would be the applicable Percentage Parameter set forth above multiplied by the leverage ratio of such product. On May 24, 2012, the Participants amended the Plan to create a 20% price band for Tier 1 and Tier 2 stocks with a Reference Price of $0.75 or more and up to and including $3.00. The Percentage Parameter for stocks with a Reference Price below $0.75 would be the lesser of (a) $0.15 or (b) 75 percent. *See* Letter from Janet M. McGinness, Senior Vice President, Legal and Corporate Secretary, NYSE Euronext, to Elizabeth M. Murphy, Secretary, Commission, dated May 24, 2012.

[11] 17 CFR 242.600(b)(42). *See also* Section I(G) of the Plan.

[12] *Id.*

[13] A stock enters the Limit State if the National Best Offer equals the Lower Price Band and does not cross the National Best Bid, or the National Best Bid equals the Upper Price Band and does not cross the National Best Offer. *See* Section VI(B) of the Plan.

[14] *See* Section I(D) of the Plan.

[15] The primary listing market declares a Trading Pause in an NMS Stock; upon notification by the primary listing market, the Processor disseminates this information to the public. No trades in that NMS Stock could occur during the Trading Pause, but all bids and offers may be displayed. *See* Section VII(A) of the Plan.

[16] As defined in Section I(X) of the Plan, a trading center shall have the meaning provided in Rule 600(b)(78) of Regulation NMS under the Act.

Stocks,[17] thereby protecting investors and promoting a fair and orderly market.[18] In particular, the Plan is designed to address the type of sudden price movements that the market experienced on the afternoon of May 6, 2010.[19] The initial date of Plan operations was April 8, 2013.[20]

The following summarizes the Eighth Amendment to the Plan and the rationale behind those changes:

Proposed Amendment

The Eighth Amendment proposes two changes to the Plan. First, the Participants propose to amend Appendix B of the Plan to state that, by May 29, 2015, the Participants shall provide to the Commission a supplemental joint assessment relating to the impact of the Plan. On September 29, 2014, the Participants submitted a Participant Impact Assessment,[21] which provided the Commission with the Participants' initial observations in each area required to be addressed under Appendix B to the Plan. Though the Participants have submitted the Participant Impact Assessment, they believe that a supplemental joint assessment is appropriate. The supplemental joint assessment would evaluate the impact of the Plan using the measures set forth in Appendix B, but would be an extensive assessment based upon a data-driven analysis across trading centers using methodology agreed upon by the Participants, which would allow the Participants to make unified recommendations, where appropriate, that would be of greater value to the Commission and the public than separate submissions. The Participants also state that they intend to make the supplemental joint assessment publicly available.

The Participants intend to engage a third-party consultant to assist in conducting the cross-market analysis and preparing the supplemental joint assessment. The Participants believe that the process of selecting, engaging, meeting with, and providing required data to the ultimate third-party consultant will be time consuming, but beneficial in that it would facilitate the development of a joint assessment that, unlike individual Participant submissions, would not need to be compared and reconciled.

Second, the Participants propose to amend Section VIII.C the Plan to extend the pilot period of the Plan from February 20, 2015 through October 23, 2015. The Participants believe that extension of the pilot period is necessary and appropriate in the interest of the public, including because additional time will: (i) Provide a reasonable period of time for the public to comment on the supplemental joint assessment and recommendations; (ii) provide Participants time to use the information collected during the operation of the Plan to perform further analysis and recommend amendments to the Plan; and (iii) allow the Commission adequate time to review the supplemental joint assessment and recommendations provided by the Participants, and determine if any modifications to the Plan are appropriate. The Participants also believe that the proposed amendment is consistent with the approval order for the Plan, in which the Commission stated that having a pilot period would allow ''the public, the Participants, and the Commission to assess the operation of the Plan and whether the Plan should be modified prior to approval on a permanent basis.'' [22] Finally, the Participants believe that the proposed amendment, which provides for additional time to observe the operation of the Pilot, as well as to prepare and submit a supplemental joint assessment, will facilitate the development of better recommendations and will allow the Participants to make unified recommendations, where appropriate, regarding the operation of the Plan.

The Participants note that the amended version of the Plan also includes the revised Appendix A—Schedule 1, which was updated for trading beginning July 1, 2014. As set forth in Appendix A—Percentage Parameters, the Primary Listing Exchange updates Schedule 1 to Appendix A semi-annually based on the fiscal year and such updates do not require a Plan amendment.

B. Governing or Constituent Documents

The governing documents of the Processor, as defined in Section I(P) of the Plan, will not be affected by the Plan, but once the Plan is implemented, the Processor's obligations will change, as set forth in detail in the Plan.

C. Implementation of Plan

The initial date of the Plan operations was April 8, 2013.

D. Development and Implementation Phases

The Plan was initially implemented as a one-year pilot program in two Phases, consistent with Section VIII of the Plan: Phase I of Plan implementation began on April 8, 2013 and was completed on May 3, 2013. Implementation of Phase II of the Plan began on August 5, 2013 and was completed on February 24, 2014. Pursuant to this proposed amendment, the Participants propose to extend the pilot period so that it is set to end October 23, 2015.

E. Analysis of Impact on Competition

The proposed Plan does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The Participants do not believe that the proposed Plan introduces terms that are unreasonably discriminatory for the purposes of Section 11A(c)(1)(D) of the Exchange Act.

F. Written Understanding or Agreements relating to Interpretation of, or Participation in the Plan

The Participants have no written understandings or agreements relating to interpretation of the Plan. Section II(C) of the Plan sets forth how any entity registered as a national securities exchange or national securities association may become a Participant.

G. Approval of Amendment of the Plan

Each of the Plan's Participants has executed a written amended Plan.

H. Terms and Conditions of Access

Section II(C) of the Plan provides that any entity registered as a national securities exchange or national securities association under the Exchange Act may become a Participant by: (1) Becoming a participant in the applicable Market Data Plans, as defined in Section I(F) of the Plan; (2) executing a copy of the Plan, as then in effect; (3) providing each then-current Participant with a copy of such executed Plan; and (4) effecting an amendment to the Plan as specified in Section III(B) of the Plan.

I. Method of Determination and Imposition, and Amount of, Fees and Charges

Not applicable.

[17] 17 CFR 242.600(b)(47).

[18] *See* Transmittal Letter, *supra* note 3.

[19] The limit up-limit down mechanism set forth in the Plan replaces the existing single-stock circuit breaker pilot. *See e.g.,* Securities Exchange Act Release Nos. 62251 (June 10, 2010), 75 FR 34183 (June 16, 2010) (SR–FINRA–2010–025); 62883 (September 10, 2010), 75 FR 56608 (September 16, 2010) (SR–FINRA–2010–033).

[20] *See* Securities Exchange Act Release No. 68953 (February 20, 2013), 78 FR 13113 (February 26, 2013).

[21] *See* Letter from Participants to Brent J. Fields, Secretary, Commission, dated September 29, 2014 (''Participant Impact Assessment'').

[22] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 at 33508 (June 6, 2012).

J. Method and Frequency of Processor Evaluation

Not applicable.

K. Dispute Resolution

Section III(C) of the Plan provides for each Participant to designate an individual to represent the Participant as a member of an Operating Committee. No later than the initial date of the Plan, the Operating Committee shall designate one member of the Operating Committee to act as the Chair of the Operating Committee. Any recommendation for an amendment to the Plan from the Operating Committee that receives an affirmative vote of at least two-thirds of the Participants, but is less than unanimous, shall be submitted to the Commission as a request for an amendment to the Plan initiated by the Commission under Rule 608.

On September 18, 2014, the Operating Committee, duly constituted and chaired by Mr. Christopher B. Stone of FINRA, met and voted to amend the Plan as set forth herein in accordance with Section III(C) of the Plan.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed Eighth Amendment 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 4–631 on the subject line.

Paper Comments

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

All submissions should refer to File Number *4–631.* 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 Plan that are filed with the Commission, and all written communications relating to the Plan 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 Participants' principal offices. 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 4–631 and should be submitted on or before February 17, 2015.

By the Commission.

Brent J. Fields,

Secretary.

[FR Doc. 2015–01384 Filed 1–26–15; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, January 29, 2015 at 2:00 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or her designee, has certified that, in her opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matter at the Closed Meeting.

Commissioner Piwowar, 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;
Consideration of amicus participation; and
Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 551–5400.

Dated: January 22, 2015.

Brent J. Fields,

Secretary.

[FR Doc. 2015–01519 Filed 1–23–15; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74115; File No. SR–BYX–2012–019]

Self-Regulatory Organization; BATS Y-Exchange, Inc.; Order Granting an Extension to Limited Exemption From Rule 612(c) of Regulation NMS in Connection With the Exchange's Retail Price Improvement Program

January 22, 2015.

On November 27, 2012, the Securities and Exchange Commission (''Commission'') issued an order pursuant to its authority under Rule 612(c) of Regulation NMS (''Sub-Penny Rule) [1] that granted the BATS Y-Exchange, Inc. (''BYX'' or the ''Exchange'') a limited exemption from the Sub-Penny Rule in connection with the operation of the Exchange's Retail Price Improvement (''RPI'') Program (the ''Program''). The limited exemption was granted concurrently with the Commission's approval of the Exchange's proposal to adopt the Program for a one-year pilot term.[2] The exemption was granted coterminous with the effectiveness of the pilot Program and has been extended once; [3] both the pilot Program and exemption are scheduled to expire on January 31, 2015.

The Exchange now seeks to extend the exemption until January 31, 2016.[4] The Exchange's request was made in conjunction with an immediately effective filing that extends the operation of the Program until January

[1] 17 CFR 242.612(c).

[2] *See* Securities Exchange Act Release No. 68303 (November 27, 2012), 77 FR 71652 (December 3, 2012) (''RPI Approval Order'') (SR–BYX–2012–019).

[3] *See* Securities Exchange Act Release No. 71249 (January 7, 2014), 79 FR 2229 (January 13, 2012) (SR–BYX–2014–001) (extending the pilot period); Securities Exchange Act Release No. 71250 (January 7, 2014), 79 FR 2234 (January 13, 2012) (Order Granting an Extension to Limited Exemption From Rule 612(c) of Regulation NMS in Connection With the Exchange's Retail Price Improvement Program).

[4] *See* letter from Eric Swanson, Senior Vice President and General Counsel, BYX, to Elizabeth M. Murphy, Secretary, Commission, dated January 16, 2015.

31, 2016.[5] In its request to extend the exemption, the Exchange notes that the Program was implemented gradually over time. Accordingly, the Exchange has asked for additional time to allow itself and the Commission to analyze data concerning the Program, which the Exchange committed to provide to the Commission.[6] For this reason and the reasons stated in the Order originally granting the limited exemption, the Commission finds that extending the exemption, pursuant to its authority under Rule 612(c) of Regulation NMS, is appropriate in the public interest and consistent with the protection of investors.

Therefore, it is hereby ordered, that, pursuant to Rule 612(c) of Regulation NMS, the Exchange is granted a limited exemption from Rule 612(c) of Regulation NMS that allows it to accept and rank orders priced equal to or greater than $1.00 per share in increments of $0.001, in connection with the operation of its RPI Program, until January 31, 2016.

The limited and temporary exemption extended by this Order is subject to modification or revocation if at any time the Commission determines that such action is necessary or appropriate in furtherance of the purposes of the Securities Exchange Act of 1934. Responsibility for compliance with any applicable provisions of the federal securities laws must rest with the persons relying on the exemption that is the subject of this Order.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Brent J. Fields,

Secretary.

[FR Doc. 2015–01425 Filed 1–26–15; 8:45 am]

BILLING CODE 8011–01–P

[5] *See* SR–BYX–2015–05.

[6] *See* RPI Approval Order, *supra* note 2, at 77 FR at 71657.

[7] 17 CFR 200.30–3(a)(83).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74107; File No. SR–BX–2015–005]

Self-Regulatory Organizations; NASDAQ OMX BX; Notice of Filing and Immediate Effectiveness of a Proposed Rule Changes To Amend Rule 7018 To Amend Fees and Rebates in Connection With BX's Retail Price Improvement Program

January 21, 2015.

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 January 12, 2015, NASDAQ OMX BX, Inc. (''BX'' or the ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing changes to amend BX Rule 7018 to amend fees and rebates in connection with BX's Retail Price Improvement Program.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxbx.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposal is to amend BX Rule 7018 to amend fees and rebates for execution of orders under BX's Retail Price Improvement (''RPI'') program. BX recently adopted the RPI program,[3] which provides incentives to member firms (or a division thereof) approved by the Exchange to participate in the program (a ''Retail Member Organization'' or ''RMO'') to submit designated ''Retail Orders''[4] for the purpose of seeking price improvement. All BX members may enter retail price improvement orders (''RPI Orders''),[5] a form of non-displayed orders that are priced more aggressively than the Protected National Best Bid or Offer (''NBBO'') by at least $0.001 per share, for the purpose of offering such price improvement. RMOs may use two types of Retail Orders. A Type 1 Retail Order is eligible to execute only against RPI Orders and other orders (such as midpoint pegged orders) that will provide price improvement. Type 2 Retail Orders interact first with available RPI Orders and other price improving orders, and then are eligible to access non-price improving liquidity on the BX book and to route to other trading venues if so designated.

BX currently offers a rebate of $0.0025 per share executed to RMOs with respect to Retail Orders that execute against RPI Orders. RMO Retail Orders that execute against other orders providing price improvement with respect to the NBBO will receive a rebate otherwise applicable to executions of orders that access liquidity. For Type 2 Retail Orders that execute against non-price improving orders on the BX book, BX offers a rebate otherwise applicable to execution of orders that access liquidity. Similarly, when Type 2 Retail Orders are routed and execute at another trading venue, BX charges the fee otherwise applicable to execution of routed orders. For RPI Orders that provide liquidity, BX charges a fee of $0.0025 per share executed. Other orders that provide liquidity to Retail Orders will receive the credit or pay the fee otherwise applicable to orders that provide liquidity.

BX is proposing to provide greater incentives to RMOs to participate in the program by providing two new tiers of credits provided under the program. Specifically, BX proposes to provide RMOs a credit of $0.0005 per share executed for a Retail Order that accesses non-Retail Price Improvement midpoint liquidity. This is the same credit all orders that execute against midpoint pegged orders currently receive under

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 73410 (October 23, 2014), 79 FR 64447 (October 29, 2014) (SR–BX–2014–048) (proposing RPI program and exemption from SEC Rule 612 under Regulation NMS, 17 CFR 242.612, in connection therewith); *see also* Securities Exchange Act Release No. 73836 (December 15, 2014), 79 FR 75852 (December 19, 2014) (SR–BX–2014–059).

[4] A Retail Order is defined in BX Rule 4780(a)(2), in part, as ''an agency or riskless principal order that satisfies the criteria of FINRA Rule 5320.03, that originates from a natural person and is submitted to the Exchange by a Retail Member Organization, provided that no change is made to the terms of the order with respect to price (except in the case that a market order is changed to a marketable limit order) or side of market and the order does not originate from a trading algorithm or any other computerized methodology.''

[5] A Retail Price Improvement Order is defined in BX Rule 4780(a)(3), in part, as consisting of ''non-displayed liquidity on the Exchange that is priced better than the Protected NBBO by at least $0.001 and that is identified as such.''

Rule 7018(a). BX is now including the credit as a stand-alone credit incorporated into the program. BX is also providing RMOs with a new credit of $0.0017 per share executed for a Retail Order that accesses other liquidity on the Exchange book. Currently, such an order would receive a credit ranging from $0.0004 to $0.0015 per share executed under Rule 7018(a), depending on a member firm's removing and adding activity during the month. BX is adding the new increased credit for a Retail Order that accesses other liquidity on the Exchange book, which will not be tied to the member firm's average daily volume during the month.

As a consequence of adding the two new credit tiers to the RPI Program, BX is eliminating language under the rule that encompasses such orders, noting that the fees under Rule 7018(a) and (b) apply. Specifically, BX is deleting language concerning Retail Orders that access other liquidity at a price better than the national best bid or best offer. Such Retail Orders may be either Type 1 or Type 2. Likewise, BX is deleting language concerning Type 2 Retail Orders that access other liquidity from the Exchange book. The orders covered by these two sections are now included in the two new credit tiers of the rule. For example, an order that would qualify under the proposed new tier applicable to Retail Orders that accesses non-Retail Price Improvement midpoint liquidity currently falls under the section concerning a Retail Order that accesses other liquidity at a price better than the national best bid and offer. Similarly, an order that would qualify under the proposed new tier applicable to a Retail Order that accesses other liquidity on the Exchange book currently falls under one of the deleted sections, as such orders must be either a Retail Order that accesses other liquidity at a price better than the national best bid or best offer, or is a Type 2 Retail Order that accesses other liquidity from the Exchange book.

2. Statutory Basis

BX believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[6] in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,[7] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which BX operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The proposed new credits provided to RMOs under the RPI program are reflective of BX's ongoing efforts to use pricing incentive programs to attract orders of retail customers to BX and improve market quality. The goal of this program and similar pricing incentives is to provide meaningful incentives for members that represent the orders of retail customers to increase their participation on BX. The proposed credit of $0.0005 per share executed with respect to Retail Orders that access non-Retail Price Improvement Order midpoint liquidity is reasonable because it merely incorporates the current credit provided for such orders under Rule 7018(a) into the RPI program. The change is consistent with an equitable allocation of fees because it will allow BX to disassociate the credit from the credit provided under Rule 7018(a) so that the RPI program credit will not be affected by changes to the credit under Rule 7018(a). Moreover, all member firms that qualify for the new tier will receive the credit. BX further believes that the proposed credit tier is not unreasonably discriminatory because it is designed to separate order activity under the program from the normal credit provided under Rule 7018(a). As such, BX may increase the proposed credit, or reduce the related credit under Rule 7018(a), resulting in a more meaningful economic benefit to member firms that participate in the RPI program. Such incentive pricing in consistent with the goal of increasing participation in this beneficial program.

Similarly, BX believes that the proposed credit of $0.0017 per share executed with respect to Retail Orders that access other liquidity on the Exchange book is reasonable because it provides greater incentive to member firms to participate in this beneficial program. The proposed credit is greater than the highest credit tier currently available for such orders under Rule 7018(a). Moreover, as opposed to the other tiers under Rule 7018(a) the new credit is not tied to any other measure, which provides further incentive to member firms to participate in the program. The proposed change is consistent with an equitable allocation of fees because it provides incentive pricing to all member firms that qualify under the program. BX further believes that the proposed credit tier is not unreasonably discriminatory because it is designed to provide further meaningful incentives for members that represent the orders of retail customers to increase their participation on BX. Because retail orders are likely to reflect long-term investment intentions, they promote price discovery. Accordingly, their presence in the BX market has the potential to benefit all market participants. For this reason, BX believes that it is equitable and not unfairly discriminatory to provide significant financial incentives to encourage greater retail participation in the market.

Elimination of the existing sections of the RPI Program that note that certain orders will be subject to the current fees and credits under Rule 7018(a) and (b) is reasonable because they are replaced by the new credit tiers, as discussed above. The Exchange believes that elimination of these sections is an equitable allocation and not unfairly discriminatory because they allow the Exchange to offer incentive pricing to a wider range of beneficial order activity, which will be provided to all member firms that meet the requirements for the credits.

Finally, BX notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, BX must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. BX believes that the proposed rule change reflects this competitive environment because it is designed to allow BX to compete with other exchanges that offer similar price improvement programs for retail orders.

B. Self-Regulatory Organization's Statement on Burden on Competition

BX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. In this instance, the RPI program is designed to allow BX to compete more effectively with the New York Stock Exchange, NYSE MKT LLC, NYSE Arca, Inc. and the BATS–Y Exchange, all of which offer similar programs designed to attract retail order flow. BX believes that the proposed higher credit with respect to Retail Orders will enhance competition by drawing additional retail order flow to BX and, as a consequence, possibly encouraging other trading venues to make competitive pricing changes.

For these reasons and the reasons discussed in connection with the statutory basis for the proposed rule change, BX does not believe that the proposed changes will impose any

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(4) and (5).

burden on competition, but rather may promote competition among order execution venues for orders of retail customers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [8] and paragraph (f) of Rule 19b–4 thereunder.[9] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BX–2015–005 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–BX–2015–005. 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 offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2015–005, and should be submitted on or before February 17, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Brent J. Fields,

Secretary.

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[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74109; File No. SR–NYSE–Arca–2014–134]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving a Proposed Rule Change To List and Trade Shares of the IQ Wilshire Alternative Strategies ETF Under NYSE Arca Equities Rule 8.600

January 21, 2015.

I. Introduction

On November 18, 2014, NYSE Arca, Inc. (the ''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 (''Act'' or ''Exchange Act'') [2] and Rule 19b–4 thereunder,[3] a proposed rule change to list and trade shares (''Shares'') of the IQ Wilshire Alternative Strategies ETF (the ''Fund'') under NYSE Arca Equities Rule 8.600. The proposed rule change was published for comment in the **Federal Register** on December 8, 2014.[4] The Commission received no comments on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes to list and trade the Shares under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares on the Exchange. The Fund is a series of the IndexIQ Active ETF Trust (the ''Trust'').[5] The Fund is an actively-managed exchange-traded fund (''ETF'') and does not seek to replicate the performance of a specified index.

IndexIQ Advisors LLC (the ''Adviser'') is the investment adviser for the Fund.[6] The Exchange states that the Adviser is a not a registered broker-dealer and is not affiliated with a broker-dealer.[7] The Exchange represents that in the event (a) any of the Adviser, Wilshire or the Underlying Managers is or becomes 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, then, to the extent the broker-dealer or affiliated broker-dealer is not a limited purpose broker-dealer used for marketing and not trading purposes, it will implement a firewall with respect to its relevant personnel 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.[8]

The Bank of New York Mellon (''Administrator'') is the administrator, custodian, transfer agent and securities lending agent for the Fund. ALPS

[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. 73716 (December 2, 2014), 79 FR 72723 (''Notice'').

[5] The Trust is registered under the 1940 Act. On April 25, 2014, the Trust filed with the Commission an amendment to its registration statement on Form N–1A relating to the Fund (File Nos. 333–193560 and 811–22739) (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. 30198 (September 10, 2012) (File No. 812–13956).

[6] 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, Wilshire Associates Incorporated (''Wilshire'') and the underlying managers that are sub-advisers to the Fund (the ''Underlying Managers'') are each registered as an investment adviser under the Advisers Act. Wilshire will be a sub-adviser to the Fund and, in that role, will evaluate and recommend strategies and Underlying Managers to the Adviser for use by the Fund. Additionally, according to the Exchange, Wilshire will provide recommendations to the Adviser for allocating and reallocating Fund assets among the Underlying Managers. Wilshire will not directly manage any assets of the Fund, although it may provide the Adviser or an Underlying Manager with non-discretionary advice on investment decisions and underlying positions.

[7] *See* Notice, supra note 4, 79 FR at 72729.

[8] *See* Notice, supra note 4, 79 FR at 72724.

Distributors Inc. is the distributor for the Fund.

The Exchange has made the following representations and statements in describing the Fund and its strategy and characteristics, investments, and investment restrictions.[9]

Fund Strategies and Characteristics

According to the Exchange, the Fund will seek long-term capital appreciation. Under normal circumstances,[10] 100% of the Fund's assets will be allocated among the Underlying Managers that will employ a variety of alternative investment strategies.[11] The Exchange states that in making these allocations, the Advisor will seek to combine the strategies of the Underlying Managers efficiently and systematically so that the Fund will generate a positive total return with relatively low volatility and low sensitivity or correlation to market indices.[12]

The Exchange states that the Fund and each of its Underlying Managers may use all or some of the following strategies in managing the assets of the Fund: equity hedge (long/short) strategies, relative value strategies, global macro strategies, event driven strategies, opportunistic credit strategies, tactical trading strategies, and liquid alternative beta strategies.[13] The Fund and each of its Underlying Managers may also add additional strategies in the future. According to the Exchange, the Advisor may allocate 0 to 100 percent of the Fund's assets to any of these strategies or any of the Underlying Managers at any time.

Investments of the Fund

The Exchange states that in implementing the strategies discussed above, the Fund will invest in a portfolio consisting of some or all of the following instruments:

- Exchange-traded equity securities, which will consist of common stocks, preferred stocks, convertible securities, rights and warrants, depositary receipts, ETFs, non-ETF exchange-traded vehicles (''ETVs''), and partnership interests, including master limited partnerships;
- Fixed income securities, which will consist of debt issued by corporations,[14] debt issued by governments, their agencies, instrumentalities, sponsored entities, and political subdivisions, covered bonds, debt participations, convertible bonds, non-investment grade securities, senior bank loans, exchange-traded notes, mortgage-backed and other asset-backed securities, and to-be-announced securities;[15]
- Currencies;
- The following derivative instruments: futures contracts (consisting of futures contracts based on equity or fixed income securities and/or equity or fixed income indices, commodities, interest rates and currencies), swap agreements on any of the following asset classes: equity, fixed income, currency and interest rates (such swaps may be based on the price return or total return of the referenced asset), credit default swaps (consisting of credit default swaps in which the referenced asset is a single fixed income security or a group of fixed income securities), options (consisting of long and short positions in call options and put options on indices based on equities, fixed income securities, interest rates, currencies or commodities, individual securities or currencies, swaptions and options on futures contracts), forward contracts (consisting of forward contracts based on equity or fixed income securities and/or equity or fixed income indices, currencies, interest rates, swap forwards and non-deliverable forwards), and structured securities (such derivative instruments, collectively ''Financial Instruments'').[16]

The Exchange states that the Fund may use leverage (*e.g.,* through the use of Financial Instruments) to obtain exposure in excess of 100% in an investment. The Fund may employ leverage to increase exposure to the Fund's portfolio holdings by up to 100% of the net assets of the Fund to gain additional exposure to the Fund's portfolio holdings, such that the Fund will have up to 200% net exposure to its investments.

According to the Exchange, the Fund may take long and/or short positions in equity securities, fixed income securities, commodities[17] and currencies, among others.

Investment Restrictions

All equity securities will be listed on a U.S. national securities exchange or a non-U.S. securities exchange that is a member of the Intermarket Surveillance Group (''ISG'') or a party to a comprehensive surveillance sharing agreement with the Exchange; provided, however, that up to 10% of the assets of the Fund may be invested in non-U.S. listed equity securities that do not meet these requirements.[18]

All options contracts will be listed on a U.S. national securities exchange or a non-U.S. securities exchange that is a member of ISG or a party to a comprehensive surveillance sharing agreement with the Exchange.[19]

Not more than 20% of the Fund's assets will be invested, in the aggregate, in non-investment grade securities and structured securities.[20]

Up to 10% of the weight of the futures contracts held by the Fund may consist of futures contracts whose principal trading market is not a member of ISG or a party to a comprehensive surveillance sharing agreement with the Exchange.[21]

The Fund may invest up to 20% of its total assets in mortgage-backed securities or in other asset-backed securities, although this 20% limitation will not apply to U.S. government securities.[22]

[9] The Commission notes that additional information regarding the IQ Wilshire Alternative Strategies ETF and its shares; investment objectives; strategies; methodology and restrictions; risks; fees and expenses; creations and redemptions of Shares; availability of information; trading rules and halts; and surveillance procedures, among other things, can be found in the Registration Statement and in the Notice. *See* Notice, *supra* note 4, and Registration Statement, *supra* note 5, respectively.

[10] The term ''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.

[11] According to the Exchange, the investment of Fund assets not allocated to the Underlying Managers may be directly managed by the Advisor, although the Advisor does not currently intend to manage a significant portion of the Fund's assets directly, and to the extent the Advisor does manage a portion of the Fund's assets it would invest such assets in the same manner as the Underlying Managers.

[12] *See* Notice, *supra* note 4, 79 FR at 72724.

[13] These strategies are discussed in greater detail in the Notice and the Registration Statement. *See* Notice, *supra* note 4, and Registration Statement, *supra* note 5, respectively.

[14] According to the Exchange, under normal market circumstances, the Fund generally will seek to invest in corporate bond issuances in developed countries that have at least $100,000,000 par amount outstanding and at least $200,000,000 par amount outstanding with respect to corporate bond issuances in emerging market countries. *See* Notice, *supra* note 4, 79 FR at 72725, n. 19.

[15] The Fund will seek to gain exposure to U.S. agency mortgage pass-through securities primarily through the use of ''to-be-announced securities.''

[16] As a result of the Fund's ability to invest in Financial Instruments, it may also hold U.S. Treasury Bills or short-term investments as collateral for the Financial Instruments, including money market funds, repurchase agreements, cash and time deposits.

[17] The Fund may gain exposure to commodities through investments in other investment companies, ETFs or ETVs.

[18] *See* Notice, *supra* note 4, 79 FR at 72726.

[19] *See id.*

[20] *See id.*

[21] *See id.*

[22] *See id.*

The 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.[23] The 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 the Fund's net assets are held in illiquid assets.

The Fund will not invest more than 10% of its net assets in unsponsored depositary receipts.[24]

III. Discussion and Commission Findings

After careful review, the Commission finds that the Exchange's proposal to list and trade the Shares is consistent with the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.[25] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Exchange Act,[26] 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 finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Exchange Act,[27] 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 and underlying securities that are listed on a U.S. exchange will be available via the Consolidated Tape Association high-speed line. Quotation and last-sale information for such U.S. exchange-listed securities as well as futures will be available from the exchange on which they are listed. Quotation and last sale information for options contracts will be available via the Options Price Reporting Authority.

Quotation information for OTC-traded securities and OTC-traded Financial Instruments (such as forwards, swaps and currency-related derivatives), and investment company securities (excluding ETFs), may be obtained from brokers and dealers who make markets in such securities or through nationally recognized pricing services through subscription agreements. Quotation information from brokers and dealers or pricing services will be available for spot and forward currency transactions held by the Fund. 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.

The Commission also 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. On each business day, before commencement of trading in Shares in the Core Trading Session (9:30 a.m. to 4:00 p.m., Eastern Time) on the Exchange, each Fund will disclose on its Web site the Disclosed Portfolio that will form the basis for a Fund's calculation of NAV at the end of the business day.[28] The Web site information will be publicly available at no charge. 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). 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.[29] The Portfolio Indicative Value of the Fund, 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.[30] The Web site for the Fund will include a form of the prospectus for the Fund and additional data relating to the Fund's NAV and other applicable quantitative information.[31]

The Exchange represents that trading in Shares of a Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached.[32] 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.[33] Trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares may be halted.

The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees.[34] The Exchange states that the Adviser is a not a registered broker-dealer and is not affiliated with a broker-dealer. The Exchange represents that, in the event (a) the Adviser becomes 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 firewall with respect to its relevant personnel 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.

The Financial Industry Regulatory Authority (''FINRA''), on behalf of the Exchange, will communicate as needed regarding trading in the Shares, equity securities, exchange-traded options, futures contracts and options on futures contracts with other markets that are members of the ISG and FINRA, on behalf of the Exchange, may obtain trading information regarding trading in the Shares, exchange-traded equities, exchange-traded options, futures contracts and options on futures contracts from such markets. In

[23] *See id.*

[24] *See id.*

[25] 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).

[26] 15 U.S.C. 78f(b)(5).

[27] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[28] Under accounting procedures followed by the Fund, trades made on the prior business day (''T'') will be booked and reflected in NAV on the current business day (''T+1''). Accordingly, 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.

[29] *See* Notice, *supra* note 4, 79 FR at 72728.

[30] According to the Exchange, several major market data vendors display and/or make widely available Portfolio Indicative Values taken from Consolidated Tape Association or other data feeds. *See* Notice, *supra* note 4, 79 FR at 72728, n. 26.

[31] *See* Notice, *supra* note 4, 79 FR at 72729.

[32] *See* Notice, *supra* note 4, 79 FR at 72728.

[33] 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. *See* Notice, *supra* note 4, 79 FR at 72728.

[34] *See* Notice, *supra* note 4, 79 FR at 72728.

addition, the Exchange may obtain information regarding trading in the Shares, exchange-traded equities, exchange-traded options, futures contracts and options on futures contracts from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.[35] 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 Commission notes that the Fund and the Shares must comply with the requirements of NYSE Arca Equities Rule 8.600 to be listed and traded on the Exchange. 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. In support of this proposal, the Exchange represented that:

(1) The Shares will be subject to NYSE Arca Equities Rule 8.600, which sets forth the initial and continued listing criteria applicable to Managed Fund Shares.

(2) Trading in the Shares will be subject to the existing trading surveillances administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws, and 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.

(3) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(4) 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: (a) The procedures for purchases and redemptions of Shares in creation unit aggregations (and that Shares are not individually redeemable); (b) 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; (c) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated Portfolio Indicative Value will not be calculated or publicly disseminated; (d) how information regarding the Portfolio Indicative Value is disseminated; (e) 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 (f) trading information.

(5) For initial and/or continued listing, the Trust will be in compliance with Rule 10A–3 [36] under the Act, as provided by NYSE Arca Equities Rule 5.3.

(6) All equity securities will be listed on a U.S. national securities exchange or a non-U.S. securities exchange that is a member of the ISG or a party to a comprehensive surveillance sharing agreement with the Exchange; provided, however, that up to 10% of the assets of the Fund may be invested in non-U.S. listed equity securities that do not meet these requirements.

(7) All options contracts will be listed on a U.S. national securities exchange or a non-U.S. securities exchange that is a member of ISG or a party to a comprehensive surveillance sharing agreement with the Exchange.

(8) Not more than 20% of the Fund's assets will be invested, in the aggregate, in non-investment grade securities and structured securities.

(9) Not more than 10% of the weight of the futures contracts held by the Fund may consist of futures contracts whose principal trading market is not a member of ISG or a party to a comprehensive surveillance sharing agreement with the Exchange.

(10) The Fund may invest no more than 20% of its total assets in mortgage-backed securities or in other asset-backed securities, although this 20% limitation will not apply to U.S. government securities.

(11) The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities, including Rule 144A securities.

(12) The Fund will not invest more than 10% of its net assets in unsponsored depository receipts will not exceed 10% of a Fund's net assets

(13) A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange.

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 descriptions of the Funds. For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act [37] 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 Exchange Act,[38] that the proposed rule change (SR–NYSEArca-2014–134) is hereby approved.[39]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.

Brent J. Fields,

Secretary.

[FR Doc. 2015–01376 Filed 1–26–15; 8:45 am]

BILLING CODE 8011–01–P

[35] For a list of the current members of ISG, see *www.isgportal.org.*

[36] 17 CFR 240.10A–3.

[37] 15 U.S.C. 78f(b)(5).

[38] 15 U.S.C. 78s(b)(2).

[39] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 9013]

Culturally Significant Objects Imported for Exhibition Determinations: ''Coypel's Don Quixote Tapestries: Illustrating a Spanish Novel in 18th-Century France''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''Coypel's *Don Quixote* Tapestries: Illustrating a Spanish Novel in 18th-Century France,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The Frick Collection, New York, New York, from on or about February 25, 2015, until on or about May 17, 2015, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the imported objects, contact Paul W. Manning, Attorney-Adviser, Office of

the Legal Adviser, U.S. Department of State (telephone: 202–632–6469). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: *January 16, 2015.*

Kelly Keiderling,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2015–01446 Filed 1–26–15; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 9012]

Culturally Significant Objects Imported for Exhibition Determinations: ''Ireland: Crossroads of Art and Design, 1690–1840''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''Ireland: Crossroads of Art and Design, 1690–1840,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Art Institute of Chicago, Chicago, Illinois, from on or about March 17, 2015, until on or about July 7, 2015, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the imported objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6469). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: January 16, 2015.

Kelly Keiderling,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2015–01448 Filed 1–26–15; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 9014]

Culturally Significant Object Imported for Exhibition Determinations: ''Sword Pommel''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the object to be included in the exhibition ''Sword Pommel,'' imported from abroad for temporary exhibition within the United States, is of cultural significance. The object is imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit object at the Metropolitan Museum of Art, New York, New York, from on or about February 1, 2015, until on or about February 1, 2020, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a description of the imported object, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6469). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: January 16, 2015.

Kelly Keiderling,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2015–01449 Filed 1–26–15; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 9011]

Texas-New Mexico Regional Meeting of the Binational Bridges and Border Crossings Group

SUMMARY: Delegates from the United States and Mexican Governments, the states of Texas and New Mexico, and the Mexican states of Chihuahua, Coahuila, Nuevo Leon, and Tamaulipas will participate in the Texas-New Mexico Regional meeting of the U.S.-Mexico Binational Bridges and Border Crossings Group on February 5, 2015, in Austin Texas. The purpose of this meeting is to discuss operational matters involving existing and proposed international bridges and border crossings and their related infrastructure, and to exchange views on policy as well as technical information. This meeting includes a public session on Thursday, February 5, 2015, from 8:30 a.m. until 11:00 a.m. This session allows proponents of proposed bridges and border crossings and related projects to make presentations to the delegations and members of the public.

FOR FURTHER INFORMATION CONTACT: For further information on the meeting and to attend the public session, please contact the Mexico Desk's Border Affairs Unit, via email at *WHA-BorderAffairs@state.gov,* by phone at 202–647–9894, or by mail at Office of Mexican Affairs—Room 3924, Department of State, 2201 C St. NW., Washington, DC 20520.

Rachel M. Poynter,

Deputy Director, Office of Mexican Affairs, Bureau of Western Hemisphere Affairs, U.S. Department of State.

[FR Doc. 2015–01459 Filed 1–26–15; 8:45 am]

BILLING CODE 4710–29–P

DEPARTMENT OF STATE

[Delegation of Authority No. 381]

Membership on the Review Committee Established by Executive Order 13567

By virtue of the authority vested in me as Secretary of State, including Section 1 of the State Department Basic Authorities Act, as amended (22 U.S.C. 2651a), and Executive Order 13567 of March 7, 2011 (the Executive Order), I hereby delegate to the Special Envoy for Guantanamo Closure the authority to serve as a member of the Review Committee described in Section 3(d) of the Executive Order for the review of file reviews only, together with any authority necessary to carry out such function.

Any act, executive order, regulation, or procedure subject to, or affected by, this delegation shall be deemed to be such act, executive order, regulation, or procedure as amended from time to time.

Notwithstanding this delegation of authority, the Secretary, the Deputy Secretary, and the Deputy Secretary for Management and Resources may at any time exercise any authority or function delegated by this delegation of authority.

This delegation of authority shall be published in the **Federal Register**.

Dated: January 7, 2015.

John F. Kerry,

Secretary of State.

[FR Doc. 2015–01450 Filed 1–26–15; 8:45 am]

BILLING CODE 4710–10–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Request for Comments on Iceland's Participation in the Environmental Goods Agreement Negotiations

AGENCY: Office of the United States Trade Representative.

ACTION: Request for comments.

SUMMARY: On March 21, 2014, the United States Trade Representative notified Congress of the Administration's intention to enter into negotiations for a World Trade Organization (WTO) Environmental Goods Agreement (EGA) with an initial group of 13 trading partners. The United States Trade Representative has since notified Congress of the Administration's intent to join a consensus among EGA participants to invite the Government of Iceland to join the EGA negotiations. The Office of the U.S. Trade Representative, on behalf of the Trade Policy Staff Committee (TPSC), is seeking public comment regarding U.S. interests and priorities with respect to this initiative to invite Iceland to join the EGA negotiations.

DATES: Written comments are due by midnight, March 6, 2015.

ADDRESSES: Comments from the public should be submitted electronically at *www.regulations.gov.* If you are unable to provide submissions at *www.regulations.gov,* please contact Yvonne Jamison, Trade Policy Coordination Assistant, at (202) 395–3475, to arrange for an alternative method of transmission.

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning written comments, please contact Yvonne Jamison, Trade Policy Coordination Assistant, at the above number. All other questions regarding this notice should be directed to Bill McElnea, Director for Environment and Natural Resources, at (202) 395–7320.

SUPPLEMENTARY INFORMATION:

Background

On March 21, 2014, the United States Trade Representative notified Congress of the Administration's intention to enter into the EGA negotiations. This notification states that the EGA negotiations ''are open to all WTO Members that are prepared to eliminate tariffs on a set of environmental goods, building on the list of 54 goods endorsed by APEC Leaders as the starting point.'' A copy of the notification is available at *www.ustr.gov/sites/default/files/03212014-Letter-to-Congress.pdf.* USTR solicited public comments on this initiative through a notification published in the **Federal Register** on March 28, 2014 (Document number: 2014–06831). Comments received through that process may be reviewed at *http://www.regulations.gov* under docket number USTR–2014–0004.

On July 8, 2014, the United States and 13 other WTO members, accounting for 86 percent of global trade in environmental goods, launched the EGA negotiations in Geneva, Switzerland. In addition to the United States, Australia, Canada, China, Costa Rica, the European Union, Hong Kong, Israel, Japan, Korea, New Zealand, Norway, Singapore, Switzerland and Chinese Taipei are participating in the negotiations. The EGA aims to eliminate tariffs on a set of environmental technologies such as wind turbines, water treatment filters, and solar water heaters. WTO members apply tariffs as high as 35 percent on environmental goods.

The Government of Iceland notified EGA participants of their interest in joining these negotiations on November 12, 2014. Following this notification of interest, EGA participants agreed to begin any relevant domestic procedures so as to allow Iceland to join the EGA negotiations. On December 12, 2014, the United States Trade Representative notified Congress of the Administration's intent to join a consensus among EGA participants to invite the Government of Iceland to join the EGA negotiations.

The Chair of the TPSC invites interested persons to provide written comments that will assist USTR in assessing Iceland's potential participation in the EGA negotiations. The TPSC Chair invites comments on all relevant matters, and, in particular, with regard to those environmental goods of which Iceland is a significant producer and consumer, as well as current market conditions for environmental technologies in Iceland.

USTR is observing the relevant procedures of the Bipartisan Trade Promotion Authority Act of 2002 (19 U.S.C. 3804) with respect to notifying and consulting with Congress on the invitation of new members to these negotiations.

Requirements for Submissions

Persons submitting comments must do so in English and must identify (on the first page of the submission) ''Environmental Goods Agreement—New Participant: Iceland''. In order to be assured of consideration, comments should be submitted by 11:59 p.m., March 6, 2015. In order to ensure the timely receipt and consideration of comments, USTR strongly encourages commenters to make on-line submissions using the *www.regulations.gov* Web site. To submit comments via *www.regulations.gov,* enter docket number USTR–2015–0002 on the home page and click ''search.'' The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice and click on the link entitled ''Comment Now!'' (For further information on using the *www.regulations.gov* Web site, please consult the resources provided on the Web site by clicking on ''How to Use This Site'' on the left side of the home page).

The *www.regulations.gov* Web site allows users to provide comments by filling in a ''Type Comment'' field, or by attaching a document using an ''Upload File'' field. USTR prefers that comments be provided in an attached document. If a document is attached, it is sufficient to type ''See attached'' in the ''Type Comment'' field. USTR prefers submissions in Microsoft Word (.doc) or Adobe Acrobat (.pdf). If the submission is in an application other than those two, please indicate the name of the application in the ''Type Comment'' field. For any comments submitted electronically containing business confidential information, the file name of the business confidential version should begin with the characters ''BC''. Any page containing business confidential information must be clearly marked ''BUSINESS CONFIDENTIAL'' on the top of that page. Filers of submissions containing business confidential information must also submit a public version of their comments. The file name of the public version should begin with the character ''P''. The ''BC'' and ''P'' should be

followed by the name of the person or entity submitting the comments or reply comments. Filers submitting comments containing no business confidential information should name their file using the name of the person or entity submitting the comments. Please do not attach separate cover letters to electronic submissions; rather, include any information that might appear in a cover letter in the comments themselves. Similarly, to the extent possible, please include any exhibits, annexes, or other attachments in the same file as the submission itself, not as separate files.

As noted, USTR strongly urges submitters to file comments through *www.regulations.gov,* if at all possible. Any alternative arrangements must be made with Ms. Jamison in advance of transmitting a comment. Ms. Jamison should be contacted at (202) 395–3475. General information concerning USTR is available at *www.ustr.gov.* Comments will be placed in the docket and open to public inspection, except business confidential information. Comments may be viewed on the *www.regulations.gov* Web site by entering the relevant docket number in the search field on the home page.

Douglas Bell,

Chair, Trade Policy Staff Committee.

[FR Doc. 2015–01373 Filed 1–26–15; 8:45 am]

BILLING CODE 3290–F5–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

January 22, 2015.

The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before February 26, 2015 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.gov* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8140, Washington, DC 20220, or email at *PRA@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submission(s) may be obtained by calling (202) 927–5331, email at *PRA@treasury.gov,* or the entire information collection request may be found at *www.reginfo.gov.*

Internal Revenue Service (IRS)

OMB Number: 1545–0216.

Type of Review: Reinstatement without change of a previously approved collection.

Title: International Boycott Report.

Form: 5713.

Abstract: Form 5713 and related Schedules A, B, and C are used by any entity that has operations in a ''boycotting'' country. If that entity cooperates with or participates in an international boycott it loses a portion of the foreign tax credit, or deferral of FSC and IC–DISC benefits. The IRS uses Form 5713 to determine if any of the above benefits should be lost. The information is also used as the basis for a report to Congress.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Annual Burden Hours: 69,495.

OMB Number: 1545–1421.

Type of Review: Reinstatement without change of a previously approved collection.

Title: Certain Elections Under the Omnibus Budget Reconciliation Act of 1993 (TD 8688-final).

Abstract: These regulations establish various elections enacted by the Omnibus Budget Reconciliation Act of 1993 (Act). The regulations provide guidance that enable taxpayers to take advantage of various benefits provided by the Act and the Internal Revenue Code.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Annual Burden Hours: 202,500.

OMB Number: 1545–1590.

Type of Review: Reinstatement without change of a previously approved collection.

Title: REG–251698–96 (TD 8869—Final) Subchapter S Subsidiaries.

Abstract: The IRS will use the information provided by taxpayers to determine whether a corporation should be treated as an S corporation, a C Corporation, or an entity that is disregarded for federal tax purposes. The collection of information covered in the regulation is necessary for a taxpayer to obtain, retain, or terminate S corporation treatment.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Annual Burden Hours: 10,110.

OMB Number: 1545–1647.

Type of Review: Reinstatement without change of a previously approved collection.

Title: Revenue Procedure 2001–21, Debt Roll-Ups.

Abstract: This revenue procedure provides for an election that will facilitate the consolidation of two or more outstanding debt instruments into a single debt instrument. Under the election, taxpayers can treat certain exchanges of debt instruments as realization events for federal income tax purposes even though the exchanges do not result in significant modifications under section 1.1001–33 of the Income Tax Regulations.

Affected Public: Private Sector: Businesses and other for-profits.

Estimated Annual Burden Hours: 75.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2015–01389 Filed 1–26–15; 8:45 am]

BILLING CODE 4830–01–P

UNITED STATES INSTITUTE OF PEACE

Board of Directors Meeting

AGENCY: United States Institute of Peace.

ACTION: Notice.

SUMMARY: Board of Directors meeting.

DATES: Friday, January 23, 2015 (10 a.m.–4 p.m.).

ADDRESSES: 2301 Constitution Avenue NW., Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Denson Staples, Assistant to the Board Liaison, Email: *dstaples@usip.org.*

SUPPLEMENTARY INFORMATION:

Status: Open Session—Portions may be closed pursuant to Subsection (c) of Section 552(b) of Title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Public Law 98–525.

Agenda: January 23, 2015 Board Meeting; Approval of Minutes of the One Hundred Fifty-Third Meeting (October 20, 2014) of the Board of Directors; Welcome New President Nancy Lindborg; Chairman's Report; Acting President's Report; Strategic Plan Evaluation Update; Impact Initiative; Project Updates; Other General Issues.

Dated: January 20, 2015.

Michael Graham,

Senior Vice President for Management and Chief Financial Officer, United States Institute of Peace.

[FR Doc. 2015–01244 Filed 1–26–15; 8:45 am]

BILLING CODE 6820–AR–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0198]

Agency Information Collection (Supporting Statement for VA Form 10–8678 Application for Annual Clothing Allowance) Activities: Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: Comments must be submitted on or before February 26, 2015.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov,* or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No. 2900–0198 (Supporting Statement for VA Form 10–8678 Application for Annual Clothing Allowance)'' in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Crystal Rennie, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7492 or email *crystal.rennie@va.gov.* Please refer to ''OMB Control No. 2900–0198 (Supporting Statement for VA Form 10–8678 Application for Annual Clothing Allowance)'' in any correspondence.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501—3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Titles: Application for Annual Clothing Allowance.

OMB Control Number: 2900–0198.

Type of Review: Extension.

Abstract: The Department of Veterans Affairs (VA) through its Veterans Health Administration (VHA) administers an integrated program of benefits and services, established by law, for veterans, service personnel, and their dependents and/or beneficiaries. Information is requested by this form under the authority of 38 U.S.C., section 1162, Clothing Allowance, which provides authority for the Secretary to pay a clothing allowance to veterans who because of a service-connected disability, wears or uses a prosthetic or orthopedic appliance (including a wheelchair) which tends to wear out or tear clothing or uses medication that causes irreparable damage to the outer garments. Entitlement to this benefit is granted by 38 CFR 3.810, Clothing Allowance, upon application by the eligible individual.

Affected Public: Individuals or Households.

Estimated Annual Burden: 1,120 burden hours.

Estimated Average Burden per Respondent: 6 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 6,720.

Dated: January 22, 2015.

By direction of the Secretary.

Crystal Rennie,

VA Clearance Officer, Department of Veterans Affairs.

[FR Doc. 2015–01393 Filed 1–26–15; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–NEW (10–10130)]

Proposed Information Collection (Audience Feedback Questionnaire—PACT Demo Lab VISN 4); Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each new collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to obtain an accurate and comprehensive assessment of satisfaction of patients who receive mental health care services and on outcomes for Veterans who seek mental health treatment from VHA. Data will allow the program office to ensure that the target audience is being reached, effective treatments are being offered, and tangible, quantitative results are being measured and tracked for continual program improvement.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before March 30, 2015.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov;* or Audrey Revere, Office of Regulatory and Administrative Affairs, Veterans Health Administration (10B4), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email: *Audrey.revere@va.gov.* Please refer to ''OMB Control No. 2900–NEW (Audience Feedback Questionnaire)'' in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Audrey Revere at (202) 461–5694.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is

being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Titles: Audience Feedback Questionnaire, VA Form 10–10130.

OMB Control Number: 2900–NEW.

Type of Review: New data collection.

Abstract: This project is being conducted under the auspices of the VISN 4 Demonstration Lab, which was funded by Patient Care Services to assess the Patient Aligned Care Team (PACT) model of care for Veterans. There is considerable interest in and urgency to implement the PACT model—reflecting both a desire to improve health care for Veterans and to sustain the VA's leadership in health care quality. CEPACT aims to contribute to these goals by evaluating the effects of the VA PACT initiative and by testing new, innovative strategies for patient care that can be spread if proven effective.

Affected Public: Individuals or households.

Estimated Annual Burden: 83 burden hours.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: Once annually.

Estimated Number of Respondents: 1000.

Dated: January 22, 2015.

By direction of the Secretary.

Crystal Rennie,

Department Clearance Officer, Department of Veterans Affairs.

[FR Doc. 2015–01396 Filed 1–26–15; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–NEW (VA Forms 10–10135, 10–10135a, 10–10135b, 10–10135c, 10–10135d, 10–10136, 10–10137)]

Proposed Information Collection (Patient Aligned Care Team (PACT) Telehealth in the Parkinson's Disease Research, Education & Clinical Center (PADRECC), Healthcare Experiences of Patients With Congestive Heart Failure (CHF)) Activity: Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each new collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to evaluate the project aims to enhance PACT implementation by providing education about the needs and experiences of ''Operation Enduring Freedom'' and ''Operation Iraqi Freedom'' (OEF/OIF) Veterans that is emotionally resonant and engaging to learners on a visceral level, as well as promoting a greater sense of alignment with VA's mission of providing patient-centered care.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before March 30, 2015.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov;* or Audrey Revere, Office of Regulatory and Administrative Affairs, Veterans Health Administration (10B4), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email: *Audrey.revere@va.gov.* Please refer to ''OMB Control No. 2900–NEW (PACT Telehealth in the PADRECC, Healthcare experiences of patients with CHF)'' in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Audrey Revere at (202) 461–5694.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Titles: PACT Telehealth in the PADRECC, Healthcare Experiences of Patients with CHF, VA Forms 10–10135a, 10–10135b, 10–10135c, 10–10135d, 10–10136, 10–10137.

OMB Control Number: 2900–NEW.

Type of Review: New data collection.

Abstract The Office of Patient Care Services, Primary Care Program Office, has undertaken an initiative to implement a patient-centered medical home model at all Veterans Health Administration (VHA) Ambulatory Primary Care sites. In addition to the VHA's Universal Health Care Services implementation of the Patient Aligned Care Team (PACT), Patient Care Services has funded 5 PACT Demonstration Laboratories across the country.

Title: Focus Group Survey.

Affected Public: Individuals or households.

Estimated Annual Burden: 20 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: Once annually.

Estimated Number of Respondents: 40.

Title: 10–10135a (GDS)

Affected Public: Individuals or households.

Estimated Annual Burden: 35 hours.

Estimated Average Burden per Respondent: 7 minutes.

Frequency of Response: Once annually.

Estimated Number of Respondents: 100.

Title: 10–10135b (PDQ–8).

Affected Public: Individuals or households.

Estimated Annual Burden: 35 hours.

Estimated Average Burden per Respondent: 7 minutes.

Frequency of Response: Once annually.

Estimated Number of Respondents: 100.

Title: 10–10135(c) Cost & Patient Outcomes.

Affected Public: Individuals or households.

Estimated Annual Burden: 35 hours.

Estimated Average Burden per Respondent: 7 minutes.

Frequency of Response: Once annually.

Estimated Number of Respondents: 100.

Title: 10135(d) Patient Assessment of Communication During Telehealth.

Affected Public: Individuals or households.

Estimated Annual Burden: 35 hours.

Estimated Average Burden per Respondent: 7 minutes.

Frequency of Response: Once annually.

Estimated Number of Respondents: 100.

Dated: January 22, 2015.

By direction of the Secretary.

Crystal Rennie,

Department Clearance Officer, Department of Veterans Affairs.

[FR Doc. 2015–01398 Filed 1–26–15; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–NEW (10–10130)]

Proposed Information Collection (From War to Home: Improving Patient-Centered Care and Promoting Empathy for ''Operation Enduring Freedom'' and ''Operation Iraqi Freedom'' (OEF/OIF) Veterans in the Veterans Health Administration Patient Aligned Care Team Demo Lab VISN 4) Activity: Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each new collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to obtain an accurate and comprehensive assessment of satisfaction of patients who receive mental health care services and on outcomes for Veterans who seek mental health treatment from VHA. Data will allow the program office to ensure that the target audience is being reached, effective treatments are being offered, and tangible, quantitative results are being measured and tracked for continual program improvement.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before March 30, 2015.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov;* or Audrey Revere, Office of Regulatory and Administrative Affairs, Veterans Health Administration (10B4), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email: *Audrey.revere@va.gov.* Please refer to ''OMB Control No. 2900–NEW (From War to Home: Improving Patient-Centered Care and Promoting Empathy for ''Operation Enduring Freedom'' and ''Operation Iraqi Freedom'' (OEF/OIF) Veterans in the Veterans Health Administration Patient Aligned Care Team Demo Lab VISN 4)'' in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Audrey Revere at (202) 461–5694.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Titles: From War to Home: Improving Patient-Centered Care and Promoting Empathy for OEF/OIF Veterans in the VHA—PACT Demo Lab VISN 4, VA Form 10–10130.

OMB Control Number: 2900–NEW.

Type of Review: New data collection.

Abstract: This project is being conducted under the auspices of the VISN 4 Demonstration Lab, which was funded by Patient Care Services to assess the Patient Aligned Care Team (PACT) model of care for Veterans. There is considerable interest in and urgency to implement the PACT model—reflecting both a desire to improve health care for Veterans and to sustain the VA's leadership in health care quality. CEPACT aims to contribute to these goals by evaluating the effects of the VA PACT initiative and by testing new, innovative strategies for patient care that can be spread if proven effective.

Affected Public: Individuals or households.

Estimated Annual Burden: 84 burden hours.

Estimated Average Burden Per Respondent: 5 minutes.

Frequency of Response: Once annually.

Estimated Number of Respondents: 1000.

Dated: January 22, 2015.

By direction of the Secretary.

Crystal Rennie,

Department Clearance Officer, Department of Veterans Affairs.

[FR Doc. 2015–01397 Filed 1–26–15; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0751]

Proposed Information Collection (Supplier Perception Survey) Activity; Comment Request

AGENCY: Office of Acquisition and Logistics, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Office of Acquisition and Logistics (OAL), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each revision of a previously approved collection, and

allow 60 days for public comment in response to this notice. This notice solicits comments on the information needed to transform the acquisition and logistics operation.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before March 30, 2015.

ADDRESSES: Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *www.Regulations.gov*; or to Rosa Cason, Logistics Policy and Supply Chain Management (00313), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420; or email: *rosa.cason@va.gov.* Please refer to ''OMB Control No. 2900–0751'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Rosa Cason at (202) 632–5773.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, OAL invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of OAL's functions, including whether the information will have practical utility; (2) the accuracy of OAL's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Department of Veterans Affairs Supplier Perception Survey.

OMB Control Number: 2900–0751.

Type of Review: Revision of previously approved collection.

Abstract: The data collected will be used to improve the quality of services delivered to VA customers and to help develop key performance indicators in acquisition and logistics operations across VA enterprise.

Affected Public: Business or other for-profit, and not-for-profit institutions.

Estimated Annual Burden: 35,100 hours.

Estimated Average Burden per Respondent: 45 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 45,840.

Dated: January 22, 2015.

By direction of the Secretary.

Crystal Rennie,

VA Clearance Officer, Department of Veterans Affairs.

[FR Doc. 2015–01391 Filed 1–26–15; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0716]

Agency Information Collection (Complaint of Employment Discrimination) Activity Under OMB Review

AGENCY: Office of Resolution Management, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–21), this notice announces that the Office of Resolution Management (ORM), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comments. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before February 26, 2015.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov,* or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No. 2900–0716'' in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Crystal Rennie, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7492 or email *crystal.rennie@va.gov.* Please refer to ''OMB Control No. 2900–0716'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Complaint of Employment Discrimination.

OMB Control Number: 2900–0716.

Type of Review: Revision of a currently approved collection.

Abstract: VA employees, former employees, applicants for employment and contractors who believe they were subject to discrimination because of their Race, Color, Religion, Sex, National Origin, Age, Disability, Genetic Information (including family medical history), and Reprisal for participating in the EEO process or opposing unlawful discrimination complete VA Form 4939 to file complaint of discrimination.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 79 FR 67242, November 12, 2014.

Affected Public: Individuals or households.

Estimated Annual Burden: 158 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 315.

Dated: January 22, 2015.

By direction of the Secretary:

Crystal Rennie,

Department of Clearance Officer, Department of Veterans Affairs.

[FR Doc. 2015–01388 Filed 1–26–15; 8:45 am]

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Part II

National Credit Union Administration

12 CFR Parts 700, 701, 702 et al.
Risk-Based Capital; Proposed Rule

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 700, 701, 702, 703, 713, 723, and 747

RIN 3133–AD77

Risk-Based Capital

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule.

SUMMARY: The NCUA Board (Board) is seeking comment on a second proposed rule that would amend NCUA's current regulations regarding prompt corrective action (PCA) to require that credit unions taking certain risks hold capital commensurate with those risks. The proposal would restructure NCUA's PCA regulations and make various revisions, including amending the agency's current risk-based net worth requirement by replacing the current risk-based net worth ratio with a new risk-based capital ratio for federally insured natural person credit unions (credit unions). The proposal would also, in response to public comments received, make a number of changes to the original proposed rule that the Board published in the **Federal Register** on February 27, 2014. These changes include, among other things, exempting credit unions with up to $100 million in total assets from the new rule, lowering the risk-based capital ratio level required for an affected credit union to be classified as well capitalized from 10.5 percent to 10 percent, lowering the risk weights for various classes of assets, removing interest rate risk components from the risk weights, and extending the implementation timeframe to January 1, 2019. These changes would substantially reduce the number of credit unions subject to the rule, reduce the impact on affected credit unions, and afford affected credit unions sufficient time to prepare for the rule's implementation.

The proposed risk-based capital requirement set forth in this proposal would be more consistent with NCUA's risk-based capital measure for corporate credit unions and more comparable to the regulatory risk-based capital measures used by the Federal Deposit Insurance Corporation, Board of Governors of the Federal Reserve, and Office of the Comptroller of Currency (Other Banking Agencies).

In addition, the proposed revisions would amend the risk weights for many of NCUA's current asset classifications; require higher minimum levels of capital for credit unions with concentrations of assets in real estate loans or commercial loans or higher levels of non-current loans; and set forth how NCUA can address a credit union that does not hold capital that is commensurate with its risk.

The proposed revisions would also eliminate several provisions in NCUA's current PCA regulations, including provisions relating to the regular reserve account, risk-mitigation credits, and alternative risk weights. (For clarity, the ''current'' PCA regulations would remain in force until the effective date of a final risk-based capital rule.)

DATES: Comments must be received by April 27, 2015.

ADDRESSES: You may submit written comments, identified by RIN 3133–AD77, by any of the following methods (Please send comments by one method only):

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- NCUA Web site: *http://www.ncua.gov/Legal/Regs/Pages/PropRegs.aspx.* Follow the instructions for submitting comments.
- Email: Address to *regcomments@ncua.gov.* Include ''[Your name]—

Comments on Proposed Rule: Risk-Based Capital'' in the email subject line.

- Fax: (703) 518–6319. Use the subject line described above for email.
- Mail: Address to Gerard Poliquin, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.
- Hand Delivery/Courier: Same as mail address.

You can view all public comments on NCUA's Web site at *http://www.ncua.gov/Legal/Regs/Pages/PropRegs.aspx* as submitted, except for those we cannot post for technical reasons. NCUA will not edit or remove any identifying or contact information from the public comments submitted. You may inspect paper copies of comments in NCUA's law library at 1775 Duke Street, Alexandria, Virginia 22314, by appointment weekdays between 9:00 a.m. and 3:00 p.m. To make an appointment, call (703) 518–6546 or send an email to *OGCMail@ncua.gov.*

FOR FURTHER INFORMATION CONTACT: Larry Fazio, Director, Office of Examination and Insurance, at (703) 518–6360; JeanMarie Komyathy, Director, Division of Risk Management, Office of Examination and Insurance, at (703) 518–6360; Steven Farrar, Loss/Risk Analyst, Division of Risk Management, Office of Examination and Insurance, at (703) 518–6393; John Shook, Loss/Risk Analyst, Division of Risk Management, Office of Examination and Insurance, at (703) 518–3799; Tom Fay, Senior Capital Markets Specialist, Division of Capital and Credit Markets, Office of Examination and Insurance, at (703) 518–1179; Rick Mayfield, Senior Capital Markets Specialist, Division of Capital and Credit Markets, Office of Examination and Insurance, at (703) 518–6501; or by mail at National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314.

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Legal Authority
III. Summary of the Original Proposal and This Proposal
IV. Section-by-Section Analysis
V. Effective Date
VI. Impact of this Proposed Rule
VII. Regulatory Procedures

I. Introduction

NCUA's primary mission is to ensure the safety and soundness of federally insured credit unions. NCUA performs this function by examining and supervising all federal credit unions, participating in the examination and supervision of federally insured, state-chartered credit unions in coordination with state regulators, and insuring members' accounts at federally insured credit unions.[1] In its role as administrator of the National Credit Union Share Insurance fund (NCUSIF), NCUA insures and regulates approximately 6,400 federally insured credit unions, holding total assets exceeding $1.1 trillion and representing approximately 99 million members.

At its January 2014 meeting, the Board issued a proposed rule (the Original Proposal)[2] to amend NCUA's PCA regulations, part 702. The Original Proposal sought to enhance risk sensitivity and address weaknesses in the existing regulatory capital framework for credit unions. The revisions in the Original Proposal included a new method for computing NCUA's risk-based requirement that would be more consistent with the risk-based capital ratio measure used for corporate credit unions[3] and more comparable to the risk-based capital ratio measures used by the Other Banking Agencies.[4] In general, this new method for computing NCUA's risk-based requirement would have adjusted the risk weights for many asset

[1] Within the nine states that allow privately insured credit unions, approximately 133 state-chartered credit unions are privately insured and are not subject to NCUA regulation or oversight.

[2] 79 FR 11183 (Feb. 27, 2014).

[3] *See* 12 CFR part 704.

[4] *See* 78 FR 55339 (Sept. 10, 2013).

classifications to lower the minimum risk-based capital ratio requirement for credit unions with lower-risk operations. Conversely, this new method would have required higher minimum levels of risk-based capital for credit unions with concentrations of assets in residential real estate loans or commercial loans, or high levels of non-current loans.

In addition, due to the inherent limitations of any widely applied risk-based capital measurement system, the Original Proposal also included procedures for the Board to require an individual credit union to hold a higher level of risk-based capital where NCUA staff raised specific supervisory concerns regarding the credit union's condition. Finally, the Original Proposal eliminated the provisions of current § 702.401(b) relating to transfers to the regular reserve account, current § 702.106 regarding the standard calculation of the RBNW ratio requirement, current § 702.107 regarding alternative components for the standard calculation, and current § 702.108 regarding the risk-mitigation credit.

In response to the Original Proposal, the Board received over 2,000 comments with many suggestions on how to improve the Original Proposal. The Board has reviewed the comments and determined that it was appropriate to issue a second proposed rule. The Board notes that, because this is a new proposed rule, it is not required to respond to any comments received on the Original Proposal. However, the Board believes it is important to address those comments, and has, therefore, included comment summaries and responses throughout the preamble to this proposal.

The Board is now requesting comment on this second proposed rule regarding risk-based capital. Based largely on comments it received on the Original Proposal, the Board is proposing many improvements to the Original Proposal, including: (1) Amending the definition of ''complex'' credit union by increasing the asset threshold from $50 million to $100 million; (2) reducing the number of asset concentration thresholds for residential real estate loans and commercial loans (formerly classified as MBLS); (3) assigning one-to-four family non-owner-occupied residential real estate loans the same risk weights as other residential real estate loans; (4) eliminating IRR from this proposed rule; (5) extending the implementation timeframe to January 1, 2019; and (6) eliminating the Individual Minimum Capital Requirement (IMCR) provision. Among other things, these changes would substantially reduce the number of credit unions subject to the rule, and would afford affected credit unions sufficient time to prepare for the rule's full implementation. A full discussion of the impact of these and other changes in this proposed rule is contained in Impact of the Proposed Regulation part of the preamble below.

As discussed in more detail below, the revisions in the Original Proposal and this proposal are intended to implement the statutory requirements of the Federal Credit Union Act (FCUA) and follow recommendations made by the Government Accountability Office (GAO).

II. Legal Authority

In 1998, Congress enacted the Credit Union Membership Access Act (CUMAA).[5] Section 301 of CUMAA added new section 216 to the FCUA,[6] which requires the Board to adopt by regulation a system of PCA to restore the net worth of credit unions that become inadequately capitalized.[7] Section 216(b)(1)(A) requires the Board to adopt by regulation a system of PCA for federally insured credit unions that is ''consistent with'' section 216 of the FCUA and ''comparable to'' section 38 of the Federal Deposit Insurance Act (FDI Act).[8] Section 216(b)(1)(B) requires that the Board, in designing the PCA system, also take into account the ''cooperative character of credit unions'' (*i.e.,* that credit unions are not-for-profit cooperatives that do not issue capital stock, must rely on retained earnings to build net worth, and have boards of directors that consist primarily of volunteers).[9] In 2000, the Board implemented the required system of PCA, primarily in part 702 of NCUA's regulations.[10]

The purpose of section 216 of the FCUA is to ''resolve the problems of [federally] insured credit unions at the least possible long-term loss to the [NCUSIF].'' [11] To carry out that purpose, Congress set forth a basic structure for PCA in section 216 that consists of three principal components: (1) A framework combining mandatory actions prescribed by statute with discretionary actions developed by NCUA; (2) an alternative system of PCA to be developed by NCUA for credit unions defined as ''new''; and (3) a risk-based net worth requirement to apply to credit unions that NCUA defines as ''complex.'' This proposed rule focuses primarily on principal components (1) and (3), although amendments to part 702 of NCUA's regulations relating to principal component (2) are also included as part of this proposal.

Among other things, section 216(c) of the FCUA requires NCUA to use a credit union's net worth ratio to determine its classification among five ''net worth categories'' set forth in the FCUA.[12] Section 216(o) generally defines a credit union's ''net worth'' as its retained earnings balance,[13] and a credit union's ''net worth ratio'' [14] as the ratio of its net worth to its total assets.[15] As a credit union's net worth ratio declines, so does its classification among the five net worth categories, thus subjecting it to an expanding range of mandatory and discretionary supervisory actions.[16]

Section 216(d)(1) of the FCUA requires that NCUA's system of PCA include, in addition to the statutorily defined net worth ratio requirement applicable to federally insured natural-person credit unions, ''a risk-based net worth [17] requirement for insured credit

[5] Public Law 105–219, 112 Stat. 913 (1998).

[6] 12 U.S.C. 1790d.

[7] The risk-based net worth requirement for credit unions meeting the definition of ''complex'' was first applied on the basis of data in the Call Report reflecting activity in the first quarter of 2001. 65 FR 44950 (July 20, 2000). NCUA's risk-based net worth requirement has been largely unchanged since its implementation, with the following limited exceptions: Revisions were made to the rule in 2003 to amend the risk-based net worth requirement for MBLs, 68 FR 56537 (Oct. 1, 2003); revisions were made to the rule in 2008 to incorporate a change in the statutory definition of ''net worth,'' 73 FR 72688 (Dec. 1, 2008); revisions were made to the rule in 2011 to expand the definition of ''low-risk assets'' to include debt instruments on which the payment of principal and interest is unconditionally guaranteed by NCUA, 76 FR 16234 (Mar. 23, 2011); and revisions were made in 2013 to exclude credit unions with total assets of $50 million or less from the definition of ''complex'' credit union, 78 FR 4033 (Jan. 18, 2013).

[8] 12 U.S.C. 1790d(b)(1)(A); *see also* 12 U.S.C. 1831o (Section 38 of the FDI Act setting forth the PCA requirements for banks).

[9] 12 U.S.C. 1790d(b)(1)(B).

[10] 12 CFR part 702; *see also* 65 FR 8584 (Feb. 18, 2000) *and* 65 FR 44950 (July 20, 2000).

[11] 12 U.S.C. 1790d(a)(1).

[12] Section 1790d(c).

[13] Section 1790d(o)(2).

[14] Throughout this document the terms ''net worth ratio'' and ''leverage ratio'' are used interchangeably.

[15] Section 1790d(o)(3).

[16] Section 1790d(c) through (g); 12 CFR 702.204(a) and (b).

[17] For purposes of this rulemaking, the term ''risk-based net worth requirement'' is used in reference to the statutory requirement for the Board to design a capital standard that accounts for variations in the risk profile of complex credit union. The terms ''risk-based capital ratio'' and ''risk-based capital ratio'' are used to refer to the specific standards this rulemaking proposes to function as criteria for the statutory risk-based net worth requirement. For example, this rulemaking's proposed risk-based capital ratio would replace the risk-based net worth ratio in the current rule. The term ''risk-based capital ratio'' is also used by the Other Banking Agencies and the international banking community

Continued

unions that are complex, as defined by the Board . . . .'' [18] Unlike the terms ''net worth'' and ''net worth ratio,'' the term ''risk-based net worth'' is not defined in the FCUA.[19] Accordingly, when read together, sections 216(b)(1) and 216(d)(1) grant the Board broad authority to design PCA regulations, including a risk-based net worth requirement, so long as the regulations are comparable to the Other Banking Agencies' PCA requirements and consistent with the requirements of section 216 of the FCUA and the cooperative character of credit unions.

The FCUA directs NCUA to base its definition of ''complex'' credit unions ''on the portfolios of assets and liabilities of credit unions.'' [20] It also requires NCUA to design a risk-based net worth requirement to apply to such ''complex'' credit unions.[21] The risk-based net worth requirement must ''take account of any material risks against which the net worth ratio required for [a federally] insured credit union to be adequately capitalized [(six percent net worth ratio)] may not provide adequate protection.'' [22] In the Senate Report on CUMAA, Congress expressed its intent with regard to the design of the risk-based requirement and the meaning of section 216(d)(2) by providing:

> The NCUA must design the risk-based net worth requirement to take into account any material risks against which the 6 percent net worth ratio required for a credit union to be adequately capitalized may not provide adequate protection. Thus the NCUA should, for example, consider whether the 6 percent requirement provides adequate protection against interest-rate risk and other market risks, credit risk, and the risks posed by contingent liabilities, as well as other relevant risks. The design of the risk-based net worth requirement should reflect a reasoned judgment about the actual risks involved.[23]

Section 216(c) of the FCUA requires that, if a credit union meets the definition of ''complex'' and its net worth ratio initially indicates that it meets or exceeds the net worth ratio requirement to be either ''adequately capitalized'' or ''well capitalized,'' the credit union must still satisfy the separate risk-based net worth requirement.[24] Under the separate risk-based net worth requirement, the complex credit union must, in addition to meeting the statutory net worth ratio requirement, also meet or exceed the minimum risk-based net worth requirement that corresponds to either the adequately capitalized or well capitalized capital category in order to receive a capital classification of adequately capitalized or well capitalized, as the case may be.[25] For example, if a complex credit union meets or exceeds the net worth ratio requirement to be classified as well capitalized, then it must also meet or exceed the corresponding risk-based net worth requirement to be well capitalized.

If any complex credit union meets or exceeds the net worth ratio requirement to be classified as well capitalized or adequately capitalized, but fails to meet the corresponding risk-based net worth requirement to be well capitalized or adequately capitalized, then the credit union's capital classification is determined based on the risk-based net worth requirement. For example, if a complex credit union is classified as well capitalized based on its net worth ratio, but only meets the risk-based net worth requirement that corresponds with the adequately capitalized capital category, then that credit union's capital classification would be adequately capitalized. Similarly, if a complex credit union meets the risk-based net worth requirement to be well capitalized, but only meets the net worth ratio requirement to be undercapitalized, then that credit union's overall capital classification is undercapitalized. In either case, the credit union would be subject to any mandatory and discretionary supervisory actions applicable to its lowest capital classification category.[26]

In response to the Original Proposal, some commenters questioned NCUA's legal authority to impose a risk-based net worth requirement on both well capitalized and adequately capitalized credit unions. NCUA's position is that the Board is authorized to do so under the FCUA. Section 216(c)(1)(A) specifically provides that, to be classified as well capitalized, a complex credit union must meet the statutory net worth ratio requirement *and* any applicable risk-based net worth requirement. Section 216(c)(1) provides, in relation to ''net worth categories,'' that: (1) An insured credit union is ''well capitalized'' if it has a net worth ratio of not less than 7 percent; *and* it meets *any applicable risk-based net worth requirement* under subsection (d) of this section; (2) an insured credit union is ''adequately capitalized'' if it has a net worth ratio of not less than 6 percent; *and* it meets *any applicable risk-based net worth requirement* under subsection (d) of this section; and (3) an insured credit union is ''undercapitalized'' if it has a net worth ratio of less than 6 percent; *or* it fails to meet *any applicable risk-based net worth requirement* under subsection (d) of this section.[27] The language in components (1) and (2), when read in conjunction with the language in section 216(d), authorizes NCUA to impose risk-based net worth requirements on both well capitalized and adequately capitalized credit unions.

In addition, section 216(d)(2) of the FCUA sets forth specific requirements for the design of the risk-based net worth requirement mandated under section 216(d)(1).[28] Specifically, section 216(d)(2) requires that the Board ''design the risk-based net worth requirement to take account of *any material risks* against which the *net worth ratio* required for an insured credit union to be adequately capitalized may not provide adequate protection.'' [29] Under section 216(c)(1)(B) of the FCUA, the *net worth ratio* required for an insured credit union to be adequately capitalized is six percent.[30] The plain language of section 216(d)(2) supports NCUA's interpretation that Congress intended for the Board to design a risk-based net worth requirement to take into account any material risks beyond those already addressed through the statutory 6 percent *net worth ratio* required for a

when referring to the types of risk-based requirements that are addressed in this proposal. This change in terminology throughout the proposal would have no substantive effect on the requirements of the FCUA, and is intended only to reduce confusion for the reader.

[18] 12 U.S.C. 1790d(d)(1).

[19] *See* 12 U.S.C. 1790d(o) (Congress specifically defined the terms ''net worth'' and ''net worth ratio'' in the FCUA, but did not define the statutory term ''risk-based net worth.'').

[20] 12 U.S.C. 1790d(d).

[21] *Id.*

[22] 12 U.S.C. 1790d(d)(2).

[23] S. Rep. No. 193, 105th Cong., 2d Sess. 13 (1998).

[24] 12 U.S.C. 1790d(c).

[25] The risk-based net worth requirement also indirectly impacts credit unions in the ''undercapitalized'' and lower net worth categories, which are required to operate under an approved net worth restoration plan. The plan must provide the means and a timetable to reach the ''adequately capitalized'' category. *See* 12 U.S.C. 1790d(f)(5) *and* 12 CFR 702.206(c). However, for ''complex'' credit unions in the ''undercapitalized'' or lower net worth categories, the minimum net worth ratio ''gate'' to that category will be six percent or the credit union's risk-based net worth requirement, if higher than 6 percent. In that event, a complex credit union's net worth restoration plan will have to prescribe the steps a credit union will take to reach a higher net worth ratio ''gate'' to that category. *See* 12 CFR 702.206(c)(1)(i)(A) *and* 12 U.S.C. 1790d(c)(1)(A)(ii) and (c)(1)(B)(ii).

[26] 12 U.S.C. 1790d(c)(1)(c)(ii).

[27] 12 U.S.C. 1790d(c)(1)(A)–(C) (emphasis added).

[28] *Id.* at section 1790d(d).

[29] *Id.* at section 1790d(d)(2).

[30] *Id.* at section 1790d(c)(1)(B).

credit union to be adequately capitalized.[31]

In other words, the language in section 216(d)(2) of the FCUA simply identifies the types of risks that NCUA's risk-based net worth requirement must address (*i.e.,* those risks not already addressed by the statutory six percent net worth ratio requirement). It is a misinterpretation of section 216(d)(2) to argue, as some commenters have in response to the Original Proposal, that Congress' use of the term ''adequately capitalized'' in section 216(d)(2) somehow limits the Board's authority to impose a higher risk-based capital ratio level for well capitalized credit unions. Rather than prohibiting the Board from imposing a higher risk-based capital ratio level for well capitalized credit unions, section 216(d)(2) simply requires that the Board design the risk-based net worth requirement to take into account those risks not adequately addressed by the statute's six percent *net worth ratio* requirement. Thus, the plain language of section 216(d) does not support these commenters' interpretation.

NCUA's interpretation of its legal authority to impose a risk-based net worth requirement on both well capitalized and adequately capitalized credit unions is further supported by the Other Banking Agencies' PCA statute and regulations.[32] Section 38(c)(1)(A) of the FDI Act, upon which section 216 of the FCUA was modeled,[33] requires that the Other Banking Agencies' ''relevant capital measures'' ''include (i) a leverage limit; and (ii) *a risk-based capital requirement.''*[34] Despite Congress' use of the singular noun ''requirement'' in section 38 of the FDI Act, the Other Banking Agencies' PCA regulations, which went into effect before Congress passed CUMAA, have long required that their regulated institutions meet different risk-based capital ratio levels to be classified as well capitalized, adequately capitalized, undercapitalized, or significantly undercapitalized. Therefore, by setting different risk-based capital ratio levels for credit unions to be adequately and well capitalized, NCUA's risk-based capital requirement would be consistent with the requirements of section 216 of the FCUA and would be ''comparable'' to the Other Banking Agencies' PCA regulations.

III. Summary of the Original Proposal and this Second Proposal

A. The Important Role and Benefit of Capital

Capital is the buffer that depository institutions, including credit unions, use to prevent institutional failure or dramatic deleveraging during times of strees. As evidenced by the recent recession, during a financial crisis a buffer can mean the difference between the survival or failure of a financial insitution. Financial crises are very costly, both to the economy in general and to individual depository institutions.[35] While the onset of a financial crisis is inherently unpredictable, a review of the historical record over a range of countries and recent time periods has suggested that a significant crisis involving depository institutions occurs about once every 20 to 25 years, and has a typical cumulative discounted cost in terms of lost aggregate output relative to the precrisis trend of about 60 percent of precrisis annual output.[36] In other words, the typical crisis results in losses over time, relative to the precrisis trend economic growth, that amount to more than half of the economy's output before the onset of the crisis.

The 2007–2009 financial crisis and the associated economic dislocations during the Great Recession were particularly costly to the United States in terms of lost output and jobs. Real GDP declined more than four percent, almost nine million jobs were lost, and the unemployment rate rose to 10 percent.[37] The cited figures are just the direct losses. Compared to where the economy would have been had it followed the precrisis trend, the losses in terms of GDP and jobs would be higher. For example, using the results described in the previous paragraph as a guide, the cumulative loss of output from the recent financial crisis is roughly $10 trillion (2014 dollars).[38] Other estimates of the total loss, derived using approaches different than described in the previous paragraph, are similar. For example, researchers at the Federal Reserve Bank of Dallas, using a different approach that achieved results within the same range, estimated a range of loss of $6 trillion to $14 trillion due to the crisis.[39]

Research using bank data across several countries and time periods indicates that higher levels of capital insulate financial institutions from the

[31] *See* S. Rep. No. 193, 105th Cong., 2d Sess. (1998) (providing in relevant part: ''The NCUA must design the risk-based net worth requirement to take into account any material risks against which the 6 percent net worth ratio required for an insured credit union to be adequately capitalized may not provide adequate protection.'').

[32] *See* 12 U.S.C. 1831o, *and, e.g.,* 12 CFR 324.403(b).

[33] *See* S. Rep. No. 193, 105th Cong., 2d Sess., 12 (1998) (Providing in relevant part: ''New section 216 [of the FCUA] is modeled on section 38 of the Federal Deposit Insurance Act, which has applied to FDIC-insured depository institutions since 1992.'').

[34] 12 U.S.C. 1831o(c)(1)(A) (emphasis added).

[35] Credit unions play a sizable role in the U.S. depository system. Assets in the credit union system amount to more than $1.1 trillion, roughly 8 percent of U.S. chartered depository institution assets (source: NCUA Calculation using the financial accounts of the United States, Federal Reserve Statistical Release Z.1, Table L.110, September 18, 2014). Data from the Federal Reserve indicate that credit unions account for about 12 percent of private consumer installment lending. (Source: NCUA calculations using data from the Federal Reserve Statistical Release G.19, Consumer Credit, September 2014. Total consumer credit outstanding (not mortgages) was $3,246.8 billion of which $826.2 billion was held by the federal government and $293.1 billion was held by credit unions. The 12 percent figure is the $293.1 billion divided by the total outstanding less the federal government total). Just over a third of households have some financial affiliation with a credit union. (Source: NCUA calculations using data from the Federal Reserve 2013 survey of Consumer Finance.) All Federal Reserve Statistical Releases are available at *http:\\www.federalreserve.gov\econresdata\statisticsdata.htm.*

[36] Basel Committee on Banking Supervision, *An assessment of the long-term economic impact of stronger capital and liquidity requirements* 3–4 (August 2010), available at *http://www.bis.org/publ/bcbs173.pdf.* These losses do not explicitly account for government interventions that ameliorated the observed economic impact. This is the median loss estimate.

[37] The National Bureau of Economic Research Business Cycle Dating Committee defines the beginning date of the recession as December 2007 (2007Q4) and the ending date of the recession as June 2009 (2009Q2). See the National Bureau of Economic Research Web site: *http://www.nber.org/cycles/cyclesmain.html.* The real GDP decline was calculated by NCUA using data for 2007Q4 and 2009Q2 from the National Income and Product Accounts, Bureau of Economic Analysis, U.S. Department of Commerce; see Table 1.1.3. Data are available at *http://www.bea.gov/iTable/iTable.cfm?ReqID=9&step=1#reqid=9&step=1&isuri=1.* Data accessed November 11, 2014. The jobs lost figure was calculated by NCUA using data from the Bureau of Labor Statistics (BLS), U.S. Department of Labor, Current Employment Statistics, CES Peak-Trough Tables. The statistic cited is the decline in total nonfarm employees from December 2007 through February 2010, which BLS defines as the trough of the employment series. Data available at: *http://www.bls.gov/ces/cespeaktrough.htm* and accessed on November 11, 2014. The unemployment rate was taken from the Bureau of Labor Statistics, U.S. Department of Labor, Current Population Survey, series LNS14000000. Accessed November 11, 2014 at *http://data.bls.gov/pdq/SurveyOutputServlet.* The unemployment rate peaked at 10 percent in October 2009.

[38] NCUA calculations based on from the National Income and Product Accounts, Bureau of Economic Analysis, U.S. Department of Commerce. Data from Table 1.1.6 show real GDP at $14.992 trillion in 2007Q4 in chained 2009 dollars. Adjusting to 2014 dollars using the GDP price index and using the 60 percent loss figure cited yields an estimated loss of approximately $10 trillion in 2014 dollars. Data are available at *http://www.bea.gov/iTable/iTable.cfm?ReqID=9&step=1#reqid=9&step=1&isuri=1.*

[39] Tyler Atkinson, David Luttrell & Harvey Rosenblum, Fed. Reserve Bank of Dall, *How Bad Was It? The Costs and Consequences of the 2007–2009 Financial Crisis* (July 2013), available at *https://dallasfed.org/assets/documents/research/staff/staff1301.pdf.*

effects of unexpected adverse developments in their asset portfolio or their deposit liabilities.[40] For the financial system as a whole, research on the banking sector has shown that higher levels of capital can reduce the probability of a systemic crisis.[41] By reducing the probability of a systemic financial crisis and insulating individual institutions from failure, higher capital requirements confer very large benefits to the overall economy.[42] With the median long-term output loss associated with a crisis in the range of 60 percent of precrisis GDP, a one percentage point reduction in the probability of a crisis would add roughly 0.6 percent to GDP each year (permanently).[43]

While higher levels of capital can insulate depository institutions from adverse shocks, holding higher levels of capital does have costs, both to individual institutions and to the economy as a whole. For the most part, the largest cost associated with holding higher levels of capital, in the long term, is foregone opportunities; that is, from the loss of potential earnings from making loans, from the cost to bank customers and credit union members of higher loan rates and lower deposit rates, and the downstream costs from the customers' and members' reduced spending.[44] Estimating the size of these effects is difficult. However, despite limitations on the ability to quantify these effects, the annual costs appear to be significantly smaller than the losses avoided by reducing the probability of a systemic crisis. For example, research using data on banking systems across developed countries indicates that a one percentage point increase in the capital ratio increases lending spreads (the spread between lending rates and deposit rates) by 13 basis points.[45] The research also shows that the long-run reduction in output (real GDP) consistent with a one percentage point increase in the Tier 1 common equity[46] to risks assets ratio would be on the order of 0.1 percent.[47] Thus, it is clear that the relatively large potential long-term benefits of holding higher levels of capital outweigh the relatively small long-term costs.

The recent financial crisis revealed a number of inadequacies in the current approach to capital requirements. Banks, in particular, experienced an elevated number of failures and the need for federal intervention in the form of capital infusions.[48] As discussed in more detail below, credit unions also experienced elevated losses and the need for government intervention. The clear implication is that capital levels in these cases were inadequate, especially relative to the riskiness of the assets that some institutions were holding on their books.

In a risk-based capital system, institutions that are holding assets that have historically shown higher levels of risk are generally required to hold more capital against those assets. At the same time, an institution's leverage ratio, which does not account for the riskiness of assets, can provide a baseline level of capital adequacy in the event that the approach to assigning risk weights does not capture all risks. A system including well-designed and well-calibrated risk-based capital standards is generally more efficient from the point of view of the overall economy, as well as for individual institutions. In general, risk-based capital standards increase capital requirements at those institutions whose asset portfolios have, on average, higher risk. Conversely, risk-based capital standards generally decrease the cost of holding capital for institutions whose strategies focus on lower risk activities. In that way, risk-based capital standards generate the benefits of helping to insulate the economy from financial crises, while also preventing some of the potential costs that would occur from holding unnecessarily high levels of capital at low-risk institutions.

B. Why did the Board issue the Original Proposal?

The Original Proposal would have amended NCUA's risk-based net worth requirements to be more comparable to the Other Banking Agencies' regulations, as required by the FCUA.[49] In 2013, the Other Banking Agencies issued final rules materially updating the risk-based capital requirements for insured banks.[50] These changes to the Other Banking Agencies' risk-based capital requirements, the weaknesses in NCUA's current risk-based net worth ratio requirement exposed by the recession of 2007–2009, and the fact that NCUA's risk-based net worth requirement had not been meaningfully updated since 2002, prompted the Board to reconsider NCUA's current risk-based net worth ratio requirement and other aspects of NCUA's current PCA regulations. In so doing, the Board was also guided by specific recommendations to update NCUA's PCA regulations made by GAO in its January 2012 review of NCUA's system of PCA.[51]

The Board issued the Original Proposal to enhance risk sensitivity and address weaknesses in the existing regulatory capital framework for credit unions. Under the current rule, only two credit unions are required to hold more capital as a result of the required risk-based net worth ratio measure. The Board emphasized that capital and risk operate synchronously, and that credit union senior management, boards, and regulators are all accountable for ensuring that appropriate capital levels are in place based on the credit union's risk exposure. The Original Proposal reflected the Board's initial effort to establish a system for assigning risk

[40] *See* An Assessment of the Long-Term Economic Impact of Stronger Capital and Liquidity Requirements, Basel Committee on Banking Supervision, August 2010. Pages 14–17. The study indicates that the seven percent TCE/RWA ratio is equivalent to a five percent ratio of equity to total assets. The average ratio of equity to total assets for the 14 largest OECD countries from 1980 to 2007 was 5.3 percent.

[41] *Id.*

[42] *Id.*

[43] *Id.*

[44] *See* An Assessment of the Long-Term Economic Impact of Stronger Capital and Liquidity Requirements, Basel Committee on Banking Supervision, August 2010. Pages 21–27.

[45] There are a number of simplifying assumptions involved in the calculation, including the assumption that banks fully pass through the increase in the cost of capital to their borrowers. *See* Basel Committee on Banking Supervision, *An Assessment of the Long-Term Economic Impact of Stronger Capital and Liquidity Requirements* 21–27 (Aug. 2010).

[46] Tier 1 common equity is made up of common stock, retained earnings, accumulated other comprehensive income, and some miscellaneous minority interests and common stock as part of an employee stock ownership plan.

[47] To be clear, the 0.1 percent figure represents the one-time, long-term loss, which should be compared with the 60 percent loss potentially avoided by reducing the probability of a financial crisis by a little more than one percentage point. See *An Assessment of the Long-Term Economic Impact of Stronger Capital and Liquidity Requirements,* Basel Committee on Banking Supervision, August 2010. Pages 21–27.

[48] For a readable overview of the 2007–2008 financial crisis and the government response see, *The Final Report of the Congressional Oversight Panel,* Congressional Oversight Panel, March 16, 2011. See also Ben S. Bernanke, ''Some Reflections on the Crisis and the Policy Response,'' Speech at the Russell Sage Foundation and The Century Foundation Conference on ''Rethinking Finance,'' New York, New York, April 13, 2012. Available at: *http://www.federalreserve.gov/newsevents/speech/2012speech.htm.*

[49] *See* 12 U.S.C. 1790d(b)(1)(A)(ii) (Requiring that the NCUA's system of PCA be ''comparable'' to the PCA requirements in section 1831o of the Federal Deposit Insurance Act).

[50] 78 FR 55339 (Sept. 10, 2013) (The FDIC published an interim final rule regarding regulatory capital for their regulated institutions separately from the Other Banking Agencies.) *and* 78 FR 62017 (Oct. 11, 2013) (The Office of the Comptroller of the Currency and the Board of Governors of the Federal Reserve System later published a regulatory capital final rule for their regulated institutions, which is consistent with the requirements in the FDIC's IFR.).

[51] *See* U.S. Govt. Accountability Office, GAO–12–247, *Earlier Actions Are Needed to Better Address Troubled Credit Unions,* (Jan. 2012) *available at http://www.gao.gov/products/GAO-12-247.*

weights that was more indicative of the potential risks existing within credit unions. Accordingly, the Original Proposal was intended to help credit unions better absorb losses and establish a safer, more resilient, and more stable credit union system that could weather periods of financial stress, thereby reducing risks to the NCUSIF.

The recent economic crisis highlighted the need for a sound system of capital requirements to address risk. From 2008 through 2012, 27 credit unions with assets greater than $50 million (the current threshold for applicability of the risk-based net worth requirement) failed at a cost of $728 million to the NCUSIF,[52] due in large part to holding inadequate levels of capital relative to the levels of risk associated with their assets and operations. In many cases, the capital deficiencies relative to elevated risk levels were identified by examiners and communicated through the examination process to officials at these credit unions.[53] Although the credit union officials were provided with notice of the capital deficiencies, they ignored the supervisory concerns or did not act in a timely manner to address the concerns raised. Furthermore, NCUA's ability to take enforcement actions to address supervisory concerns in a timely manner was cited by GAO as limited under NCUA's current regulations. As a result, over a dozen very large consumer credit unions, and numerous smaller ones, were in danger of failing and required extensive NCUA intervention, financial assistance, or both, along with increased reserve levels for the NCUSIF.[54] The Original Proposal sought to incorporate the lessons learned from those failures, and near failures, and better account for risks not addressed by NCUA's current PCA rule.

The Board notes that, in general, most credit unions with over $100 million in assets (the proposed new threshold for applicability of the risk-based capital ratio measure) hold capital well above the statutory net worth ratio for credit unions to be classified as well capitalized, as shown in the following table.[55]

NUMBER OF CREDIT UNIONS WITH ASSETS OF AT LEAST $100 MILLION, BY NET WORTH RATIO

	2006	2007	2008	2009	2010	2011	2012	2013
Net Worth Ratio:								
Less than 6 percent	3	5	10	42	35	16	11	7
6 percent to 7 percent	8	7	32	63	44	35	17	9
7 percent to 8 percent	39	42	109	188	162	152	138	103
8 percent to 9 percent	123	109	185	248	243	256	269	234
9 percent to 10 percent	193	197	213	244	289	299	293	305
10 percent to 11 percent	205	217	212	192	192	213	231	257
Greater than 11 percent	628	642	522	388	404	430	478	540
Total	1,199	1,219	1,283	1,365	1,369	1,401	1,437	1,455

Many credit unions hold additional capital as a cushion against an unexpected adverse shock that might drive their net worth ratios below the well capitalized level. Because credit unions primarily generate capital only through retained earnings, there is an added incentive to hold higher levels of capital. Most banks, however, also hold capital in excess of their required well capitalized thresholds and on par with total capital levels held by credit unions, despite having the ability to raise capital outside of retained earnings.[56] This suggests that strong capital levels serve an important purpose for financial institutions despite any associated cost of the capital.

As shown in the table below, at year end 2013, 119 credit unions, or 7.3 percent of all credit unions with assets greater than $100 million in assets, exhibited a net worth ratio below eight percent. Of that 7.3 percent of credit unions, all were either already below the seven percent well capitalized threshold or were only slightly above, so they were vulnerable to falling below the well capitalized level with only a modest shock to their net income. Call report data as of December 31, 2013, indicates that these 119 credit unions hold assets of $68.7 billion, which is more than seven percent of all credit union assets (see table below).

PERCENTAGE DISTRIBUTION OF TOTAL ASSETS OF CREDIT UNIONS WITH ASSETS OF AT LEAST $100 MILLION, BY NET WORTH RATIO[57]

	2006	2007	2008	2009	2010	2011	2012	2013
	Percent							
Net Worth Ratio:								
Less than 6 percent	0.1	0.2	1.4	2.6	2.6	0.5	0.4	0.3
6 percent to 7 percent	0.8	1.0	5.9	7.5	1.6	2.5	0.5	0.2
7 percent to 8 percent	4.9	5.8	10.9	13.6	15.3	12.6	9.1	6.8
8 percent to 9 percent	12.5	12.4	15.7	19.2	18.5	16.7	19.1	12.5
9 percent to 10 percent	18.2	21.6	23.2	24.8	28.1	24.5	21.1	22.9

[52] These figures are based on data collected by NCUA throughout the crisis, and do not include the costs associated with failures of corporate credit unions.

[53] *See, e.g.,* OIG–13–10, Material Loss Review of Chetco Federal Credit Union (October 1, 2013), OIG–13–05, Material Loss Review of Telesis Community Credit Union (March 15, 2013), OIG–10–15, Material Loss Review of Ensign Federal Credit Union, (Sept. 23, 2010), OIG–10–03, Material Loss Reviews of Cal State 9 Credit union (April 14, 2010).

[54] As most of these credit unions are still active institutions, or have merged into other active institutions, NCUA cannot provide additional details publicly.

[55] This statement and the majority of the related analysis in this section is specific to credit unions with $100 million in assets or greater, unless otherwise noted, as this proposed rule would only apply to credit unions at or above this level.

[56] The aggregate core capital (leverage) ratio for all FDIC-insured institutions as of December 2013 was 9.41 percent. FDIC Quarterly, 2014, Volume 8, No. 1.

PERCENTAGE DISTRIBUTION OF TOTAL ASSETS OF CREDIT UNIONS WITH ASSETS OF AT LEAST $100 MILLION, BY NET WORTH RATIO [57]—Continued

	2006	2007	2008	2009	2010	2011	2012	2013
	Percent							
10 percent to 11 percent	16.3	18.2	15.3	12.3	12.3	20.4	23.9	19.0
Greater than 11 percent	47.1	40.8	27.6	20.0	21.6	22.8	25.8	38.3
Total Assets, billions $	582.4	628.1	686.3	760.1	790.2	839.4	901.7	945.4

The table below shows that credit unions falling below the seven percent well capitalized net worth ratio requirement tend to contract their asset base. By contrast, over the same period, credit unions that did not fall below the seven percent well capitalized net worth ratio requirement experienced annualized asset growth of almost seven percent.

GROWTH IN ASSETS AT CREDIT UNIONS WITH MORE THAN $100 MILLION IN ASSETS [58]

Growth over the four quarters after a decline in the net worth ratio below 7%	Growth over the four quarters where the net worth ratio did not fall below 7%
−4.3%	+6.8%

Unlike banks that can issue other forms of capital like common stock, credit unions that need to raise additional capital when faced with a capital shortfall generally have no choice except to reduce member dividends or other interest payments, raise lending rates, or cut non-interest expenses in an attempt to direct more income to retained earnings.[59] Thus, the first round impact of falling or low capital levels at credit unions is likely a direct reduction in credit union members' access to credit or interest bearing accounts. Hence, an important policy objective of capital standards is to ensure that financial institutions build sufficient capital to continue functioning as financial intermediaries during times of stress without government intervention or assistance.

NCUA's analysis of credit union Call Report data from 2006 forward, as detailed below, also makes it clear that higher capital levels keep credit unions from becoming undercapitalized during periods of economic stress. The table below summarizes the changes in the net worth ratio that occurred during the recent economic crisis. Of credit unions with a net worth ratio of less than eight percent in the fourth quarter of 2006, 80 percent fell below seven percent at some time during the financial crisis and its immediate aftermath. Of credit unions with 8 percent to 10 percent net worth ratios in the fourth quarter of 2006, just under 33 percent fell below seven percent during the crisis period. However, of credit unions that entered the crisis with at least 10 percent net worth ratios, less than five percent fell below the seven percent well capitalized standard during the crisis or its immediate aftermath.

DISTRIBUTION OF NET WORTH RATIOS OF CREDIT UNIONS WITH AT LEAST $100 MILLION IN ASSETS BY LOWEST NET WORTH RATIO DURING THE FINANCIAL CRISIS

	Lowest Net Worth Ratio between 2007Q1 and 2010Q4						
	<6%	6–7%	7–8%	8–10%	≥10%	*Total*	*Number of credit unions*
Net Worth Ratio in 2006Q4							
<8 percent	44.0	36.0	20.0	0.0	0.0	100.0	50
8–10 percent	13.0	19.6	38.0	29.4	0.0	100.0	316
≥10 percent	1.9	2.8	9.4	38.8	47.1	100.0	830

Similarly, the table below shows how credit unions with at least $100 million in assets in the fourth quarter of 2006 fared during the five years after the fourth quarter of 2007, which was the period that encompassed the Great Recession. The table shows that the credit unions that survived the crisis and recession had higher net worth ratios going into the Great Recession. In particular, credit unions with more than $100 million in assets before the crisis began, but failed during the crisis, had a median precrisis net worth ratio of less than nine percent, while similarly sized institutions that survived the crisis had, on average, precrisis net worth ratios in excess of 11 percent.

[57] Data based on year end Call Report data.

[58] Based on Call Report data, using annualized growth 2007 Q4–2013 Q4.

[59] Low-income designated credit unions can issue secondary capital accounts that count as net worth for PCA purposes. As of June 30, 2014, there are 2,107 low-income designated credit unions. Given the nature (*e.g.,* size) of these credit unions and the types of instruments they can offer, however, there is often a very limited market for these accounts.

CHARACTERISTICS OF FICUS WITH ASSETS > $100 MILLION AT THE END OF 2006 BY FIVE YEAR SURVIVAL BEGINNING 2007 Q4

	Number of institutions	Median				
		Assets ($M)	Net Worth Ratio (percent)	Loan to Asset Ratio (percent)	Real Estate Loan Share (percent)	Member Business Loan Share (percent)
Failures	27	162.7	8.97	84.0	58.0	8.3
Survivors	1138	237.9	11.20	71.0	49.0	0.7

Survivorship is determined based on whether a FICU stopped filing a Call Report over the five years starting in the fourth quarter of 2007. Failures exclude credit unions that merged or voluntarily liquidated. Note: All failures had precrisis net worth ratios in excess of seven percent.

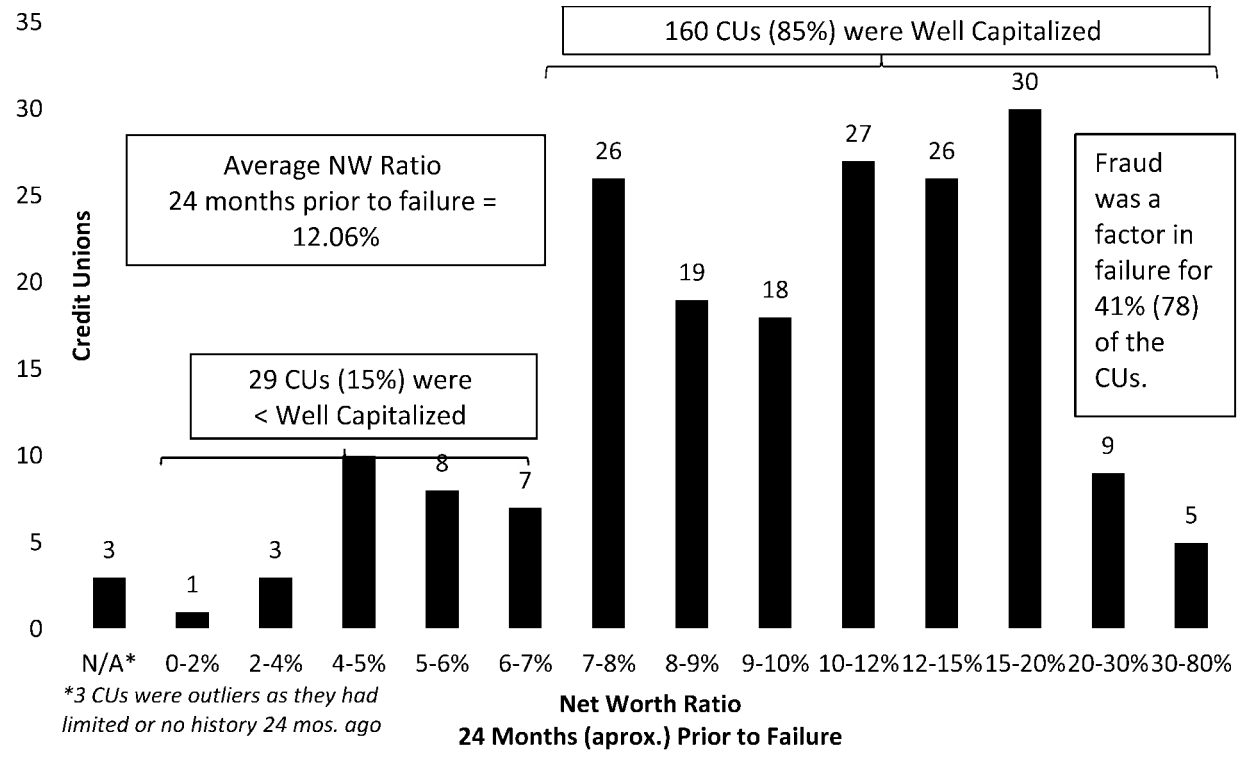
Aside from demonstrating the differences in the capital positions of credit unions that failed from those that did not fail, the table above highlights two additional considerations. First, the table shows that other performance indicators were different between the two groups of credit unions. In particular, the survivors had a lower median loan-to-asset ratio, a lower median share of total loans in real estate loans, and a lower share of member business loans in their overall loan portfolio.

A key limitation of the leverage ratio is that it is a lagging indicator because it is based largely on accounting standards. Accounting figures are point-in-time values largely based on historical performance to date. Further, the leverage ratio does not discriminate between low-risk and high-risk assets or changes in the composition of the balance sheet. A risk-based capital ratio measure is more prospective in that, as a credit union makes asset allocation choices, it drives capital requirements before losses occur and capital levels decline. The differences in indicators between the failure group and the survivors in the table above demonstrate that factors in addition to capital levels play an important role in preventing failure. For example, all of the failures listed in the table above had net worth ratios in excess of the well capitalized level at the end of 2006. The severe weakness of NCUA's current risk-based net worth requirement is further demonstrated by the fact that, of the 27 credit unions that failed during the Great Recession, only two of those credit unions were considered less than well capitalized due to the existing RBNW requirement.[60] A well designed risk-based capital ratio standard would have been more successful in helping credit unions avoid failure precisely because such standards are targeted at activities that result in elevated risk.

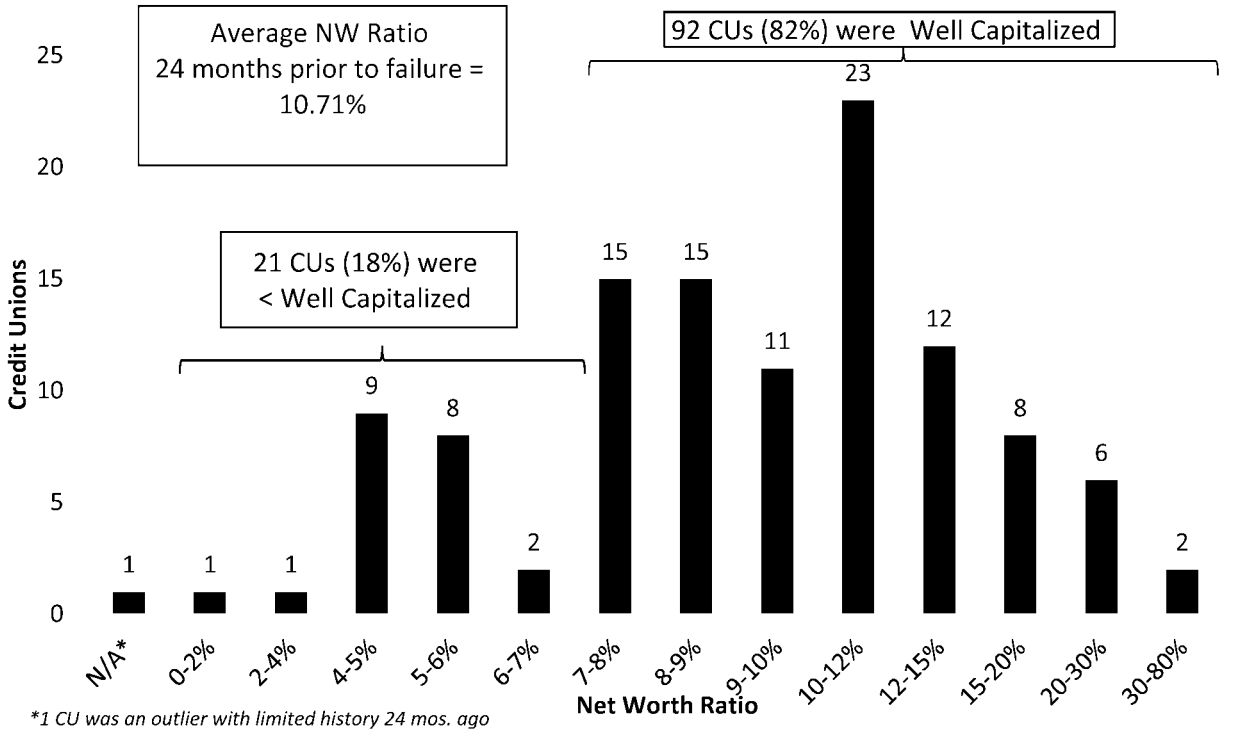
The need for a risk-based capital standard beyond a leverage ratio is further supported when considering a more comprehensive review of credit union failures. The figures below present data from NCUA's review of the 192 credit union failures that occurred over the past 10 years and indicates that 160 failed credit unions had net worth ratios greater than seven percent two years prior to their failure. Further, the failed credit unions exhibited a 12 percent average net worth ratio two years prior to their failure.

[60] See table above (referencing the 27 failures of credit unions over $100 million in assets).

Net Worth Ratio 24 Months Prior to Failure (All CU Failures in the Last 10 Years)



Net Worth Ratio 24 Months Prior to Failure of CUs – Non-Fraud (Last 10 Years)



The table above shows that credit unions with high net worth ratios can and have failed, demonstrating that a leverage ratio alone has not always proven to be an adequate predictor of a credit union's future viability. However,

a more robust risk-based capital standard would reflect the presence of elevated balance sheet risk sooner, and in relevant cases would improve a credit union's odds of survival.

A recession or other source of financial stress poses more difficulties for credit unions with limited capital options and with capital levels lower than what their risks warrant. A capital shortfall reduces a credit union's ability to effectively serve its members. At the same time, the shortfall can cascade to the rest of the credit union system through the NCUSIF, potentially affecting an even broader number of credit union members. Credit unions are an important source of consumer credit and a capital shortfall that affects the credit union system could reduce general consumer access to credit for millions of credit union members. [61] Accordingly, a risk-based capital rule that is effective in requiring credit unions with low capital ratios and a large share of high-risk assets to hold more capital relative to their risk profile, while limiting the burden on already well capitalized credit unions, should provide positive net benefits to the credit union system and the United States economy. Improved resilience enhances credit unions' ability to function during periods of financial stress and reduce risks to the NCUSIF.

The Original Proposal reflected the Board's objective of modifying the existing system for assigning risk weights to make it more indicative of the risks in credit unions. The Board intended it to help credit unions better absorb losses and establish a safer, more resilient, and more stable credit union system. However, as noted below, the Board believes the Original Proposal can be improved and is, therefore, issuing this second proposal.

C. What significant changes would the Original Proposal have made?

The Original Proposal would have changed the current risk-based net worth requirement applicable to complex credit unions (which was then defined as credit unions with more than $50 million in assets). In particular, the Original Proposal would have replaced the current risk-based net worth ratio measure with a new risk-based capital ratio measure that would have been more comparable to the risk-based capital requirement in the Other Banking Agencies' regulations. NCUA's capital requirements and PCA supervisory actions for ''new'' credit unions and credit unions with $50 million or less in assets would have remained largely unchanged, with a few exceptions.

The Board intended the change in the risk-based capital methodology in the Original Proposal to improve the comparability of risk-based capital ratios across financial institutions. Compared to the current risk-based net worth ratio measure, the methodology under the Original Proposal would have provided a more common measure both of credit union capital available to absorb losses and of asset risk. Moreover, the use of a consistent framework for assigning risk weights would have resulted in better comparability and improved understanding between all types of federally insured financial institutions, and would have increased the correlation between required capital levels and risk.

The Original Proposal would have replaced the current method used by credit unions to apply risk weights to their assets with a new risk-based capital ratio measure that is more commonly applied to depository institutions worldwide. The proposed risk-based capital ratio measure was the percentage of a credit union's capital available to cover losses, divided by the credit union's defined risk weighted asset base.

Under the current rule, the numerator of the RBNW ratio is ''net worth'' as defined in section 216(o)(2).[62] However, as discussed in the Legal Authority section of this preamble, the FCUA gives the Board broad discretion in designing the risk-based capital requirement.[63] Thus, the Original Proposal would have broadened the definition of the risk-based capital ratio numerator.

The Board chose to take this approach to provide a more comparable measure of capital across all financial institutions and to better account for those related elements of the financial statement that are available to cover losses and protect the NCUSIF. Under the Original Proposal, the risk-based capital ratio numerator essentially started with the generally accepted accounting principles (GAAP) definition of equity (which is broader than the statutory definition of ''net worth''), adding the allowance for loan and lease losses (ALLL) account subject to some limitations, and deducting goodwill, intangible assets, and the NCUSIF deposit. In addition, to more accurately reflect capital available to absorb losses, this broader definition of the risk-based capital ratio numerator would have contributed over 50 basis points, on average, to credit unions' risk-based capital ratio.

With regard to the denominator for the risk-based capital ratio, Congress recognized that operating a credit union involves taking and managing a variety of risks. As stated previously, the FCUA mandates that NCUA's risk-based net worth requirement ''take account of any material risks against which the net worth ratio required for [a federally] insured credit union to be adequately capitalized may not provide adequate protection.'' [64] In the Senate Report on CUMAA, Congress expressed its intent with regard to the design of the risk-based net worth requirement by directing NCUA to ''consider whether the 6 percent [net worth ratio] requirement provides adequate protection against interest-rate risk and other market risks, credit risk, and the risks posed by contingent liabilities, as well as other relevant risks.'' [65]

The risk-based net worth ratio measure in NCUA's current PCA regulation, which has not been substantially updated since 2002, was designed to primarily address credit risk, concentration risk, interest rate risk (IRR), and liquidity risk. The current rule does this through the assignment of risk weights to different types of assets based on the predominant form of risk that is associated with the asset type. Loans and investments make up the vast majority (88 percent based on December 2013 Call Report data) of credit union assets and, therefore, are the primary variables for the denominator of a credit

[61] Credit unions play a sizable role in the U.S. depository system. Assets in the credit union system amount to more than $1.1 trillion, roughly eight percent of U.S. chartered depository institution assets (source: NCUA calculation using the financial accounts of the United States, Federal Reserve Statistical Release Z.1, Table L.110, September 18, 2014). Data from the Federal Reserve indicate that credit unions account for about 12 percent of private consumer installment lending. (Source: NCUA calculations using data from the Federal Reserve Statistical Release G.19, Consumer Credit, September 2014. Total consumer credit outstanding (not mortgages) was $3,246.8 billion of which $826.2 billion was held by the federal government and $293.1 billion was held by credit unions. The 12 percent figure is the $293.1 billion divided by the total outstanding less the federal government total). Just over a third of households have some financial affiliation with a credit union. (Source: NCUA calculations using data from the Federal Reserve 2013 survey of Consumer Finance.) All Federal Reserve Statistical Releases are available at *http:\\www.federalreserve.gov\econresdata\statisticsdata.htm.*

[62] *See* the definition of ''net worth'' at 12 U.S.C. 1790d(o)(2)(A) through (C).

[63] *See* section 1790d(d)(2) (Recognizing the limitations of the net worth ratio, Congress directed the Board to develop a risk-based net worth requirement that ''take[s] account of any material risks against which the net worth ratio . . . may not provide adequate protection.'').

[64] *Id.*

[65] S. Rep. No. 193, 105th Cong., 2d Sess. 13 (1998).

union's current risk-based net worth ratio.

Under the current rule, most types of loans have risk weights based on credit risk. Concentration risk and IRR are incorporated for real estate loans and member business loans (MBLs) using a tiered risk weight framework. As a credit union's concentration in these loans increases, incrementally higher levels of capital are required. This requirement was intended to provide capital to protect against the concentration risk and IRR inherent in a long duration and/or complex whole loan portfolio with limited liquidity.[66]

The Original Proposal would have maintained a very similar risk weight structure for loans, with a few exceptions. The Original Proposal would have effectively reduced the capital required for a credit union to hold first-lien residential real estate loans, and raised the capital required to hold junior-lien residential real estate loans, consumer loans, and MBLs.

The current rule, as opposed to this second proposal, assigns risk weights to most types of investments based on their IRR and liquidity risk. The rationale for doing so was that most credit unions maintain liquidity in their investment portfolio. For credit unions with high loan volume involving long-term fixed rate products, the investment portfolio can exacerbate the interest rate and liquidity risks involved in meeting member lending and deposit preferences. NCUA's current rule, unlike this second proposal, assigns risk weights to most investments based on their weighted average life, with the weights generally calibrated to the projected loss in value of a U.S. Treasury security if interest rates increased by 300 basis points. The Original Proposal would have retained this approach to assigning investment risk weights. However, the Original Proposal would have effectively reduced the capital required for investments with weighted average lives of less than five years, and increased the capital required for investments with weighted average lives of greater than five years.

The Original Proposal was intentionally designed to parallel the current approach to applying risk weights to assets using existing information contained in the Call Report, thereby minimizing transition costs and associated reporting burdens. In comparison to the current risk-based net worth ratio method however, the originally proposed risk-based capital ratio method would have included a greater number of exposure categories for purposes of calculating a credit union's risk-weighted assets. Thus, the Original Proposal would have required that some additional data be collected on the Call Report. However, this additional data would not have represented a material increase to the burden of completing the Call Report. Further, under the Original Proposal, the rule would have provided an 18-month implementation period for credit unions to adjust their systems to account for the additional data items that would have been collected in the Call Report.

The way in which the risk-based net worth ratio functions in relation to the net worth categories under the current rule could result in a credit union's capital classification declining directly from well capitalized to undercapitalized if it fails to meet the required risk-based net worth ratio level.[67] The Original Proposal would have modified this approach by requiring credit unions to meet different risk-based capital ratio levels for the well capitalized (10.5 percent) and adequately capitalized (eight percent) categories. This formulation would have been comparable with the Other Banking Agencies' capital rules,[68] and would have encouraged (but did not require) credit unions to build capital sufficient to absorb losses and prevent precipitous declines in their overall capital classification. In addition to providing greater comparability with the Other Banking Agencies' rules, the different threshold levels also would have resulted in a risk-based net worth requirement that could have effectively addressed any ''outlier'' credit unions and encouraged them to accumulate additional capital.

The Original Proposal would have generally retained the definition of ''complex'' in the current rule so the proposed changes to the risk-based net worth requirement would have applied to all credit unions with over $50 million in total assets.[69]

D. Public Comments on the Original Proposal

The Board received 2,056 public comments on the Original Proposal from credit unions, trade associations, state credit union leagues, state supervisory authorities, public officials (including current and former members of the U.S. Congress), Federal Home Loan Banks, credit union members, and other interested parties. Because this is a new proposed rule, the Board notes it is not required to respond to any comments received on the Original Proposal. However, the Board believes it is important to address all relevant comments. Therefore, the Board has included comment summaries and responses throughout the preamble to this proposal.

Overall, while some commenters supported the concept of adopting risk-based capital standards for complex credit unions that were more comparable to those applicable to banks, most commenters opposed the Original Proposal, particularly those requirements that the commenters believed exceeded the requirements imposed on banks.

Most commenters also expressed concerns about the potential costs and burdens of various aspects of the Original Proposal. A significant number of commenters argued that new risk-based capital standards were not necessary at this time, particularly given the success of consumer credit unions during the recent financial crisis. A number of commenters also requested that the Board withdraw the Original Proposal and reissue a proposal for another round of public comments with significant revisions to the risk weights. Many commenters also asked for additional time to implement the new requirements and adjust their balance sheets.

The Board responds to the significant comments received on the Original Proposal throughout this preamble. More detailed discussions on the comments received on particular aspects of the Original Proposal, and NCUA's responses to those comments, are primarily provided in the section-by-section analysis part of the preamble.

General Comments on Application of Risk-Based Capital Standards to Credit Unions

The Board received over 2,000 comments regarding the application of risk-based capital standards to credit unions under the Original Proposal. A majority of the commenters stated that NCUA's current risk-based net worth ratio standard is working well,

[66] Concentration risk is mainly accounted for in commercial and real estate loans because, historically, this is where credit unions have experienced concentration and IRR problems. These types of assets are longer and/or provide fewer options and greater challenges in managing, restructuring, or selling such portfolios. Cash flows for shorter-term loans, like auto loans, are typically much less susceptible to changing rates; and portfolios customarily cash flow fast enough to mitigate concentration and IRR concerns.

[67] Per the FCUA, ''undercapitalized'' is the lowest PCA category in which a failure to meet the risk-based net worth requirement can result.

[68] *See, e.g.,* 12 CFR 324.10, 324.11 and 324.403.

[69] 78 FR 4032 (Jan. 18, 2013).

particularly given that the credit union industry survived the recent financial crisis, and that maintaining the current system is far preferable to adopting the Original Proposal. Some commenters stated they were opposed to imposing a more sophisticated risk-based capital framework on credit unions. Other commenters stated they appreciated NCUA's efforts to keep the new requirements relatively simple and to minimize the implementation burden on affected institutions. A substantial number of other commenters agreed that updates to NCUA's risk-based net worth regulations were necessary to keep up with what other financial institutions are doing, but did not agree with certain aspects of the Original Proposal. Other commenters stated that some form of risk-based capital calculation was prudent to reward those institutions that do not stretch too hard for earnings or put their members' deposits at extraordinary risk. A significant number of commenters specifically suggested that the rule be amended to match the risk-based capital requirement for banks, the Basel III risk-based capital standards, or both. Other commenters suggested that the structure and performance of credit unions suggests that the risk weights should be less stringent than the risk weights applied to banks. Still other commenters suggested that instead of focusing on the past failures of credit unions, the Board should be focused on the successes of credit unions and issue regulations that help credit unions achieve success.

The Board received a significant number of comments questioning whether the proposal would actually serve to protect the NCUSIF and make the industry safer and sounder. A number of commenters stated that the proposal essentially represented a de facto assumption of important balance sheet management decisions by NCUA for purposes of protecting the NCUSIF at the expense of the current prerogatives and interests of individual credit unions and their members. Commenters contended that since the implicit incentives in the proposal are the same for every credit union, over the long run, the Original Proposal would cause credit unions to become less financially diverse, which would increase the vulnerability of the industry and NCUSIF to some future widespread economic adversity. Commenters stated that credit unions are in the risk business by nature and that the proposal was too focused on a number-generated, one-size-fits-all solution. Other commenters requested that the Board be mindful that the risk weights that are adopted in the rule could ultimately drive which types of products and services are offered by credit unions.

Some commenters suggested NCUA include a risk-capital model calculation as part of the examination process, similar to NCUA requirements for other types of modeling such as the model required for IRR testing. Those commenters suggested that the results of the risk-based capital model could be used to identify ''potential risk'' by examiners and credit union boards, calling for additional scrutiny in the exam, instead of prescribing a rule that is assumed to quantify ''actual'' risk.

A small number of commenters suggested that the Other Banking Agencies are all leaning toward simply using a simplified leverage ratio to account for risks.

Justification and Supporting Analysis

A number of commenters commented on the Board's justification and analysis supporting the need for a proposed rule. Commenters suggested the proposal was arbitrary and developed without feedback from the credit union industry. Other commenters suggested that the Board should have provided stakeholders with a more thorough discussion of how the proposal would fit into NCUA's regulatory framework, including recently issued final rules regarding liquidity risk, IRR, and stress testing and capital planning. Commenters stated there was no credible analysis available in the Original Proposal to suggest credit unions overall are unlikely to perform well under the current PCA system, which already includes a risk-based net worth requirement. Others commented that the proposal provided no evidence that this rule would help members.

Commenters suggested the Board did not sufficiently take into account the unique nature of credit unions and the financial performance and distinctive structure of credit unions in developing the proposal. They argued this was problematic because the Board is required to take into account the unique nature of credit unions in designing a system of PCA, and that by failing to sufficiently account for credit union differences and the lower level of risk that credit unions demonstrate as a result led to a proposal that would require well-managed credit unions to hold too much capital. Others suggested that the proposal failed to consider how the use of bank style capital levels could adversely impact credit unions. There were those who felt that the Board should propose a rule only if NCUA has prepared a reasoned determination that the rule's benefits justify its costs. They suggested that any benefits in terms of reduced NCUSIF losses would be minor at best and the very real costs of unnecessarily high capital requirements would be substantial. Commenters also suggested that the proposal was not tailored to impose the least burden.

The Board received a number of comments on the basis provided for the proposed rule. Commenters suggested the proposal should have been based on historical perspectives, and stated that based on their own analysis the proposal would have avoided few if any past credit union failures. One commenter stated that only 1.1 percent of credit unions with more than $50 million in assets have failed in the six-and-a-half years since the beginning of the worst financial crisis and recession in 80 years. The commenter did, however, acknowledge that the proposed system would have been more effective than the current system in identifying credit unions that subsequently failed.

One commenter suggested that the Board's justification that the proposal seeks to incorporate lessons learned from past failures of credit unions to hold sufficient levels of capital despite warnings from NCUA examiners was unsupportable because NCUA and state officials have various supervisory enforcement measures at their disposal (*e.g.,* preliminary warning letters, letters of understanding and agreement, and cease and desist orders) to force a credit union to improve the alignment between its risk exposures and its available capital.

A significant number of commenters questioned the Board's supporting analysis for various aspects of the proposal. Commenters suggested that the empirical foundation provided for the proposed risk weights was not sufficient. Other commenters stated that the Board should provide additional justification and more clarity as to why the proposed risk weights differ from those for other community financial institutions. Many commenters stated they would like an opportunity to review and comment on empirical data, but that they were not provided sufficient information to understand how the metrics behind the proposal were determined and how historic losses contributed to each calculation. One commenter suggested that NCUA should expand its research horizons to include data-sourcing outside the natural-person credit union space, claiming the Original Proposal contained several examples where ''uncertain'' conclusions were drawn from insufficient data or those where

research was halted due to the burdensome process of data collection. The commenter suggested that often these data sources are limited to natural-person credit unions, many of which have little exposure to the asset classes in question.

Another commenter suggested that the stated purpose of the proposal was to mitigate losses to the NCUSIF that could result from inadequate capital, but that GAO and NCUA's Office of Inspector General (OIG) reports demonstrate that deficiencies in the examination process contributed substantially to losses during the financial crisis, and that such deficiencies continue to be a significant factor in more recent credit unions failures. That commenter suggested that instead of focusing on a risk-based capital requirement for credit unions to contain NCUSIF losses, the Board should be improving examiner training so that agency field staff can more readily identify material risks without increasing the agency's budget, which is funded by credit unions.

A significant number of commenters expressed concerns regarding the justification and explanation of how credit risks as well as interest rate, concentration, liquidity, operational, market risks, and other types of risk were addressed in the proposed rule. Commenters questioned the Board's justification for including IRR and concentration risk in the proposed risk weights for investments, real estate loans, and member business loans. A small number of commenters suggested that there was no explanation of which portion of the proposed risk weight is intended to address each of these risk elements, and that, as a result, the risk weights did not reflect a reasoned judgment about the actual risks involved.

Competitive Concerns and Concerns Related to the Unique Nature of Credit Unions

The Board received a significant number of comments expressing concerns that the proposed rule would have put credit unions at a competitive disadvantage to banks. A majority of the commenters suggested that the differences between NCUA's proposed risk weights and the Other Banking Agencies' capital rules would have constrained the healthy growth of the credit union industry. Commenters suggested that the statutory seven percent net worth requirement to be classified as well capitalized was set artificially high by Congress to slow the growth of credit unions and that the proposed rule would build on that artificially high net worth requirement and further slow the growth of credit unions, putting credit unions at a further disadvantage to banks. A significant number of commenters stated that the competitive disadvantages in the proposed rule could incentivize many credit unions to switch to bank charters. Other commenters suggested that NCUA's proposed risk-based capital ratios were much more volatile than the risk weights under the Other Banking Agencies' rule, and that the proposed risk weights for some investments were excessively punitive and should be changed to match the risk weights used in Basel [70] and the Other Banking Agencies' calculations. Still others suggested that it would be appropriate for NCUA to establish new risk-based capital ratio levels only when the leverage ratio requirements for credit unions to be adequately and well capitalized were lowered.

A small number of commenters stated that they appreciated that the Board kept the proposed risk-based capital calculation less complicated than the banking risk-based capital calculation.

A substantial number of commenters suggested that it was not appropriate for the Board to adopt the framework of the Basel system in the proposal and also take parts from NCUA's current PCA regulation that bear no relationship to Basel. A substantial number of commenters stated that neither Basel III nor the Other Banking Agencies rules attempt to capture IRR, liquidity risk, market risk, or operational risk in their risk weights, and that Basel III and the Other Banking Agencies' capital rules are only designed to take into account credit risk. Many commenters stated that adopting either the Basel III format or the Other Banking Agencies' risk weights accurately would give both NCUA and the credit union industry credibility to all outside parties. Other commenters suggested that, because of these and other differences, the proposal was not ''comparable'' with the Other Banking Agencies' rules, which is a requirement of the FCUA.

A substantial number of commenters stated that the structure and performance of credit unions suggests that the risk weights should be less stringent than the risk weights applied to banks. Other commenters suggested that the proposed risk-based capital standards for credit unions are comparable to FDIC standards, but that they fail to take into account the unique characteristics of the credit union system as required by the FCUA. Commenters noted that unlike banks, credit unions do not have capital stock and cannot go to outside investors to seek equity capital to fuel growth or shore up capital ratios in times of stress. They stated that the rule and associated risk weights should recognize that sources of capital within the credit union industry are not as easily acquired as capital sources for banks. A number of commenters stated that if Congress had intended credit unions to be subject to the same requirements as banks it would have said so, and suggested that the Board should stop treating credit unions like banks and judging them by return on investment, and instead judge them on how effectively they deliver on their mission and make a distinctive impact relative to their resources.

One commenter suggested that the rule should be based on three principles: (1) Risk weights should generally be similar to those applied to community banks in the United States; (2) for those assets where credit union loss experience is historically lower than bank loss rates, credit union risk weights should be at or below bank risk weights; and (3) concentration risk and IRR should not be incorporated into the risk-based capital system, but instead, should be addressed in the regulatory, examination and supervision process.

Another commenter claimed that the risk weights established by FDIC do not exceed 100 percent so NCUA's rule should not establish levels over 100 percent as it would impede growth and preclude credit unions from generating net income.

Commenters suggested that the differences between proposed risk weights and banks' rules would encourage credit unions to make consumer loans by discouraging credit unions from making other types of loans, such as mortgage loans, MBLs, or agricultural loans. Others suggested that the proposed rule would have forced all credit unions into a bank model that would have required them to pay less, charge more, and increase fees. Other commenters suggested that the proposed risk weights could drive many credit unions to a ''cookie cutter'' balance sheet where each credit union has the same percentage of total assets allocated to specific loan types, which could force a high percentage of credit unions into less profitable asset growth and make it challenging to differentiate themselves from competitors.

[70] Basel 1 (First Capital Accord) established minimum capital standards (1998). Basel II established the three pillar framework (first issued in 2004). Basel III is the most recent and builds upon Basel II pillars and enhances the core principles (first issued in 2010).

Commenters suggested that credit unions generally operate as portfolio lenders, making and holding high-quality consumer and residential real estate loans that serve their members and improve their communities, and that credit unions often carry significantly less exposure to volatile product lines such as acquisition development and construction loans, commercial real estate, and complex derivatives products.

Commenters added that credit unions also face stringent regulatory restrictions on their investment powers, and as a result, natural-person credit unions fared substantially better during the recent financial crisis than many other entities, including banks. Those commenters concluded that an appropriate risk-based capital requirement would reflect these important differences with a streamlined program that recognizes credit unions as strong counter-cyclical lenders while bolstering safety and soundness through meaningful benchmarks and access to supplemental capital.

Impacts

The Board received a substantial number of comments concerning the impact that the Original Proposal would have had on credit unions. In general, most of these commenters expressed concern that the Original Proposal would have had a material adverse impact on individual credit unions and the entire credit union industry. This section outlines these concerns.

A majority of commenters stated that the proposed risk-based capital requirement would weaken credit unions' ability to build the capital cushions they need to protect themselves against risk and would hamper credit unions' ability to grow and provide services to their members. Other commenters stated that the Original Proposal would constrain future investments by credit unions and, thus, would limit credit unions' ability to provide certain services, better loan rates, and dividends to their members. Others expressed concern that the proposal would impede growth and deter lending among credit unions, even those with demonstrated long-term ability to manage risk and net worth.

Many commenters stated that the Original Proposal seemed to be a reaction to the Great Recession and that the Board should further consider the Original Proposal's impact on the future of the credit union industry. Commenters suggested that the proposed requirement to hold a higher capital-to-asset ratio would cause credit union asset growth to stagnate and decline over the long term, for any given rate of return on assets, and that the Board should try to quantify these costs and weigh them against the uncertain benefits of minor reductions in the relative cost of credit union failures. Using the rule that the sustainable asset growth rate is equal to the return on equity, or Asset Growth Rate = ROA/Capital Ratio, some commenters estimated that asset growth for credit unions would slow to eight percent under the Original Proposal, or 1.1 percent lower than the asset growth rate would be without the Original Proposal.

Commenters stated that because credit unions can only build capital through retained earnings, the Original Proposal could severely limit credit unions' ability to grow, to increase the products and services they provide to their members, and to help their local communities prosper. They also suggested that the Original Proposal may actually reduce credit unions' ability to absorb losses, given their limited access to capital markets.

A number of commenters stated that the low risk weights applied to consumer loans and the high risk weights applied to first-lien mortgage loans, mortgage servicing rights, and subordinate-lien mortgage loans would push credit unions to make more consumer loans and fewer mortgage loans, despite a significant demand for real estate lending services at some credit unions. Other commenters stated that the Original Proposal would induce credit unions to focus on risk-based capital instead of growth in real capital. Still other commenters suggested the proposed risk weights would penalize non-consumer lending, which could force small credit unions to only make consumer loans on very low margins, a strategy that would not survive in the future.

One commenter suggested that the Original Proposal did not properly account for the effect of economic downturns on credit unions, and that it would be difficult or impossible for downgraded credit unions to rebuild following an economic downturn.

A substantial number of commenters suggested that NCUA underestimated the adverse effect of the Original Proposal. They maintained that the Board understated the number of credit unions whose net worth would have decreased to just barely over well capitalized or adequately capitalized levels. One commenter suggested that, under the Original Proposal, approximately 1,000 credit unions would be required to raise $4 billion in additional capital. Other commenters proffered that the Original Proposal would require the credit union industry to hold an additional $6.5 billion to $7 billion dollars in additional capital to retain the same buffers that exist today and still be considered well capitalized. Commenters suggested that the Board considered only the narrowest interpretation of the Original Proposal's impact, ignoring the immediate and long-term effects that it would have on individual credit unions and the entire credit union system. They stated that credit unions cannot easily manage their capital to the exact dollar level that equates to NCUA's proposed standards, and that credit unions typically strive to maintain sufficient space or buffers between their actual net worth ratios and the minimum required levels to be well capitalized because of the significant consequences of not meeting the net worth standards. According to the commenters, credit unions choosing to regain their buffer would only have three choices: (1) Rebalance their assets, recognizing an opportunity cost when they forego higher earnings, which would diminish their ability to grow; (2) ration services, stifling asset and membership growth; or (3) require members to pay more, resulting in fewer member benefits and increased competition from banks.

Commenters added that the Original Proposal would require many credit unions to adjust their capital levels to maintain current margins above the well capitalized threshold, at the same time as earnings at credit unions continue to be squeezed by low interest rates, downward pressure on other revenue streams, and moderate loan growth. They argued that these adjustments would pressure credit unions, already suffering from low to moderate loan-to-share ratios, to decrease their assets by curbing lending in an attempt to comply with the new requirements.

A significant number of commenters stated that the Original Proposal would cause the reallocation of credit union capital toward less productive uses. One commenter suggested that, for some credit unions, the Original Proposal would increase the amount of capital required to be well capitalized above the current level of seven percent of total assets, positing that 10.5 percent of risk assets amounts to more than seven percent of total assets for most credit unions, depending on the ratio of risk assets to total assets. The commenter assumed that, across all potentially affected credit unions, the total amount of capital necessary to be well capitalized would increase by $7.6 billion, or, in other words, that the Original Proposal would increase the

well capitalized net worth ratio requirement an average of 0.76 percent, from seven percent to 7.76 percent.

A number of commenters also noted their concern that the Original Proposal would force many credit unions out of business.

A significant number of commenters expressed concern that the Original Proposal would curtail MBL activities. They stated that the Original Proposal unfairly penalized credit unions that are exempt from the MBL limits in § 107A of the FCUA.[71] Other commenters suggested that the Original Proposal would stifle the strategic business plans of credit unions that specialize in MBLs to grow their assets with additional commercial and real estate loans. They also stated that the Original Proposal would drive down MBL activity in rural areas because credit unions specializing in MBLs, particularly in agricultural loans and/or loans secured by farm land, cannot diversify their portfolio by providing other types of loans not needed by their members. Others stated that the proposed risk weights for MBLs would discriminate against credit unions that serve underserved and credit-challenged Americans—taxi drivers, farmers, and those in faith-based credit unions. Commenters suggested that, in order to increase their risk-based capital ratios required under the Original Proposal, credit unions may feel forced to reduce mortgage and business lending or increase loan rates and fees. They stated that the Original Proposal would have a negative effect on agricultural lending, farming communities, and credit union members, particularly those in rural and low-income areas. A number of commenters urged the Board to further consider the economic impact and consequences of reduced liquidity and financing for families and small businesses. Others argued that the Original Proposal would eliminate credit unions' business models centering on mortgage lending.

Commenters suggested that the proposed risk weights would discourage well capitalized credit unions from engaging in mergers of undercapitalized credit unions because the Original Proposal would force credit unions into less profitable asset growth. Other commenters maintained that the reduction of credit unions' capital margin or cushion would negatively impact credit unions' ability to merge, and would permit only the largest credit unions to merge with smaller credit unions. Still others suggested that the Original Proposal would encourage mergers of credit unions not meeting the risk-based requirements.

A substantial number of commenters stated that the Original Proposal would have a direct negative impact on credit union service organizations (CUSOs) by discouraging investment in CUSOs, thereby forcing many credit unions to limit services to their members.

Commenters feared that the Original Proposal would result in stricter scrutiny by examiners, which would increase NCUA's examination and supervision costs and, therefore, the costs borne by credit union members. Other commenters suggested that NCUA already has a large examination and oversight budget to eliminate risk to the NCUSIF; they contended the Original Proposal did not sufficiently address the aggregate costs of these initiatives to credit union members. According to these commenters, the impact of the Original Proposal on credit union members, in the form of excessive supervision and lost earnings due to overcapitalization, could itself pose a risk to the NCUSIF.

Some commenters shared their belief that the Original Proposal would reduce lending in dramatic ways and stifle the economy. Other commenters asserted that the Original Proposal would decrease member benefits, such as patronage dividends and reduced expenses. A number of commenters stated that the Original Proposal failed to consider impacts on businesses and the economy, particularly on small businesses that rely on credit unions for credit. Several commenters suggested that the Original Proposal would force some credit unions away from their missions to serve member in predominantly rural and low-income fields of membership.

A small number of commenters encouraged the Board to follow the cost-benefit analysis blueprint established by Executive Orders 13563 and 13579. Doing so, they argued, would allow meaningful, cumulative analysis that would result in a more coherent rule with fewer harmful, unintended consequences for the American economy.

A number of commenters expressed significant concerns about the Original Proposal's negative impact on the growth and viability of small credit unions. They suggested that the Original Proposal would inhibit the growth of credit unions that are developing from small credit unions (less than $50 million) to medium-size credit unions ($50 million–$99 million). Other commenters suggested it would reduce the monetary and other support that larger credit unions historically have provided to their smaller counterparts. They noted that some small credit unions depend on grants, scholarships, and training opportunities funded by larger credit unions. If these larger credit unions were compelled to change their loan and investment portfolios, or are required to adjust their capital, those commenters concluded their income levels would decline, thereby rendering it more difficult for them to fund as many opportunities for small credit unions. One credit union with less than $10 million in assets asserted that it would be adversely affected by the proposed change in the capital reserves requirement.

Other commenters suggested that the Original Proposal imposed unnecessary regulatory burdens that would impede small credit unions' ability to serve their members. A substantial number of commenters stated that small credit unions not classified as ''complex'' and not subject to the risk-based capital requirement would still be negatively affected because the Original Proposal estimated the paperwork burdens include over 160 hours of work for credit unions, which is significant for small credit unions with limited resources. Other commenters suggested that small credit unions would suffer significantly due to the complexity of this regulation and its implementation costs. Many commenters stated that small credit unions cannot survive under the current regulatory burdens. Others foresaw potentially disastrous consequences if this regulation were pushed down to small credit unions. An official at one small credit union asserted that the Original Proposal would affect its strategic planning as it approached $50 million in assets. Another commenter stated that, as a credit union with under $50 million in assets, it was concerned about the uncertainty of how the Original Proposal would affect privately insured credit unions.

Other Concerns

Several commenters expressed concerns that the proposal did not provide for input from state regulators who may have a different view or approach from that of NCUA. Other commenters suggested that the proposal was developed with no involvement or dialogue with state regulators. Commenters suggested that the Board should ensure that NCUA properly implements directives in the FCU Act and coordinates with state officials in implementing risk-based requirements and PCA.

[71] 12 U.S.C. 1757a.

E. What are the primary changes the Board has included in this proposal?

Similar to the Original Proposal, this proposal would replace the method currently used by credit unions to apply risk weights to their assets with a new risk-based capital ratio measure that is more comparable to that applied to depository institutions worldwide. The proposed risk-based capital ratio measure would be the percentage of a credit union's capital available to cover losses, divided by the credit union's defined risk-weighted asset base.

As noted in the introduction, this proposed rule would make substantial modifications to the Original Proposal to address specific concerns that were raised by commenters regarding the proposal's cost, complexity, and burden. These changes would include: (1) Amending the definition of ''complex'' credit union by increasing the asset threshold from $50 million to $100 million; (2) reducing the number of asset concentration thresholds for residential real estate loans and commercial loans (formerly classified as MBLS); (3) assigning one-to-four family non-owner-occupied residential real estate loans the same risk weights as other residential real estate loans; (4) eliminating IRR from this proposed rule; (5) extending the implementation timeframe to January 1, 2019; and (6) eliminating the Individual Minimum Capital Requirement (IMCR) provision. Among other things, these changes would substantially reduce the number of credit unions subject to the rule, and would afford affected credit unions sufficient time to prepare for the rule's full implementation. A full discussion of the impact of these and other changes in this proposed rule is contained in Impact of the Proposed Regulation part of the preamble below.

As discussed previously, the FCUA gives NCUA broad discretion in designing the risk-based net worth requirement. Thus, this proposal would incorporate a broadened definition of capital to be used as the numerator in calculating the proposed new risk-based capital ratio measure. The Board is proposing this change to provide a more comparable measure of capital across all financial institutions and to better account for related elements of the financial statement that are available to cover losses and protect the NCUSIF. This broader definition of capital would more accurately reflect the amount of capital that is available at a credit union to absorb losses. On average, it would increase a credit union's risk-based capital ratio by over 50 basis points as discussed in more detail below.

The Board agrees with the various comments received on the Original Proposal that suggested the allowance for loan and lease losses (ALLL) account should be included in its entirety in the risk-based capital ratio numerator (that is, not subject to a 1.25 percent cap), and that goodwill and other intangible assets specifically related to a supervisory merger that occurs before the Board finalizes its risk-based capital ratio rule should be included in the risk-based capital ratio numerator for some period of time before being excluded (approximately 10 years after any final rule is published in the **Federal Register**). For a more detailed discussion on these and the other proposed changes, and responses to the comments received on the Original Proposal, refer to the section-by-section analysis part of this preamble below.

In terms of the denominator for the risk-based capital ratio measure, section 216(d)(2) of the FCUA requires that the Board, in designing a risk-based net worth requirement, ''take account of *any material risks* against which the net worth ratio required for [a federally] insured credit union to be adequately capitalized may not provide adequate protection.'' [72] Congress specifically listed IRR with respect to this provision in the Senate Report accompanying CUMAA, which added the aforementioned requirement to the FCUA.[73] Section 216(d)(2) of the FCUA differs from the corresponding provision in section 38 of the FDI Act,[74] which requires the Other Banking Agencies to implement risk-based capital requirements, because section 216(d)(2) specifically requires that NCUA's risk-based requirement address ''*any material risks.*'' Accordingly, despite the absence of an IRR component in the Other Banking Agencies' risk-based capital requirements,[75] the Board is still required to account for any material risks in the risk-based requirement unless the risk is deemed *immaterial* because of the existence of some other mechanism that the Board believes adequately accounts for the risk.

NCUA's risk-based net worth requirement has included some aspect of IRR since its inception in 2000. Further, the Board continues to believe that IRR, if not adequately addressed through some regulatory, statutory or supervisory mechanism, can represent a material risk for purposes of NCUA's risk-based requirement.[76] The Board noted its concerns about IRR in the preamble of the final IRR rule issued in January 2012 when it highlighted the need for federally insured credit unions to have an effective IRR management program.[77] NCUA's requirement to have an effective IRR management program was necessitated in part by the Board's concern over the steady lengthening in maturity of average credit union assets, an increase that in turn was fueled by a steady and extended expansion into mortgage loans and investments. At the same time credit unions were experiencing an increase in the weighted average maturity of their assets, much of their current portfolio was established in a period of record-low interest rates and at contractually fixed coupon amounts. These asset factors, coupled with a large influx of non-maturity shares also priced at historically low rates, has created a unique mismatch between assets and liabilities and a potentially volatile sensitivity in earnings and capital. Accordingly, the Board continues to view IRR as a major risk facing credit unions.

Based on long-term balance sheet trends at credit unions and NCUA's experiences dealing with problem institutions, the Board has concluded that NCUA's current regulations and supervisory process alone cannot adequately address IRR. However, the Board agrees with commenters on the Original Proposal who suggested that measures of IRR based comprehensively on assets and liabilities (including hedges) should be favored over measures that are based upon an asset-only approach, which is the approach taken in the current rule and was also the approach taken in the Original Proposal. Accordingly, the Board is now proposing to exclude consideration of IRR from the risk-based capital ratio measure, but in the future intends to consider alternative approaches for taking into account the IRR at credit unions.

The proposed methodology for assigning risk weights in this proposed rule, therefore, would account only for credit risk and concentration risk. The Board believes that a capital-at-risk methodology is more appropriate for

[72] 12 U.S.C. 1790d(d)(2) (emphasis added).

[73] S. Rep. No. 193, 105th Cong., 2d Sess. 13 (1998).

[74] 12 U.S.C. 1831o.

[75] 78 FR 55349, 55362 (Sept. 10, 2013) (''The risk-based capital ratios under these rules do not explicitly take account of the quality of individual asset portfolios or the range of other types of risk to which FDIC-supervised institutions may be exposed, such as interest rate, liquidity, market, or operational risks.'').

[76] IRR has been NCUA's top supervisory priority for the last few years, and has appeared as an issue of significant concern in the Financial Stability Oversight Council's 2012 and 2013 Annual Reports.

[77] 77 FR 5155 (February 2, 2012).

measuring the risks arising from the changes in interest rates. The use of capital-at-risk methodologies to identify, measure and control IRR is a long standing practice in larger credit unions and a standard expectation among depository institution supervisors, including NCUA. Net economic value (NEV) is the most prevalent tool credit unions use to measure capital-at-risk. NEV measures the effect of changes in interest rates on a credit union's economic value. NCUA has had a supervisory expectation for the use of asset liability management modeling by large credit unions for decades. In 2013, NCUA codified the requirement for IRR policies and management programs under section 741.3(b)(5).[78] Paragraph (b)(5) currently requires federally insured credit unions with over $50 million in assets to develop and adopt a written policy on IRR management, and a program to effectively implement that policy, as part of their asset liability management responsibilities.

Because IRR will no longer be included in this proposal, NCUA will consider what alternative approaches can be taken to account for IRR at credit unions. Alternative approaches that could be taken include adding a separate IRR standard as a subcomponent of the risk-based net worth requirement to complement the proposed risk-based capital ratio measure. Conceptually, a separate IRR standard should be based on a comprehensive balance sheet measure, like NEV, that takes into account offsetting risk effects between assets and liabilities (including benefits from derivative transactions). The intent of such a measure would be to measure IRR consistently and transparently across all asset and liability categories, to address both rising and falling rate scenarios, and to supplement the supervisory process with a measure calibrated to address severe outliers. This approach would also incorporate a forward-looking, proactive measure into NCUA's capital standards, as recommended by GAO.[79]

In light of the proposed elimination of IRR measures from the current rule, and GAO's recommendation for NCUA to incorporate a forward-looking measure into credit union's capital standards, the Board specifically requests comments on alternative approaches that could be taken in the future to reasonably account for IRR.

Because the Board has decided to exclude IRR from the computation of the risk weights for assets in this proposal, it was necessary to propose significant changes to how investments are currently risk-weighted. This proposal adopts a risk weight framework for investments based largely on the credit risk of the issuer or underlying collateral. This proposed approach would be substantially similar to the Other Banking Agencies' framework for investments.[80] Because the same types of investments generally perform identically on a credit risk basis for credit unions and banks, the variations in this proposal from the Other Banking Agencies' investment risk weights primarily involve credit union-specific type investments. For example, the proposed risk weights assigned to investments in capital instruments issued by corporate credit unions and credit union service organizations would differ from the corresponding risk-weights assigned to bank investments. While this approach to assigning risk weight to investments would require credit unions to report additional data on the Call Report, the Board believes such an approach would result in net benefits to credit unions in terms of the improved precision of the capital requirements. Further, the more granular data will improve NCUA's offsite supervision capabilities. The section-by-section analysis part of the preamble contains more detailed discussions on the specific changes being proposed to the investment risk weights.

Concentration risk can also be a material risk. As the Basel Committee on Banking Supervision explained in Basel II:

> Risk concentrations are arguably the single most important cause of major problems in banks. Risk concentrations can arise in a bank's assets, liabilities, or off-balance sheet items, through the execution or processing of transactions (either product or service), or through a combination of exposures across these broad categories. Because lending is the primary activity of most banks, credit risk concentrations are often the most material risk concentrations within a bank. Credit risk concentrations, by their nature, are based on common or correlated risk factors, which, in times of stress, have an adverse effect on the creditworthiness of each of the individual counterparties making up the concentration.[81]

The concept of higher risk weights for concentrations of real estate loans and MBLs exists in the current risk-based requirement. Eliminating the concentration dimension for risk weights would be a step backward and is inconsistent with the concerns raised regarding concentration risk by GAO and in Material Loss Reviews (MLRs) conducted by NCUA's OIG. The 2012 GAO report notes credit concentration risk contributed to 27 of 85 credit union failures that occurred between January 1, 2008, and June 30, 2011. Credit unions with high MBL concentrations are particularly susceptible to changes in business conditions that can affect borrower cash flow, collateral value, or other factors increasing the probability of default. GAO found in its 2012 report that credit unions who failed had more MBLs as a percentage of total assets than peers and the industry average. GAO advised NCUA to revise PCA taking into account credit unions with a high percentage of MBLs to total assets. The report documented NCUA's agreement to revise PCA regulations so that capital standards adequately address concentration risk.[82]

GAO also recommended NCUA address the real estate concentration risk concerns raised by NCUA's OIG, who completed several MLRs where failed credit unions had large real estate loan concentrations. The NCUSIF incurred losses of at least $25 million in each of these cases. The credit unions reviewed held substantial residential real estate loan concentrations in either first-lien mortgage loans, home equity lines of credit (HELOCS), or both.[83]

Accordingly, the Board is now proposing to include a tiered risk weight framework for high concentrations of residential real estate loans and commercial loans[84] in NCUA's risk-based capital ratio measure.[85] As a

[78] *See also* 78 FR 4032, 4037 (Jan. 18, 2013).

[79] *See* U.S. Govt. Accountability Office, GAO–12–247, *Earlier Actions Are Needed to Better Address Troubled Credit Unions,* (Jan. 2012) *available at http://www.gao.gov/products/GAO-12-247.*

[80] *See, e.g.,* 12 CFR 324.32.

[81] Basel Committee on Banking Supervision, ''International Convergence of Capital Measurement and Capital Standards: A Revised Framework, Comprehensive Version'' 214 (June 2006) *available at http://www.bis.org/publ/bcbs128.pdf* (*Basel II*).

[82] *See* U.S. Govt. Accountability Office, GAO–12–247, Earlier Actions are Needed to Better Address Troubled Credit Unions (2012), *available at http://www.gao.gov/products/GAO-12-247.*

[83] *See* Office of Inspector General, National Credit Union Administration, OIG–10–03, Material Loss Review of Cal State 9 Credit Union (April 14, 2010), available at *http://www.ncua.gov/about/Leadership/CO/OIG/Documents/OIG201003MLRCalState9.pdf;* Office of Inspector General, National Credit Union Administration, OIG–11–07, Material Loss Review of Beehive Credit Union (July 7, 2011), available at *http://www.ncua.gov/about/Leadership/CO/OIG/Documents/OIG201107MLRBeehiveCU.pdf;* Office of Inspector General, National Credit Union Administration, OIG–10–15, Material Loss Review of Ensign Federal Credit Union, (September 23, 2010), available at *http://www.ncua.gov/about/Leadership/CO/OIG/Documents/OIG201015MLREnsign.pdf.*

[84] The definition of commercial loans and the differences between commercial loans and MBLs are discussed in more detail in the section-by-section analysis.

[85] The tiered framework would provide for an incrementally higher capital requirement resulting

credit union's concentration in these asset classes increases, incrementally higher levels of capital would be required. This approach would address concentration risk as it relates to minimum required capital levels through a transparent, standardized, regulatory requirement. Considering concentration risk solely in the examination process would be less consistent and transparent, and would lack a strong enforcement framework.

The Board agrees with various commenters on the Original Proposal that the tiered risk weight system should be adjusted so as to focus on material outliers, thereby creating more consistency of capital treatment with banks. Accordingly, the Board proposes to use a single, higher concentration threshold to simplify the risk weight framework and calibrate it to be applicable only to credit unions that deviate significantly from the mean.[86] This single, higher concentration threshold would provide sufficient flexibility for the vast majority of credit unions to operate at a level where the risk weights are substantially similar to the risk weights applied to similar bank assets under the Other Banking Agencies' capital regulations.[87]

The concentration thresholds would not limit a credit union's lending activity; rather, the thresholds would merely require the credit union to hold capital for the elevated risk. The Board does not believe credit unions would be at a competitive disadvantage because most loans (except for loans at extremely high concentrations) would be assigned risk weights similar to those applicable to banks.

Consistent with section 216(b)(1)(A)(ii) of the FCUA, which requires NCUA's PCA requirement be comparable to the Other Banking Agencies' PCA requirements, the Board largely relied on the risk weights assigned to various asset classes under the Basel Accords and the Other Banking Agencies' risk-based capital rules, as well as the underlying principles, for this proposal.[88] NCUA has, however, tailored the risk weights in this proposal for certain assets that are unique to credit unions; where a demonstrable and compelling case exists, based on contemporary and sustained performance differences, to differentiate for certain asset classes between banks and credit unions; or where a provision of the FCUA required doing so. Thus, this proposal provides for even greater comparability to Other Banking Agencies' risk weights than the Original Proposal by adjusting asset classes and recalibrating risk weight, including for all loans changing the definition of ''current'' from less than 60 to less than 90 days past due.

The following is a table showing a summary of the risk weights included in this proposal. See the section-by-section analysis part of the preamble below for more detail on the proposed changes to the asset classes and risk weights.

SUMMARY OF PROPOSED RISK WEIGHTS

	0%	20%	50%	75%	100%	150%	250%	300%	400%	1250%
Cash/Currency/Coin	X									
Investments:.										
Unconditional Claims—U.S. Govt. (Treas./GNMA)	X									
Balances Due from Federal Reserve Banks	X									
Federally Insured Deposits in Financial Institutions	X									
Debt Instruments issued by NCUA and FDIC	X									
CLF Stock	X									
Uninsured deposits at U.S. Federally Insured Inst.		X								
Agency Obligations		X								
FNMA and FHLMC pass through MBS		X								
Gen. Oblig. Bonds Issued by State or Political Sub.		X								
FHLB Stock and Balances		X								
Senior Agency Residential MBS or Asset Backed Securities (ABS) Structured		X								
Revenue Bonds Issued by State or Political Sub.			X							
Senior Non-Agency Residential MBS Structured			X							
Corporate Membership Capital					X					
Senior Non-Agency ABS Structured Securities					X					
Industrial Development Bonds					X					
Agency Stripped MBS (Int. Only and Prin. Only)					X					

in a blended rate for the corresponding portfolio. That is, the portion of the portfolio below the threshold would receive a lower risk weight, and the portion above the threshold would receive a higher risk weight. The higher risk weight would be consistent across asset categories as a 50 percent increase from the base rate. Some comments on the Original Proposal suggested NCUA should have combined similar exposures across asset classes, such as investments and loans. For example, residential mortgage-backed security concentrations could have been included with the real estate loan thresholds due to the similarity of the underlying assets. However, given the more liquid nature and price transparency of a security, the Board believes including this with the risk thresholds for real estate lending is not necessary.

[86] The concentration threshold for real estate loans is approximately two standard deviations from the mean. The concentration threshold for commercial loans is over five standard deviations from the mean.

[87] Based on NCUA's analysis of call report data, approximately 90 percent of complex credit unions operate at levels below the concentration thresholds proposed for residential real estate loans. Over 99 percent of complex credit unions operate at levels below the concentration thresholds proposed for commercial loans. *See also, e.g.,* 12 CFR 324.32(f) and (g) (corresponding FDIC risk weights).

[88] NCUA has attempted to simplify certain aspects of this proposed rule to take into account the cooperative character of credit unions while still imposing risk-based capital standards that are substantially similar and equivalent in rigor to the standards imposed on banks. *See* 12 U.S.C. 1790d(b)(1)(B).

SUMMARY OF PROPOSED RISK WEIGHTS—Continued

	0%	20%	50%	75%	100%	150%	250%	300%	400%	1250%
Mutual Funds Part 703 Compliant					X*					
Value of General Account Insurance (BOLI/CUOLI)					X*					
Corporate Perpetual Capital						X				
Mortgage Servicing Assets							X			
Separate Account Life Insurance								X*		
Publicly Traded Equity Investment (non CUSO)								X		
Mutual Funds Part 703 Non-Compliant								X*		
Non-Publicly Traded Equity Inv. (non CUSO)									X	
Subordinated Tranche of Any Investment										X**
Consumer Loans:										
Share-Secured		X								
Current Secured				X						
Current Unsecured					X					
Non-Current						X				
Real Estate Loans:										
Share-Secured		X								
Current First Lien < 35% of Assets			X							
Current First Lien > 35% of Assets				X						
Not Current First Lien					X					
Current Junior Lien < 20% of Assets					X					
Current Junior Lien > 20% of Assets						X				
Noncurrent Junior Lien						X				
Commercial Loans:										
Share-Secured		X								
Portion of Commercial Loans with Compensating Balance		X								
Commercial Loans < 50% of Assets					X					
Commercial Loans > 50% of Assets						X				
Non-current						X				
Miscellaneous:										
Loans to CUSOs					X					
Equity Investment in CUSO						X				
Other Balance Sheet Items not Assigned					X					

* *With the option to use the look-through options.*[89]
** *With the option to use the gross-up approach.*[90]

The Board notes that FDIC's capital standards are the ''minimum capital requirements and overall capital adequacy standards for FDIC-supervised institutions . . . include[ing] methodologies for calculating minimum capital requirements . . .'' [91]

The FDIC may require an FDIC-supervised institution to hold an amount of regulatory capital greater than otherwise required under its capital rules if the FDIC determines that the institution's capital requirements under its capital rules are not commensurate with the institution's credit, market, operational, or other risks.[92]

Further, the September 10, 2013 preamble to part 324 of FDIC's regulations states that:

> The FDIC's general risk-based capital rules indicate that the capital requirements are minimum standards generally based on broad credit-risk considerations. The risk-based capital ratios under these rules do not explicitly take account of the quality of individual asset portfolios or the range of other types of risk to which FDIC-supervised institutions may be exposed, such as interest-rate risk, liquidity, market, or operational risks . . . In light of these considerations, as a prudent matter, an FDIC-supervised institution is generally expected to operate with capital positions well above the minimum risk-based ratios and to hold capital commensurate with the level and nature of the risks to which it is exposed, which may entail holding capital significantly above the minimum requirements.[93]

As indicated above, FDIC's approach to risk weights is calibrated to be the minimum regulatory capital standard. Similarly, this proposal is calibrated to be the minimum regulatory capital standard. Therefore, the Board believes it is necessary to incorporate a broader regulatory provision requiring complex credit unions to maintain capital commensurate with the level and nature of all risks to which they are exposed, and to maintain a written strategy for assessing capital adequacy and maintaining an appropriate level of capital.

Proposed new § 702.101(b) is based on a similar provision in the Other Banking Agencies' rules.[94] This provision would not affect a complex credit union's PCA classification. It would, however, support NCUA's assessment of complex credit unions' capital adequacy in the supervisory process (*e.g.,* assigning CAMEL and risk ratings). Following the publication of a final risk-based capital rule, NCUA would develop and publish supervisory guidance for examiners and credit unions on the application of this provision. Please refer to the section-by-

[89] The ''look-through'' approaches are discussed in more detail in part of the preamble discussing § 702.103(c)(4) of this proposal.

[90] The ''gross-up'' approach is discussed in more detail in part of the preamble discussing § 702.103(c)(4) of this proposal.

[91] *See, e.g.,* 12 CFR 324.1(a).

[92] *See, e.g.,* 12 CFR 324.1(d).

[93] 78 FR 55362, Tuesday, September 10, 2013.

[94] *See, e.g.,* 12 CFR 324.10(d)(1) and (2).

section analysis part of this preamble for a more detailed discussion of this new provision and the related supervisory process considerations.

Because of this proposed new capital adequacy provision, existing enforcement authority for unsafe and unsound conditions or practices,[95] NCUA's authority to reclassify an insured credit union into a lower net worth category,[96] and comments on the Original Proposal, the Board has decided to eliminate the provision in the Original Proposal for imposing an IMCR.

Under the Original Proposal, proposed § 702.105(a) would have introduced rules and procedures to permit the Board, on a case-by-case basis, to impose an IMCR that exceeds the risk-based capital requirement that otherwise would apply to a credit union under subpart A of part 702.

Under the Original Proposal, § 702.105(a) would have prescribed criteria to determine when a credit union's capital is, or may become, inadequate, making it appropriate to impose a higher capital requirement. It then would have prescribed standards to determine what heightened capital requirement to impose in such cases, based not only on mathematical and objective criteria, but on subjective judgment grounded in agency expertise.

Under the Original Proposal, a staff-level decision to impose a discretionary supervisory action (DSA) under part 702,[97] and a decision to impose an IMCR would have been treated as a ''material supervisory determination.'' [98] As such, proposed § 747.2006 would have required NCUA to provide the affected credit union with reasonable notice of a proposed IMCR, and it established an independent process by which to challenge the proposed IMCR, culminating in Board review.

With a few notable exceptions,[99] the comments addressing the IMCR were critical of the concept itself, NCUA's legal authority to impose an IMCR, the scope of an IMCR, the criteria and procedures for imposing it, the subjectivity and discretion involved, or the lack of an option for review by an independent third party.

Now that the IMCR provision in this proposal has been removed, the commenters' concerns with the various aspects of the IMCR are no longer relevant. NCUA would be able to address any deficiencies in a credit union's capital levels relative to its risk by: (1) Reclassifying the credit union into a lower net worth category under § 702.102(b) of this proposal and FCUA; [100] (2) determining in relation to proposed § 702.101(b) that capital levels are not commensurate with the level or nature of the risks to which the credit union is exposed; or (3) using other supervisory authorities to address unsafe or unsound conditions or practices as noted in § 702.1(d) of this proposal and the current rule. As a practical matter, in using these authorities, NCUA may provide specific metrics for necessary reductions in risk levels, increases in capital levels beyond those otherwise required under this part, and some combination of risk reduction and increased capital so it is clear how the credit union can address NCUA's supervisory concerns. Then it would be up to the credit union to decide which particular option to pursue to remedy NCUA's enforcement action.

As discussed earlier in this preamble, the Original Proposal would have required that credit union meet different risk-based capital ratio levels for the adequately capitalized category (eight percent) and the well capitalized category (10.5 percent). Commenters on the Original Proposal questioned NCUA's legal authority to require complex credit unions to meet one risk-based capital ratio to be adequately capitalized and a different, higher risk-based capital ratio to be classified as well capitalized. As explained in the legal authority section of this preamble, the Board has the authority under the FCUA to take this approach.

However, the Board supports lowering the risk-based capital ratio level required for a complex credit union to be classified as well capitalized from 10.5 percent to 10 percent. The Board agrees with commenters that a 10 percent risk-based capital ratio level for well capitalized credit unions simplifies the comparison with the Other Banking Agencies' rules [101] by removing the effect of the capital conservation buffer.[102] Capital ratio thresholds are largely a function of risk weights. As discussed in other parts of this proposal, the Board is now proposing to more closely align NCUA's risk weights with those assigned by the Other Banking Agencies,[103] so it follows that the risk-based capital ratio thresholds should also align as much as possible. The proposed 10 percent risk-based capital ratio level for well capitalized credit unions, along with the eight percent risk-based capital ratio level for adequately capitalized credit unions, would be comparable to the total risk-based capital ratio requirements contained in the Other Banking Agencies' capital rules.[104]

The Original Proposal would have applied to all credit unions with over $50 million in total assets. Based on NCUA's analysis of the comments received on the Original Proposal, the Board is now proposing to define a credit union as ''complex'' if it has assets of more than $100 million.[105] Credit unions meeting this threshold have a portfolio of assets and liabilities that are complex, based upon the products and services in which they are engaged. Credit unions with $100 million in assets or less generally do not have a complex structure of assets and liabilities and are a small share of the overall assets in the credit union system, thereby limiting the exposure of the NCUSIF to these institutions. As discussed later in this document, the $100 million asset threshold is a clear demarcation above which all credit unions engage in complex activities, and where almost all such credit unions (99 percent) are involved in multiple complex activities, in stark contrast to credit unions with $100 million in assets or less.

The Board believes an asset threshold would be clear, logical, and easy to administer when compared to the more complicated formula credit unions are required to follow under the current rule [106] to determine if they are complex. Using a more straightforward proxy for complex credit unions would also help account for the fact that credit unions have boards of directors that consist primarily of volunteers. The $100 million dollar asset size threshold would exempt almost 80 percent of credit unions [107] from any regulatory burden associated with complying with this rule, while covering nearly 90 percent of the assets in the credit union system. The threshold would also be consistent with the fact that the majority

[95] See § 702.1(d) of this proposed rule and the current rule.

[96] See section 1790(d)(h) of the Federal Credit Union Act, and § 702.102(b) of this proposed rule and the current rule.

[97] *E.g.,* 12 CFR 702.202(b) and (c).

[98] 12 U.S.C. 1790d(k).

[99] Several trade association commenters advocated limiting the scope of the IMCR to IRR and concentration risk only, otherwise excluding those two risks from the scope of the proposed rule.

[100] 12 U.S.C. 1790d(h).

[101] *See, e.g.,* 12 CFR 324.403.

[102] The ''capital conservation buffer'' is explained in more detail in the discussion on proposed § 702.102(a) in the section-by-section analysis part of the preamble.

[103] *See, e.g.,* 12 CFR 324.32.

[104] *See, e.g.,* 12 CFR 324.403.

[105] There is no exemption for banks from the risk-based capital requirements of the other banking agencies. There are 1,975 FDIC-insured banks with assets less than $100 million as of June 2014.

[106] 12 CFR 702.106.

[107] Based upon December 31, 2013 Call Report data.

of losses (as measured as a proportion of the total dollar cost) to the NCUSIF result from credit unions with assets greater than $100 million. For a more detailed discussion of the rationale the Board considered in defining complex, see the discussion associated with proposed § 702.103 in the section-by-section analysis part of the preamble.

The Original Proposal would have provided an 18-month implementation period for credit unions to adjust to the new requirements. The Board agrees with the comments received on the Original Proposal that a longer implementation period is necessary due to the complexity of this rule and the changes needed in the Call Report. Therefore, the Board is proposing to more than double the implementation period by extending it to January 1, 2019, to provide both credit unions and NCUA sufficient time to make the necessary adjustments, such as systems, processes, and procedures, and to reduce the burden on affected credit unions in meeting the new requirements.

IV. Section-by-Section Analysis

Part 702—Capital Adequacy

Revised Structure of Part 702

Consistent with the Original Proposal, this proposed rule would reorganize part 702 by consolidating NCUA's PCA requirements, which are currently included under subsections A, B, C, and D, under proposed subparts A and B. Proposed subpart A would be titled ''Prompt Corrective Action'' and proposed subpart B would be titled ''Alternative Prompt Corrective Action for New Credit Unions.'' [108] The reorganization of the proposed rule is designed so that credit unions need only reference the subpart applying to their institution to identify the applicable minimum capital standards and PCA regulations. The Board believes that consolidating these sections would reduce confusion and save credit union staff from having to frequently flip back and forth through the four subparts of the current PCA rule.

In general, this proposed rule would restructure part 702 by consolidating most of the rules relating to capital and PCA that are applicable to credit unions that are not ''new'' credit unions under new subpart A. This change is intended to simplify the structure of part 702. The specific sections that would be included in new subpart A and the proposed changes to those sections are discussed in more detail below.

Similarly, this proposed rule would consolidate most of NCUA's rules relating to alternative capital and PCA requirements for ''new'' credit unions under new subpart B. This change is intended to simplify the structure of part 702. The sections under new subpart B would remain largely unchanged from the requirements of current part 702 relating to alternative capital and PCA, except for revisions to the sections relating to reserves and the payment of dividends. The specific sections included in new subpart B and the specific changes to the sections under new subpart B are discussed in more detail below.

Finally, this proposed rule would retain subpart E of part 702, Stress Testing, but would re-designate and re-number the current subpart as subpart C. Other than re-designating and re-numbering the subpart, the language and requirements of current subpart E would remain unchanged.

Section 702.1 Authority, Purpose, Scope, and Other Supervisory Authority

Consistent with the Original Proposal, proposed § 702.1 would remain substantially similar to current § 702.1, but would be amended to update terminology and internal cross references within the section, consistent with the changes that are being proposed in other sections of part 702. No substantive changes to the section are intended.

The Board received a number of comments expressing concerns regarding the Boards authority to issue the Original Proposal. Several commenters stated that the Board lacks legal authority to issue a rule implementing the risk-based capital requirement as proposed. Other commenters suggested that the Board did not adequately account for the unique nature of credit unions in the Original Proposal. Another commenter suggested that the language of the FCUA does not mean that there should be one approach and one universal algorithm applied to all risk in the same fashion. Other commenters suggested that the Original Proposal was inconsistent with the statutory requirement for the Board to design a system of PCA that is comparable to that of FDIC. Other commenters argued that the proposed risk-based capital requirement was inconsistent with the FCUA because they believed it ignored the fact that most credit unions raise net worth only through retained earnings.

The Board has carefully considered these comments and generally disagrees with commenters' reading of the FCUA. Section 216(b)(1) of the FCUA requires the Board to adopt by regulation a system of PCA for insured credit unions that is ''comparable to'' the system of PCA prescribed in the FDI Act, that is also ''consistent'' with the requirements of section 216 of the FCUA, and that takes into account the cooperative character of credit unions.[109] Paragraph (d)(1) of the same section requires that NCUA's system of PCA include ''a risk-based net worth requirement for insured credit unions that are complex . . .'' When read together, these sections grant the Board broad authority to design reasonable risk-based capital regulations to carry out the stated purpose of section 216, which is to ''resolve the problems of [federally] insured credit unions at the least possible long-term loss to the [National Credit Union Share Insurance] Fund.'' [110] As explained in more detail below, the Board believes that this proposed rule is comparable, although not identical in detail, to the PCA and risk-based capital requirements for banks. In addition, as explained throughout the preamble to this proposed rule, this proposal deviates from the PCA and risk-based capital requirements applicable to banks as required by section 216 of the FCUA and takes into account the cooperative character of credit unions. Accordingly, the Board believes that this proposed rule would implement the risk-based net worth requirement consistent with section 216 of the FCUA.

Section 702.2—Definitions

Under the Original Proposal, proposed § 702.2 would have retained many of the definitions in current § 702.2 with no substantive changes. The Original Proposal would, however, have removed the paragraph number assigned to each of the definitions under current § 702.2 and would have reorganized the section so the new and existing definitions were listed in alphabetic order. This reformatting would have made § 702.2 more consistent with current §§ 700.2, 703.2 and 704.2 of NCUA's regulations.[111] In addition, the originally proposed § 702.2 would have added a number of new definitions, and amended some existing definitions in § 702.2. These changes were intended to help clarify the

[108] Under both current § 702.301(b) and proposed § 702.201(b), a credit union is ''new'' if it is ''a federally-insured credit union that both has been in operation for less than ten (10) years and has total assets of not more than $10 million. A credit union which exceeds $10 million in total assets may become 'new' if its total assets subsequently decline below $10 million while it is still in operation for less than 10 years.''

[109] 12 U.S.C. 1790d(b)(1).

[110] Section 1790d(a)(1).

[111] 12 CFR 700.2; 12 CFR 703.2; 12 CFR 704.2.

meaning of terms used in the Original Proposal.

The Board received no comments on these technical changes to § 702.2 and has decided to retain the changes described above in this second proposal. Consistent with section 202 of the FCUA,[112] the Board has incorporated the phrase 'in accordance with GAAP' into many of the definitions to clarify that generally accepted accounting principles would be used determine how an item is recorded on the statement of financial condition from which it would be incorporated into the risk-based capital calculation. The following definitions, some of which were included in the Original Proposal, would be added, amended, or removed under this proposed rule:

Allowances for loan and lease losses (ALLL). Under the Original Proposal, the term ''allowance for loan and lease loss'' would have been defined as reserves that have been established through charges against earnings to absorb future losses on loans, lease financing receivables, or other extensions of credit.

The Board received no comments on the definition of ALLL in the Original Proposal and has decided to retain the term and definition in this second proposal with the following changes. As discussed in more detail below, the Board is now proposing to amend the definition of ALLL to address the importance of maintaining ALLL in accordance with GAAP since the integrity of the risk-based capital ratio is dependent upon an accurate ALLL, particularly now that this second proposal would allow the entire ALLL balance to be included in the risk-based capital ratio numerator. A credit union maintaining ALLL in accordance with GAAP will make timely adjustments to the ALLL including the timely charge off of loan losses. Accordingly, under this proposed rule, the term ''ALLL'' would be defined as valuation allowances that have been established through a charge against earnings to cover estimated credit losses on loans, lease financing receivables or other extensions of credit as determined in accordance with GAAP.

Amortized cost. Under this proposed rule, the new term ''amortized cost'' would be defined as the purchase price of a security adjusted for amortizations of premium or accretion of discount if the security was purchased at other than par or face value.

This proposed new term is being added because investments accounted for as held-to-maturity are reported on the balance sheet at amortized cost while investments accounted for as available-for-sale are reported on the balance sheet at fair value. As explained in more detail below, to ensure consistency in the measure of minimum capital for held-to-maturity or available-for-sale investments, the risk weights will be applied to the amortized cost.

Appropriate regional director. This proposed rule would amend the definitions section to remove the definition of the term ''appropriate regional director'' from the current rule. The definition is unnecessary and redundant because the term ''Regional Director'' is already defined for purposes of NCUA's regulations in § 700.2.

Appropriate state official. Under this proposed rule, the term ''appropriate state official'' would be defined as the state commission, board or other supervisory authority having jurisdiction over the credit union. The proposal would amend the current definition of ''appropriate state official'' to provide additional clarity by adding the italicized words above (''state'' and ''the'') to the definition, and by removing the words ''chartered by the state which chartered the affected credit union,'' which the Board believes are unnecessary.

Call Report. Under the Original Proposal, the term ''Call Report'' would have been defined as the Call Report required to be filed by all credit unions under § 741.6(a)(2).

The Board received no comments on the definition of ''Call Report'' and has decided to retain the definition unchanged in this proposal.

Carrying value. Under this proposed rule, the new term ''carrying value'' would be defined, with respect to an asset, as the value of the asset on the statement of financial condition of the credit union, determined in accordance with GAAP. Under this proposed rule, for many assets, the carrying value would be the amount subject to the application of the associated risk weight.

Central counterparty (CCP). Under this proposed rule, the new term ''central counterparty'' would be defined as a counterparty (for example, a clearing house) that facilitates trades between counterparties in one or more financial markets by either guaranteeing trades or novating contracts. The Board is proposing to add this term to coincide with amendments it is making in the derivatives section of this proposal.

Commercial loan. Under this proposed rule, the new term ''commercial loan'' would be defined as any loan, line of credit, or letter of credit (including any unfunded commitments) to individuals, sole proprietorships, partnerships, corporations, or other business enterprises for commercial, industrial, and professional purposes, but not for investment or personal expenditure purposes. The definition would also provide that the term commercial loan excludes loans to CUSOs, first- or junior-lien residential real estate loans, and consumer loans.

The Board is proposing to adopt a different approach from the Original Proposal, in which it applied risk weights to assets that fell within the statutory definition of MBLs, and is now proposing to assign specific risk weights to all loans meeting the new definition of commercial loans provided above. The proposed definition of commercial loans is more reflective of the risk of these loans than the previously defined term MBL, which would no longer be used in proposed § 702.104, and, as discussed in more detail below, is intended to better identify the loans made for a commercial purpose and having similar risk characteristics. Classification of a loan as a commercial loan would be based upon the purpose of the loan, the use of the proceeds of the loan, and the type of underlying collateral. Commercial loans may take the form of direct or purchased loans.

For example, commercial loans would generally include the following types of loans:[113]

- Loans for commercial, industrial and professional purposes to:
  - Mining, oil- and gas-producing, and quarrying companies;
  - Manufacturing companies of all kinds, including those which process agricultural commodities;
  - Construction companies;
  - Transportation and communications companies and public utilities;
  - Wholesale and retail trade enterprises and other dealers in commodities;
  - Cooperative associates including farmers' cooperatives;
  - Service enterprises such as hotels, motels, laundries, automotive service stations, and nursing homes and hospitals operated for profit;
  - Insurance agents; and
  - Practitioners of law, medicine and public accounting.
- Loans for the purpose of financial capital expenditures and current operations.
- Loans to finance agricultural production and other loans to farmers, including:

[112] 12 U.S.C. 1782(a)(6)(C)(i).

[113] Many of the descriptions below overlap and are not intended to be an all-inclusive list.

○ Loans and advances made for the purpose of financing agricultural production, including the growing and storing of crops, the marketing or carrying of agricultural products by the growers thereof, and the breeding, raising, fattening, or marketing of livestock;

○ Loans and advances made for the purpose of financial fisheries and forestries, including loans to commercial fishermen;

○ Agricultural notes and other notes of farmers that the credit union has discounted, or purchased from, merchants and dealers, either with or without recourse to the seller;

○ Loans and advances to farmers for purchase of farm machinery, equipment, and implements;

○ Loans and advances to farmers for all other purposes associated with the maintenance or operations of the farm.

• Loan secured by multifamily residential properties with 5 or more dwelling units in structures (including apartment buildings and apartment hotels) used primarily to accommodate a household on a more or less permanent basis and cooperative-type apartment buildings containing 5 or more dwelling units.[114]

• Loans secured by real estate as evidenced by mortgages or other liens on business and industrial properties, hotels, churches, hospitals, educational and charitable institutions, dormitories, clubs, lodges, association buildings, ''homes'' for aged persons and orphans, golf courses, recreational facilities, and similar properties.

• Loans to finance leases for fleets of vehicles used for commercial purposes.

Commitment. Under the Original Proposal, the term ''commitment'' would have been defined as any legally binding arrangement that obligated the credit union to extend credit or to purchase assets.

The Board received no comments on the definition of ''commitment'' and has decided to retain the definition in this proposal, but with a minor change. In this proposal, the term ''commitment'' would be defined as any legally binding arrangement that obligates the credit union to extend credit, to purchase *or sell* assets, *or enter into a financial transaction.* The italicized words would be added to expand the definition to provide additional clarity and to encompass a broader range of financial transactions than just extending credit or purchasing assets.

Consumer loan. Under this proposed rule, the new term ''consumer loan'' would be defined as a loan to one or more individuals for household, family, or other personal expenditures, including any loans secured by vehicles generally manufactured for personal, family, or household use regardless of the purpose of the loan. The proposed definition would provide further that the term consumer loan excludes commercial loans, loans to CUSOs, first- and junior-lien residential real estate loans, and loans for the purchase of fleet vehicles.

For example, under this proposed rule, consumer loans would include direct and indirect loans for the following purposes:

• Purchases of new and used passenger cars and other vehicles such as minivans, sport-utility vehicles, pickup trucks, and similar light trucks or heavy duty trucks generally manufactured for personal, family, or household use and not used as fleet vehicles or to carry fare-paying passengers;

• Purchases of household appliances, furniture, trailers, and boats;

• Repairs or improvements to the borrower's residence (that do not meet the definition of a loan secured by real estate);

• Education expenses, including student loans;

• Medical expenses;

• Personal taxes;

• Vacations;

• Consolidation of personal debts;

• Purchases of real estate or mobile homes to be used as the borrower's primary residence (that do not meet the definition of a loan secured by real estate); and

• Other personal expenses.

The Board is proposing to add this new term and definition to part 702 to distinguish loans made for a consumer purpose from real estate loans and commercial loans so each can be assigned to an appropriate risk weight category.

Contractual compensating balance. Under this proposed rule, the new term ''contractual compensating balance'' would be defined as the funds a commercial loan borrower must maintain on deposit at the lender credit union as security for the loan in accordance with the loan agreement, subject to a proper account hold and on deposit as of the measurement date.

The Board is proposing this new term because it recognizes that the portion of commercial loans covered by contractual compensating balances present a lower credit risk, and thus should be assigned a lower risk weight provided the credit union has a proper hold and maintains the compensating balance.

Credit conversion factor (CCF). Under this proposed rule, the new term ''credit conversion factor'' would be defined as the percentage used to assign a credit exposure equivalent amount for selected off-balance sheet accounts.

This definition is being proposed to help clarify the process used to calculate the credit exposure equivalent for off-balance sheet items. Specific off-balance sheet items have a probability of becoming an actual credit exposure and shifting on to the balance sheet. The CCF is an estimate of this probability.

Credit union. Under this proposed rule, the term ''credit union'' would be defined as a federally insured, natural-person credit union, whether federally or state-chartered. The proposal would amend the current definition of the term ''credit union'' to remove the words ''as defined by 12 U.S.C. 1752(6)'' from the end of the definition because they are unnecessary, and could mistakenly be read to limit the definition of ''credit unions'' to state-chartered credit unions.

Current. Under this proposed rule, the new term ''current'' would be defined to mean, with respect to any loan, that the loan is less than 90 days past due, not placed on non-accrual status, and not restructured.

Commenters suggested that loans carried on non-accrual status should not be included with delinquent loans, and that the Original Proposal did not take into consideration the balances in the ALLL if the credit union is able, under GAAP, to reserve for individual losses. Other commenters suggested that the definition of ''delinquent loans'' should be amended to match the Other Banking Agencies' regulations, which count loans as delinquent only if they are 90 days or more past due.

The Board is now proposing to count loans as non-current if they are 90 days past due (rather than 60 days past due), and, as explained in more detail below, to assign them to the higher risk weight category associated with past due loans. This change would better align this proposal with the definition of ''current loan'' under the Other Banking Agencies regulations.[115] The change to 90 days past due would also be consistent with § 741.3(b)(2), which specifies that a credit union's written lending policies must include ''loan workout arrangements and nonaccrual standards that include the discontinuance of interest accrual on loans past due by 90 days or more.''

In general, loans that are more than 90 days past due, or restructured, tend to

[114] Under this proposal, loans secured by one-to-four family residential property are defined as first or junior lien residential real estate loans.

[115] See, *e.g.,* 12 CFR 324.32(k).

have higher incidences of default resulting in losses. The Board is aware that the historical and individual loan losses are reflected in the balance of the ALLL, and believes that removal of the 1.25 percent of assets limit on the ALLL addresses the concerns expressed by commenters that, under the Original Proposal, there was a potential for negative consequences for maintaining an adequate ALLL for delinquent loans.

This definition would replace the term ''delinquent loans,'' which was used in the Original Proposal, when referring to whether a loan is past due, placed on non-accrual status, modified, or restructured. The Board believes using the term ''current'' when referring to loans will eliminate confusion caused by using the term ''delinquent loan'' in reference to regulatory reporting requirements or proper accounting treatment. Under this second proposed rule, loans are either current or non-current for purposes of determining their appropriate risk weight category.

CUSO. Under the Original Proposal, the term ''CUSO'' would have been defined as a credit union service organization as defined in parts 712 and 741.

The Board received no comments on the proposed definition of ''CUSO'' and has decided to retain the definition unchanged in this proposal.

Custodian. Under this proposed rule, the new term ''custodian'' would be defined as a financial institution that has legal custody of collateral as part of a qualifying master netting agreement, clearing agreement or other financial agreement. The Board is proposing to add this new term to coincide with other changes it is proposing to make in the derivatives section of this proposal.

Depository institution. Under this proposed rule, the new term ''depository institution'' would be defined as a financial institution that engages in the business of providing financial services; that is recognized as a bank or a credit union by the supervisory or monetary authorities of the country of its incorporation and the country of its principal banking operations; that receives deposits to a substantial extent in the regular course of business; and that has the power to accept demand deposits. The definition provides further that the term depository institution includes all federally insured offices of commercial banks, mutual and stock savings banks, savings or building and loan associations (stock and mutual), cooperative banks, credit unions and international banking facilities of domestic depository institutions, and all privately insured state-chartered credit unions.

The term depository institution would primarily be used to address the risk weights assigned to deposits in depository institutions.

Derivatives Clearing Organization (DCO). Under this proposed rule the term ''Derivatives Clearing Organization (DCO)'' would be defined as having the same definition as provided by the Commodity Futures Trading Commission in 17 CFR 1.3(d). The Board is proposing to add this new term to coincide with other changes it is proposing to make in the derivatives section of this proposal.

Derivative contract. Under this proposed rule, the term ''derivative contract'' would be defined as a financial contract whose value is derived from the values of one or more underlying assets, reference rates, or indices of asset values or reference rates. The definition would provide further that the term derivative contract includes interest rate derivative contracts, exchange rate derivative contracts, equity derivative contracts, commodity derivative contracts, and credit derivative contracts. The definition would also provide that the term derivative contract also includes unsettled securities, commodities, and foreign exchange transactions with a contractual settlement or delivery lag that is longer than the lesser of the market standard for the particular instrument.

The Board received no comments on the proposed definition of ''derivatives contract.'' This proposal, however, includes a slightly modified definition of derivative contract to state derivative means a financial contract whose value is derived from the values of one or more underlying assets, reference rates, or indices of asset values or reference rates. Derivative contracts include interest rate derivative contracts, exchange rate derivative contracts, equity derivative contracts, commodity derivative contracts, and credit derivative contracts. Derivative contracts also include unsettled securities, commodities, and foreign exchange transactions with a contractual settlement or delivery lag that is longer than the lesser of the market standard for the particular instrument. The Board believes this modification will make this proposal more clear and accurate.

Equity investment. Under this proposed rule, the new term ''equity investment'' would be defined as investments in equity securities, and any other ownership interests, including, for example, investments in partnerships and limited liability companies.

This term would be primarily used to address the risk weights assigned to equity exposures. The Board recognizes that equity investments contain significant credit risk as they are generally in the first loss position and depend upon continued profitable operations of a business entity to retain value. The liquidity of equity investments can vary depending upon if the investment is publicly traded or closely held.

Equity investment in CUSOs. The Original Proposal would have defined the term ''investment in CUSO'' as the unimpaired value of the credit union's aggregate CUSO investments as measured under generally accepted accounting principles on an unconsolidated basis.

The Board received no comments on the definition of ''investments in CUSO.'' However, the Board has decided to change the term and the definition as follows. Under this proposed rule, the new term ''equity investment in CUSOs'' would be defined as the unimpaired value of the credit union's equity investments in a CUSO as recorded on the statement of financial condition in accordance with GAAP.

The Board renamed this term and amended the definition in this proposal to emphasize the importance of recording equity investments in CUSOs in accordance with GAAP and clarify how the equity investment in a CUSO for the assignment of risk weights is determined. By following GAAP:

- For an unconsolidated CUSO, a credit union must assign the risk weight to the unimpaired value of the equity investment as presented on the statement of financial condition;
- For a consolidated CUSO, a credit union's equity investment is normally zero since the consolidation entries eliminate the intercompany transaction.

Exchange. Under this proposed rule the new term ''exchange'' would be defined as a central financial clearing market where end users can trade derivatives. The Board is proposing to add this new term to coincide with other changes it is proposing to make in the derivatives section of this proposal.

Excluded goodwill, and excluded other intangible assets. Under this proposed rule, the new term ''excluded goodwill'' would be defined as the outstanding balance, maintained in accordance with GAAP, of any goodwill originating from a supervisory merger or combination that was completed no more than 29 days after publication of this rule in final form in the **Federal**

Register. The definition would provide further that the term excluded goodwill and its accompanying definition will expire on January 1, 2025.

This proposed rule would also define the new term ''excluded other intangible assets'' as the outstanding balance, maintained in accordance with GAAP, of any other intangible assets such as core deposit intangibles, member relationship intangibles, or trade name intangible originating from a supervisory merger or combination that was completed no more than 29 days after publication of this rule in final form in the **Federal Register**. The definition would provide further that the term excluded other intangible assets and its accompanying definition will expire on January 1, 2025.

The Board added these two definitions as part of a response to certain comments on the Original Proposal and seeks to take into account the impact goodwill or other intangible assets recorded from transactions defined as supervisory mergers or combinations has on the calculation of the risk-based capital ratio upon implementation. This proposed exclusion would apply to supervisory mergers or combinations that are completed prior to a date that is 30 days from the date of publication of this rule in final form in the **Federal Register**. The Board intends to allow this additional time (until approximately 2024) for supervisory mergers or combinations related goodwill and other intangible assets to be absorbed under the proposed risk-based capital ratio. Under this proposal, the amount of goodwill deducted from the risk-based capital ratio numerator would be reduced by the balance of excluded goodwill or excluded other intangible assets recorded in accordance with GAAP as of the measurement date. However, credit unions would still need to conform to GAAP in the measurement and disclosure of goodwill and other intangible assets. This proposed exclusion would end on January 1, 2025 so the last quarter-end date with this exclusion will be December 31, 2024. This means that any remaining goodwill or other intangible assets would be required to be deducted from the risk-based capital ratio numerator after January 1, 2025.

Exposure amount. Under this proposed rule, the new term ''exposure amount'' would be defined as:

- The amortized cost for investments classified as held-to-maturity and available-for-sale, and the fair value for trading securities.
- The outstanding balance for Federal Reserve Bank Stock, Central Liquidity Facility Stock, Federal Home Loan Bank Stock, nonperpetual capital and perpetual contributed capital at corporate credit unions, and equity investments in CUSOs.
- The carrying value for non-CUSO equity investments, and investment funds.
- The carrying value for the credit union's holdings of general account permanent insurance, and separate account insurance.
- The amount calculated under § 702.105 of this part for derivative contracts.

This definition would be used to ensure the specific assets are assigned consistent risk weights based on the treatment of the specific assets.

Fair value. Under this proposed rule, the new term ''fair value'' would be defined as having the same meaning as provided in GAAP. This definition is important because the proper accounting for some specific assets subject to risk weights are recorded on the statement of financial condition at fair value.

Financial collateral. Under this proposed rule, the new term ''financial collateral'' would be defined as collateral approved by both the credit union and the counterparty as part of the collateral agreement in recognition of credit risk mitigation for derivative contracts. The Board is proposing to add this new term to coincide with other changes it is proposing to make in the derivatives section of this proposal.

First-lien residential real estate loan. Under this proposed rule, the new term ''first-lien residential real estate loan'' would be defined as a loan or line of credit primarily secured by a first-lien on a one-to-four family residential property where: (1) The credit union made a reasonable and good faith determination at or before consummation of the loan that the member will have a reasonable ability to repay the loan according to its terms; and (2) in transactions where the credit union holds the first-lien and junior-lien(s), and no other party holds an intervening lien, for purposes of this part the combined balance will be treated as a single first-lien residential real estate loan.

Under the Original Proposal, the term ''first mortgage real estate loan'' would have been defined as loans and lines of credit fully secured by first-liens on real estate (excluding MBLs), where the original amortization of the mortgage exposure does not exceed 30 years; the loan underwriting took into account all the borrower's obligations, including mortgage obligations, principal, interest, taxes, insurance (including mortgage guarantee insurance) and assessments; and the loan underwriting concluded the borrower is able to repay the exposure using the maximum interest rate that may apply in the first five years, the maximum contract exposure over the life of the mortgage, and verified income.

A number of commenters stated that they believed the proposed definition of first mortgage real estate loan would conflict with rules promulgated by the Consumer Financial Protection Bureau (CFPB), which may prevent credit unions from originating mortgage loans that qualify as ''qualified mortgages'' under CFPB's regulations, or are otherwise permitted under those rules, without incurring an additional capital charge. One commenter suggested that the proposed definition of first mortgage real estate loan should be amended to read as follows: ''A loan on realty with the benefit of a senior security interest to all others.'' Other commenters stated that the definition of first mortgage real estate loan is overbroad and should be revised to exclude home equity lines of credit because the risks associated with 30-year fixed-rate first-lien mortgages and HELOCs are vastly different and should not be assigned the same risk weight.

In response to the comments received on the Original Proposal, the Board is now proposing to eliminate the term ''first mortgage real estate loan'' and the accompanying definition and instead use the new term ''first-lien residential real estate loan'' for purposes of this proposal.

The Board believes that the credit risk for all first-lien residential real estate loans, in which the credit union has conducted a reasonable analysis of the ability of the borrower to repay, are sufficiently similar to justify a lower risk weight than most other types of loans. Accordingly, the Board is proposing to remove from the definition of first-lien residential real estate loans the requirement that such loans not have an amortization period exceeding 30 years.

The Board also believes, however, that first-lien residential real estate loans with amortizations longer than 30 years contain additional risks and must be underwritten with great care and monitored closely. Accordingly, the low risk weight assigned to first-lien residential real estate loans should not be viewed as encouraging certain real estate loan features which can be harmful to the credit quality of the loan, including an interest-only period, negative amortization, balloon payments, or excess upfront points and fees.

Credit unions must continue to make a good-faith effort to determine before the loan is made whether a borrower is likely to be able to repay the loan. In practice this means credit unions must generally ascertain, consider, and document a borrower's income, assets, employment status and stability, credit history and current and proposed monthly expenses.[116] NCUA does not intend for this definition to conflict with rules promulgated by CFPB. Rather, the Board believes the requirement that the credit union make a reasonable and good-faith effort that the member has the ability to repay the loans is consistent with CFPB regulations and ensures the grouping of loans receiving this relatively low risk weight would be substantially similar in credit quality.

The definition of first-lien residential real estate loan would include first-lien residential real estate loans that are not owner occupied. First-lien residential real estate loans that are over $50,000 and not the primary residence of the borrower would continue to count toward the credit union's total of member business loans for the purpose of monitoring and compliance with the statutory limitation on MBLs. However, they would be included in the definition of first-lien residential real estate loans for the purpose of this part and would be risk-weighted accordingly.

If a credit union holds both the first- and junior-liens on a residential real estate loan without an intervening lien holder and the loan otherwise meets this definition, the entire combined balance of the loans would be assigned the risk weight for first-lien residential real estate loans.

GAAP. Under the Original Proposal, the term ''GAAP'' would have been defined as generally accepted accounting principles as used in the United States.

The Board received no comments on the definition of ''GAAP'' and has decided to retain the term in this proposal with the following changes. Under this proposed rule, the term ''GAAP'' would be defined as generally accepted accounting principles in the United States as set forth in the Financial Accounting Standards Board's (FASB) Accounting Standards Codification (ASC).

The Board is proposing to define ''GAAP'' narrowly to retain its conventional meaning. However, credit unions should also follow joint accounting issuances by the chief accountants' of the federal financial institution regulatory agencies (including NCUA) that provide implementation guidance consistent with GAAP practice. The guidance issued jointly by the federal financial institution regulatory agencies' chief accountants' does not add to or modify existing financial reporting requirements under GAAP but often narrows GAAP practice to address supervisory considerations related to financial institutions. The federal financial institution regulatory agencies' chief accountants have a practice of clearing such guidance implementing GAAP through the FASB and the SEC's Office of the Chief Accountant.

General account permanent insurance. Under this proposed rule, the new term ''general account permanent insurance'' would be defined as an account into which all premiums, except those designated for separate accounts are deposited, including premiums for life insurance and fixed annuities and the fixed portfolio of variable annuities, whereby the general assets of the insurance company support the policy.

Under this proposal, general account permanent insurance would include direct obligations to the insurance provider. This would mean that the credit risk associated with general account permanent insurance is to the insurance company, which generally makes these insurance accounts have a lower credit risk than separate account insurance, which is a segregated accounting and reporting account held separately from the insurer's general assets.

General obligation. Under this proposed rule, the new term ''general obligation'' would be defined as a bond or similar obligation that is backed by the full faith and credit of a public sector entity.

The Board is proposing to add this definition to clarify that general obligation bonds or debt are generally backed by the credit and ''taxing power'' of the issuing jurisdiction rather than the revenue from a given project.

Goodwill. Under the Original Proposal, the term ''goodwill'' would have been defined as an intangible asset representing the future economic benefits arising from other assets acquired in a business combination (*i.e.,* merger) that are not individually identified and separately recognized.

The Board received no comments on the definition of ''goodwill'' and has decided to retain the definition in this proposed rule, with the addition that goodwill must be maintained in accordance with GAAP and does not include a new term ''excluded goodwill.'' Accordingly, under this proposal, the term ''goodwill'' would be defined as an intangible asset, maintained in accordance with GAAP, representing the future economic benefits arising from other assets acquired in a business combination (*e.g.,* merger) that are not individually identified and separately recognized. Goodwill does not include excluded goodwill. These proposed changes are intended to clarify the definition and make it consistent with other changes being made in this proposal.

Government guarantee. Under this proposed rule, the new term ''government guarantee'' would be defined as a guarantee provided by the U.S. Government, FDIC, NCUA or other U.S. Government agencies, or a public sector entity.

The Board recognizes that government guarantees provide enhanced credit protection, particularly to loans, and revised the risk weights for the portion of loans with a government guarantee to a lower risk weight.

Government-sponsored enterprise (GSE). Under this proposed rule, the new term ''government-sponsored enterprise'' would be defined as an entity established or chartered by the U.S. Government to serve public purposes specified by the U.S. Congress, but whose debt obligations are not explicitly guaranteed by the full faith and credit of the U.S. Government.

Guarantee. Under this proposed rule, the new term ''guarantee'' would be defined as a financial guarantee, letter of credit, insurance, or similar financial instrument that allows one party to transfer the credit risk of one or more specific exposures to another party. The Board is proposing to add this definition to provide clarity.

Identified losses. Under the Original Proposal, the term ''identified losses'' would have been defined as those items that have been determined by an evaluation made by a state or federal examiner, as measured on the date of examination, to be chargeable against income, capital and/or valuation allowances such as the allowance for loan and lease losses. That proposed definition also would have provided the following examples of identified losses: Assets classified as losses, off-balance sheet items classified as losses, any provision expenses that are necessary to replenish valuation allowances to an adequate level, liabilities not shown on the books, estimated losses in contingent liabilities, and differences in accounts that represent shortages.

[116] See NCUA Regulatory Alert, 14–RA–01, Ability-to-Repay and Qualified Mortgage Requirements from the Consumer Financial Protection Bureau (CFPB), January 2014 for additional information.

The Board received no comments on the proposed definition of ''identified losses.'' Nevertheless, the Board is now proposing to amend the definition of ''identified losses'' from the Original Proposal to ensure that identified losses would be measured in accordance with GAAP. Accordingly, under this proposal, the term ''identified losses'' would be defined as those items that have been determined by an evaluation made by NCUA, or in the case of a state-chartered credit union, the appropriate state official, as measured on the date of examination in accordance with GAAP, to be chargeable against income, equity or valuation allowances such as the allowances for loan and lease losses. The definition would provide further that examples of identified losses would be assets classified as losses, off-balance sheet items classified as losses, any provision expenses that are necessary to replenish valuation allowances to an adequate level, liabilities not shown on the books, estimated losses in contingent liabilities, and differences in accounts that represent shortages.

Industrial development bond. Under this proposed rule, the new term ''industrial development bond'' would be defined as a security issued under the auspices of a state or other political subdivision for the benefit of a private party or enterprise where that party or enterprise, rather than the government entity, is obligated to pay the principal and interest on the obligation.

This definition would be added to ensure the ultimate obligor's risk weight is used for risk-based capital calculations.

Intangible assets. Under the Original Proposal, the term ''intangible assets'' would have been defined as those assets that are required to be reported as intangible assets on a credit union's Call Report, including but not limited to purchased credit card relationships, goodwill, favorable leaseholds, and core deposit value.

The Board received no comments on the definition of ''Intangible assets'', but is proposing to revise the definition for clarity. Accordingly, under this proposal, the term ''intangible assets'' would be defined as assets, maintained in accordance with GAAP, other than financial assets, that lack physical substance. This proposed change would not affect the substance of the definition, but will make the definition clearer. Additionally, the Board is proposing to add a definition for ''other intangibles'', which are a subset of ''intangible assets,'' and discussed in more detail below.

Investment fund. Under this proposed rule, the new term ''investment fund'' would be defined as an investment with a pool of underlying investment assets. The proposed definition would provide further that the term investment fund includes an investment company that is registered under § 8 of the Investment Company Act of 1940, as amended, and collective investment funds or common trust investments that are unregistered investment products that pool fiduciary client assets to invest in a diversified pool of investments.

The Board is proposing to define the term ''investment fund'' broadly to capture more than SEC-registered investment companies and funds offered by banks. This broader definition is intended to allow for the use of the look-through approaches used in the Other Banking Agencies' capital regulations,[117] which are discussed in more detail below, to separate account insurance or other pooled investments.

Junior-lien residential real estate loan. Under this proposed rule, the new term ''junior-lien residential real estate loan'' would be defined as a loan or line of credit secured by a subordinate lien on a one-to-four family residential property.

Due to the observed higher delinquency and losses of junior lien residential real estate loans, and consistent with the risk weights assigned by the Other Banking Agencies,[118] the Board proposes assigning higher risk weights for junior-lien residential real estate loans than for first-lien residential real estate loans. This definition would generally include all residential real estate loans that do not meet the definition of a first-lien residential real estate loans since the credit union is secured by a second or subsequent lien on the residential property loan.

Loan to a CUSO. Under the Original Proposal, the term ''loans to CUSO'' would have been defined as the aggregate outstanding loan balance, available line(s) of credit from the credit union, and guarantees the credit union has made to or on behalf of a CUSO.

The Board received no comments on the definition of ''Loans to CUSOs'' and has decided to retain the term in this proposal with the following changes to the term and the definition. Under this proposed rule the term ''loan to a CUSO'' would be defined as the outstanding balance of any loan from a credit union to a CUSO as recorded on the statement of financial condition in accordance with GAAP.

The Board originally proposed to add this definition to capture the importance of recording loans to a CUSO in accordance with GAAP and to clarify how the assignment of risk weights would be determined. By following GAAP:

- For an unconsolidated CUSO, a credit union must assign the risk weight to the outstanding balance of the loans to the CUSO as presented on the statement of financial condition;
- For a consolidated CUSO, the loan to a CUSO is normally zero since the consolidation entries eliminate the intercompany transaction.

Loan secured by real estate. Under this proposed rule, the new term ''loan secured by real estate'' would be defined as a loan that, at origination, is secured wholly or substantially by a lien(s) on real property for which the lien(s) is central to the extension of the credit. The definition would provide further that a lien is ''central'' to the extension of credit if the borrowers would not have been extended credit in the same amount or on terms as favorable without the lien(s) on real property. The definition would also provide that, for a loan to be ''secured wholly or substantially by a lien(s) on real property,'' the estimated value of the real estate collateral at origination (after deducting any more senior liens held by others) must be greater than 50 percent of the principal amount of the loan at origination.

The Board proposes using this term to ensure consistency in the assignment of risk weights for real estate loans. The definition would clarify that the terms of the loan are predicated on the existence of the lien on real property and that the real estate value at origination of the loans must be at least 50 percent of the principal amount of the loan to meet the definition. The Board does not intend for this to mean that a real estate loan with a 50 percent loan-to-value ratio is an appropriate credit risk but rather such a loan only meets the definition of secured by real estate.

Loans transferred with limited recourse. Under the Original Proposal, the term ''loans transferred with limited recourse'' would have been defined as the total principal balance outstanding of loans transferred, including participations, for which the transfer qualified for true sale accounting treatment under GAAP, and for which the transferor credit union retained some limited recourse (*i.e.,* insufficient recourse to preclude true sale accounting treatment). The proposed definition would also have clarified that the term does not include transfers that qualify for true sale accounting treatment but contain only routine

[117] *See, e.g.,* 12 CFR 324.53.

[118] *See, e.g.,* 12 CFR 324.32(g)(2).

representation and warranty paragraphs that are standard for sale on the secondary market, provided the credit union is in compliance with all other related requirements such as capital requirements.

Commenters suggested that the proposed definition be amended to represent the true risk associated with that product. Commenters stated that the proposed definition mirrors the Call Report field and includes the ''total principal balance outstanding of loans transferred . . . for which the transferor credit union retained some limited recourse.'' Although commenters stated they appreciated NCUA's efforts to align defined terms with existing Call Report fields, they countered that contingent liabilities should be taken into account only to the extent the credit union retains contractual and legal liability on the exposure. On partial recourse loans, commenters suggested that the credit union only retains a small fraction of the liability and is not exposed on the total principal balance. However, commenters stated that, under the Original Proposal, a credit union would be treated as holding the full balance as a contingent liability. Commenters suggested that this was a significant misrepresentation of the risk and created a disincentive for credit unions to utilize limited recourse loan sale relationships, which provide credit unions with a valuable option in managing liquidity risk and IRR, while still incentivizing the credit union to make high-quality loans. Commenters stated that the proposal would penalize credit unions that have utilized these programs prudently and effectively as part of a safe and sound asset management program. To remedy this problem, commenters suggested the definition of the term ''loans transferred with limited recourse'' and the corresponding Call Report field should be amended to reflect the true recourse exposure of the credit union.

In response to these comments, the Board is now proposing to amend the calculation for determining the risk-based capital requirement for loans transferred with limited recourse to more accurately align the capital requirement with the true recourse exposure. Whereas the Original Proposal would have required the credit union to multiply the face amount, or notional value, of the loans transferred with limited recourse by the appropriate credit conversion factor and then apply the appropriate risk weight, this proposed rule would amend the calculation to require a credit union to multiply the off-balance sheet exposure by the appropriate credit conversion factor and then apply the appropriate risk weight. A new definition for off-balance sheet exposure is included in this proposal and is discussed in more detail below. In addition, the definition of ''loans transferred with limited recourse'' is revised by amending all references to ''warranty paragraphs'' to read ''warranty clauses'' to clarify that it is the content of the document and not its length that is important.

Accordingly, under this proposed rule, the term ''Loans transferred with limited recourse'' would be defined as the total principal balance outstanding of loans transferred, including participations, for which the transfer qualified for true sale accounting treatment under GAAP, and for which the transferor credit union retained some limited recourse (*i.e.,* insufficient recourse to preclude true sale accounting treatment). The definition would provide further that the term loans transferred with limited recourse excludes transfers that qualify for true sale accounting treatment but contain only routine representation and warranty clauses that are standard for sales on the secondary market, provided the credit union is in compliance with all other related requirements, such as capital requirements.

Mortgage-backed security (MBS). Under this proposed rule, the new term ''mortgage-backed security'' would be defined as a security backed by first- or junior-lien mortgages secured by real estate upon which is located a dwelling, mixed residential and commercial structure, residential manufactured home, or commercial structure. This definition would be similar to the definition of MBS in part 704 of NCUA's regulations. The only difference is that the phrase ''first- or junior-lien mortgages'' in the proposed part 702 definition replaces the phrase ''first or second mortgage'' in the definition in part 704. This makes the proposed part 702 definition more consistent with the terminology used throughout the proposal.

Mortgage partnership finance program. Under this proposed rule, the new term ''mortgage partnership finance program'' would be defined as any Federal Home Loan Bank program through which loans are originated by a depository institution that are purchased or funded by the Federal Home Loan Banks, where the depository institutions receive fees for managing the credit risk of the loans and servicing them. The definition would provide further that the credit risk must be shared between the depository institutions and the Federal Home Loan Banks.

Adding this definition is necessary because this proposal would apply a separate risk weight to the off-balance sheet exposure resulting from loans transferred under the defined program. Additionally, the method that would be used to calculate the risk-based capital requirement for loans in the defined program would be different from other loans transferred with limited recourse. A separate definition and risk weight for loans sold under this program would result in a risk-based capital requirement consistent with the credit loss history of this program.

Mortgage servicing assets. Under the Original Proposal, the term ''mortgage servicing asset'' would have been defined as those assets (net of any related valuation allowances) resulting from contracts to service loans secured by real estate (that have been securitized or owned by others) for which the benefits of servicing are expected to more than adequately compensate the servicer for performing the servicing.

The Board received no comments on the definition of ''mortgage servicing asset'' and has decided to retain the proposed definition in this proposal with the following changes for clarity. Credit unions are expected to follow GAAP when reporting assets, which is intended to clarify that credit unions must report mortgage servicing assets net of any related valuation allowance because it is required by GAAP. Accordingly, under this proposed rule, the term ''mortgage servicing assets'' would be defined as those assets, maintained in accordance with GAAP, resulting from contracts to service loans secured by real estate (that have been securitized or owned by others) for which the benefits of servicing are expected to more than adequately compensate the servicer for performing the servicing.

NCUSIF. Under the Original Proposal, the term ''NCUSIF'' means the National Credit Union Share Insurance Fund as defined by 12 U.S.C. 1783. The Board received no comments on the definition of ''NCUSIF'' and has decided to retain the term in this proposal without modification.

Net worth. Generally consistent with the current rule, under this proposed rule the term ''net worth'' would be defined as:

- The retained earnings balance of the credit union at quarter-end as determined under GAAP, subject to bullet 3 of this definition.
- For a low-income-designated credit union, net worth also includes secondary capital accounts that are uninsured and subordinate to all other

claims, including claims of creditors, shareholders, and the NCUSIF.

- For a credit union that acquires another credit union in a mutual combination, net worth also includes the retained earnings of the acquired credit union, or of an integrated set of activities and assets, less any bargain purchase gain recognized in either case to the extent the difference between the two is greater than zero. The acquired retained earnings must be determined at the point of acquisition under GAAP. A mutual combination, including a supervisory combination, is a transaction in which a credit union acquires another credit union or acquires an integrated set of activities and assets that is capable of being conducted and managed as a credit union.
- The term ''net worth'' also includes loans to and accounts in an insured credit union, established pursuant to § 208 of the FCUA, provided such loans and accounts:
  - Have a remaining maturity of more than five years;
  - Are subordinate to all other claims including those of shareholders, creditors, and the NCUSIF;
  - Are not pledged as security on a loan to, or other obligation of, any party;
  - Are not insured by the NCUSIF;
  - Have non-cumulative dividends;
  - Are transferable; and
  - Are available to cover operating losses realized by the insured credit union that exceed its available retained earnings.''

The Original Proposal did not revise the definition of the term ''net worth,'' and NCUA did not receive any comments on the definition. This proposal, however, would delete from the current definition of net worth the sentence ''Retained earnings consists of undivided earnings, regular reserve, and any other appropriations designed by management or regulatory authorities,'' which is included in paragraph (f)(1) of the current definition. That sentence lists items that are included in retained earnings and is not necessary. No substantive change is intended by this amendment.

Paragraph (f)(3) of the current definition would also be revised to clarify that the term ''mutual combination'' includes a ''supervisory combination'' because this proposal introduces the new term supervisory merger to part 702, which is a specific type of mutual combination.

Net worth ratio. Under the Original Proposal, the term ''net worth ratio'' means the ratio of the net worth of the credit union to the total assets of the credit union truncated to two decimal places. The Board received no comments on the definition of ''net worth ratio'' and has decided to retain the term in this proposal without modification.

New credit union. To provide clarity and reduce the number of redundant rule sections, under this proposed rule, the term ''new credit union'' would be defined as having the same meaning as in § 702.201. No substantive changes to the current definition of ''new credit union'' are intended.

Nonperpetual capital. Under this proposed rule, the new term ''nonperpetual capital'' would be defined as having the same meaning as in 12 CFR 704.2 for consistency.

Off-balance sheet items. Under the Original Proposal, the term ''off-balance sheet items'' would have been defined as items such as commitments, contingent items, guarantees, certain repo-style transactions, financial standby letters of credit, and forward agreements that are not included on the balance sheet but are normally included in the financial statement footnotes.

The Board received no comments on the definition of ''off-balance sheet items,'' but is proposing to change the words ''balance sheet' in the definition to ''statement of financial condition.'' Accordingly, under this proposed rule, the term ''off-balance sheet items'' would be defined as items such as commitments, contingent items, guarantees, certain repo-style transactions, financial standby letters of credit, and forward agreements that are not included on the statement of financial condition, but are normally reported in the financial statement footnotes.

The Board is proposing to make this change in a number of places throughout the rule to make the rule more accurate and to clarify the definition for the reader.

Off-balance sheet exposure. Under this proposed rule, the new term ''off-balance sheet exposure'' would be defined as follows, depending on the type of exposure: (1) For loans sold under the Federal Home Loan Bank mortgage partnership finance (MPF) program, the outstanding loan balance as of the reporting date, net of any related valuation allowance; (2) for all other loans transferred with limited recourse or other seller-provided credit enhancements and that qualify for true sales accounting, the maximum contractual amount the credit union is exposed to according to the agreement, net of any related valuation allowance; (3) for unfunded commitments, the remaining unfunded portion of the contractual agreement.

The Board added the definition of off-balance sheet exposure to clarify the amount of the off-balance sheet item that will be used to calculate a credit union's risk-based capital ratio.

On-balance sheet. Under this proposal, the term ''on-balance sheet'' would be defined as a credit union's assets, liabilities, and equity, as disclosed on the statement of financial condition at a specific point in time.

Other intangible assets. Under this proposed rule, the new term ''other intangible assets'' would be defined as intangible assets, other than servicing assets and goodwill, maintained in accordance with GAAP. The definition would provide further that other intangible assets does not include excluded other intangible assets.

Under the Original Proposal, the term ''intangible assets'' would have been defined as those assets that are required to be reported as intangible assets on a credit union's Call Report, including but not limited to purchased credit card relationships, goodwill, favorable leaseholds, and core deposit value.

The Board received no comments on the proposed definition of ''intangible assets,'' but has taken the opportunity in this proposed rule to clarify the definition. The term intangible asset is typically defined by GAAP and includes goodwill. However, in the context of deductions from the numerator of the risk-based capital ratio, goodwill is already a deduction. Further, servicing assets are also typically considered an intangible asset. However, because servicing assets can typically be readily sold in the marketplace, the Board believes that intangible assets excluded from the risk-based capital ratio numerator should not include servicing assets. To simplify this issue, the Board has defined the term ''other intangible assets'' to be those assets defined under GAAP as intangible assets, except goodwill and servicing assets. The Board notes that this is not a substantive change between the two proposals, but merely a clarification to make the rule easier to read and understand.

Over-the-counter (OTC) interest rate derivative contract. Under this proposed rule, the new term ''over-the-counter (OTC) interest rate derivative contract'' would be defined as a derivative contract that is not cleared on an exchange. The Board is proposing to add this new term to coincide with other changes it is proposing to make in the derivatives section of this proposal.

Perpetual contributed capital. Under this proposed rule, the new term ''perpetual contributed capital'' would be defined as having the same meaning as in § 704.2 of this chapter.

Public sector entity (PSE). Under this proposed rule, the new term ''public sector entity'' would be defined as a state, local authority, or other governmental subdivision of the United States below the sovereign level.

Qualifying master netting agreement. Under this proposed rule, the term ''qualifying master netting agreement'' would be defined as a written, legally enforceable agreement, provided that:

- The agreement creates a single legal obligation for all individual transactions covered by the agreement upon an event of default, including upon an event of conservatorship, receivership, insolvency, liquidation, or similar proceeding, of the counterparty;
- The agreement provides the credit union the right to accelerate, terminate, and close out on a net basis all transactions under the agreement and to liquidate or set off collateral promptly upon an event of default, including upon an event of conservatorship, receivership, insolvency, liquidation, or similar proceeding, of the counterparty, provided that, in any such case, any exercise of rights under the agreement will not be stayed or avoided under applicable law in the relevant jurisdictions, other than in receivership, conservatorship, resolution under the Federal Deposit Insurance Act, Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act, or under any similar insolvency law applicable to GSEs;
- The agreement does not contain a walkaway clause (that is, a provision that permits a non-defaulting counterparty to make a lower payment than it otherwise would make under the agreement, or no payment at all, to a defaulter or the estate of a defaulter, even if the defaulter or the estate is a net creditor under the agreement); and
- In order to recognize an agreement as a qualifying master netting agreement for purposes of this part, a credit union must conduct sufficient legal review, at origination and in response to any changes in applicable law, to conclude with a well-founded basis (and maintain sufficient written documentation of that legal review) that:
  - ○ The agreement meets the requirements of paragraph (2) of this definition; and
  - ○ In the event of a legal challenge (including one resulting from default or from conservatorship, receivership, insolvency, liquidation, or similar proceeding), the relevant court and administrative authorities would find the agreement to be legal, valid, binding, and enforceable under the law of relevant jurisdictions.

The Board has retained this definition from the Original Proposal with only minor clarifying amendments.

Recourse. Under this proposed rule, the new term ''recourse'' would be defined as a credit union's retention, in form or in substance, of any credit risk directly or indirectly associated with an asset it has transferred that exceeds a pro-rata share of that credit union's claim on the asset and disclosed in accordance with GAAP. The definition would provide further that if a credit union has no claim on an asset it has transferred, then the retention of any credit risk is recourse. The definition would also provide that a recourse obligation typically arises when a credit union transfers assets in a sale and retains an explicit obligation to repurchase assets or to absorb losses due to a default on the payment of principal or interest or any other deficiency in the performance of the underlying obligor or some other party. Finally, the definition would provide that recourse may also exist implicitly if the credit union provides credit enhancement beyond any contractual obligation to support assets it has transferred.

Residential mortgage-backed security. Under this proposed rule, the new term ''residential mortgage-backed security'' would be defined as a mortgage-backed security backed by loans secured by a first-lien on residential property.

The Board proposes to define ''residential mortgage-backed security'' similarly to the conventional usage of that term. This definition was added to allow for non-subordinated mortgage-backed securities backed by first-lien real estate loans to receive the same risk weight as first-lien residential real estate loans.

Residential property. Under this proposed rule, the new term ''residential property'' would be defined as a house, condominium unit, cooperative unit, manufactured home, or the construction thereof, and unimproved land zoned for one-to-four family residential use. The definition would provide further that the term residential property excludes boats and motor homes, even if used as a primary residence, and timeshare property.

The purpose of this new term is to broadly define the types of property that will be considered residential property. The definition is intended to allow for the inclusion of single family residential construction loans. The definition is intended to exclude larger scale speculative residential land transactions, which would be considered commercial loans for assigning risk weights.

Restructured. Under this proposed rule, the new term ''restructured'' would be defined, with respect to any loan, as a restructuring of the loan in which a credit union, for economic or legal reasons related to a borrower's financial difficulties, grants a concession to the borrower that it would not otherwise consider. According to the definition of ''current'' loan in this proposal, as restructured loan would not be considered a ''current'' loan. The definition would provide further that the term restructured excludes loans modified or restructured solely pursuant to the U.S. Treasury's Home Affordable Mortgage Program.

The restructuring of a loan may include, but is not necessarily limited to: (1) The transfer from the borrower to the lending credit union of real estate, receivables from third parties, other assets, or an equity interest in the borrower, in full or partial satisfaction of a loan; (2) a modification of the loan terms, such as a reduction of the stated interest rate, principal, or accrued interest or an extension of the maturity date at a stated interest rate lower than the current market rate for new debt with similar risk; or (3) a combination of the above.[119] A loan extended or renewed at a stated interest rate equal to the current market interest rate for new debt with similar risk is not a restructured loan.

The Board proposes to add the definition of ''restructured'' because a loan that is restructured contains elements, as addressed above, which increase the credit risk of the loan and therefore is assigned a higher risk weight associated with non-current loans. This definition also enables the definition of current loan to better align with the Other Banking Agencies [120] while addressing the same exception for loans modified or restructured pursuant to the U.S. Treasury's Home Affordable Mortgage Program.

Revenue obligation. Under this proposed rule, the new term ''revenue obligation'' would be defined as a bond or similar obligation that is an obligation of a PSE, but which the PSE is committed to repay with revenues from the specific project financed rather than general tax funds.

Revenue obligation bonds or debt are generally paid with revenues from the specific project financed rather than the general credit and taxing power of the issuing jurisdiction.

Risk-based capital ratio. Under the Original Proposal, the term ''risk-based

[119] FASB ASC 310–40, ''Troubled Debt Restructuring by Creditors.''

[120] *See* 12 U.S.C. 324.32(g).

capital ratio'' would have been defined as the percentage, rounded to two decimal places, of the risk-based capital ratio numerator to total risk weighted assets, as calculated in accordance with § 702.104(a).

A number of commenters raised concerns with the proposed changes that would have been made to the terminology in the current rule, including adding the new term ''risk-based capital ratio'' to the rule. Several commenters suggested that the Board would be redefining a statutorily defined term by using the proposed term ''risk-based capital ratio'' in the rule instead of the statutory term ''risk-based net worth ratio'' in the proposed rule.

The Board disagrees with this comment for reasons that are discussed in more detail in the portion of the preamble relating to § 702.102 below. Other than the comment above, the Board received no comments on the substance of the definition of ''risk-based capital ratio'' and has decided to retain the definition in this proposal with only non-substantive changes. Accordingly, under this proposed rule the term ''risk-based capital ratio'' would be defined as the percentage, rounded to two decimal places, of the risk-based capital ratio numerator to risk weighted assets, as calculated in accordance with § 702.104(a).

Risk-weighted assets. Under the Original Proposal, the term ''risk-weighted assets'' would have been defined as the total risk-weighted assets as calculated in accordance with § 702.104(c).

The Board received no comments on the definition of ''risk-weighted assets'' and has decided to retain the definition unchanged in this proposal.

Secured consumer loan. Under this proposed rule, the new term ''secured consumer loan'' would be defined as a consumer loan associated with collateral or other item of value to protect against loss where the creditor has a perfected security interest in the collateral or other item of value.

The Board recognizes that a secured consumer loan has lower credit risk than an unsecured consumer loan and, therefore, the Board assigns secured consumer loans to a lower risk weight than unsecured consumer loans. Secured consumer loans generally have lower delinquency rates and lower charge-off rates than unsecured consumer loans. Secured consumer loans generally include those collateralized by new and used vehicles, all-terrain vehicles, recreational vehicles, boats, motorcycles, and other items with a title and could also include a perfected security interest in furniture, fixtures, equipment, antiques, investments and collectables.

Senior executive officer. Under the Original Proposal, the term ''senior executive officer'' would have been defined as a senior executive officer as defined by § 701.14(b)(2).

The Board received no comments on the definition of ''senior executive officer'' and has decided to retain the definition unchanged in this proposal.

Separate account insurance. Under this proposed rule, the new term ''separate account insurance'' would be defined as an account into which a policyholder's cash surrender value is supported by assets segregated from the general assets of the carrier.

The Board added the definition of separate account insurance. The credit risk associated with separate account insurance may be higher than for general account permanent insurance because the separate account insurance is a segregated accounting and reporting account held separately from the insurer's general assets. The investments in the separate account would typically not be permissible for federal credit unions; therefore the separate account insurance is treated as if it were a non-part 703 compliant investment fund.

Shares. Under the Original Proposal, the term ''shares'' means deposits, shares, share certificates, share drafts, or any other depository account authorized by federal or state law. The Board did not receive any comments on this term and, therefore, has retained it in this proposal, without modification.

Share-secured loan. Under this proposed rule, the new term ''share-secured loan'' would be defined as a loan fully secured by shares on deposit at the credit union making the loan, and does not included the imposition of a statutory lien under 12 CFR 701.39.

The Board recognizes that share-secured loans have a low credit risk. It added this new definition to clarify which loans can be classified as share secured and, therefore, assigned a 20 percent risk weight. A credit union should have proper internal controls to ensure that pledged shares are not withdrawn prior to the full payment of the loan they secure. This definition specifically excludes a loan upon which a credit union has impressed a statutory lien pursuant to § 701.39 of NCUA's regulations, where the subject loan was not originated as share-secured.

STRIPS. Under this proposed rule, the new term ''STRIPS'' would be defined as separate traded registered interest and principal security.

The Board proposes to define ''STRIPS'' similarly to its conventional usage. This definition is meant to define investments that are created by separating a coupon paying security into distinct interest-only and principal-only securities.

Structured product. Under this proposed rule, the new term ''structured product'' would be defined as an investment that is linked, via return or loss allocation, to another investment or reference pool.

The Board proposes to define ''structured product'' to include investments that are created to behave like other investments. This definition is meant to ensure bonds that are indexed to equities are treated as equities for risk weight purposes. This definition is also meant to ensure that debentures that have losses that are allocated similarly to subordinated securities are treated as subordinated securities.

Subordinated. Under this proposed rule, the new term ''subordinated'' would mean, with respect to an investment, that the investment has a junior claim on the underlying collateral or assets to other investments in the same issuance. The definition would provide further that the term subordinated does not apply to securities that are junior only to money market fund eligible securities in the same issuance.

The Board recognizes that subordinated investments can contain substantial and complicated credit risk elements. The definition of subordinated is designed to encompass all investments that take losses before a more senior claim takes losses. This definition would not include an investment that was once subordinate to a senior investment, but then became non-subordinate because the previously senior investment paid off.

Supervisory merger or combination. Under this proposed rule, the new term ''supervisory merger or combination'' would be defined as a transaction that involved the following:

- An assisted merger or purchase and assumption where funds from the NCUSIF are provided to the continuing credit union;
- A merger or purchase and assumption classified by NCUA as an ''emergency merger'' where the acquired credit union is either insolvent or ''in danger of insolvency'' as defined under appendix B to part 701 of this chapter; or
- A merger or purchase and assumption that included NCUA's or the appropriate state official's

identification and selection of the continuing credit union.

The Board has added this definition to clarify which merger or combination transactions would be subject to an extended time period for absorbing the directly related goodwill and other intangible assets that are part of the transaction.

Swap dealer. Under this proposed rule, the new term ''swap dealer'' would be defined as having the same meaning as defined by the Commodity Futures Trading Commission in 17 CFT 1.3(ggg). The Board is proposing to add this new term to coincide with other changes it is proposing to make in the derivatives section of this proposal.

Total assets. The Original Proposal would have retained the definition of ''total assets'' in current § 702.2, but would have restructured the definition and provided additional clarifying language. Under proposed paragraph (1) under the definition of ''total assets,'' for each quarter, a credit union must elect one of the four measures of total assets listed in paragraph (2) of the definition to apply for all purposes under part 702 except §§ 702.103 through 702.105 (risk-based capital requirement). Proposed paragraph (2) under the definition of total assets would have provided that ''total assets'' means a credit union's total assets as measured by either: (i) The credit union's total assets measured by the average of quarter-end balances of the current and three preceding calendar quarters; (ii) the credit union's total assets measured by the average of month-end balances over the three calendar months of the applicable calendar quarter; (iii) the credit union's total assets measured by the average daily balance over the applicable calendar quarter; or (iv) the credit union's total assets measured by the quarter-end balance of the applicable calendar quarter as reported on the credit union's Call Report.

The Board received no comments on the definition of ''total assets'' and has decided to retain the definition in this proposal with only minor conforming changes.

Tranche. Under this proposed rule, the new term ''tranche'' would be defined as one of a number of related securities offered as part of the same transaction. The definition would provide further that the term tranche includes a structured product if it has a loss allocation based off of an investment or reference pool.

The Board proposes to define ''tranche'' similarly to its conventional usage for securitizations. Structured products are included in this definition if they are allocated losses based on a reference investment or reference pool.

Unsecured consumer loan. Under this proposed rule, the new term ''unsecured consumer loan'' would be defined as a consumer loan not secured by collateral.

The Board recognizes that unsecured consumer loans generally have a higher credit risk than secured consumer loans. Unsecured consumer loans have higher delinquency rates and higher charge-off rates than secured consumer loans. Unsecured consumer loans generally include credit card loans, signature loans, and co-maker and cosigner loans. Accordingly, the Board assigns unsecured consumer loans to a higher risk weight category than secured consumer loans.

U.S. Government agency. Under the Original Proposal, the term ''U.S. Government agency'' would have been defined as an instrumentality of the U.S. Government whose obligations are fully and explicitly guaranteed as to the timely payment of principal and interest by the full faith and credit of the U.S. Government.

The Board received no comments on the definition of ''U.S. Government agency'' and has decided to retain the proposed definition unchanged in this proposal.

Weighted-average life of investments. Under this proposed rule, the definition of ''weighted-average life of investments'' and the entirety of current § 702.105 of NCUA's regulation would be removed. The use of weighted-average life (WAL) of investments for the assignment of risk weights is in the current risk-based capital measure and would have been modified with lower capital requirements for shorter average life investments in the Original Proposal. Many commenters objected to the use of WAL for the assignment of risk weights for investments because the risk weights are based primarily on interest rate and liquidity risks, not credit risk.

In response to the comments, the Board now proposes to assign investment risk weights primarily based on credit risk with risk weights more comparable to the risk weights assigned by the Other Banking Agencies.[121] This adjustment would require additional granularity in the reporting of investments on the Call Report.

The Board requests comments on the definitions included in this proposal.

A. Subpart A—Prompt Corrective Action

The Original Proposal would have established new subpart A titled ''Prompt Corrective Action.'' New subpart A would have contained the sections of part 702 relating to capital measures, supervisory PCA actions, requirements for net worth restoration plans, and reserve requirements for all credit unions *not* defined as ''new'' pursuant to § 216(b)(2) of the FCUA.[122] The Board received no comments on these changes and has decided to retain the changes in this proposal.

Section 702.101 Capital Measures, Capital Adequacy, Effective Date of Classification, and Notice to NCUA

Under the Original Proposal, the requirements of proposed § 702.101 would have remained largely unchanged from current § 702.101. The title of proposed § 702.101, however, would have been changed to ''Capital measures, effective date of classification, and notice to NCUA'' to better reflect the three major topics that would have been covered in the section. In addition, the Original Proposal would have replaced the terms ''net worth measures'' with ''capital measures,'' ''net worth classification'' with ''capital classification,'' and ''net worth category'' with ''capital category'' to reflect the terminology changes being made throughout the proposal, which were discussed above and are discussed in further detail below.

A number of commenters raised concerns with the proposed changes that would have been made to the terminology in the current rule. The Board disagrees with these commenters for reasons that are discussed in more detail in the portion of the preamble relating to § 702.102. Other than the comments discussed in more detail below, the Board received no other comments on proposed changes to § 702.101 and has decided to retain the changes in this proposal.

Capital helps to ensure that individual credit unions can continue to serve as credit intermediaries even during times of stress, thereby promoting the safety and soundness of the overall U.S. financial system. As a prudential matter, the NCUA has a long-established policy that federally insured credit unions should hold capital commensurate with the level and nature of the risks to which they are exposed. In some cases, this may entail holding capital above the minimum requirements, depending on the nature of the credit union's activities and risk profile.

The Board notes that Other Banking Agencies' capital standards are the ''minimum capital requirements and

[121] *See, e.g.,* 12 CFR 324.32.

[122] Section 1790d(b)(2).

overall capital adequacy standards for FDIC-supervised institutions . . . include[ing] methodologies for calculating minimum capital requirements . . . .'' [123]

The FDIC may require an FDIC-supervised institution to hold an amount of regulatory capital greater than otherwise required under this part if the FDIC determines that the institution's capital requirements under this part are not commensurate with the institution's credit, market, operational, or other risks.[124]

Further, the September 10, 2013 preamble to art 324 of FDIC's regulations state that:

> The FDIC's general risk-based capital rules indicate that the capital requirements are minimum standards generally based on broad credit-risk considerations. The risk-based capital ratios under these rules do not explicitly take account of the quality of individual asset portfolios or the range of other types of risk to which FDIC-supervised institutions may be exposed, such as interest-rate risk, liquidity, market, or operational risks . . . In light of these considerations, as a prudent matter, an FDIC-supervised institution is generally expected to operate with capital positions well above the minimum risk-based ratios and to hold capital commensurate with the level and nature of the risks to which it is exposed, which may entail holding capital significantly above the minimum requirements.[125]

As indicated above, FDIC's approach to risk weights is calibrated to be the minimum regulatory capital standard. This NCUA proposal would also be calibrated to be the minimum regulatory capital standard, similar to the FDIC's rule, as suggested by commenters on the Original Proposal. Therefore, the Board believes it is necessary to incorporate a broader regulatory provision requiring complex credit unions to maintain capital commensurate with the level and nature of all risks to which they are exposed, and to maintain a written strategy for assessing capital adequacy and maintaining an appropriate level of capital. Proposed new § 702.101(b) is based on a similar provision in the Other Banking Agencies' rules and within the Board's authority under the FCUA.[126] The Board notes that it has broad legal authority to take action to ensure the safety and soundness of credit unions and the NCUSIF and to carry out the powers granted to the Board.[127] Requiring credit unions to maintain capital adequacy is part of ensuring safety and soundness, and is not a new concept.[128] Rather, as discussed in more detail below, NCUA long-standing practice is to monitor and enforce capital adequacy through the supervisory process. Therefore, proposed § 702.10(b) is a proper use of NCUA's broad legal authority to ensure safety and soundness and to carry out its administrative powers, is consistent with its long-standing supervisory practices, and furthers comparability with the Other Banking Agencies' risk based capital rules.

As the Other Banking Agencies' approach to risk assigning risk weights is calibrated to be the minimum regulatory capital standard, and this proposal is calibrated predominantly based on the Other Banking Agencies' rules as suggested by commenters on the Original Proposal, the Board has concluded it is necessary to require complex credit unions to maintain capital commensurate with the level and nature of all risks to which they are exposed, and a written strategy for assessing capital adequacy and maintaining an appropriate level of capital. This provision would complement NCUA's existing regulatory framework by working in tandem with other regulatory requirements, such as those related to liquidity, interest rate, and credit risk.

Accordingly, proposed § 702.101 would amend current § 702.101 to include a new capital adequacy provision based on a similar provision in FDIC's rule.[129] The new capital adequacy provision would be added as proposed § 702.101(b) and paragraphs (b) and (c) of current § 702.101 would be renumbered as paragraphs (d) and (e) of proposed § 702.101. The new capital adequacy provision would not affect credit unions' PCA capital category. However, the Board believes it would support the assessment of capital adequacy in the supervisory process (assigning CAMEL and risk ratings).

A complex credit union is generally expected to have internal processes for assessing capital adequacy that reflect a full understanding of its risks and to ensure that it holds capital corresponding to those risks to maintain overall capital adequacy.[130] The nature of such capital adequacy assessments should be commensurate with the credit union's size, complexity, and risk-profile. Consistent with longstanding NCUA practice,[131] the supervisory assessment of capital adequacy will take account of whether a credit union plans appropriately to maintain an adequate level of capital given its activities and risk profile, as well as risks and other factors that can affect its financial condition; including, for example, the level and severity of problem assets and its exposure to operational risk, IRR and significant asset concentrations. In addition to evaluating the appropriateness of a credit union's capital level given its overall risk profile, the supervisory assessment takes into account the quality and trends in a credit union's capital composition, whether the credit union is entering new activities or introducing new products. The assessment also considers whether a credit union is receiving special supervisory attention, has or is expected to have losses resulting in capital inadequacy, has significant exposure due to risks from nontraditional activities, or has significant exposure to IRR or operational risk. For these reasons, NCUA's supervisory assessment of capital adequacy may differ from conclusions that might be drawn solely from the calculation of a complex credit union's regulatory capital ratios.

An effective capital planning process involves an assessment of the risks to which a credit union is exposed and its processes for managing and mitigating those risks, an evaluation of its capital adequacy relative to its risks, and consideration of the potential impact on its earnings and capital base from current and prospective economic conditions. While elements of a supervisory review of capital adequacy would be similar across credit unions, evaluation of the level of sophistication of an individual credit union's capital adequacy process should be commensurate with the institution's size, sophistication, and risk profile, similar to the current supervisory practice. NCUA would develop and publish supervisory guidance for examiners on how to apply this provision.

Some commenters stated that they manage their capital so that they operate with a buffer over the regulatory minimum and that examiners expect such a buffer. These commenters expressed concern that examiners will expect even higher capital levels. The Board notes that the credit union system is generally very well capitalized, and

[123] *See, e.g.,* 12 CFR 324.1(a).

[124] *See, e.g.,* 12 CFR 324.1(d).

[125] 78 FR 55362, Tuesday, September 10, 2013.

[126] *See, e.g.,* 12 CFR 324.10(d)(1) and (2).

[127] 12 U.S.C. 1786 and 1789.

[128] See, *e.g.* 78 FR 55340, 55362(September 10, 2013).

[129] 12 CFR 324.10 Minimum capital requirements.

[130] The Basel framework incorporates similar requirements under Pillar 2 of Basel II.

[131] NCUA Letter to Credit Unions No. 07–CU–12, December 2007, CAMEL Rating System and NCUA Letter to Credit Unions No. 09–CU–03, November 2009, Reviewing Adequacy of Earnings.

this provision merely reflects existing supervisory standards for individual complex credit unions. However, NCUA plans to incorporate in its National Supervision Policy Manual procedural controls on the discretion examiners employ in relation to a complex credit union being deemed out of compliance with this provision.

101(b) Capital Adequacy

For the reasons discussed above, this proposal would add new capital adequacy provisions to current § 702.101(b). The proposed new capital adequacy provisions would be added as § 702.101(b), and the proposal would redesignate paragraphs (b) and (c) of current § 702.101 as paragraphs (d) and (e) of proposed § 702.101. Proposed § 702.101(b) would provide that:

- Notwithstanding the minimum requirements in this part, a credit union defined as complex must maintain capital commensurate with the level and nature of all risks to which the institution is exposed.
- A credit union defined as complex must have a process for assessing its overall capital adequacy in relation to its risk profile and a comprehensive written strategy for maintaining an appropriate level of capital.

Section 702.102 Capital Classifications

Under the Original Proposal, the title of § 702.102 would have been changed from ''statutory net worth categories'' to ''capital classifications.'' The section would also have continued to list the five statutory capital categories that are provided in § 216(c) of the FCUA.[132]

A number of commenters expressed concerns with the changes in terminology that were made in this and other sections of the regulation. Commenters suggested that by using the terms ''risk-based capital,'' ''capital categories,'' ''capital classifications,'' and other terms not specifically included in the FCUA, the Board was redefining the statutorily defined terms ''net worth'' and ''net worth ratio'' with terms that do not encompass the same things.

The Board disagrees. As the Board explained in the Original Proposal, although § 216(c) of the FCUA uses the general term ''net worth categories,'' the Board believes the term ''capital categories'' is less confusing for industry practitioners and better describes the two measurements, ''net worth ratio'' and ''risk-based net worth,'' that make up the categories listed in the statute. It is clear, from the distinct uses of the terms ''net worth'' and ''risk-based net worth'' in the FCUA that Congress intended those terms to have different meanings.[133] Moreover, the new terms were defined in the Original Proposal in a manner consistent with both the statutory terms and the FCUA's requirements. The Board has considered the use of these new terms, as well as the comments received, and believes that the new terminology would not alter or otherwise be inconsistent with the requirements of the FCUA. Rather, the Board continues to believe that the use of these new terms will help to clarify the requirements of the regulation for credit unions and other interested parties. Therefore, the Board has decided to retain the changes and new terminology in this proposal.

102(a) Capital Categories

Under the Original Proposal, proposed § 702.102(a) would have replaced current § 702.102(a) and would have set forth new minimum capital measures for complex credit unions. Consistent with sections 216(c)(1)(A) through (E) of the FCUA, the net worth ratio measures listed in proposed §§ 702.102(a)(1) through (5) would have continued to match those listed in the statute for each capital category, and would have used both the net worth ratio and the proposed risk-based capital ratio as elements of the capital categories for ''well capitalized,'' ''adequately capitalized,'' and ''undercapitalized'' credit unions. The risk-based capital ratio would have included components that required higher capital levels to reflect increased risk due to IRR, concentration risk, credit risk, market risk, and liquidity risk.

The Original Proposal also would have introduced a new, scaled risk-based capital ratio measurement approach for assigning capital classifications for well capitalized, adequately capitalized, and undercapitalized credit unions. This scaled approach would have recognized the relationship between higher risk-based capital ratios and the creditworthiness of credit unions.

The Board received numerous general comments concerning the capital categories, nearly all advocating a reduction in all of the risk-based capital ratios for complex credit unions. Some commenters suggested the following risk-based ratios for complex credit unions: Eight percent or greater for well capitalized, 5.5 percent to 7.99 percent for adequately capitalized, and 5.5 percent or lower for undercapitalized. Other commenters suggested that, in light of the historical performance of credit unions through the recent financial crisis, the risk-based capital ratio ratios should be: 8.5 percent or greater to be well capitalized, six percent to 8.49 percent to be adequately capitalized, and six percent or less to be undercapitalized. Still other commenters suggested a reduction in the risk-based capital ratios for each capital category by a minimum of 50 basis points to avoid harming the credit union industry by limiting credit unions' ability to make loans, decreasing their earnings, and hampering current business strategies.

After carefully considering the comments, the Board is now proposing to reduce the risk-based capital ratio threshold for well capitalized from 10.5 percent to 10 percent. All of the other risk-based capital ratio thresholds from the Original Proposal would remain unchanged. As discussed below, the Board believes this structure is within its legal authority to implement, and that this well capitalized ratio threshold both achieves parity with Other Banking Agencies' regulations[134] and simplifies NCUA's proposed risk-based capital ratio measure by not including the capital conservation buffer that is part of the Other Banking Agencies' risk-based capital regulations.

102(a)(1) Well Capitalized

Under the Original Proposal, proposed § 702.102(a)(1) would have required a credit union to maintain a net worth ratio of seven percent or greater and, if it were a complex credit union, a risk-based capital ratio of 10.5 percent or greater to be classified as well capitalized. The higher proposed risk-based capital requirement for the well capitalized classification was designed to boost the resiliency of complex credit unions throughout financial cycles and align them with the standards used by the Other Banking Agencies.[135] The proposed 10.5 percent risk-based capital ratio target was comparable to the Other Banking Agencies' eight percent total risk-based capital ratio to be adequately capitalized plus the 2.5 percent capital conservation buffer that banks will be required to meet when the capital conservation buffer is fully

[132] Section 1790d(c).

[133] *Compare* section 1790d(c)(1)(A) (providing that a credit union is ''well capitalized'' if it meets both the seven percent net worth ratio requirement and any applicable risk-based net worth requirement), *and* section 1790d(d) (requiring the Board to design a risk-based net worth requirement), *with* section 1790d(o) (defining the term ''net worth,'' but not defining the term risk-based net worth ratio).

[134] *See, e.g.,* 12 CFR 324.403.

[135] *See, e.g.,* 12 CFR 324.10, 324.11, and 324.403.

implemented in 2019.[136] To be well capitalized, the Other Banking Agencies require a total risk-based capital ratio of 10 percent. Therefore, a bank can be well capitalized with a total risk-based capital ratio of 10 percent, but its inadequate capital conservation buffer would still limit its ability to make capital distributions and discretionary bonus payments. The Original Proposal included a 10.5 percent risk-based capital ratio requirement, rather than the Other Banking Agencies' 10 percent,[137] to avoid the complexity of a capital conservation buffer.

The Board received a substantial number of comments regarding the proposed risk-based capital ratio for a credit union to be classified as well capitalized. As a threshold matter, a number of commenters questioned the Board's authority to impose any risk-based net worth requirement on well capitalized credit unions. Specifically, commenters suggested that § 1790d(d) of the FCUA, which they argued provides the entirety of the language in the FCUA dealing with the risk-based component of PCA, directs NCUA to connect the risk-based net worth requirement to the sufficiency of a credit union's net worth only for the adequately capitalized classification. Commenters further maintained that requiring a *higher* risk-based capital ratio level for well capitalized credit unions than the level required for adequately capitalized credit unions contravened both Congressional intent and the Board's statutory authority. They argued that, not only does the FCUA itself prohibit the Board from imposing a higher risk-based capital ratio for the well capitalized threshold, but that sound public policy also supports applying the risk-based net worth requirement only to the adequately capitalized threshold. They cited the seven percent net worth ratio for well capitalized credit unions as support for this argument, stating that this net worth ratio renders a separate, higher risk-based capital ratio level unnecessary for well capitalized credit unions.

Similarly, another commenter recommended that the Board impose the same risk-based capital ratio on both well capitalized and adequately capitalized credit unions, and the commenter encouraged the Board not to increase that risk-based capital ratio above eight percent. As support, the commenter noted that, in the preamble to the Original Proposal, the Board stated that the proposed risk-based capital ratio of eight percent would have been reasonable for an adequately capitalized credit union. The commenter further suggested that because adequately capitalized and well capitalized credit unions have higher net worth ratio requirements than similarly situated banks, an eight percent risk-based capital ratio would be sufficient and that it would be unreasonable to require adequately capitalized credit unions to maintain a 10.5 percent risk-based capital ratio.

Other commenters suggested that the proposed 10.5 percent risk-based capital ratio for a credit union to be classified as well capitalized is not appropriate because it unfairly incorporates the capital conservation buffer into the PCA framework for credit unions. These commenters noted that a bank can be classified as well capitalized with an eight percent total risk-based capital ratio, even if the bank fails to hold the 2.5 percent capital conservation buffer required under the Other Banking Agencies' capital regulations, although the commenters acknowledged that any such failure to meet the capital conservation buffer would limit that bank's ability to make capital distributions and discretionary bonus payments. These commenters maintained that by directly incorporating the capital conservation buffer into NCUA's PCA framework, the Board would disadvantage credit unions by making them more vulnerable to downgrades in their PCA capital classification level, a course of action which the Other Banking Agencies specifically declined to adopt. Commenters further stated that because the capital conservation buffer was designed to absorb losses in stressful periods, the Other Banking Agencies believed that it was appropriate for a depository institution to be able to use some of its capital conservation buffer without being considered less than well capitalized for PCA purposes. Commenters suggested that the Board should, at a minimum, provide credit unions the same flexibility. Other commenters suggested that the Other Banking Agencies adopted the capital conservation buffer as a means to restrict banks from paying dividends to shareholders and ''substantial discretionary bonuses'' to management, which occurred even as banks' financial conditions weakened during the last financial crisis. These commenters noted that even failed credit unions were not engaging in this practice and, therefore, the concern is not relevant to the credit union industry. Accordingly, the commenters argued that including the capital conservation buffer in the risk-based capital proposal and setting the risk-based capital ratio at 10.5 percent was arbitrary.

Another commenter suggested that the capital conservation buffer for banks applies only in periods of significant credit growth, while NCUA's proposed risk-based capital ratio of 10.5 percent would apply at all times in a financial cycle. Other commenters suggested that the Original Proposal would have applied the capital conservation buffer only to the well capitalized classification, thereby subjecting adequately capitalized credit unions only to the eight percent total risk-based capital ratio used by the Other Banking Agencies. Commenters maintained that, for the sake of consistency and comparability among banks and credit unions, the Board should remove the 2.5 percent capital conservation buffer from the well capitalized category and adjust the other levels accordingly. Alternatively, they argued that the Board should, at a minimum, allow credit unions an equivalent five-year implementation period to build capital reserves without sacrificing member services or dramatically increasing fees.

One commenter supported the proposed 10.5 percent risk-based capital ratio level as the appropriate level to be considered well capitalized.[138] This commenter maintained, however, that there should not be an associated increase in this risk-based capital requirement if NCUA determines to include the NCUSIF deposit in the risk-based capital ratio numerator.

Other commenters questioned why well capitalized credit unions would be subject to a risk-based capital ratio of 10.5 percent when banks only need a risk-based capital ratio of 10 percent.

Finally, still other commenters suggested that credit unions receiving an overall capital classification of well capitalized be granted blanket waivers, fixed asset exemptions, longer exam cycles, and other incentives under any final risk-based capital rule.

As noted in the legal authority section of this preamble, the Board has carefully considered these comments and generally disagrees with commenters' reading and interpretation of the FCUA. For the reasons stated in that discussion, it is within NCUA's legal authority to promulgate this proposal and to impose a separate, higher risk-based capital ratio requirement on well capitalized credit unions than the one imposed on adequately capitalized

[136] On September 10, 2013, FDIC published an interim final rule that revised its risk-based and leverage capital requirements for FDIC-supervised institutions. 78 FR 55339 (Sept. 10, 2013).

[137] *See, e.g.,* 12 CFR 324.403.

[138]

credit unions. NCUA's interpretation of its legal authority to require credit unions to meet different risk-based capital ratio levels to be classified as either well capitalized or adequately capitalized is further supported by the Other Banking Agencies' PCA statute and regulations, which require different risk-based capital ratio levels for banks to be classified as well capitalized, adequately capitalized, undercapitalized, or significantly undercapitalized.[139] Section 38(c)(1)(A) of the FDI Act requires that the Other Banking Agencies' relevant capital measures ''include (i) a leverage limit; and (ii) a risk-based capital *requirement.*'' [140] Therefore, by setting different risk-based capital ratio levels for credit unions to be adequately and well capitalized, NCUA's risk-based capital requirement is more ''comparable'' to the Other Banking Agencies' risk-based capital requirement.

The Board also notes there are sound policy reasons for setting a higher risk-based capital ratio threshold for the well capitalized category than the one for the adequately capitalized category. Under the current rule, a credit union's capital classification could rapidly decline directly from well capitalized to undercapitalized if it fails to meet the required risk-based net worth ratio level.[141] Moreover, credit unions classified as well capitalized are generally considered financially sound, afforded greater latitude under some other regulatory provisions,[142] and are not subject to most mandatory or discretionary supervisory actions. In contrast, credit unions that fall to the undercapitalized category are financially weak and are subject to various mandatory and discretionary supervisory actions intended to resolve the capital deficiency and limit risk taking until capital levels are restored to prudent levels. The lack of graduated thresholds in the current rule's construct for the risk-based net worth requirement does not effectively provide for earlier reflection in a credit union's net worth category. Under the current rule, a change in the credit union's risk profile, capital levels, or both that results in a decline in the risk-based net worth ratio does not affect its net worth category until it results in the credit union falling to the point where the situation requires mandatory or discretionary supervisory actions.

The Board believes a more effective policy is to adopt a higher threshold for the well capitalized category than for the adequately capitalized category to provide a more graduated framework where a credit union does not necessarily drop directly from well capitalized to undercapitalized. In fact, this policy objective is reflected in how Congress, in section 216(c) of the FCUA, and the Other Banking Agencies, in their risk-based capital regulations, designed the graduated PCA capital categories.

For a given risk asset, the amount of capital required to be held for that risk asset is calculated by multiplying the dollar amount of the risk asset times the risk weight times the desired capital level. To illustrate, where the threshold for well capitalized is 10 percent, a credit union that has one dollar in a risk asset assigned a 50 percent risk weight would need to hold capital of five cents ($1 multiplied by 50 percent multiplied by 10 percent). The point of this illustration is that the risk weights are interdependent with the thresholds set for the regulatory capital categories. The Board notes the risk weights in this proposal are based predominantly on those used by the Other Banking Agencies, as suggested by commenters on the Original Proposal. For the total capital-to-risk assets ratio, the Other Banking Agencies establish a threshold of 10 percent to be well capitalized.[143]

For NCUA's risk-based capital requirement to be comparable, it should also be equivalent in rigor to the Other Banking Agencies' risk-based capital requirement.[144] The rigor of a regulatory capital standard is primarily a function of how much capital an institution is required to hold for a given type of asset. Thus, if NCUA chose any threshold below 10 percent for the minimum required level of regulatory capital, it would either result in systematically lower incentives for credit unions to accumulate capital or the risk weights would need to be adjusted commensurately to offset the effect of the lower threshold. For example, if a uniform threshold for both well and adequately capitalized were maintained and set at only 8 percent, as some commenters suggested, there would be a decline in the overall rigor of the risk-based capital ratio. Alternatively, the risk weights for various assets could be increased by 20 percent to offset this effect. The Board believes adjusting the risk weights in this manner would create more difficulty in comparing asset types and risk weights across financial institutions, and no doubt lead to misunderstanding and controversy.

Conversely, a uniform threshold for the well capitalized and adequately capitalized categories could be maintained, but raised to maintain the rigor of the risk-based capital standard and avoid adjusting the risk weights. This approach would set a higher point at which credit unions would fall to undercapitalized, and therefore be subject to mandatory and discretionary supervisory actions. The Board does not believe this would be optimal, as the supervisory consequences for credit unions with risk-based capital ratios between eight percent and ten percent would be worse than for institutions operating under the Other Banking Agencies' rules.

Maintaining the rigor of the risk-based net worth requirement is also important for another key policy objective of the Board: Ensuring the risk-based net worth requirement is relevant and meaningful. A relevant and meaningful risk-based net worth requirement will result in capital levels better correlated to risk, and better inform credit union decision making.[145] To be relevant and meaningful, the risk-based net worth requirement must result in minimum regulatory capital levels on par with the net worth ratio for credit unions with elevated risk, and be the governing ratio (require more capital than the net worth ratio) for credit unions with extraordinarily high risk profiles. If the highest threshold for the risk-based capital ratio were set as low as 8 percent for well capitalized credit unions, as some commenters suggested, the risk-based net worth requirement would govern very few, if any, credit unions. If the highest risk-based capital ratio threshold were set at eight percent, NCUA estimates at most seven credit unions would have the proposed risk-based ratio be the governing requirement, with only one credit union currently holding insufficient capital to meet the requirement. Further, only credit unions with risk assets greater

[139] *See* 12 U.S.C. 1831o, *and* 12 CFR 324.403(b).

[140] 12 U.S.C. 1831o(c)(1)(A) (emphasis added).

[141] Per the FCUA, ''undercapitalized'' is the lowest PCA category in which a failure to meet the risk-based net worth requirement can result.

[142] *See* 12 CFR 745.9–2 and 12 CFR 723.7.

[143] The Other Banking Agencies' Total Risk-Based Capital ratio is the most analogous standard for credit unions given the proposed broadening of the definition of capital to include accounts that would not be included in the definition of Tier 1 capital, such as the allowance for loan and lease losses and secondary capital for low-income designated credit unions.

[144] *See* S. Rep. No. 193, 105th Cong., 2d Sess. (1998).

[145] The benefits of a capital system better correlated to risk are discussed in the Summary section of this preamble.

than 90 percent of total assets would be bound by the risk-based requirement.

Further, capital is a lagging indicator because it is founded primarily on accounting standards, which by their nature are largely based on past performance. The net worth ratio is even more so a lagging indicator because it applies capital—a lagging measure in itself—to total assets. Thus, the net worth ratio does not distinguish among risky assets or changes in a balance sheet's composition. A risk-based capital ratio is more prospective by accounting for asset allocation choices and driving capital requirements before losses occur and capital levels decline. The more relevant the risk-based net worth requirement is, the more likely that credit unions will build capital sufficient to prevent precipitous declines in their PCA capital classifications that could result in greater regulatory oversight and even failure.

To be relevant and meaningful, the risk-based net worth requirement also needs to incent credit unions to build and maintain capital as they increase risk to be able to absorb any corresponding unexpected losses. A graduated, or tiered, system of capital category thresholds that distinguishes between the well capitalized and adequately capitalized categories will incentivize credit unions to hold sound levels of capital without invoking supervisory action before necessary. While there is no requirement for a credit union to be well capitalized, and there are no supervisory interventions required for a credit union with an adequately capitalized classification, there are some regulatory privileges and other benefits for a credit union that is well capitalized. Chief among those benefits is the accumulation of sufficient capital to weather financial and economic stress. During the recent financial crisis, credit unions experienced large losses in a compressed timeframe, resulting in a rapid deterioration of net worth. Some credit unions that historically had been classified as well capitalized were quickly downgraded to undercapitalized. As noted in the summary section, credit unions that failed at a loss to the NCUSIF on average were very well capitalized, based on their net worth ratios, 24 months prior to failure (average net worth ratio of 12 percent). Over the last 10 years, more than 80 percent of all credit union failures involved institutions that were well capitalized in the 24 months immediately preceding their failure. Unlike the net worth ratio, which is indifferent to the composition of assets, a well-designed risk-based net worth requirement would reflect material shifts in the risk profile of assets.

The Board believes that a risk-based capital framework that encourages and promotes capital accumulation benefits not only those credit unions that achieve the well-capitalized classification, but the entire credit union system. Thus, the Board remains committed to implementing the risk-based requirement under a graduated (multi-tiered) capital category framework.

As noted earlier in this preamble, the Board supports lowering the well capitalized risk-based capital ratio threshold from 10.5 percent to 10 percent. The Board agrees with the commenters who suggested that a 10 percent risk-based capital ratio would simplify the comparison with the Other Banking Agencies' rules by removing the effect of the capital conservation buffer. The 10 percent threshold for well capitalized credit unions, along with the eight percent threshold for adequately capitalized credit unions, would also be consistent with the total risk-based capital ratio requirements contained in the Other Banking Agencies' capital rules.

Capital ratio thresholds are largely a function of risk weights. As discussed in other parts of this proposal, the Board is now proposing to more closely align NCUA's risk weights with those assigned by the Other Banking Agencies. Therefore, the Board believes that NCUA's risk-based capital ratio threshold levels should also align with those of the Other Banking Agencies as closely as possible.

102(a)(2) Adequately Capitalized

Under the Original Proposal, proposed § 702.102(a)(2) would have required a credit union to maintain a net worth ratio of six percent or greater and, if it were a complex credit union, a risk-based capital ratio of eight percent or greater to be classified as adequately capitalized. This risk-based capital ratio level is comparable to the eight percent total risk-based capital ratio level required by the Other Banking Agencies for a bank to be adequately capitalized.

Other than the comments discussed above and in other parts of this preamble, the Board received no comments on the Original Proposal's adequately capitalized risk-based capital ratio level. Therefore, the Board has decided to retain the changes, with only minor adjustments for clarity.

This proposal would also add proposed § 702.102(a)(2)(iii), which would clarify that a credit union is adequately capitalized only if it meets the net worth and risk-based capital criteria in proposed paragraphs (a)(2)(i) and (ii), and does not meet the definition of a well capitalized credit union.

102(a)(3) Undercapitalized

Under the Original Proposal, proposed § 702.102(a)(3) would have classified a credit union as undercapitalized if the credit union maintained a net worth ratio of four percent or greater but less than six percent and, if it were a complex credit union, a risk-based capital ratio of less than eight percent.

Other than the comments discussed above and other parts of this preamble, the Board received no comments on the Original Proposal's undercapitalized risk-based capital ratio requirement. However, to provide additional clarity the Board is proposing to make additional minor adjustments to the paragraph in this proposal.

Under this proposal, § 702.102(a)(3) would provide that a credit union is undercapitalized if: (1) The credit union has a net worth ratio of four percent or more but less than six percent; or (2) the credit union, if complex, has a risk-based capital ratio of less than eight percent.

102(a)(4) Significantly Undercapitalized

Under the Original Proposal, proposed § 702.102(a)(4) would have classified a credit union as significantly undercapitalized if: (1) It had a net worth ratio of less than five percent and had received notice that its net worth restoration plan had not been approved; [146] (2) the credit union had a net worth ratio of two percent or more but less than four percent; or (3) the credit union had a net worth ratio of four percent or more but less than five percent, and the credit union either failed to submit an acceptable net worth restoration plan within the time prescribed in § 702.110, or materially failed to implement a net worth restoration plan approved by NCUA. The Original Proposal would have made some clarifying changes to the language in current § 702.102(a)(4), but would not have changed the criteria for being classified as significantly undercapitalized under part 702.

The Board received no comments on the proposed changes to this paragraph and has decided to retain the changes in this proposal with several adjustments for clarity.

[146] To qualify for a higher net worth classification, a significantly undercapitalized credit union must have a net worth restoration plan approved by NCUA.

Under this proposal, § 702.102(a)(4) would provide that a credit union is significantly undercapitalized if:

- The credit union has a net worth ratio of two percent or more but less than four percent; or
- The credit union has a net worth ratio of four percent or more but less than five percent, and either—
  - Fails to submit an acceptable net worth restoration plan within the time prescribed in § 702.111;
  - Materially fails to implement a net worth restoration plan approved by the Board; or
  - Receives notice that a submitted net worth restoration plan has not been approved.

102(a)(5) Critically Undercapitalized

Under the Original Proposal, proposed § 702.102(a)(5) would have classified a credit union as critically undercapitalized if it had a net worth ratio of less than two percent. The Original Proposal would have made some minor technical amendments to the language in current 702.102(a)(5), but would not have changed the criteria for being classified as critically undercapitalized under part 702.

The Board received no comments on the proposed changes to this paragraph and, therefore, it has decided to retain the changes in this proposal.

102(b) Reclassification Based on Supervisory Criteria Other Than Net Worth

The Original Proposal would have retained current § 702.102(b), with only a few amendments to update terminology and make minor edits for clarity. No substantive changes were intended.

The Board received no comments or suggested changes to this paragraph and has decided to retain the changes in this proposal.

102(c) Non-Delegation

Proposed § 702.102(c) would have been unchanged from current § 702.102(c).

The Board received no comments or suggested changes to this paragraph and has decided to make no changes in this proposal.

102(d) Consultation With State Officials

Proposed § 702.102(d) would have retained current § 702.102(d) with only a few small amendments for consistency with other sections of NCUA's regulations. No substantive changes were intended.

The Board received no comments or suggested changes to this paragraph and has decided to retain the changes in this proposal.

Section 702.103 Applicability of the Risk-Based Capital Ratio Measure

Under the Original Proposal, proposed § 702.103 would have changed the title of current § 702.103 from ''Applicability of risk-based net worth requirement'' to ''Applicability of risk-based capital ratio measure.'' Proposed § 702.103 would have provided that, for purposes of § 702.102, a credit union is defined as ''complex,'' and a risk-based capital ratio requirement is applicable, only if the credit union's quarter-end total assets exceed $50 million, as reflected in its most recent Call Report.

Under the current rule, credit unions are ''complex'' and subject to the risk-based net worth requirement only if they have quarter-end total assets over $50 million *and* they have a risk based net worth requirement exceeding six percent. The Original Proposal would have eliminated current § 702.103(b) and defined all credit unions with over $50 million in assets as ''complex.''

The Board received a significant number of comments on the proposed definition of complex credit unions. Many commenters pointed out that NCUA already has a complexity index based on deposit account types, member services, loan and investment types, and portfolio composition, and given the availability of such a measure, which takes into account ''the portfolio of assets and liabilities'' of credit unions. Commenters stated that it seemed odd that the Board would define complex based solely on credit unions' asset size given the fact that the NCUA already has a complexity index.

Commenters suggested that section 1790d(d)(1) of the FCUA directs the Board to establish a risk-based net worth system for ''complex'' credit unions, but does not give the Board complete discretion on how the system must be structured and applied to credit unions. Commenters argued that defining ''complex'' using only an asset size threshold fails to comply with the requirement in section 1790d(d)(1) that the Board take into account the ''portfolios of assets and liabilities of credit unions'' when defining complex credit unions.

Commenters also suggested that a single-dimension definition of ''complex'' credit union does not account for actual operational complexity. Other commenters suggested that the proposed definition of ''complex'' was arbitrary and is too simplistic a measure because it did not take into account a credit union's comprehensive book of assets, including all loans, investments, and liabilities, as well as whether a credit union's operations are sufficiently diverse to warrant a ''complex'' designation.

Other commenters stated that determining whether a credit union is complex should be influenced by whether they do real estate lending, member business lending, have risky investments, and many other factors contributing to the composition of a credit union's balance sheet and overall operation. Commenters claimed that many larger credit unions have limited service offerings or narrow portfolio composition and are not complex institutions. Commenters suggested that NCUA's own complexity index shows that using asset size alone does not result in an accurate measure of complexity for credit unions.

One commenter suggested that all federally insured credit unions with assets above $250 million and that have an NCUA complexity index value of 17 or higher be required to meet risk-based capital requirements. Another commenter suggested that, consistent with NCUA's final liquidity rule, credit unions with over $250 million in assets have a great degree of interconnectedness with other market entities, and when they experience unexpected or severe liquidity constraints they are more likely to adversely affect the credit union system, public perception, and the NCUSIF. The commenter suggested that setting the size threshold at $250 million will encourage mid-size credit union growth.

Other commenters believed the Board has defined complex in NCUA's derivatives regulation and for examinations as $250 million in assets.

Other commenters suggested the Board raise that threshold to $500 million given the burden they believe would be imposed by the rule and the potential for unintended consequences. The commenters further suggested it would be wise to phase-in the application of the rule slowly by starting with credit unions with assets of $500 million or more to ensure smooth implementation of the rule without threatening the viability of smaller institutions.

Other commenters questioned whether the Board cares about the safety and soundness of credit unions with $50 million in assets or less. Several of those commenters suggested the risk-based capital requirements should apply to all credit unions regardless of size because if they are not subject to the capital regulation they will be unprepared when they reach $50 million size threshold.

Some commenters suggested that the situation is further compounded by the number of credit unions that have

received a low-income designation. They envisioned a difficult transition for low-income credit unions going from no caps on commercial lending and commercial loan participations, to tiered risk weights that could become problematic in terms of regulatory compliance.

A small number of commenters suggested the Board should adjust for inflation any asset-size threshold used in the definition of complex.

Another commenter suggested that any credit union that is identified as ''complex'' by NCUA should be able to present evidence to the agency as to why it is not complex and should not be subject to risk-based capital requirements. The commenter suggested the process for contesting an agency designation of ''complex'' should also be detailed in the rule.

Other commenters suggested the rule should acknowledge the differences between credit unions of different asset sizes and assign different risk weights for credit unions of different asset sizes.

The Board has carefully considered the comments received and generally agrees that a higher asset size threshold is appropriate. Based on comments received on the Original Proposal, the Board is now proposing to use $100 million in assets as a proxy for determining whether a credit union is complex. Under this proposal, the title of current § 702.103 would continue to be changed from ''Applicability of risk-based net worth requirement'' to ''Applicability of risk-based capital ratio measure.''

However, after diligently considering the comments on the Original Proposal and further analyzing the ''portfolios of assets and liabilities of credit unions,'' the Board now believes that $100 million in assets would be a more appropriate threshold level for defining ''complex'' credit unions. Accordingly, consistent with requirements of § 216(d)(1) of the FCUA, this proposed § 702.103 would now provide that, for purposes of § 702.102, a credit union is defined as ''complex,'' and a risk-based capital ratio requirement is applicable, only if the credit union's quarter-end total assets exceed $100 million, as reflected in its most recent Call Report. The Board would periodically evaluate this threshold as part of NCUA's annual review of one-third of its regulations.

Under the current rule, credit unions are ''complex'' and subject to the risk-based net worth requirement only if they have quarter-end total assets over $50 million *and* they have a risk-based net worth ratio over six percent. In effect, this means that all credit unions with over $50 million in assets are subject to the current risk-based net worth requirement unless their level of risk assets is relatively low.

Consistent with requirements of section 216(d)(1) of the FCUA, the Board is proposing to eliminate the additional complexity measure in current § 702.103(b) and declines to propose a complexity measure in addition to the $100 million asset sized threshold for defining ''complex'' credit unions. Accordingly, this proposal would eliminate current § 702.103(b) and define all credit unions with over $100 million in assets as ''complex.'' For reasons described more fully below, the Board believes that defining the term ''complex'' credit union using a single asset size threshold of $100 million as a proxy for a credit union's complexity would be accurate and reduce the complexity of the rule, would provide regulatory relief for smaller institutions, and would eliminate the complexity and potential unintended consequences of having a checklist of activities that would determine whether or not a credit union is subject to the risk-based capital requirement.

Under this proposal, the term ''complex'' is defined only for purposes of the risk-based capital ratio measure. The Board believes there are a number of products and services, which under GAAP are reflected as the credit unions portfolio of assets and liabilities, in which credit unions are engaged [147] that are inherently complex based on the nature of their risk and the expertise and operational demands necessary to manage and administer such activities effectively. The Board believes that credit unions offering such products and services have complex portfolios of assets and liabilities for purposes of NCUA's risk-based net worth requirement. In particular, the Board believes that the following products and services engaged in by credit unions are good indicators of complexity:

- Member business loans,
- Participation loans,
- Interest-only loans,
- Indirect loans,
- Real estate loans,
- Non-federally guaranteed student loans,
- Investments with maturities of greater than five years (where the investments are greater than one percent of total assets),
- Non-agency mortgage-backed securities,
- Non-mortgage-related securities with embedded options,
- Collateralized mortgage obligations/real estate mortgage investment conduits,
- Commercial mortgage-related securities,
- Borrowings,
- Repurchase transactions,
- Derivatives, or
- Internet banking.

Based on a review of Call Report data as of June 30, 2014, all credit unions with more than $100 million in assets were engaged in the products and services listed above, with 99 percent having more than one complex activity, and 87 percent having four or more. On the other hand, less than two-thirds of credit unions below $100 million in assets are involved in even a single complex activity, and only 15 percent have four or more. Moreover, credit unions with total assets less than $100 million are a small share (approximately 10 percent) of the overall assets in the credit union system—which limits the exposure of the Share Insurance Fund to these institutions. Accordingly, the Board believes $100 million in assets is a clear demarcation above which complex activities are always present, and where credit unions are almost always engaged in one or more complex activities, in contrast to credit unions $100 million or less in assets.

As discussed earlier, and consistent with section 216(d)(1) of the FCUA, the Board believes $100 million in assets is an accurate proxy for complexity based on credit unions' portfolios of assets and liabilities. It is logical, clear, and easy to administer. This proposed approach would also benefit credit union boards of directors, which consist primarily of volunteers. Based on December 31, 2013 Call Report data, this proposed approach would exempt almost 80 percent of credit unions from the regulatory burden associated with complying with the risk-based net worth requirement, while still covering 90 percent of the assets in the credit union system. It is also consistent with the fact that the majority of losses (68 percent as measured as a proportion of the total dollar cost [148]) to the NCUSIF over the last 10 years have come from credit unions with assets greater than $100 million.[149] Accordingly, this proposal

[147] Products and services comprise a portfolio of assets and liabilities through the accounts and fixed assets that must be maintained to operate, the resources of staff and funds necessary to operate the credit union, and the liabilities that may arise from contractual obligations, among other things. Altogether, these products and services are accounted for on the balance sheet through the assets and liabilities according to GAAP.

[148] Based on NCUA's loss and failure data.

[149] NCUA performed back testing analysis of Call Report and failure data to determine whether this proposed regulation would have resulted in earlier

would eliminate current § 702.103(b) and amend current § 702.103 to define all credit unions with over $100 million in assets as ''complex.''

In addition, the Board is requesting comment on an alternative measurement for the definition of ''complex.'' This alternative approach would define ''complex'' as engaging in a threshold number of products and services, such as those listed above, which the Board believes make up a complex portfolio of assets and liabilities. For example, this alternative approach could define a credit union as complex if it engaged in one or more of the products and services listed above. In addition to general comments on this approach, the Board is requesting comments on the following aspects of this alternative measurement for the definition of ''complex'':

1. What specific products and services should the Board include in the list of products and services used to determine whether a credit union's portfolio of assets and liabilities is ''complex,'' and why?

2. What number of complex products and services should a credit union be allowed to engage in before being designated as ''complex,'' and why?

Section 702.104 Risk-Based Capital Ratio

Under the Original Proposal, the Board proposed changing the title of current § 702.104 from ''Risk portfolio defined'' to ''Risk-based capital ratio measures.'' In addition, the Board originally proposed entirely replacing the requirements for calculating the risk-based net worth requirement for ''complex'' credit unions under current § 702.104 with a new risk-based capital ratio measure.[150] The proposed section would have required all ''complex'' credit unions to calculate their risk-based capital ratio as directed in the section. The proposed risk-based capital ratio was designed to enhance sound capital management and help ensure that credit unions maintain adequate levels of loss-absorbing capital going forward, strengthening the stability of the credit union system and ensuring credit unions serve as a source of credit in times of stress.

NCUA received a number of general comments on the proposed § 702.104. Commenters argued that the proposed risk-based capital calculation did not match the real risk in the system. Other commenters suggested the proposed risk-based capital calculation was an oversimplification of risk.

Some commenters stated that they generally supported the proposed calculation for the risk-based capital ratio. Other commenters stated that the proposed changes would make the risk-based capital ratio calculations more reflective of comparable calculations required by FDIC, provide clarity and understandability to a complex calculation, and make the resulting analysis more valuable and useable.

Other commenters suggested that the funding source of the credit union's assets should also be factored into the risk-based capital ratio measure, and that credit unions that fund assets solely with member deposits should be given a credit compared to credit unions that fund assets with borrowing and/or broker deposits. These commenters stated that the proposal would regulate only one side of the balance sheet—the assets—while not allowing credit unions the flexibility to deal with this new capital requirement through supplementary capital or the matching of term liabilities to specific assets. Similarly, other commenters suggested that the proposal did not effectively consider a credit union's liabilities as a source of funds matched against its assets. The commenters suggested that the cost at which some credit unions can borrow funds to then loan out or invest is very low and carry a healthy spread, but they believed the proposal would have penalized credit unions on the asset side of the balance sheets irrespective of their management of matching sources and uses of funds. Other commenters suggested that applying higher risk weights on long-term assets to deal with IRR is misleading without considering liabilities.

Commenters stated that NCUA assigns a CAMEL rating based on a number of factors, including management effectiveness, and that an institution with a more effective management team can adequately manage an increased level of risk. Commenters suggested that by not taking risk management techniques and qualities into account in the proposed rule when determining the required risk-based capital ratios, credit unions with strong management effectiveness would be essentially limited in how well they could utilize the skills that reside on their team.

One commenter suggested that credit unions should be given a credit for checking and savings non-maturity deposits. Another commenter suggested that the Original Proposal appeared to concentrate on risks faced by credit unions in a low interest rate environment, but that the rule should be amended to be flexible enough to also work in high interest rate environments that may occur in the future.

As discussed in more detail below, the Board believes most of the comments outlined above would be addressed by removing the IRR components from the risk weights in this proposal. Accordingly, consistent with the Original Proposal, the Board is now proposing to change the title of current § 702.104 from ''Risk portfolio defined'' to ''Risk-based capital ratio.'' In addition, the Board is now proposing, with some minor changes from the Original Proposal, to entirely replace the requirements for calculating the risk-based net worth ratio for ''complex'' credit unions under current § 702.104 with a new risk-based capital ratio measure.[151]

Proposed § 702.104 would continue to require all ''complex'' credit unions to calculate the risk-based capital ratio as directed in the section. The Board believes the proposed risk-based capital ratio would enhance sound capital management and help ensure that credit unions maintain adequate levels of loss-absorbing capital going forward, strengthen the stability of the credit union system, provide a more leading indicator of deteriorating strength than the net worth ratio, and ensure credit unions serve as a source of credit in times of stress.

104(a) Calculation of Capital for the Risk-Based Capital Ratio

Under the Original Proposal, proposed § 702.104(a) would have provided that to determine its risk-based capital ratio, a complex credit union must calculate the percentage, rounded to two decimal places, of its risk-based capital ratio numerator as described in § 702.104(b) to its total risk-weighted assets denominator as described in § 702.104(c). The proposed method of calculating risk-based capital would have been generally consistent with the methods used in other sectors of the financial services industry. As with the current risk-based net worth requirement, the proposed risk-based capital ratio calculation would have been calculated primarily using information credit unions already report on the Call Report form required under § 741.6(a)(2) of NCUA's regulations.

The Board received a number of comments regarding the Original

identification of emerging risks and possibly reduced losses to the NCUSIF. We evaluated the impact of this proposal on more recent failures of credit unions with total assets over $100 million. This testing revealed that maintaining a risk-based capital ratio in excess of 10 percent would have triggered eight out of nine such failing credit unions to hold additional capital, which could have prevented failure or reduced losses to the NCUSIF.

[150] 12 U.S.C. 1790d(d).

[151] 12 U.S.C. 1790d(d).

Proposal's reliance primarily on information credit unions already report on the Call Report form. A number of commenters stated that the Call Report is sufficient and should not be amended or expanded. Commenters generally appreciated the Board's awareness of the regulatory burdens on credit unions relating to reporting requirements.

Other commenters suggested the Call Report information currently collected should be modified to properly capture risks associated with assets and liabilities in more detail. One commenter suggested that by supporting and ensuring strong risk-based capital calculations through enhanced Call Report data, the Board could help to improve communications between credit unions and examiners during the examination process, which could result in more efficient examinations and would help alleviate regulatory burdens on credit unions.

Other commenters suggested that adopting investment risk weights consistent with the Other Banking Agencies' regulations would require additional reporting in the Call Reports, but stated additional reporting would be a small issue for some credit unions and a non-event for others.

One commenter suggested that the Board's goal should be to produce the best risk-based capital proposal regardless of the current reporting structure and the proposal should be rewritten and the effort begun anew without the instructions to minimize changes to the current call report form. Another commenter suggested that the call report should be amended to include a separate line item labeled, ''deposits in Federal Reserve Banks,'' and that such a change would not be burdensome, either for credit unions or NCUA.

Several commenters stated that the revised Call Report would make the reporting process more costly and complicated for credit unions due to the amount of new information that credit unions would be required to provide under the Original Proposal because gathering new data would require changes by data processors, additional staff time and staff training, all of which costs money.

Conversely, one commenter suggested that the vast majority of credit unions that would be affected by the Original Proposal either use systems developed by, or outsourced their investment accounting and reporting to, firms who already provide the required information to banks, and it would require little relative effort to modify the reports provided to credit unions to be able to report this information in the Call Reports. Another commenter stated that the Board should overhaul the current call reporting platform to better align credit union Call Report data with the Call Report data collected by the other U.S. regulated depository institutions to build a consistent framework for both the assignment of appropriate risk weights, as well as the comparability of capital adequacy across institutions. Still another credit union commenter stated that it captures credit scores and current loan-to-value (LTV) ratios and would gladly report additional loan information to NCUA in its Call Report rather than be subject to the proposed risk-based capital standards.

The Board has decided to retain the original changes to § 702.104(a) in this proposal with only minor, non-substantive edits. However, the Board is aware that changes to the Call Report could create a reporting burden on credit unions. The Board agrees with commenters who encouraged Call Report data enhancement which would improve the assignment of appropriate risk weights using more granular data. While this approach would require more call report data, it would also result in improved precision of capital requirements, and more granular data that would also enhance NCUA's offsite supervision capabilities. As NCUA has done in the past (most recently in October 2012), the agency will provide credit unions with prior notification of significant reporting changes to the Call Report,[152] and credit unions will have an opportunity to comment via the related Paperwork Reduction Act filing through the U.S. Office of Management and Budget (OMB). The assignment and discussion of specific risk weights for assets that would be identified within the Call Report is contained in § 702.104(c).

104(b) Risk-Based Capital Ratio Numerator

Under the Original Proposal, proposed § 702.104(b) would have provided that the risk-based capital ratio numerator is the sum of certain specific capital elements listed in § 702.104(b)(1), minus certain regulatory adjustments listed in § 702.104(b)(2). The proposed numerator for the risk-based capital ratio would have continued to consist primarily of the components of a credit union's net worth. In order to capture all of the material risks while keeping the calculation from becoming overly complicated, the Original Proposal would have added some additional equity and loss allowance items and other specified balance sheet items would be subtracted. The goal of the proposed risk-based capital ratio numerator was to achieve a measure that reflects a more accurate amount of equity and reserves available to cover losses.

A number of commenters suggested that the Board should focus more on the numerator of the risk-based capital ratio in the rule by allowing credit unions to hedge IRR by obtaining ''credits'' for low-risk assets such as certificates of deposit. Other commenters made similar statements suggesting that credit unions should be given a credit when they build their own insurance through certificates of deposit or long-term borrowing because such investments are considered additional insurance that are being used to hedge IRR.

The Board determined these comments are related to the IRR components of the risk weights in the Original Proposal and, as previously stated, this proposal would not include IRR components in the risk weights assigned to investments. The Board also determined quantifying ''credits'' for specific types of shares and liabilities would be extraordinarily complicated and require a large amount of additional data, and be inconsistent with how the Other Banking Agencies approach risk-based capital requirements.

The Original Proposal maintained the structure of the computation of the risk-based capital ratio numerator with some revisions, which are addressed under the discussion on each of the individual elements below. Accordingly, the Board is now proposing to retain § 702.104(b) of the Original Proposal without change.

104(b)(1) Capital Elements of the Risk-Based Capital Ratio Numerator

Section 702.104(b)(1) of the Original Proposal would have listed the capital elements of the risk-based capital ratio numerator as follows: undivided earnings (including any regular reserve); appropriation for non-conforming investments; other reserves; equity acquired in merger; net income; ALLL, limited to 1.25 percent of risk assets; secondary capital accounts included in net worth (as defined in § 702.2); and § 208 assistance included in net worth (as defined in § 702.2). Consistent with the Original Proposal, § 702.104(b)(1) of this proposal would list the elements of the risk-based capital ratio numerator.

The Board received a significant number of comments suggesting various changes or additions to the list of capital elements included in the Original

[152] NCUA Letter to Credit Unions No. 12–CU–12, October 2012, Changes Planned for Upcoming Call Reports.

Proposal, which are discussed in more detail below.

The Board generally disagrees with the comments received and has, with the exception of the ALLL, decided to retain the language from the Original Proposal without change. As explained above, the FCUA gives NCUA broad discretion in designing the risk-based net worth requirement. Thus, this proposal incorporates a broadened definition of capital for purposes of calculating the proposed new risk-based capital ratio that would serve as the risk-based net worth requirement. The Board proposes to do this to provide for a more comparable measure of capital across all financial institutions and better account for related elements of the financial statement that are available (or not) to cover losses and protect the NCUSIF. This broader definition of capital would contribute over 50 basis points, on average, to affected credit unions' risk-based capital ratio.

Undivided Earnings

The Original Proposal would have included undivided earnings (including any regular reserve) in the risk-based capital ratio numerator.

The Board received no comments on the inclusion of this capital element in the risk-based capital ratio numerator. Accordingly, the Board has decided to retain this aspect of the Original Proposal with a minor change. The reference to regular reserve would be removed, as the regular reserve account is a part of undivided earnings and this proposal seeks to eliminate the provisions of the rule relating to maintenance of the regular reserve account.

Appropriation for Nonconforming Investments

The Original Proposal would have included the appropriation for nonconforming investments in the risk-based capital ratio numerator.

The Board received no comments on the inclusion of this capital element in the risk-based capital ratio numerator. Accordingly, the Board has decided to retain this aspect of the Original Proposal without change.

Other Reserves

The Original Proposal would have included other reserves in the risk-based capital ratio numerator.

The Board received no comments on the inclusion of this capital element in the risk-based capital ratio numerator. Accordingly, the Board has decided to retain this aspect of the Original Proposal without change.

Equity Acquired in Merger

Under the Original Proposal, the proposed risk-based capital ratio numerator would have included the equity acquired in merger component of the balance sheet. This equity item would have been used in place of the total adjusted retained earnings acquired through business combinations amount that credit unions report on the PCA net worth calculation worksheet in the Call Report. The equity acquired in merger is the GAAP equity recorded in a business combination and can vary from the amount of total adjusted retained earnings acquired through business combinations, which is not a GAAP accounting item. The use of equity acquired in a merger, as measured using GAAP, would have more accurately reflected the overall value of the business combination transaction.

The Board received no comments on the inclusion of this capital element in the risk-based capital ratio numerator. Accordingly, the Board has decided to retain this aspect of the Original Proposal without change.

Net Income

The Original Proposal would have included net income in the risk-based capital ratio numerator.

The Board received no comments on the inclusion of this capital element in the risk-based capital ratio numerator. Accordingly, the Board has decided to retain this aspect of the Original Proposal without change.

ALLL

The Original Proposal would have included the ALLL in the risk-based capital ratio numerator. The Board noted in the Original Proposal that the ALLL would have been included in the risk-based capital ratio numerator because it is available to cover expected levels of loan losses at a credit union. The Original Proposal, however, would have limited the amount of the ALLL that a credit union could include in the risk-based capital ratio numerator to 1.25 percent of total risk-weighted assets. In the preamble to the Original Proposal, the Board stated that this approach would have been consistent with the Basel III framework and the Other Banking Agencies' capital regulations,[153] and it also would have induced credit unions to grant quality loans and record loan losses in a timely manner.

The Board received a number of comments regarding the proposed inclusion of the ALLL in the risk-based capital ratio numerator. A substantial number of commenters stated that the ALLL is a dedicated item on the balance sheet and should not be limited or restricted in any way. Commenters suggested that GAAP will not allow the ALLL to be an excessive amount, so the reasoning for limiting the ALLL in the Original Proposal was unclear, even if the Other Banking Agencies' rules treat it that way. Commenters suggested that, rather than implementing a 1.25 percent cap to capture risks in credit unions that are holding excess ALLL, the Board should address the risks that the cap was intended to address one-on-one with ''overly conservative'' credit unions. Commenters suggested that risk reserved for within the ALLL for credit risk should not be duplicated under the risk-based capital ratio measure. Other commenters stated that limiting the ALLL would have minimal practical effect on the way credit unions underwrite loans or record losses, but it could create a disincentive for credit unions to hold higher reserves.

Some commenters suggested that for banks, the 1.25 percent limitation prevents the use of the ALLL as a means to control taxable revenue by maintaining excessive reserves, but that credit unions have no incentive to manipulate the reserve in such a manner so the Board should include the full ALLL balance in the risk-based capital ratio numerator.

Other comments stated that the allocation of 1.5 percent of loans in the current rule more appropriately captures the insulating contribution that the ALLL provides to capital, particularly during times of economic stress.

Still other commenters stated that credit unions with portfolios of agricultural and business loans, which are allowed by GAAP to reserve for each loan individually in the ALLL rather than just using historical data, would be adversely affected by the original proposal because credit unions would have a lot less incentive to include economic downturns as part of their calculations under the rule.

A small number of commenters suggested that the ALLL in excess of 1.25 percent of risk assets should be recognized as a reduction of risk-based loans at 100 percent consistent with the treatment by the Other Banking Agencies.

Conversely, some other commenters stated that both the inclusion of the ALLL in the risk-based capital ratio numerator and the 1.25 percent limit were appropriate based on the current environment.

[153] *See, e.g.,* 12 CFR 324.20(d).

However, another commenter suggested that by excluding the amount of the ALLL above 1.25 percent, the Original Proposal would have implicitly encouraged credit unions to cap their ALLL at 1.25 percent, ignoring the responsibility to develop the ALLL based on portfolio risk.

In response to the comments received, the Board is now proposing to remove the 1.25 percent of risk asset limit on the amount of the ALLL that can be included in the risk-based capital ratio numerator. Under this proposal, all of the ALLL, maintained in accordance with GAAP, would be included in the risk-based capital ratio numerator. The proposed removal of the limit on the ALLL would result in this reserve fully counting as capital. The Board believes this is appropriate given that credit unions will have already expensed through the income statement the expected credit losses on the loan portfolio. In times of financial stress, while risk may be increasing (such as rising non-current loans), an uncapped inclusion of the ALLL in the risk-based capital ratio numerator would allow a properly funded ALLL to somewhat offset the impact of the financial stressors on the risk-based capital ratio.

The Board also believes that this proposed change is appropriate given the high quality of credit union capital. The quality of credit union capital should eliminate concerns that the ALLL could account for too much of the capital required to be held against total risk-weighted assets.

Further, the Board agrees with commenters that NCUA's supervision process could address any concerns with uncapping inclusion of the ALLL, such as artificially slow charge-offs to manipulate capital requirements. Removal of the limitation in the amount of the ALLL included in risk-based capital ratio would also address the treatment of excess ALLL that was excluded from the calculation.

A significant number of commenters also stated that if the Financial Accounting Standards Board (FASB) changes the accounting standards that cause more than inconsequential increases to the normal levels of ALLL, the Board should increase the limit of ALLL to be included in the risk-based capital ratio numerator comparable to the additional levels of normal ALLL. Other commenters suggested that the Board eliminate the ALLL cap of 1.25 percent of risk-weighted assets given the high risk weight associated with non-current loans. Further, commenters suggested elimination of the ALLL cap based on the FASB's proposed accounting for credit losses, which, if finalized, could result in an increase of credit unions' ALLL by more than 50 percent. Another commenter suggested that language be added to the rule that states that the ALLL credit will be increased if FASB proposal is implemented. Other commenters suggested that reducing the ALLL allocation would be inconsistent with the expected accounting conventions for future allowance methodologies.

The Board notes that eliminating the cap on ALLL inclusion in the risk-based capital ratio numerator would address concerns with FASB's proposed related changes to GAAP.[154] However, FASB has implied its intent in the upcoming Current Expected Credit Loss Model to change current GAAP and require entities to establish a day one credit loss allowance on Purchased Credit Impaired (PCI) assets.

As the entire credit loss allowance would be included in a credit union's risk-based capital ratio numerator under the proposed rule, the Board is requesting specific comment on how a final rule should mitigate strategies by credit unions to ''purchase'' a credit loss allowance by acquiring PCI assets in an acquisition or merger, and thus, artificially increase their risk-based capital ratio numerator.

Secondary Capital Accounts

The Original Proposal would have included secondary capital accounts included in net worth (as defined in § 702.2) in the risk-based capital ratio numerator.

The Board received no comments on the inclusion of this capital element in the risk-based capital ratio numerator. Accordingly, the Board has decided to retain this aspect of the Original Proposal in this proposal without change.

Section 208 Assistance

The Original Proposal would have included § 208 assistance included in net worth (as defined in § 702.2) in the risk-based capital ratio numerator.

The Board received no comments on the inclusion of this capital element in the risk-based capital ratio numerator. Accordingly, the Board has decided to retain this aspect of the Original Proposal in this proposal without change.

Call Report Equity Items Not Included in the Risk-Based Capital Ratio Numerator

Under the Original Proposal, the proposed risk-based capital ratio numerator would not have included the following Call Report equity items: accumulated unrealized gains (losses) on available for sale securities; accumulated unrealized losses for other than temporary impairment (OTTI) on debt securities; accumulated unrealized net gains (losses) on cash flow hedges; and other comprehensive income. In designing the proposed rule, the Board recognized that the items listed above reflected a credit union's actual loss absorption capacity at a specific point in time, but included gains or losses that may or may not be realized. The Board also recognized that including these items in the risk-based ratio numerator could lead to volatility in the risk-based capital ratio measure, difficulty in capital planning and asset-management, and other unintended consequences.[155] Accordingly, the Board chose to exclude these items from the risk-based capital ratio numerator in the Original Proposal.

The Board received a number of comments on the exclusion of accumulated unrealized gains and losses from the risk-based capital ratio numerator in the proposed rule. Commenters suggested that to offset the effect of unrealized gains or losses, credit unions should be allowed to net the gain or loss against the investment that created it, which would mean valuing the investment at book. Commenters stated that this would make adjustments to the unrealized gains or losses have no net effect on the calculation. Commenters stated further that under the Original Proposal an unrealized gain would increase the value of the investment in the denominator and an unrealized loss would decrease the value of the investment in the denominator, creating volatility. Commenters also suggested that with an unrealized loss there is no deduction from net worth and the asset is still decreased in the risked-based asset calculation; thus, a large unrealized loss could hide a risk that the net worth would have to be reduced if the credit union was liquidated. Other commenters agreed that including unrealized gains and losses could lead to volatility in the risk-based capital measure, difficulty in capital planning and asset-management, and other unintended consequences as the unrealized gain or loss expands and contracts.

Still other commenters suggested that while the Original Proposal would have

[154] FASB Financial Instruments-Credit Losses Subtopic 825–15 (exposure drafted dated December 20, 2012).

[155] The Other Banking Agencies' regulatory capital rules (12 CFR 324.22) allow institutions to make an opt-out election for similar accounts. See, *e.g.,* 78 FR 55339 (Sept. 10, 2013).

appropriately left unrealized gains and losses on available-for-sale securities out of the risk-based capital ratio numerator, and explains NCUA's sound reasoning behind that position, the proposed high risk weights applied to investments would almost completely offset this for many credit unions. These commenters suggested the high risk weights applied to investments would reduce some credit unions' risk-based capital ratios as if they had already sold their entire portfolio at the loss in market values they would expect in an unrealized, instantaneous, ''up 300 basis points'' rate-shock scenario.

As noted earlier, this proposal removes the IRR components contained in the risk weights, so related concerns raised by commenters on the investment risk weights should now be moot.

Due to the changes this proposal would make to the assignment of risk weights for investments, and in response to the comments in agreement with the concerns about volatility in the risk-based capital ratio that can occur with investments, the Board has decided to retain this aspect of the Original Proposal without change. The proposed application of excluding accumulated unrealized gains (losses) on available-for-sale securities; accumulated unrealized losses for OTTI on debt securities; accumulated unrealized net gains (losses) on cash flow hedges, and other comprehensive income also would eliminate the added complication of an opt-in or opt-out approach.

Other Supplemental Forms of Capital

Under the Original Proposal, forms of supplemental capital, other than secondary capital accounts included in net worth (as defined in § 702.2), would not have been included in the risk-based capital ratio numerator. For natural-person credit unions, the only form of supplemental capital the FCUA includes in the definition of ''net worth'' is secondary capital that it authorizes for low-income credit unions.[156] The Board did not propose including other supplemental forms of capital in the risk-based capital ratio numerator.

As a result, the Board received a substantial number of comments expressing concern about the omission of supplemental capital from the risk-based capital ratio numerator.

A number of commenters suggested that the Original Proposal would have regulated only the asset side of the balance sheet, representing the risk-based capital ratio denominator, while depriving credit unions of the flexibility to use supplemental capital to address the newly introduced capital requirement through the risk-based capital ratio numerator. Other commenters stated that, in order for any credit unions but low-income credit unions to use supplemental capital to meet the risk-based net worth requirement, Congress would have to amend the FCUA to give NCUA the authority to permit that use of supplemental capital. In that regard, commenters contended that the Board should have raised the supplemental capital issue with Congress before issuing the proposed rule.

Without being able to include supplemental capital in the risk-based capital ratio numerator, some commenters stated that credit unions would be forced to address capital concerns by increasing profitability (through higher fees and loan rates, etc.), shrinking assets, or both; none of which they suggested would be in a credit union's best interest.

A small number of commenters suggested that credit unions would not need supplemental capital to be effective if the Board were to devise a risk-based capital regulation that enabled credit unions to grow in a manner consistent with safety and soundness.

Other commenters protested that since the Board had altered the definition of capital in the Original Proposal, it therefore should also extend the risk-based capital ratio numerator to include supplemental capital. In making the same argument, others noted that the risk-based capital ratio numerator as proposed already included items that are not part of ''net worth'' as defined by the FCUA.

Commenters generally acknowledged that counting supplemental capital as part of a credit union's net worth requirement (for all but low-income credit unions) would require an authorizing amendment to the FCUA, but they maintain that, in contrast, nothing in the Act *prohibits* the Board from including supplemental capital in the risk-based capital ratio numerator. More expansively, some commenters interpreted the absence of an express prohibition in the Act barring the use of supplemental capital by any credit union for any purpose as implicit *support* for allowing it to be used for risk-based purposes only. Under either interpretation, commenters urged the Board to make supplemental capital a component of the risk-based capital ratio numerator consistent with the proposed definition of capital as ''equity, as measured by GAAP, available to a credit union to cover losses.''[157]

In contrast to the lack of authority for federally chartered credit unions, other than low-income credit unions, to currently accept secondary capital, several commenters suggested that the laws of some states authorize their federally insured state chartered credit unions to raise other supplemental forms of capital. Therefore, the commenters suggested the rule should permit those federally insured state chartered credit unions that are authorized to raise other forms of capital under state law to also count that capital in the risk-based capital ratio numerator.

Commenters suggested that the FCUA already authorizes federally chartered credit unions to issue certificates of indebtedness, which function as loans from the holder to the credit union with interest paid to the holder, as well as to offer subordinated debt instruments to members and non-members. They urged the Board to allow FCUs to count those certificates of indebtedness, and those instruments that meet GAAP capital requirements, in the risk-based capital ratio numerator.

Having considered the comments on supplemental capital, the Board declines to permit credit unions (other than low-income credit unions) to include other supplemental forms of capital in the risk-based capital ratio numerator as part of this proposal, pending potential Congressional action and more specific comments as described below.[158]

Members of Congress have introduced legislation in the past that would authorize all federally insured credit unions to accept supplemental capital.[159] Individual Board members have publicly supported such legislation in the past. At this time the Board prefers to await the outcome of previously proposed legislation that, if passed by Congress, would expressly authorize supplemental capital as a component of net worth,[160] and permit

[156] 12 U.S.C. 1757(6), 1790d(o)(2)(C) (defining ''net worth''), *and* proposed § 702.2 (defining ''net worth'').

[157] *See* 79 FR 11183, 11211 (Feb. 27, 2014) (Proposing to define ''capital'' as ''the equity, as measured by GAAP, available to a credit union to cover losses.'').

[158] 702.104(b)(2)

[159] See, *e.g.,* HR 719, 113th Cong. (2013) (HR 719 would have amended the FCUA to allow the Board to authorize certain forms of supplemental capital that could be counted toward a credit union's ''net worth,'' as that term is defined in section 1790d(o)(2)).

[160] The Capital Access for Small Businesses and Jobs Act, HR 719, was introduced in the House of Representatives and referred to the House Financial Services Committee during the 113th Congress.

the Board to decide whether or how to include such capital in the net worth ratio and the risk-based net worth requirement. Individual Board members have publicly supported such legislation in the past.

Such authority would also raise a host of other complicated issues that would need to be addressed through additional changes to NCUA's regulations, including providing consumer protections, amending NCUSIF payout priorities, and imposing prudent limitations on the ability of non-low-income credit union to offer and include supplemental capital.

Although the FCUA does authorize federally chartered credit unions to issue certificates of indebtedness and subordinated debt instruments to members and non-members, the ability to include them in the risk-based capital ratio numerator depends on whether such supplemental forms of capital are structured to satisfy prudential capital and consumer protection requirements—issues not addressed in this rulemaking.

The Board does, however, specifically request comment on the following questions regarding additional supplemental forms of capital.

1. Should additional supplemental forms of capital be included in the risk-based capital ratio numerator and how would including such capital protect the NCUSIF from losses?

2. If yes, to be included in the risk-based capital ratio numerator, what specific criteria should such additional forms of capital reasonably be required to meet to be consistent with GAAP and the FCUA, and why?

3. If certain forms of certificates of indebtedness were included in the risk-based capital ratio numerator, what specific criteria should such certificates reasonably be required to meet to be consistent with GAAP and the FCUA, and why?

4. In addition to amending NCUA's risk-based capital regulations, what additional changes to NCUA's regulations would be required to count additional supplemental forms of capital in NCUA's risk-based capital ratio numerator?

5. For state-chartered credit unions, what specific examples of supplemental capital currently allowed under state law do commenters believe should be included in the risk-based capital ratio numerator, and why should they be included?

6. What investor suitability, consumer protection, and disclosure requirements should be put in place related to additional forms of supplemental capital?

104(b)(2) Risk-based Capital Ratio Numerator Deductions

Under the Original Proposal, proposed § 702.104(b)(2) would have provided that the elements deducted from the sum of the capital elements of the risk-based capital ratio numerator are: (1) The NCUSIF Capitalization Deposit; (2) goodwill; (3) other intangible assets; and (4) identified losses not reflected in the risk-based capital ratio numerator.

The Board received a significant number of comments, which are outlined in detail below, regarding the capital elements that would have been deducted from the risk-based capital ratio numerator. However, for the reasons explained in more detail below, the Board has decided to retain most of these aspects of the Original Proposal with a few changes that are discussed in more detail below.

NCUSIF capitalization deposit. The Original Proposal would have addressed concerns about the NCUSIF capitalization deposit being reflected on the NCUSIF's balance sheet both as equity to pay losses and as an asset of the insured credit unions. Under the Original Proposal, the NCUSIF capitalization deposit would have been subtracted from both the numerator and denominator of the risk-based capital ratio.[161] This treatment of the risk-based capital ratio would not have altered the NCUSIF capitalization deposit's accounting treatment for credit unions.

The Board received a number of comments expressing concerns about the Original Proposal's treatment of the NCUSIF capitalization deposit. A majority of commenters disagreed with or questioned the treatment of the NCUSIF deposit. Commenters suggested that the NCUSIF deposit should not be deducted from the risk-based capital ratio numerator or denominator.

Commenters stated that if the risk-based capital ratio numerator is intended to reflect ''equity available to cover losses in the event of liquidation,'' then the NCUSIF deposit should be included because it is one of the most reliable assets available to credit unions to cover losses. Commenters suggested that the only condition under which it would not be available is during a system-wide catastrophe, in which case most other credit union assets, other than cash, would similarly be subject to substantial losses. Those commenters argued there is no reason to believe the NCUSIF capitalization deposit would not be available to cover losses or that it should be excluded from the numerator of the risk-based capital ratio.

Other commenters suggested that NCUA has control of these funds so credit unions should be able to count the deposit toward their capital requirement (*i.e.,* the deposit should be included in the risk-based capital ratio numerator and be counted only as a zero-risk item in the risk-based capital ratio denominator).

Other commenters stated that although banks expense their deposit insurance, credit unions treat the deposit as an asset. Commenters stated that while it is true that the bank's deposit insurance premiums have reduced the bank's capital, a credit union's capital has been reduced in real terms by the lost income the credit union would have earned had it placed the funds in an earning asset rather than in a non-interest-bearing deposit to NCUSIF.

Another commenter stated that it appeared that the Board was attempting to make the risk-based capital ratio numerator comparable to banks, which expense their insurance premiums paid by eliminating the NCUSIF capitalization, but that banks pay and expense their premiums for each period due and cannot get those funds back. The commenter stated further that federally insured credit unions, on the other hand, not only pay an upfront deposit of one percent of insured shares and record that as an asset, but also pay for and immediately expense periodic assessments from NCUA needed to bolster the NCUSIF. In addition, the commenter stated that federally insured credit unions can have their deposits returned if, for example, they convert to a bank, elect private insurance (in the nine states where private insurance is permitted), or complete a voluntary liquidation, and the NCUSIF capitalization deposit is an asset as recognized by GAAP, is tangible, and easily measured.

Some commenters suggested that this accounting difference is already captured as part of the higher leverage ratio for credit unions as compared to banks. They believe Congress established a capital level for credit unions two percentage points higher than the capital level for banks because one percent of a credit union's capital is dedicated to the NCUSIF and another one percent of the typical credit union's capital is dedicated to its corporate credit union. Those commenters stated that if the Board excludes the NCUSIF deposit it will create an uneven playing field between banks and credit unions

[161] *See* U.S. Govt. Accountability Office, GAO–04–849, Available Information Indicates No Compelling Need for Secondary Capital (2004), *available at http://www.gao.gov/assets/250/243642.pdf.*

that will disadvantage credit unions by adjusting for the deposit twice.

Commenters generally suggested that this new approach could bring the accounting treatment of the NCUSIF deposit into question; that if the deposit is not available to cover a credit union's risks during liquidation then that leads to the question of whether or not the deposit is an asset. Going further, other commenters suggested the Board reconsider this aspect of the Original Proposal, as it implies that the deposit is worthless and should be expensed versus the current method of capitalizing the deposit.

Conversely, another commenter stated that after experiencing the corporate credit union meltdown, it has become evident that NCUA has the superior claim on the deposit and that the credit union really cannot claim to own it. Still another commenter stated that perhaps the NCUSIF deposit should have been expensed all along, but writing it down now comes at a time when generating earnings is already a big challenge.

One commenter suggested that the NCUSIF deposit should be treated as an investment like Federal Home Loan Bank stock, which would mean assigning a risk weight to account for the possibility of the NCUSIF having to use the credit union's funds beyond normal premiums and losing some of the credit union's equity in the NCUSIF. The commenter suggested that leaving the NCUSIF deposit on the balance sheet, assigning it a risk weight, and removing the deduction from net worth is the best option for accurately measuring the ability of each credit union to weather losses. Other commenters suggested that the deposit should be assigned a risk weight of 100 percent or lower.

It was suggested that the NCUSIF deposit should not be excluded from the calculation of risk-based capital ratios at all, but that excluding it from the denominator penalizes more than excluding it from the risk-based capital ratio numerator.

Yet other commenters disagreed, suggesting that the NCUSIF deposit be excluded from the calculation of risk-based capital altogether.

One commenter suggested that the deposit be treated like any other illiquid asset instead of contra-equity.

The Board has carefully considered the comments received and continues to believe exclusion of the NCUSIF deposit from both the risk-based capital ratio numerator and denominator is the appropriate way to handle its risk-based capital treatment. Accordingly, for all the reasons discussed below, the Board has decided to retain this aspect of the Original Proposal without change.

The 1997 U.S. Treasury Report on Credit Unions supports NCUA's current position of excluding the NCUSIF deposit from the risk-based capital ratio calculation. The Treasury report concluded that the NCUSIF deposit is double counted because it is an asset on credit union balance sheets and equity in the NCUSIF.[162] The Treasury noted that, in lieu of expensing the NCUSIF deposit, holding additional capital is necessary to offset risk of loss from required credit union replenishment. According to comments within the 1997 Treasury Report, Congress established a higher statutory leverage ratio for credit unions in part to offset the risk of loss from required credit union replenishment.[163]

The Board believes the NCUSIF deposit deduction needs to be addressed in the risk-based capital ratio, not just the leverage ratio, to correct for the double-counting concern in those credit unions where the risk-based capital ratio is the governing requirement.

The NCUSIF deposit is not available for a credit union to cover losses from risk exposures on its own individual balance sheet in the event of insolvency.[164] The purpose of the NCUSIF deposit is to cover losses in the credit union system. The Board is required to assess premiums necessary to restore and maintain the NCUSIF equity ratio at 1.2 percent. Premiums were necessary from 2009 through 2011 as a result of losses. A series of NCUA Letters to Credit Unions issued during 2009 discuss the necessary write-down of the one percent NCUSIF deposit and required NCUSIF premium expenses needed to restore the NCUSIF equity ratio.[165]

The NCUSIF deposit is refundable in the event of voluntary credit union charter cancellation or conversion. However, this aspect does not change the unavailability of the NCUSIF deposit to cover individual losses while the credit union is an active going concern, or its at risk stature in the event of major losses to the NCUSIF. NCUA refunds the NCUSIF deposit only in the event a solvent credit union voluntarily liquidates, or converts to a bank charter or private insurance.

Consistent with its exclusion from the risk-based capital ratio numerator, the NCUSIF deposit would also be deducted from the denominator under proposed § 702.104(c)(1), which would properly adjust the risk-based capital ratio calculation and reduce the impact of the adjustment.

Neither the Original Proposal nor this second proposal would adjust for the NCUSIF deposit twice or put credit unions at a disadvantage in relation to banks because banks have expensed premiums to build the Deposit Insurance Fund.

The Board does not agree with commenters who suggested that the NCUSIF deposit should be treated as an investment similar to FHLB stock. The NCUSIF deposit and FHLB stock have several fundamental differences. The deposit in the NCUSIF results in double counting of capital within the credit union system. Investments in FHLB stock do not. A financial institution does not need to change its charter for a FHLB stock redemption as a credit union must do for a NCUSIF deposit refund. Further, unlike FHLB stock, the NCUSIF deposit is not an income-producing asset. The NCUSIF deposit has not paid a dividend since 2006. The NCUSIF cannot pay another dividend while the Corporate Stabilization Fund loan from the Treasury is still outstanding.

The Board is not requiring credit unions to expense the NCUSIF deposit, and does not believe the risk-based capital treatment will lead to a change in how this asset is accounted for under GAAP. The Board agrees with the U.S. Treasury position as stated in its 1997 Report on Credit Unions. Treasury stated expensing the NCUSIF deposit would not strengthen the NCUSIF. The financial structure of the NCUSIF is reasonable and works well for credit unions.

The assignment of a risk weight for the NCUSIF has the potential to create additional criticisms, as a low risk weight may not capture the true nature of the account and a high risk weight could produce unnecessary concern about risk of the NCUSIF. The NCUSIF is treated similarly to other intangible assets, (*e.g.* goodwill and core deposits intangible assets), as they are not available assets upon liquidation.

[162] Department of U.S. Treasury Report titled; *Credit Unions,* 1997, Page 58: ''The one percent deposit does present a double-counting problem. And it would be feasible for credit unions to expense the deposit now, when they are healthy and have strong earnings. However, expensing the deposit would add nothing to the Share Insurance Fund's reserves, and—as we will explain—better ways of protecting the Fund are available. Accordingly, we do not recommend changing the accounting treatment of the 1 percent deposit.''

[163] *Id.* at page 4–5 and 55–59

[164] 12 U.S.C. 1782(c)(1)(B)(iii).

[165] NCUA Letter 09–CU–20, Premium Assessments; NCUA Letter 09CU–14, Corporate Stabilization Fund Implementation; NCUA Letter 09–CU–02, Letter Corporate Credit Union System Strategy.

Goodwill and Other Intangible Assets

Under the Original Proposal, goodwill and other intangible assets would have been deducted from both the risk-based capital ratio numerator and denominator in order to achieve a risk-based capital ratio numerator reflecting equity available to cover losses in the event of liquidation.

Goodwill and other intangible assets contain a high level of uncertainty regarding a credit union's ability to realize value from these assets, especially under adverse financial conditions.

The Board received a number of comments regarding the treatment of goodwill under the proposal. Commenters suggested that credit unions should not be required to subtract goodwill even though doing so is consistent with Basel III and the Other Banking Agencies' capital regulations. One commenter suggested that the proposed rule and the treatment of goodwill should follow GAAP. Another commenter suggested that goodwill is an asset and should be counted as such.

Other commenters suggested that goodwill should be excluded from the risk-based capital calculation because goodwill is not immediately available to absorb losses in accordance with the intended purpose of regulatory capital, but that the Board should also consider what impact such a change could have on merger incentives in the industry. Another commenter suggested that goodwill not be immediately deducted from the numerator of the risk-based capital ratio, but instead be phased out over a 10-year period, or longer on a case-by-case basis.

Commenters generally suggested that the exclusion of goodwill disincentives merger activity, which would prevent healthy industry consolidation and the combining of unhealthy credit unions with stronger ones in the future.

Other commenters suggested that not including intangibles resulting from a merger in the risk-based capital ratio numerator causes a reduction in the risk-based capital ratio for non-goodwill intangibles, which are not included in the numerator and are deducted from the numerator when amortized.

Other commenters stated they agree with the proposed treatment of goodwill, but that the Board should only deduct those items initially included, and only to the extent of current (net) assets.

The Board also received a few comments on the treatment of other intangible assets under the proposed rule. Commenters suggested the Board should rethink the treatment of the core deposit intangible and let GAAP determine how core deposit intangible is to be written off in fairness to the surviving credit union and to encourage future mergers of both healthy and distressed institutions whether credit unions or banks.

The Board has considered the comments and, as explained above, has decided to retain the definition of goodwill and to clarify the definition of other intangibles. However, the Board recognizes that requiring the exclusion of goodwill and other intangibles associated with supervisory mergers and combinations that occurred prior to this proposal would directly reduce the credit union's risk-based capital ratio. The Board is now proposing to amend the Original Proposal in a manner that would allow credit unions to include certain goodwill and other intangibles in the risk-based capital ratio numerator. In particular, this second proposed rule would exclude from the definition of goodwill which must be deducted from the risk-based capital ratio numerator, any goodwill acquired by a credit union in a supervisory merger or consolidation that occurred before the publication of this rule in final form.

The Board notes, however, that this proposed change would not change financial reporting requirements for credit unions to use GAAP to determine how certain intangibles are valued over time.

Under this proposal, credit unions would still need to account for goodwill in accordance with GAAP and the amount of excluded goodwill and other intangibles is based on the outstanding balance of the goodwill directly related to supervisory mergers.

The Board is proposing to allow the excluded goodwill until December 31, 2024. The Board believes this date would allow most, if not all, credit unions to adjust to this change as they continue to value goodwill and other intangibles in accordance with GAAP. Also, the Board notes that this provision would only apply to goodwill and other intangibles acquired through supervisory mergers or consolidations, as that term is defined above, and is not available for goodwill and other intangibles acquired from mergers or consolidations that do not meet this definition. This change would allow affected credit unions time to revise business practices to ensure goodwill and other intangibles directly related to supervisory mergers do not adversely impact their risk-based capital calculation.

In response to commenters who sought to include goodwill and other intangibles in the risk-based capital ratio numerator, the Board reiterates that there is a high level of uncertainty regarding the ability of credit unions to realize the value of these items, particularly in times of adverse conditions. In addition, the Board notes that its proposed approach to other intangibles generally mirrors the treatment by the Other Banking Agencies.[166] However, the longer implementation period included in this proposal would serve to mitigate some of the commenters' concerns regarding existing goodwill and other intangibles because it would provide affected credit unions with approximately a 10-year period to write down the goodwill or otherwise adjust their balance sheet.

While the Board is proposing to include a provision to address goodwill and other intangibles acquired through supervisory mergers and consolidations completed prior to this rule, the Board is now proposing to retain the requirement that all other goodwill and other intangibles be excluded from the risk-based capital ratio numerator as they are not available to cover losses. Credit unions will need to consider the impact future combinations will have on both the net worth and risk-based capital ratios. For mergers involving financial assistance from the NCUSIF, this means a credit union with higher capital may be able to outbid a competing credit union. A credit union will need to consider the impact on its capital when determining the components of a merger proposal, which may result in higher costs to the NCUSIF. However, stronger capital and a risk-based capital measure that is less lagging should reduce the number and cost of failures, resulting in a net positive benefit to the NCUSIF and the industry.

Finally, in order to improve clarity about which particular intangible assets are deducted from the risk-based capital ratio numerator, the Board is proposing to revise the definition of other intangible assets. Specifically, the Board is proposing to exclude servicing assets from the amount of intangible assets deducted from the risk-based capital ratio numerator since they have the potential for value in the event of liquidation.

Identified Losses Not Reflected in the Risk-Based Capital Ratio Numerator

The Original Proposal would have included a provision to allow for identified losses, not reflected as

[166] *See, e.g.,* 12 CFR 324.22.

adjustments in the risk-based capital ratio numerator, to be deducted. The inclusion of identified losses would have allowed for the calculation of an accurate risk-based capital ratio.

The Board received no comments on this aspect of the proposal. Accordingly, the Board has decided to retain this aspect of the Original Proposal without change. However, the definition for identified losses was modified, for reasons articulated above, to make it clear any such items would be measured in accordance with GAAP.

104(c) Risk-weighted Assets

In developing the proposed risk weights included in the Original Proposal, the Board reviewed the Basel accords and the U.S. and various international banking systems' existing risk weights.[167] The Board considered the comments contained in MLRs prepared by the NCUA's OIG and comments by GAO in their respective reviews of the financial services industry's implementation of PCA.[168] As previously mentioned, the FCUA requires the risk-based measure to include all material risks. Accordingly, in assigning the originally proposed risk weights, the Board considered credit risk, concentration risk, market risk, IRR, operational risk, and liquidity risk.

The Board received a number of comments expressing general concerns about the proposed risk weights. A significant number of commenters suggested that the Original Proposal did not contain sufficient statistical analysis of credit union losses or failures, quantified and summarized data on historical NCUSIF loss experiences, and comparisons of the loss or failure rates at banks to rationalize the proposed asset risk weights. One commenter suggested that the risk weights reflect ''socio-economic reasons'' instead of ''reasoned judgment about actual risks.''

A number of commenters argued that the absence of rigorous quantitative analysis accompanying the proposal's risk weights raises many questions and makes it exceedingly difficult to respond fully to the agency's proposal. Other commenters contended that the proposal provides no explanation of how the risk-based ratings were derived and how they would directly correlate to risks the proposal attempts to mitigate. Commenters suggested that the Board's proposed increases to various risk weights were excessively blunt given the small number of failures and the MLR narratives cited in the proposed rule. Other commenters suggested that some of the risk weights appear to be excessive, arbitrary, and/or appear to cover all types of risk by adopting excessive risk weight amounts.

A number of commenters suggested that the proposed risk weights would encourage credit unions to increase levels of poorer credit quality consumer loans at the expense of higher levels of even the strongest, most secure MBLs, real estate loans, and longer-term investments. A significant number of commenters expressed concerns that the Original Proposal would have been inconsistent in the treatment of the real risks associated with some on-balance sheet assets when the risk weights of various assets were compared to one another; *e.g.,* the risk weights for delinquent first mortgage loans, buildings, prepaid expenses, foreclosed properties, investments in CUSOs, and any investment with a weighted-average life of more than 5 years.

Other commenters suggested that the Board reconsider the limitations of any single metric at assessing risk and match the consequences of a low risk-based capital ratio to the limitations and potential inaccuracy of that metric.

One commenter suggested that, based on the proposal, the implied balance sheet structure of most credit unions would be as follows: (1) Commercial lending would be limited to roughly 15 percent of assets, because of the heavier risk weight at higher thresholds; (2) real estate lending would be limited to approximately 35 percent of assets regardless of the repricing structure of the loans; (3) home equity loans/second lien mortgage loans would be limited to 10 percent of assets; and (4) the remainder of a credit union's balance sheet would be limited to consumer loans and very short-term investments because of the risk weights.

A number of commenters suggested that asset quality (*e.g.,* number of delinquencies, classified loans, and charge-offs) should also be taken into account in setting the risk weights to avoid penalizing credit unions that are doing their jobs well. Other commenters suggested that the calculation should provide relief to well-run credit unions that manage their risk appropriately.

A number of commenters suggested that the Original Proposal was biased toward lending and against investments, but that many credit unions have no other option but to purchase investments to improve their interest income to boost their overall earnings. Other commenters stated that the proposal created a bias in favor of consumer loans and short-term assets, which, along with the investment portfolio risk weights, would have forced credit unions down the yield curve to short-duration assets and impeded their ability to build capital. A number of commenters suggested that the risk weight categories and asset categories were over generalized.

A small number of commenters suggested that the rule would be better balanced if credit to the risk weights could be established with a rolling average to reward credit unions effectively managing their loan risks.

The Board generally agrees with comments related to the need for more consistency of risk weights across asset classes, and that IRR and credit risk should not be commingled in the risk weights. Therefore, the Board has decided to make corresponding changes to the risk weights in this proposal. In this second proposal, the Board would address credit risk and concentration risk to be comparable to the Other Banking Agencies.[169] The Board believes the other types of risks that would have been addressed in the Original Proposal are either currently addressed through supervision or will be addressed through alternative approaches in the future. In response to the comments received, particularly those related to investments and residential real estate loans, the Board believes deviating from the current rule's and Original Proposal's method for assigning risk weights would be more consistent with the associated credit risk and the risk weights assigned by the Other Banking Agencies.

This proposal would substantially change how the risk weights for investments would be assigned. Instead of assigning the investment risk weights based on weighted average life, the investment risk weights would be assigned based primarily on the credit quality of the underlying collateral or repayment ability of the issuer. This adjustment addresses the inconsistencies between the risk weights for loans and investments.

For example, under this proposal most first-lien residential real estate

[167] The Basel Committee on Banking Supervision (BCBS) published Basel III in December 2010 and revised it in June 2011, *available at http://www.bis.org/publ/bcbs189.htm.*

[168] Section 988 of the Dodd-Frank Wall Street Reform and Consumer Protection Act obligates NCUA's OIG to conduct MLRs of credit unions that incurred a loss of $25 million or more to the NCUSIF. In addition, section 988 requires NCUA's OIG to review all losses under the $25 million threshold to assess whether an in-depth review is warranted due to unusual circumstances. The MLRs are *available at http://www.ncua.gov/about/Leadership/CO/OIG/Pages/MaterialLossReviews.aspx; see also* GAO/GGD–98–153 (July 1998); GAO–07–253 (Feb. 2007), GAO–11–612 (June 2011), GAO–12–247 (Jan. 2012), and GAO–13–71 (Jan. 2013).

[169] *See, e.g.,* 12 CFR 324.32.

loans receive a 50 percent risk weight and an investment backed by similar assets would receive a 50 percent risk weight. Under this proposal, a credit union managing assets well by avoiding concentrations, non-current loans and risky investments would realize lower total risk-assets and thus a higher risk-based capital ratio. Further details on the changes to individual assets are addressed in the discussion on proposed § 702.104(c)(2) below.

Regarding support for the risk weights themselves, the Board notes that given the requirement in section 216(b)(1)(A)(ii) to maintain comparability with the Other Banking Agencies' PCA requirements, NCUA generally relied on risk weights assigned to various asset classes within the Basel Accords and established by the Other Banking Agencies' risk-based capital regulations to develop this proposal. Based on the comments received, the Board believes it has more precisely defined the risk weights. NCUA has tailored risk weights in this proposal for assets unique to credit unions, or where a demonstrable and compelling case existed based on contemporary and sustained performance differences as shown in Call Report data to differentiate for certain asset classes between banks and credit unions, or where a provision of the FCUA necessitated doing so. Thus, when compared to the Original Proposal, this second proposal would adjust asset classes and recalibrate risk weights, and is more comparable to the risk weights in the Other Banking Agencies' capital regulations.[170]

104(c)(1) General

Under the Original Proposal, proposed § 702.104(c)(1) would have provided that total risk weighted assets include risk-weighted on-balance sheet assets as described in § 702.104(c)(2), plus the risk-weighted off-balance sheet assets in § 702.104(c)(3), plus the risk-weighted derivative contracts in § 702.104(c)(4), minus the risk-based capital ratio numerator deductions in § 702.104(b)(2). The proposal would have required a complex credit union to calculate its risk-weighted asset amount for its on- and off-balance sheet exposures. In the proposal, risk-weighted asset amounts would have generally been determined by assigning an on-balance sheet asset to broad risk weight categories according to the asset type, collateral, and level of concentration. Similarly, risk-weighted assets amounts for off-balance sheet items would have been calculated using a two-step process: (1) Multiplying the notational principal or face value of the off-balance sheet item by a credit conversion factor (CCF) to determine a credit equivalent amount, and (2) assigning the credit equivalent amount to the relevant risk weighted category. A credit union would determine its total risk weighted assets by calculating (1) its risk weighted assets, minus (2) goodwill and other intangibles, and minus (3) the NCUSIF deposit.

The Board received no comments on the language in this paragraph and has decided to retain this aspect of the Original Proposal with the following two changes.

First, the Board proposes to add the following language to this subsection to address the assignment of a risk weight should a particular on- or off-balance sheet item meet more than one defined risk weight category: ''If a particular asset, derivative contract, or off-balance sheet item has features or characteristics that suggest it could potentially fit into more than one risk weight category, then a credit union shall assign the asset, derivative contract, or off-balance sheet item to the risk weight category that most accurately and appropriately reflects its associated credit risk.'' A thorough evaluation of the true credit risk associated with such an item would be the determining factor for the appropriate risk weight.

Second, the Board proposes to make minor conforming amendments to the language to further clarify the requirements.

Accordingly, under this proposal § 702.104(c)(1) would provide that risk-weighted assets includes risk-weighted on-balance sheet assets as described in §§ 702.104(c)(2) and (c)(3), plus the risk-weighted off-balance sheet assets in § 702.104(c)(4), plus the risk-weighted derivatives in § 702.104(c)(5), less the risk-based capital ratio numerator deductions in § 702.104(b)(2). In addition, the section would provide further that if a particular asset, derivative contract, or off balance sheet item has features or characteristics that suggest it could potentially fit into more than one risk weight category, then a credit union shall assign the asset, derivative contract, or off-balance sheet item to the risk weight category that most accurately and appropriately reflects its associated credit risk. The Board is proposing to add this language to account for the evolution of financial products that could lead to such products meeting the definition of more than one risk asset category. If necessary, NCUA would publish guidance to address these products, if and when developed.

104(c)(2) Risk Weights for On-Balance Sheet Assets

Under the Original Proposal, proposed § 702.104(c)(2) would have defined the risk categories and risk weights to be assigned to each specifically defined on-balance sheet asset. All on-balance sheet assets would be assigned to one of the 10 categories and risk weights.

The Board received a significant number of comments on the proposed risk-weight categories and the risk weights assigned to particular assets and has decided to make a number of changes to this subsection, which are discussed in more detail below.

Material Risks

In accordance with section 216(d)(2) of the FCUA, which requires NCUA's risk-based capital requirement ''to take account of any material risks against which the [6 percent] net worth ratio required for an insured credit union to be adequately capitalized may not provide adequate protection,''[171] the risk weights under the Original Proposal would have included elements to address credit, concentration, market risk, interest rate, and liquidity risk. In doing so, proposed § 702.104(c) of the Original Proposal would have addressed concentration risk by assigning higher risk weights to larger percentages of assets in MBLs and real estate loans in § 702.104(c). The concentration threshold amounts were generally based on the average percentage of assets held in the asset types.

The Board has addressed comments received on the Original Proposal related to specific assets in the preamble parts corresponding to the various types of assets covered by this proposal below. However, the Board received a number of general comments on total risk-weighted assets.

A number of commenters stated that NCUA did not adequately support the proposed risk weights nor show a significant correlation between losses and the current risk-based capital structure. Some commenters argued that the proposed risk weights were arbitrary and unsupported. Other commenters noted that the proposed risk weights did not take into account the quality of assets, the ability of credit unions to manage capital, liabilities on credit unions' balance sheets, or the actual loss experience of credit unions. A few commenters believed the proposal would create a bias against long-term lending and investments in favor of short-term assets. One commenter stated

[170] *See, e.g.,* 12 CFR 324.32.

[171] 12 U.S.C. 1790d(d)(2).

that all risk weights should be capped at 100 percent. One commenter stated that the proposal would essentially structure the balance sheet for most credit unions so that commercial lending would be limited to 15 percent of assets, real estate lending would be limited to 35 percent of assets, HELOCs and second-lien mortgages would be limited to 10 percent of assets, and the remainder of the balance sheet would be limited to short-term investments and consumer loans.

After diligently considering all of the comments, and as discussed in more detail in the applicable sections, the Board is now proposing to make significant revisions to the current rule and the Original Proposal, which are discussed in more detail below, to address many of the concerns raised by commenters.

Cash and investment risk weights. In general, the Original Proposal would have retained the approach used in the current rule for measuring risk weights for most cash items and investments. Consistent with the current rule, the risk weights for specific investments generally would have been based upon the weighted-average life of investments (WAL). The WAL is generally calculated based on the average time until a dollar of principal is repaid.[172] Under the current rule, a higher risk weight is generally assigned to an investment with a longer WAL.

Under the Original Proposal, the proposed risk weights for cash and investments would have been assigned as follows:

ORIGINAL PROPOSAL—RISK WEIGHTS FOR CASH AND INVESTMENTS

Item	Proposed risk weight percent
Cash on hand	0
NCUA and FDIC issued Guaranteed Notes	0
Direct, unconditional U.S. Government obligations	0
Cash on deposit	20
Cash equivalents	20
Total investments with WAL ≤ 1-year	20
Total investments with WAL > 1-year and ≤ 3-years	50
Total investments with WAL > 3-year and ≤ 5-years	75
Corporate credit union nonperpetual capital	100
Total investments with WAL > 5-year and ≤ 10-years	150
Total investments with WAL > 10-years	200
Corporate credit union perpetual capital	200

The Original Proposal would have also lowered the risk weight for direct and unconditional U.S. Government obligations (FDIC-issued Guaranteed Notes, and other U.S. Government obligations) from the WAL measure to zero percent risk weight, and maintained the current zero percent risk weight for NCUA-guaranteed assets. Finally, the Original Proposal would have removed nonperpetual and perpetual capital in corporate credit unions from the >1–3 year WAL category under the current rule and assigned those assets their own specific risk weights based on factors other than the WAL.

The Board received a large number of comments on the risk weights for investments. Generally, commenters disagreed with the proposed risk weights. Specifically, many commenters felt that the risk weights were not the appropriate place to address IRR and that many of the risk weights could act to limit credit unions' investments in a way that would be detrimental to the individual credit unions and the credit union industry. In addition, many commenters cited inconsistencies between the risk weights for certain investments and the risk weights for the underlying assets, arguing that this may have the unintended consequence of encouraging credit unions to obtain riskier assets with lower risk weights rather than relatively safe investments that have much higher risk weights.

Commenters who sought lower risk weights for investment varied in exactly how to lower risk weights. Some commenters argued that no investment should have a risk weight over 100 percent. Other commenters requested a reduced number of risk weight tiers, stating that it is more appropriate to have a 20 percent risk weight on investments with WALs up to five years and a risk weight of 100 percent for investments that have a WAL greater than 5 years. Commenters suggested that overall the proposed risk weight structure penalizes credit unions for investing and unfairly discriminates against longer-term investments. Several commenters also sought an ''other'' category for investments that would allow credit unions to demonstrate why certain investments do not warrant the risk weight associated with their WAL. Still other commenters asked that the Board adopt the weights for investments that are included in FDIC's interim final rule.

In addition to requesting lower overall risk weights, many of the commenters addressing this topic also requested all agency and GSE securities receive a lower risk weight. Most commenters felt that securities offered by a federal agency or GSE and overnight Fed Fund deposits should have the same zero percent risk weight that is applied to NCUA- and FDIC-issued guaranteed notes and direct, unconditional U.S. Government obligations. These commenters argued that securities offered by agencies other than NCUA and FDIC and overnight Fed Fund deposits pose little to no risk to the investing credit unions and have an implicit or, in some cases, explicit guarantee of the U.S. Government. Further, commenters contend that without a lower risk weight on agency securities and overnight Fed Fund deposits, credit unions are actually incentivized to avoid these low-risk investments in favor of investments that carry greater credit risk, but offer the potential for a higher return as both types of investments carry the same risk weight. Commenters provided the

[172] There are a few exceptions, most notably calculating WAL until the next adjustment date for variable-rate obligations.

following example to illustrate this point: A credit union can invest in a private-label, asset-backed security with a 5.5-year WAL, or a security backed by the guarantee of a GSE with the same WAL, and both investments would have carried a 150 percent risk weight.

Some commenters also asked for clarification on the risk weight for long-term CDs purchased from FDIC-insured institutions and investments in Federal Home Loan Banks.

Further, a majority of the commenters addressing this section of the proposed rule argued that risk-based capital is not the appropriate medium to address IRR. Commenters stated that NCUA's attempt to regulate IRR through the risk-based capital requirement appeared arbitrary and was inconsistent with treatment provided to banks by the Other Banking Agencies. One commenter stated that, if NCUA uses the risk-based capital requirement to regulate IRR, it should note that shocks of 300 basis points are rare and have not been seen since the early 1980's. Further, commenters stated that basing risk weights on the WAL does not take into account credit risk, the funding source for the investments, whether the investment is fixed- or variable-rate, actual maturity of the investment, optionality, or the benefit of longer-term investments—all of which, commenters argue, provide a better evaluation of the risk associated with an investment than the WAL.

Some commenters also noted that the proposed risk weights for investments would lead to inconsistent treatments among various assets. Specifically, commenters argued that the risk weights on some long-term investments that pose a low degree of risk are weighted higher than other, riskier assets. To support these arguments, commenters cited examples that included: A member business loan with a seven-year balloon would carry a lower risk weight than a seven-year bullet agency security; a current credit card loan would have a lower risk weight than a 5.5-year security guaranteed by a GSE; and an indirect auto loan with a 130 percent loan-to-value would have a lower risk weight than a 5.5-year GSE guaranteed security. Other commenters questioned why the risk weight for a mortgage-backed security is higher than the underlying 30-year mortgage that backs the security.

Several commenters questioned how the proposal affects the authority in § 701.19, which allows a federal credit union to purchase investments to fund employee benefit plans without being subject to NCUA's investment rules. Generally, commenters requested lower risk weights for investments held to fund employee benefit plans and life insurance contracts held by the credit union on its executive-level employees. Commenters contend that credit unions may be less likely to offer and fund employee benefit plans because of the risk weights. Further, one commenter stated that the proposal does not take into account the purpose of the investments and their applicability to benefit plan funding, potentially creating risks from both a fiduciary standpoint and the loyalty of executives and employees. Several commenters also requested that the Board include specific risk weights for annuities and mutual funds used to fund employee benefit programs based on the underlying accounts and investment strategies. One commenter suggested that mutual funds be weighted based on the underlying investment strategy. This commenter suggested the following breakdown: State and federal government funds—20 percent; Municipal bond strategies—50 percent; Asset-backed, mortgage-backed, and bank loan funds—100 percent; Other funds—150 percent; Bonds—WAL; Equity securities—200 percent. Another commenter stated that life insurance contracts owned by the credit union should be rated at 20 percent for AAA- and AA-rated insurers.

The Board generally agrees with commenters' concerns regarding the differences between the current risk-based requirements, the Original Proposal's investment risk weights, and the risk weights assigned by the Other Banking Agencies. As discussed in the summary part of the preamble above, the Board believes that measures of IRR should be based on a credit union's entire balance sheet to take into account the offsetting risk effects of assets and liabilities (including any benefits from derivative transactions). The Board also generally agrees with commenters that the use of asset-duration risk weights in the risk-based capital scheme is overly simplistic and does not fully take into account potential risk mitigation benefits, such as liabilities and derivatives.

The Board agrees that the approach taken in the Original Proposal should be revised. Accordingly, the Board is now proposing to change the risk weights in the investment area to more closely align them with the risk weights in the Other Banking Agencies' regulations,[173] and to handle IRR outliers through alternative approaches and possibly a separate subsequent rulemaking.

In particular, the Board is now proposing to eliminate the process of assigning risk weights for investments based on WAL of investments in favor of a credit-risk centered approach for investments. As discussed earlier in the document, the credit risk approach to assigning risk weights under this proposal is based on applying lower risk weights to safer investment types and higher risk weights to riskier investment types.[174] The proposed investment risk weights would be similar to the risk weights assigned to investments under the Other Banking Agencies' regulations,[175] which are based on the credit-risk elements of the issuer and the position of the particular type of investment. The proposed changes to the risk weights assigned to investments are outlined in the following table:

THIS PROPOSAL—RISK WEIGHTS FOR CASH AND INVESTMENTS

Item	Proposed risk weight (percent)
• The balance of cash, currency and coin, including vault, automatic teller machine, and teller cash	0
• The exposure amount of:	
○ An obligation of the U.S. Government, its central bank, or a U.S. Government agency that is directly and unconditionally guaranteed, excluding detached security coupons, ex-coupon securities, and principal and interest only mortgage-backed STRIPS.	
○ Federal Reserve Bank stock and Central Liquidity Facility stock.	
• Insured balances due from FDIC-insured depositories or federally insured credit unions	

[173] *See, e.g.,* 12 CFR 324.32.

[174] When the Board evaluates the risk of an investment type, it is based on criteria such as volatility, historical performance of the investments, and standard market conventions.

[175] *See, e.g.,* 12 CFR 324.32.

THIS PROPOSAL—RISK WEIGHTS FOR CASH AND INVESTMENTS—Continued

Item	Proposed risk weight (percent)
• The uninsured balances due from FDIC-insured depositories, federally insured credit unions, and all balances due from privately-insured credit unions	20
• The exposure amount of:	
○ A non-subordinated obligation of the U.S. Government, its central bank, or a U.S. Government agency that is conditionally guaranteed, excluding principal and interest only mortgage-backed STRIPS.	
○ A non-subordinated obligation of a GSE other than an equity exposure or preferred stock, excluding principal and interest only GSE obligation STRIPS.	
○ Securities issued by PSEs in the United States that represent general obligation securities.	
○ Investment funds whose portfolios are permitted to hold only part 703 permissible investments that qualify for the zero or 20 percent risk categories.	
○ Federal Home Loan stock.	
• Balances due from Federal Home Loan Banks.	
• The exposure amount of:	50
○ Securities issued by PSEs in the U.S. that represent non-subordinated revenue obligation securities.	
○ Other non-subordinated, non-U.S. Government agency or non-GSE guaranteed, residential mortgage-backed securities, excluding principal and interest only STRIPS.	
• The exposure amount of:	100
○ Industrial development bonds.	
○ All stripped mortgage-backed securities (interest only and principal only STRIPS).	
○ Part 703 compliant investment funds, with the option to use the look-through approaches.	
○ Corporate debentures and commercial paper.	
○ Nonperpetual capital at corporate credit unions.	
○ General account permanent insurance.	
○ GSE equity exposure and preferred stock.	
• All other assets listed on the statement of financial condition not specifically assigned a different risk weight.	
• The exposure amount of perpetual contributed capital at corporate credit unions	150
• The exposure amount of:	300
○ Publicly traded equity investment, other than a CUSO investment.	
○ Investment funds that are not in compliance with part 703 of this Chapter, with the option to use the look-through approaches.	
○ Separate account insurance, with the option to use the look-through approaches.	
• The exposure amount of non-publicly traded equity investments, other than equity investments in CUSOs	400
• The exposure amount of any subordinated tranche of any investment, with the option to use the gross-up approach	1,250

The Board disagrees with commenters who suggested that all investments should be assigned a risk weight of 100 percent or less. Assigning a maximum of 100 percent risk weight to all investments would not sufficiently capture the risk of equity or leveraged investments, and would unjustifiably differ from the risk weights used by the Other Banking Agencies. Based on the extensive analyses performed by the Basel Committee [176] and the Other Banking Agencies in the development of their regulations, the Board believes the Other Banking Agencies' risk weights sufficiently reflect the credit risk in their respective categories. As the same type of investment will perform on a credit risk basis identically for credit unions and banks, in general, variations in this proposal from the approach taken by the Other Banking Agencies' regulations [177] are due to differences in credit union investments, the investment authorities of credit unions, or are intended to offer credit unions a simplified but equivalent approach for applying risk weights.

Another area where commenters expressed concern was with the risk weights assigned to U.S. Government agency and GSE securities under the Original Proposal. The Board believes it has addressed these concerns in this second proposed rule by removing the IRR component from the risk weights for investments. The Board also believes this concern would be addressed for these and other investment types by assigning risk weights on long-term assets only based on the credit risk, and not IRR. For example, an 11-year WAL non-subordinated mortgage-backed security issued by a GSE would have been assigned a 200 percent risk weight under the Original Proposal, while a 2-year WAL of the same security type would have been assigned a 50 percent risk weight. Conversely, under this second proposed rule, both securities would be assigned a 20 percent risk weight, which is based only on the credit risk of the investment type.

The Board has also assigned risk weights to types of investments, such as corporate bonds, asset-backed securities and corporate equities, which are generally not available to federal credit unions. These risk weights were assigned to account for the fact that federally insured state chartered credit unions sometimes have investment authorities that allow then to invest in assets not available to FCUs. In addition, § 701.19 permits federal credit unions to purchase investments to fund employee benefits that are not otherwise available to federal credit unions under NCUA's investment regulations. For these types of assets, the Board has assigned risk weights that it believes reflect the risk of the assets that could be used to fund employee benefit plans.

The Board disagrees with commenters who suggested lower risk ratings should be applied to such assets because they were purchased for employee benefit plans. However, the Board does seek comment on whether lower risk weights should be applied to investments that fund employee benefit plans in which all of the risk of loss is held by the

[176] Basel Committee on Banking Supervision, ''International Convergence of Capital Measurement and Capital Standards: A Revised Framework, Comprehensive Version'' 214 (June 2006) *available at http://www.bis.org/publ/bcbs128.pdf* (*Basel II*) and Basel Committee on Banking Supervision, ''An Explanatory Note on the Basel II IRB Risk Weight Functions'' (July 2005).

[177] *See, e.g.,* 12 CFR 324.32.

beneficiary. For example, how should NCUA assign a risk weight to an equity investment on a credit union's statement of financial condition that represents a holding in a credit union executive's 457(b) plan?

The Board chose not to assign risk weights based on credit ratings, as at least one commenter requested. Consistent with the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, which required agencies to remove all references to credit ratings, NCUA does not use credit ratings to determine risk weights for part 702.[178]

Loans generally. NCUA received a substantial number of comments regarding the risk weights assigned to loans in general. A number of commenters stated that the proposed risk weights for various types of loans were overly broad, arbitrary, punitive, and did not take into account the individual underwriting terms, pricing and risk management of individual credit unions. Other commenters suggested that the proposed risk weights for loans failed to consider loan-to-value ratios, fixed- versus variable-rate loans, repricing opportunities, maturity length, and other risk mitigation strategies. Still other commenters stated that the quality of the loan portfolio is the most determinant of risk to capital. A number of commenters stated that all loans are not the same like the rule is treating them. Other commenters objected to laddering quantitative risk-based metrics for loans because doing so ignores credit union's strategic and business plans, taking growth management away from the board of directors.

However, the Board cannot uniformly use these criteria to measure minimum capital requirements for credit unions because of the indeterminate reporting that would be necessary and the myriad of variables available to establish a sound lending program. This second proposed rule is consistent with the regulatory capital models under the Basel framework, which are portfolio invariant.[179] Being ''portfolio invariant'' means that the capital charge for a particular loan category is consistent among all credit union portfolios based on the loan characteristics, rather than the individual credit union's portfolio performance or characteristics. Taking into account each credit union's individual characteristics would be too complicated for both credit unions and NCUA for minimum regulatory capital requirements.

A number of commenters stated that assigning risk weights to loans based on the risk of the underlying loans makes more sense than on the size of the portfolio. Other commenters suggested that if IRR is included in investment risk weights, it should also be included in loan risk weights.

As noted in the summary section, the Board believes the revised loan concentration risk thresholds and corresponding risk weights under this proposal would address only credit risk exposures, and to a limited extent concentration risk exposures. While certain loans contain a substantial amount of IRR, the Board does plan to consider alternative approaches to address IRR separately from this rulemaking.

Several commenters suggested that the Board remove the higher-risk components for delinquent loans because the ALLL balance is already factored into the formula. Conversely, other commenters stated that they appreciated that the Original Proposal assigned delinquent and non-delinquent loans different risk weights.

At least one commenter suggested that troubled debt restructuring loans be risk-weighted at 50 percent.

This proposal would maintain a separate, higher risk weight for loans that are not current, but would also, as discussed in detail above, eliminate the 1.25 percent cap on the ALLL in the risk-based capital ratio numerator. The Board believes the proposed higher risk weight that would be assigned to non-current loans is warranted because such loans have a higher probability of default when compared to current loans. Non-current loans are more likely to default because repayment is already impaired making them one step closer to default compared to current loans. Additionally, a higher risk weight for non-current loans is consistent with the risk weights assigned by the Other Banking Agencies.[180]

A small number of commenters suggested that share-secured loans should have a risk weight between zero and 25 percent since they are fully secured. Also, some commenters noted that secured consumer loans generally pose less risk than unsecured consumer loans. The Board generally agrees that share-secured loans pose less risk to credit unions than other types of secured loans. Accordingly, under this second proposal share-secured loans would be assigned a 20 percent risk weight. The board does not believe a risk weight of zero percent is warranted because of the small amount of operational and transaction risk present in share-secured loans. A risk weight of 20 percent for share-secured loans is proposed because it recognizes the low amount of risk and is consistent with the 20 percent risk weight for contractual compensating balances on commercial loans that are also secured by shares on deposit.

The Board also agrees unsecured consumer loans generally pose more risk than secured consumer loans, and is therefore proposing to assign a lower risk weight of 75 percent to secured consumer loans and a higher risk weight of 100 percent to unsecured consumer loans. The 100 percent risk weight for unsecured consumer loans would be comparable to the Other Banking Agencies' risk weight for consumer loans.[181] Because secured consumer loans pose less risk to a credit union than unsecured consumer loans, the Board is proposing to assign secured consumer loans a lower risk weight of 75 percent compared to the 100 percent risk weight for unsecured consumer loans.

A small number of commenters suggested that loans held for sale should have a 25 percent risk weight. Other commenters suggested that loans held for sale should have a 50 percent risk weight.

After considering the comments received, the Board continues to believe that loans held for sale carry identical risks to the originating credit union as other loans held in the credit union's portfolio until transfer to the purchaser is final. Until the originating credit union transfers the loan to the purchaser, the originating credit union bears the risk of the loan defaulting. If the loan defaults prior to the finalization of the transfer, the originating credit union must account for any loss from the defaulting loan, similar to other loans held on the credit union's books. Because they carry the same risks, loans held for sale would be assigned a risk weight based on the loan's type.

Commercial Loans. The Original Proposal would have increased the risk weights for member business loans (MBLs) from the current rule to address the historical correlation between high concentrations of MBLs and higher risk to the credit union. As noted in the

[178] Public Law 111–203, Title IX, Subtitle C, section 939A, 124 Stat. 1376, 1887 (July 21, 2010).

[179] Basel Committee on Banking and Supervision, *An Explanatory Note on the Basel II IRB Risk Weight Functions,* July 2005, *available at http://www.bis.org/bcbs/irbriskweight.htm.* ''The model should be portfolio invariant, *i.e.* the capital required for any given loan should only depend on the risk of that loan and must not depend on the portfolio it is added to. This characteristic has been deemed vital in order to make the new IRB framework applicable to a wider range of countries and institutions.''

[180] *See, e.g.,* 12 CFR 324.32(k).

[181] *See, e.g.,* 12 CFR 324.32(l)(5).

Original Proposal, many of the largest losses the NCUSIF has experienced over its history have occurred in credit unions with high concentrations of MBLs.[182] In addition, the failures of many small banks between 2008 and 2011 were largely driven by high concentrations of commercial loans.[183]

For purposes of the Original Proposal, ''member business loans outstanding'' would have consisted of loans outstanding that qualified as MBLs under NCUA's definition,[184] or under a state's NCUA-approved definition.[185] If a loan qualified as a MBL when it is originated, it would have remained so until it had been repaid in full, sold, or otherwise disposed of.

Consistent with the current rule, the Original Proposal would have applied risk weights to MBLs as a percentage of total assets. As a credit union's concentration in particular asset classes increased, incrementally higher levels of capital would have been required.[186] The following table shows a comparison of the current rule and the Original Proposal:

COMPARISON—MBL COMPONENTS OF THE CURRENT RULE AND ORIGINAL PROPOSAL

Total MBLs	Current rule MBL risk weights[187]—(converted for 8% adequately capitalized level)	Original proposal MBL risk weights
0 to 15% of Assets	75%	100%[188]
>15 to 25% of Assets	100%	150%
Amount over 25%	175%	200%

Under the Original Proposal, MBLs that were at least 75 percent guaranteed by the federal government, typically by the Small Business Administration (SBA) or U.S. Department of Agriculture, would have received a risk weight of 20 percent regardless of the percent of the credit union assets they represented.[189]

A substantial number of commenters addressed MBLs and generally disagreed with the proposed risk weights in the Original Proposal, noting that the risk weight assigned to commercial loans under the Other Banking Agencies' capital regulations would have been lower for such loans when held in higher concentrations.

There were, however, a few commenters that agreed that higher risk weights should be applied to MBLs held in higher concentrations.

Many commenters objected to the Board's methodology for assigning risk weights to MBLs based on concentration. Other commenters disagreed with NCUA's methodology of assigning risk weights based on concentrations of MBLs compared to total assets. These commenters argued that risk weights based on concentration levels do not take into account all pertinent information to accurately determine risk. Some commenters believed that risk weights should be assigned based on the type of loan, specifically separating loans by business purpose (commercial, agricultural, or construction and development). Some of these commenters suggested the Board should address concentration risk through supervision rather than through a rulemaking.

Some commenters questioned the interplay between exemptions from the statutory cap on MBLs and higher risk weights for credit unions that exceed the cap. These commenters pointed out that many credit unions have been given an exemption from the statutory MBL concentration limit. Some of these commenters stated that the proposed risk weights would nullify the exemptions included in the Federal Credit Union Act and may lead some credit unions to discontinue business lending, particularly in the area of agriculture. To that end, commenters requested a variety of solutions. Some commenters believed credit unions exempt from the statutory MBL cap should be given more time to comply with the MBL risk weights, while other commenters argued there should be a separate set of risk weights for exempt credit unions. Finally, some commenters requested that the Board allow credit unions exempt from the statutory MBL cap to continue following the risk weights in the current rule.

Higher capital requirements for concentrations of MBLs exist in the current rule and the Board believes completely eliminating them would be a step backwards in matching risks with minimum risk-based capital requirements. Credit unions with high commercial loan concentrations are particularly susceptible to changes in business conditions that can affect borrower cash flow, collateral value, and other factors increasing the probability of default.

NCUA does currently review credit concentrations during examinations as commenters recommended. However, as discussed in the summary section, the

[182] GAO found in its 2012 report that credit unions who failed had more MBLs as a percentage of total assets than peers and the industry average. *See.* U.S. Govt. Accountability Office, GAO–12–247, *Earlier Actions Are Needed to Better Address Troubled Credit Unions* 17 (Jan. 2012) *available at http://www.gao.gov/products/GAO-12-247.*

[183] U.S. Government Accountability Office, GAO–13–704T, *Causes and Consequences of Recent Community Bank Failures* 4 (June 12, 2013) *available at http://www.gao.gov/assets/660/655193.pdf.*

[184] *See* 12 CFR 723.1.

[185] *See* 12 CFR 723.20.

[186] Under the current rule, the Original Proposal and this second proposal, concentration risk is accounted for in commercial and real estate loans because historically this is where credit unions have experienced concentration risk problems.

[187] The current MBL risk weights were converted to a comparable risk weight by dividing the current risk weight by eight percent, with eight percent representing the level of risk weighted capital needed to be adequately capitalized. In the current rule total MBLs less than the threshold 15 percent of assets receive a six percent risk weight, which is equivalent to a 75 percent risk weight under this proposal (six percent divided by eight percent). The next threshold in the current regulation for total MBLs from 15 percent to 25 percent of assets received an eight percent risk weight, which is equivalent to a 100 percent risk weight under this proposal (eight percent divided by eight percent) and the highest concentrations of MBLs received a 14 percent risk weight, which is equivalent to a 175 percent risk weight under the proposal (14 percent divided by eight percent).

[188] This is consistent with the Other Banking Agencies' capital rules (*e.g.,* 12 CFR 324.32), which maintain a 100 percent risk weight for commercial real estate (CRE) and includes a 150 percent risk weigh for loans defined as high-volatility commercial real estate (HVCRE). *See, e.g.,* 78 FR 55339 (Sept. 10, 2013).

[189] Under the current rule the entire balance of MBLs outstanding, including any amount partially guaranteed by a U.S. Government agency, is included in the risk weight for MBLs (*i.e.,* the equivalent risk-weight under the current rule for an MBL that is 75 percent government guaranteed is the same as the risk weight for any other MBL. Thus, this proposed rule would be more favorable because it would assign a low risk weight of 20% to the portion of the commercial loan with a U.S. Government guarantee. This is in addition to the lower risk weight that would be assigned to non-owner occupied one-to-four-family residential real estate loans that would not be risk-weighted as commercial loans under this proposal.

FCUA requires that NCUA's risk-based net worth requirement account for material risks that the six percent net worth ratio may not provide adequate protection, which would include credit concentration risks.[190]

Basel II states, ''risk concentrations are arguably the single most important cause of major problems in banks.'' [191] In addition, GAO specifically recommended that the Board continue to address concentration risk in the risk-based capital requirement. GAO found in its 2012 report that credit unions that failed had more MBLs as a percentage of total assets than peers and the industry average.[192] GAO advised the Board to revise NCUA's PCA requirements to take into account credit unions with a high percentage of MBLs to total assets. In addition, NCUA's OIG recommended in MLRs that the Board increase the risk weights assigned to MBLs, citing numerous and excessive NCUSIF losses related to MBLs, including a number of large credit unions with high concentrations of MBLs.[193]

However, after consideration of the comments, the Board is proposing to modify the approach to MBLs taken in the Original Proposal assigning risk weights to ''commercial loans'' rather than ''MBLs.'' Under this second proposal the risk weights assigned to commercial loans would generally be consistent with those assigned by Other Banking Agencies and with the objectives of the Basel Committee on Banking Supervision.[194] This proposal reduces the number of commercial loan concentration thresholds from two to one, with a single concentration threshold at 50 percent of total assets. Applicable commercial loans less than the 50 percent threshold would be assigned a 100 percent risk weight, and commercial loans over the threshold would be assigned a 150 percent risk weight. Commercial loans that are not current would be assigned a 150 percent risk weight. This change to a single, higher concentration risk threshold would simplify the risk weight framework and calibrate it to only pick up outliers. The concentration threshold for commercial loans is well over two standard deviations from the mean. Based on December 2013 Call Report data, all but 12 credit unions with total assets of $100 million or greater operate at a level in which the risk weights assigned to commercial loans would be similar to the risk weight assigned by the Other Banking Agencies.[195]

Further, the 50 percent threshold and the risk weights of 100 percent and 150 percent result in nearly identical capital requirements, as compared to the current rule, for high concentrations of commercial loans. This creates parity to the Other Banking Agencies' rules[196] for virtually all credit unions, and allows credit unions exempt from the MBL cap (with very high concentration levels) to continue to operate under effectively the same capital requirements of the current rule. Further, none of the credit unions that would be subject to the concentration threshold have material variations in the type of their MBLs. So such an approach would add significant complexity to the rule with no benefit.

	Commercial loan concentration (percent of total assets)				
	15%	20%	50%	75%	100%
Effective Capital Rate:[197]					
Current Rule	6.0%	6.5%	10.4%	11.6%	12.2%
This Proposal	10.0%	10.0%	10.0%	11.7%	12.5%

The Board also disagrees that concentration thresholds for commercial loans should vary based on the business purpose or underlying collateral. Utilizing specific commercial loan type or collateral loss history is not a reliable or consistent method for assigning risk weights in a regulatory model. Nor is it consistent with the Basel framework or the Other Banking Agencies' capital models. All commercial asset classes experience performance fluctuations with variations in business cycles. Some sectors that have experienced minimal losses are now pre-disposed to heightened credit risk. Both NCUA and FDIC have recently addressed these types of exposures in respective Letters to Credit Unions and Financial Institution Letters.[198]

A large number of commenters addressing MBLs argued that the risk weights for credit unions should be lower than the risk weights employed by FDIC for banks. Commenters noted that the proposed risk weight of 100 percent for total MBLs of zero to 15 percent of total assets was the same as the risk weight for commercial loans under FDIC's interim final regulation. Commenters argued, however, that credit unions have historically had a lower loss rate on MBLs than community banks had for commercial loans. These commenters argued that since credit unions have a lower historical loss rate than banks, the risk weights assigned to MBLs should also be lower. Other commenters noted that NCUA's MBL regulation is more conservative than commercial lending regulations for banks, and, therefore, at a minimum the Board should adopt a 100 percent risk weight, regardless of concentration, to mirror the commercial loan risk weights for banks.

The Board does not believe the contemporary variances between bank and credit union losses on commercial loans are substantial enough to warrant assigning lower risk weights to

[190] *See* 12 U.S.C. 1790d(d)(2).

[191] International Convergence of Capital Measurement and Capital Standards—June 2006. Basel Committee on Banking Supervision.

[192] *See* U.S. Govt. Accountability Office, GAO–12–247, *Earlier Actions Are Needed to Better Address Troubled Credit Unions* (Jan. 2012) *available at http://www.gao.gov/products/GAO–12–247.*

[193] *OIG Capping Report on Material Loss Reviews,* Report # OIG–10–20, November 23, 2010. Also see *Material Loss Review of Telesis Community Credit Union,* Report # OIG–13–05, March 15, 2013.

[194] This is comparable with the other Federal Banking Regulatory Agencies' capital rules (*e.g.,* 12 CFR 324.32), which maintain a 100 percent risk-weight for commercial real estate (CRE) and includes a 150 percent risk-weight for loans defined as high volatility commercial real estate (HVCRE). *See, e.g.,* 78 FR 55339 (Sept. 10, 2013). Basel Committee on Banking Supervision, *International Convergence of Capital Measurement and Capital Standards,* June 2006, ''In view of the experience in numerous countries that commercial property lending has been a recurring cause of troubled assets in the banking industry over the past few decades, Committee holds to the view that mortgages on commercial real estate do not, in principle, justify other than a 100% risk weight of the loans secured.'' *Available at http://www.bis.org/publ/bcbs128.htm.*

[195] *See, e.g.,* 12 CFR 324.32(f).

[196] *Id.*

[197] The effective capital rate represents the blended percentage of capital necessary for a given level of commercial loan concentration. For this proposal's figures, the calculation uses 10% as the level of risk-based capital to be well capitalized under this proposal.

[198] NCUA Letter to Credit Unions, 14–CU–06, *Taxi Medallion Lending,* April 2014. Financial Institution Letter, *Prudent Management of Agricultural Credits Through Economic Cycles,* FIL–39–2014, July 16, 2014.

commercial loans held by credit unions. Credit unions' commercial loan loss experience is comparable to community banks after adjusting for asset size. The recent loss experience for credit unions and banks is very similar.

	3 Year average loss history	
	Credit unions >$100M in assets	Banks $100M to $10B in assets
Commercial & Industrial	0.75	0.78

Further, credit unions' long-term historical MBL losses are somewhat understated because the NCUA's Call Report did not collect separate MBL data until 1992. Thus, significant MBL losses experienced in the late 1980s and early 1990s are not included in the long-term historical credit union MBL loss data.[199]

Some commenters also questioned the disparity between NCUA's treatment of unfunded commitments and the treatment in Basel III. For this second proposal, the Board has adjusted the treatment for unfunded MBL commitments to be more comparable to the Other Banking Agencies' rules.[200]

Under this proposal, the definition of ''commercial loans,'' as discussed in the definition section of this preamble, would: (1) include all commercial purpose loans regardless of dollar amount; (2) exclude one-to-four-family non-owner occupied first-lien real estate loans, which would be considered residential real estate loans for the purpose of assigning risk weights in this proposal; (3) exclude any loans secured by a vehicle generally manufactured for personal use; (4) assign to the portion of a commercial loan that is insured or guaranteed by the U.S. Government, U.S. Government agency, or a public sector entity a lower risk weight of 20 percent and not count such loans toward the 50 percent of assets concentration threshold; and (5) assign to any amount of a contractual compensating balance associated with a commercial loan and on deposit in the credit union a 20 percent risk weight and not count such amounts toward the 50 percent of assets concentration threshold. The revised definition of commercial loan would better capture the loans made for a commercial purpose that have similar risk characteristics. The portion of a commercial loan that is insured or guaranteed by the U.S. Government, U.S. Government agency, or a public sector entity would be assigned a lower risk weight of 20 percent and would not count toward the 50 percent of asset threshold. This provision is comparable to the Other Banking Agencies.[201] The amount of a contractual compensating balance associated with a commercial loan and on deposit in the credit union would receive a 20 percent risk weight and not count toward the 50 percent of assets concentration threshold since the credit union has the ability to apply the compensating balance against the amount owed, lowering the potential loss exposure. This provision would be unique to credit unions but appropriately reduces the risk weight due to the existence of the compensating balances. The Board believes these changes would encourage the use of government guarantees and compensating balances and provide credit unions with additional methods to serve commercial borrowers while reducing their minimum capital requirement without increasing risk to the NCUSIF for commercial loan losses.

Residential real estate loans. The current standard approach to assigning risk weights in part 702 of NCUA's regulations establishes higher capital requirements for only ''long term'' real estate loans, and excludes loans that re-price, refinance, or mature within five years or less. By excluding loans that re-price, refinance, or mature within five years or less from higher capital requirements, as a result, the current rule does not adequately account for credit unions that have high real estate loan concentrations.

Additionally, junior-lien real estate loans, which have a significantly higher loss history, are assigned the same risk weight as first-lien mortgage real estate loans under the current rule. As a result, the current real estate loan risk weights incentivize credit unions to structure their mortgage products to minimize their capital requirements, which can impact the marketability of such loans. As discussed in more detail below, the Original Proposal would have made a number of changes to the current rule to address these concerns.

Consistent with the current rule, the Original Proposal would have continued to exclude from the real estate risk weights those real estate loans reported as MBLs. The Original Proposal would have recognized the lower loss history for current, prudently written first-lien real estate-secured loans by assigning a lower risk weight of 50 percent to the first 25 percent of assets.[202] To account for concentration risk, the proposal would have raised the risk weight for first-lien real estate loans between 25 and 35 percent of assets from 50 percent to 75 percent. First-lien real estate loans over 35 percent of assets would have been assigned a 100 percent risk weight. The threshold of 25 percent was based on the average percentage of first-lien real estate loans to total assets, which, as of June 30, 2013, was 24.9 percent for complex credit unions, as defined under the current rule.

Under the Original Proposal, if a credit union held the first- and junior-liens on a property, and no other party held an intervening lien, the credit union could have treated the combined exposure as a single loan secured by a first lien for the purpose of assigning the risk weight. First-lien real estate loans assigned to the 50 percent risk weight category could not have been restructured or modified loans. First-lien real estate loans modified or restructured on a permanent or trial basis solely under the U.S. Treasury's Home Affordability Mortgage Program (HAMP) would not have been considered restructured or modified.

First-lien real estate loans guaranteed by the federal government through the Federal Housing Administration (FHA) or the Department of Veterans Affairs (VA) generally would have been risk-weighted at 20 percent. While a U.S. Government guarantee against default mitigates credit risk, normally the loans

[199] NCUSIF losses from MBLs are a recurring historical trend. The U.S. Treasury Report on Credit Union Member Business Lending discusses 16 credit union failures from 1987 to 1991 that cost the NCUSIF over $100 million. Department of the Treasury, *Credit Union Member Business Lending* (Washington DC January 2001).

[200] *See, e.g.,* 12 CFR 324.33.

[201] *See,* 12 U.S.C. 324.32(a).

[202] This is comparable with the Other Banking Agencies' capital rules (*e.g.,* 12 CFR 324.32), which maintained the 50 percent risk weight for one-to-four-family real estate loans that are prudently underwritten, not 90 days or more past due, and not restructured or modified, and a 100 percent risk weight for such loans otherwise. *See, e.g.,* 78 FR 55339 (Sept. 10, 2013).

are not fully guaranteed and routinely subject the credit union to meeting loan underwriting and servicing requirements.

Under the Original Proposal, real estate-secured loans that did not meet the definition of a ''first mortgage real estate loan'' would have been defined as ''other real estate loans'' and assigned a higher risk weight. First-lien real estate loans delinquent for 60 days or more, or carried on non-accrual status, would have been included in the category of other real estate loans for the purpose of assigning the risk weight. Other real estate loans would have been assigned a risk weight of 100 percent for the first 10 percent of assets. To account for concentration risk, the risk weight for other real estate loans would increase to 125 percent for loans between 10 and 20 percent of assets, and other real estate loans over 20 percent of assets would have been risk-weighted at 150 percent.

The threshold of 10 percent was based on the average percentage of other real estate loans to total assets, which, as of June 30, 2013, was 6.85 percent for complex credit unions.

Under the Original Proposal, the aggregate minimum capital requirement for first- and junior-lien real estate loans would have been slightly less than the current minimum requirement.[203] The originally proposed risk weights for real estate loans, however, would have resulted in a higher variance in the minimum capital requirement for individual affected credit unions because the risk weights better differentiated between the risks associated with lien position and concentration.

NCUA received a significant number of comments on the proposed risk weights for real estate loans. Most commenters generally disagreed with the proposed risk weights, stating that they were too high. Commenters suggested that, given lower historical loss rates on residential mortgage loans at credit unions compared to community banks and the fact that credit unions with higher concentrations of these loans tend to experience lower loss rates than their peers, the risk weights and concentration thresholds for real estate loans should be far lower than the Original Proposal indicated and lower than what banks must meet. Commenters generally acknowledged that the proposed 50 percent risk weight (*i.e.,* excluding the higher weights for concentration risk) for first mortgage loans was equal to the bank risk weight, but argued that credit union losses on these loans historically have been lower than community bank loss totals. One commenter claimed that credit unions' losses on first mortgage loans were in fact equal to 60 percent of community bank loss totals over the long term, since the start of the Great Recession, and at peak value losses. Based on this historical performance, the commenter suggested that if the appropriate bank risk weights for residential first mortgages is indeed 50 percent, the history-based risk weights for credit unions ought to be closer to 30 percent (*i.e.,* 60 percent of 50 percent).

The Board does not believe the contemporary variances between bank and credit union losses on real estate loans are substantial enough to warrant assigning lower risk weights. Based on the credit union Call Reports and FDIC Quarterly Banking reports for the years ended December 31, 2011, 2012, and 2013, credit union real estate loan loss experience is comparable to community banks. Credit unions with over $100 million in assets have an average overall real estate loan loss ratio of 0.58 percent over the past three years. Banks with assets up to $10 billion have an average real estate loan loss ratio of 0.65 percent over the same time period. Credit union first mortgage loan losses average 0.34 percent over the last three years compared to 0.49 percent for banks. Credit union home equity loan losses average 0.96 percent over the last three years compared to 0.73 percent for banks.

Another commenter suggested that NCUA's tiered risk weight approach for real estate-secured loans for both the current risk-based net worth ratio framework and the proposed risk-based capital ratio framework is arbitrary and unsupported by the administrative record, and that NCUA has not offered specific analyses or other evidence to support either framework's implied assumption that there is a correlative relationship between the size of a credit union's portfolio of real estate secured loans and the risk that portfolio presents to the NCUSIF.

Other commenters believed the proposed risk weights would discriminate against homeownership because home loans bring a positive reputation value that the rule cannot factor, and that any additional capital requirement for providing home loans to the common family is destructive. Commenters also suggested that the proposed risk weights would limit credit unions' ability to help low-income members and members with troubled real estate and impact credit unions' ability to provide members with a low cost source of funds for financing their primary residence by discouraging credit unions from making real estate loans over 25 percent or 35 percent of their total assets.

A small number of commenters suggested that the rule allow some type of waiver when it is apparent that a credit union can make sound real estate loans. Another commenter suggested that the rule exclude some parts of a credit union's first-lien mortgage portfolio.

Some commenters suggested that although significant losses did occur during the recent economic downturn, first-lien residential mortgage loans have historically been a low credit risk and an important part of credit unions' presence and mission in their communities. One commenter stated that major progress has been made in underwriting first mortgage loans following the recent recession, that high-risk mortgage products are no longer common, and the CFPB and Dodd-Frank Act regulations have eliminated the likelihood of a repeat of the circumstances that caused extensive losses for first-lien residential mortgage loans during the recession. Therefore, the commenters suggested the Board should eliminate the higher risk weights for a concentration of first-lien residential mortgage loans.

A small number of commenters acknowledged that there is a great deal of differentiation across mortgage products that make it difficult to determine the best framework to identify those higher-risk mortgages without imposing an untenable reporting requirement. Given the delicate balance between regulatory burden and meaningful reporting, many commenters suggested the Board should maintain the proposed definition for non-delinquent first mortgage real estate loans and risk weight them all at 50 percent, regardless of concentration level. Commenters argued that such a change would provide parity with the banking system and obviate the need for more onerous reporting. Commenters argued the Board should adopt a similar approach for other real estate-secured loans by eliminating the concentration thresholds and, consistent with the Other Banking Agencies' rules, risk-weight them all at 100 percent.

[203] Credit unions predominantly offering first lien real estate loans would have had lower capital requirements than the current rule. Credit unions predominantly offering junior-lien real estate loans would have had higher capital requirements than the current rule. Analysis of December 31, 2013, Call Report data indicates that the originally proposed risk weights produce an aggregate minimum capital requirement, at the well capitalized level, of 97 percent of the current minimum risk-based net worth ratio required for real estate loans when applied to affected credit unions.

A number of other commenters suggested various specific risk weight schemes for real estate loans, but did not explain why their suggested risk weights would more accurately account for risk than those originally proposed by the Board.

Higher capital requirements for concentrations of real estate loans exists in the current rule, and the Board believes completely eliminating them would be a step backwards in matching risks with minimum risk-based capital requirements. Credit unions with high real estate loan concentrations are particularly susceptible to changes in the economy and housing market because a significant portion of their assets are focused in one industry.

NCUA does currently review credit concentrations during examinations as commenters recommended. However, as discussed in the summary section, the FCUA requires that NCUA's risk-based capital requirement account for material risks that the 6 percent net worth ratio may not provide adequate protection, including credit and concentration risks.[204]

Credit concentration risk can be a material risk under certain circumstances. The Board generally agrees that CFPB's new ability-to-repay regulations should improve credit quality. However, the extent to which this will alter loss experience rates remains to be seen.

NCUA has also been advised by its OIG and GAO to address real estate credit concentration risk. NCUA's OIG completed several MLRs where failed credit unions had large real estate loan concentrations. The NCUSIF incurred losses of at least $25 million in each of these cases. The credit unions reviewed held substantial residential real estate loan concentrations in either first-lien mortgages, home equity lines of credit, or both.[205] In addition, in 2012 GAO recommended that NCUA address the credit concentration risk concerns the NCUA OIG raised.[206] The 2012 GAO report notes credit concentration risk contributed to 27 of 85 credit union failures that occurred between January 1, 2008, and June 30, 2011. The report indicated that the Board should revise PCA so that minimum net worth levels emphasize credit concentration risk. Accordingly, the Board believes eliminating the concentration dimension for risk weights entirely would be inconsistent with the concerns raised on concentration risk by GAO and the MLRs conducted by NCUA's OIG.

However, after consideration of the comments, the Board proposes to modify the real estate loan risk weights presented in the Original Proposal. Under this second proposal the risk weights assigned to residential real estate loans would generally be consistent with those assigned by Other Banking Agencies.[207] This proposal would reduce the number of first- and junior-lien residential real estate loan concentration thresholds from two to one, with single concentration thresholds at 35 percent and 20 percent of total assets respectively.

RESIDENTIAL REAL ESTATE LOANS CONCENTRATION THRESHOLDS

	50%	75%	100%	150%
First-Lien	Current <35% of Assets	Current ≥35% of Assets.		
Junior-Lien			Current <20% of Assets	Current ≥20% of Assets

First- and junior-lien residential real estate loans that are not current would be assigned 100 percent and 150 percent risk weights respectively. This change to a single, higher concentration risk threshold would simplify the risk weight framework and calibrate it to only pick up outliers. The concentration thresholds are roughly two standard deviations from the mean for both first and junior-liens. This means that roughly 90 percent of credit unions with more than $100 million in assets operate at levels below the concentration thresholds proposed for residential real estate loans, and only two credit unions operate above both thresholds (based on December 2013 Call Report data). Thus, most credit unions would operate at a level in which the risk weights assigned to residential real estate loans would be the same as the risk weights of the Other Banking Agencies.[208]

The Board believes the single higher concentration threshold would simplify the risk weight framework and better calibrate it to apply only to credit unions with outlying levels of concentration risk. The revised approach taken in this second proposal would be more comparable with the approaches taken by the Other Banking Agencies' rules[209] and Basel III, while also maintaining higher minimum capital requirements for large concentrations of real estate loans as recommended by GAO and OIG. The Board believes the proposed risk weights would also be consistent with credit union loss history and recent NCUSIF losses reviewed by OIG.

The Board does not agree that the proposed risk weights would slow residential real estate loan origination, stifle homeownership, or limit credit unions' ability to assist low-income members because the revised risk weights provide credit unions with continued flexibility to assist members in a sustainable manner while maintaining sufficient minimum capital.

Commenters stated that credit unions should not be penalized for having high-quality, performing first mortgage loan portfolios, suggesting that risk weights should be lowered on first mortgage real estate portfolios that demonstrate strong performance through lower charge-off ratios. Numerous commenters suggested that the risk weights should take underwriting into account that offsets the risk of these loans (*e.g.,* a portfolio made up of borrowers with high credit scores is less risky than one that is made of low-credit-score borrowers).

A small number of commenters suggested the mortgage risk weights could be better balanced by providing credit unions with some type of earned credit based on managed risk performance.

Another commenter suggested that low-income credit unions that are Community Development Financial Institutions have loan portfolios that are primarily made up of non-prime and sub-prime loans, which have a greater propensity for delinquency. The commenter suggested that such institutions should not be penalized for

[204] *See* 12 U.S.C. 1790d(d)(2).

[205] See OIG–10–03, Material Loss Review of Cal State 9 Credit Union (April 14, 2010), OIG–11–07, Material Loss Review OF Beehive Credit Union (July 7, 2011), OIG–10–15, Material Loss Review OF Ensign Federal Credit Union, (September 23, 2010), *available at http://www.ncua.gov/about/Leadership/CO/OIG/Pages/MaterialLossReviews.aspx*

[206] See U.S. Govt. Accountability Office, GAO–12–247, Earlier Actions are Needed to Better Address Troubled Credit Unions (2012), *available at http://www.gao.gov/products/GAO–12–247.*

[207] *See, e.g.,* 12 CFR 324.32(g).

[208] *See, e.g.,* 12 CFR 324.32(g).

[209] *Id.*

serving historically disenfranchised and marginalized populations.

The Board agrees with commenters that credit scores, loan underwriting, portfolio seasoning, and portfolio performance are good measures to evaluate a residential real estate lending program. However, broadly applicable regulatory capital models are portfolio invariant. This means the capital charge for a particular loan category is consistent among all credit union portfolios based on the loan characteristics, rather than the individual credit union's portfolio performance or characteristics. Taking into account each credit union's individual characteristics would be too complicated for many credit unions and NCUA for minimum capital requirements.[210] Further, such an approach would not be comparable to the risk weight framework used by the other banking agencies.

NCUA will continue to take into account loan underwriting practices, portfolio performance and loan seasoning as part of the examination and supervision process. This method of review is consistent with the Basel three-pillar framework: minimum capital requirements, supervisory review, and market discipline.[211] Credit unions should use criteria from their own internal risk models and loan underwriting in developing their internal risk management systems.

The Board also agrees LTV ratios are an informative measure to assess risk. However, it is not a practical measure to assess minimum capital requirements because of volatility in values and the corresponding reporting burden for credit unions tracking LTVs and keeping them current. There also is no historical data across institutions upon which to base varying risk weights according to LTVs and other underwriting criteria (like credit scores). Examiners take LTVs into consideration during the examination process. Supervisory experience has demonstrated LTV verification requires on-site review and application of credit analytics to validate the most current information. On-site review also minimizes reporting requirements on credit unions.

Commenters questioned why real estate loans were risk-weighted differently than GSE and other mortgage-backed securities. Under the Original Proposal, a 30-year first mortgage loan would have been assigned a 50 percent risk weight while a federal agency mortgage-backed security that has an average life of six years would have been assigned a 150 percent risk weight. Numerous commenters remarked that the differences between these two risk weights seemed inappropriate because the two assets have similar interest-rate risk, and that the security has less credit risk and is more marketable. Commenters stated that one way credit unions can lower the risk of holding first mortgage loans on their balance sheets is to securitize them, making them more readily available to serve as collateral to borrow against or to sell as a security. Commenters also suggested that the higher risk weight that would apply to securitized mortgages would discourage credit unions from using this strategy.

The Board agrees with the commenters' concerns regarding consistency of risk weights across assets classes. As noted above, by removing consideration of IRR from the risk weights for purposes of this second proposal, analogous risk across loans and investments would be more consistently risk-weighted.

Commenters suggested that the rule should distinguish between variable-rate first mortgage loans and fixed-rate first mortgage loans, with lower risk weights associated with the variable-rate loans and shorter-term fixed-rate loans in order to capture the lower IRR associated with such loans as compared to 30-year fixed-rate first mortgage loans. Other commenters suggested that the capital requirement for adjustable-rate mortgages and shorter-maturity fixed-rate mortgage loans should be lowered to take into consideration the reduced risk associated with these adjustable and shorter-term mortgage loan products. Commenters also suggested that the IRR may in fact be lower for junior-lien loans because many are home equity lines of credit with variable rates. The Board notes, as discussed above, removal of consideration of IRR from the risk weights for purposes of this second proposal resolves these commenters' concerns.

Commenters questioned the risk weight for junior-lien mortgage loans, suggesting such loans represent no more risk than first mortgage loans if underwritten at appropriate loan-to-value ratios. Some of these commenters stated that many credit unions have established loan-to-value and combined loan-to-value limits for junior-lien real estate loans of 75–80 percent (or less) as a means of managing risk. Commenters suggested that consideration should also be given to the equity position and not just the lien position when setting risk weights.

A small number of commenters stated that no clear explanation or rationale was offered for why junior-lien mortgage loans have higher risk weights than first mortgage loans.

Conversely, other commenters stated that while they have many concerns about the risk weights, they agree that the proposed risk weights for home equity/second mortgages seem appropriate based on losses at comparable banks and credit unions.

The Board continues to believe junior-lien residential real estate loans warrant a higher risk weight based on loss history. Call Report data indicates credit unions over $100 million in asset size reported three times the rate of loan losses (0.96 percent) on other real estate loans[212] when compared to first mortgage real estate loans (0.34 percent) during the past three years. In addition, the base risk weight for junior-lien residential real estate loans in this proposal is comparable to the Other Banking Agencies.[213]

After carefully considering the comments, the Board is now proposing to modify the definitions and risk weights for loans secured by residential real estate. Three substantive changes are discussed in more detail below.

First, one-to-four family non-owner-occupied residential real estate loans would now be included in the definition of either first- or junior-lien residential real estate loan.[214] The Board believes this change is consistent with the credit risk inherent in these loans and corresponding risk weights assigned by the Other Banking Agencies.[215]

Second, for a loan to be included in the definition of a first-lien residential

[210] Basel Committee on Banking and Supervision, *An Explanatory Note on the Basel II IRB Risk Weight Functions,* July 2005, *available at http://www.bis.org/bcbs/irbriskweight.htm:* ''The model should be portfolio invariant, *i.e.* the capital required for any given loan should only depend on the risk of that loan and must not depend on the portfolio it is added to. This characteristic has been deemed vital in order to make the new IRB framework applicable to a wider range of countries and institutions.''

[211] Basel Committee on Banking Supervision, *International Convergence of Capital Measurement and Capital Standards,* June 2006, *available at http://www.bis.org/publ/bcbs128.htm.* ''The Committee notes that, in their comments on the proposals, banks and other interested parties have welcomed the concept and rationale of the three pillars (minimum capital requirements, supervisory review, and market discipline) approach on which the revised Framework is based.''

[212] Junior-lien real estate loans are currently reported on the Call Report as part of ''other real estate loans.''

[213] *See, e.g.,* 12 CFR 324.32(g)(2).

[214] Under the Original Proposal, one-to-four-family non-owner occupied residential real estate loans greater than $50,000 would have been defined as member business loans.

[215] *See, e.g.,* 12 CFR 324.32(g).

real estate loan, a reasonable and good faith determination must have been made to determine that the borrower had the ability to repay the loan according to its terms. The Board believes this change is consistent with existing legal requirements for residential real estate secured loans and prudential underwriting expectations in the Other Banking Agencies' risk weight definitions, and would provide some standard of quality to justify residential real estate loans receiving a lower risk weight. Under this second proposal a credit union would not be required to underwrite ''qualified mortgages'' to receive a lower risk weight. However, a first-lien residential real estate loan would receive the proposed 50 percent risk weight only if the credit union underwrites them in accordance with CFPB's ability-to-repay requirements under § 1026.43 of this title.[216]

Finally, this second proposal would provide a risk weight of 20 percent for the portion of real estate loans with a government guarantee and exclude this amount from the calculation of the concentration threshold. The Board believes this change would better reflect the risk and encourage credit unions to take advantage of available programs designed to reduce their risk of loss.

Current consumer loans. Consumer loans (unsecured credit card loans, lines of credit, automobile loans, and leases) are generally highly desired credit union assets and a key element of providing basic financial services.[217] For most current consumer loans, the Original Proposal would have assigned a risk weight of 75 percent.[218] Non-federally guaranteed student loans, which contain higher risks (*e.g.,* default risk and extension risk), would have been risk-weighted at 100 percent under the Original Proposal. Federally guaranteed student loans would have received a zero percent risk weight.[219]

The Board received a number of comments regarding the risk weights for consumer loans. A number of commenters recommended the Board lower the risk weights for performing collateralized consumer loans, and that data on such loans is reflected on the Call Report and could easily be incorporated into the risk weights.

Several commenters asked why a secured auto loan was assigned the same risk weight as an unsecured credit card loan under the Original Proposal when credit card loans have a delinquency rate more than four times that of auto loans.

Other commenters stated the rule should take into account the type of consumer loan (unsecured versus secured, loss history, and term of the loan) and generation source (direct versus indirect) because different loan types and generation sources have different performance experiences historically and should be evaluated as part of the rulemaking.

Another commenter stated that the proposal would have made no distinction between indirect loans and loans originated in-house, which would have encouraged ''buy rate'' indirect lending (*i.e.,* markups by dealer), which is bad for consumers.

Other commenters suggested different risk weights should be applied to consumer loans based on credit score ranges.

A small number of commenters suggested that consumer loans have significantly less IRR than first-mortgage loans, but are assigned a 75 percent risk weight while first-mortgage loans are assigned a 50 percent risk weight, suggesting that only credit risk was considered in setting the risk weight for consumer loans.

A small number of commenters suggested that consumer loans should be assigned a 20 percent risk weight because credit loss risk is covered in the ALLL.

A number of other commenters suggested that the proposed risk weights for consumer loans seemed appropriate based on losses at comparable banks and credit unions.

The Board generally agrees with commenters who suggested that secured and unsecured consumer loans have different levels of risk exposure. To address the different risks between these two loan types, this second proposal would assign separate risk weights for secured and unsecured consumer loans. To differentiate between these two loan types, this proposed rule would include new definitions for secured consumer loans and unsecured consumer loans. Loans meeting the definition of a current secured consumer loan would receive a risk weight of 75 percent, and those meeting the definition of a current unsecured consumer loan would be assigned a 100 percent risk weight. This would account for the higher risk associated with unsecured loans given their lack of collateral.

The Board also generally agrees that credit scores, staff qualifications, loan underwriting, portfolio seasoning, and portfolio performance are good measures to evaluate a lending program. However, the Board cannot uniformly use these criteria to measure minimum capital requirements for all credit unions because of the indeterminate reporting requirements that would be necessary and the myriad variables used to establish sound lending programs.

The Board disagrees that credit loss risk would be entirely covered in the ALLL. The ALLL is intended to cover expected losses as of the balance sheet date. The ALLL is not intended to cover unexpected losses. While a credit union's funding of the ALLL through provision expenses decreases retained earnings, the proposed new risk-based capital ratio calculation would add back in the balance of the ALLL without limit.

Non-current consumer loans. The current risk-based capital measure does not contain a higher risk weight for non-current consumer loans. Increasing levels of non-current loans are an indicator of increased risk. To reflect the impaired credit quality of past-due loans, the Original Proposal would have required credit unions to assign a 150 percent risk weight to loans (other than real estate loans) 60 days or more past due or in nonaccrual status. The higher risk weight on past-due exposures ensures sufficient regulatory capital for the increased probability of unexpected losses on these exposures. The higher risk weights were intended to capture the risk associated with the impaired credit quality of these exposures, and were consistent with the risk weights used by Basel III and the Other Banking Agencies.[220]

A small number of commenters questioned why delinquent consumer loans were assigned a 150 percent risk weight under the Original Proposal

[216] The Ability-to-Repay requirements include eight loan underwriting factors a credit union will need to consider and verify. These include the following: (1) current or reasonably expected income or assets; (2) current employment status; (3) the monthly payment on the covered transaction; (4) the monthly payment on any simultaneous loan; (5) the monthly payment for mortgage-related obligations; (6) current debt obligations; (7) the monthly debt-to-income ratio or residual income; and (8) credit history. *See, e.g.,* 78 FR 6407 at 6585 (Jan. 30, 2013).

[217] Per Call Report data for years ending December 31, 2012 and 2013, consumer loans were greater than 40 percent of loans in credit unions with total assets greater than $100 million.

[218] The Other Banking Agencies' capital rules maintained the 100 percent risk weight for current consumer loans. *See, e.g.,* 12 CFR 324.32 *and* 78 FR 55339 (Sept. 10, 2013).

[219] Up until 2010, guaranteed student loans were available through private lending institutions under the Federal Family Education Loan Program (FFELP). These loans were funded by the federal government and administered by approved private lending organizations. In effect, these loans were underwritten and guaranteed by the federal government, ensuring that the private lender would assume no risk should the borrower ultimately default. Loans issued under this program prior to June 30, 2012 will remain on the books of credit unions for many years.

[220] *See, e.g.,* 12 CFR 324.32(k).

when such loans are assigned only a 100 percent risk weight under the Other Banking Agencies' capital rules. However, in fact, a 150 percent risk weight is consistent with the risk weight for past-due consumer loans under the Other Banking Agencies' regulations [221] and would result in a risk-based capital measure that is more responsive to changes in the credit performance of the loan portfolio. Thus, this proposal would retain the 150 percent risk weight for consumer loans that are not current.

Loans to CUSOs and CUSO Investments.

Under the Original Proposal, investments in CUSOs were assigned a risk weight of 250 percent and loans to CUSOs were assigned a risk weight of 100 percent. A majority of the commenters addressed these risk weights and, nearly unanimously, opposed them. There were, however, a few commenters who generally agreed with the proposed risk weights.

In brief, commenters generally maintained that the originally proposed risk weight for investments in CUSOs was too high. Some commenters argued that the Original Proposal was arbitrary and unsupported by analytical data. Others stated that the risk weights did not take into account the requirements of the CUSO regulation or the nature and business of individual CUSOs. Finally, some commenters believed the Original Proposal would have a chilling effect on CUSOs and could lead credit unions to seek out more expensive third-party vendors.

Some commenters questioned why the Original Proposal included different risk weights for investments and loans. Other commenters argued that there should be only one risk weight and that it should not exceed 100 percent. Several commenters suggested risk weights below 100 percent, stating that higher risk weights would diminish the cooperative nature of credit unions. A few commenters advocated eliminating risk weights for CUSOs altogether, claiming that assigning risk weights to these assets would be detrimental to credit unions forming and utilizing CUSOs.

Other commenters stated that NCUA should address risk in CUSOs through supervision of the credit union investors, rather than assigning risk weights to investments and loans.

One commenter expressed concern about investments in CUSOs being included in the risk-based capital ratio calculation on an unconsolidated basis, combined with including a CUSO's mortgage servicing assets (MSAs) on a consolidated basis. This commenter stated that if mortgage servicing assets represent a significant portion of the equity of a CUSO on an unconsolidated basis, then the credit union's MSAs would effectively be weighted at 500 percent.

Several commenters argued that the risk weights for CUSO loans and investments should be lower because the actual degree of risk from CUSOs is relatively low. A few commenters noted that credit unions have less than 0.2 percent of total assets invested in CUSOs, which, they argued, is an immaterial risk to the credit union industry.

Other commenters stated that the requirements in the recently finalized CUSO rule effectively reduce risk from CUSOs, thereby eliminating the need for higher risk weights.

Several commenters expressed concern that the 250 percent risk weight on investments in CUSOs would restrict or reduce the benefits from using CUSOs. Some of these commenters argued that credit unions would be forced to contract with higher-priced third-party vendors for services because third-party vendors do not carry a capital risk weight.

Several commenters also questioned the mechanics of the two risk weights that would have applied to CUSOs. One commenter stated that the risk weight for loans did not take into account collateral for the loan or the quality of any such collateral.

Another commenter stated that there was no reason for a risk weight if the amount of an investment in a CUSO was fully offset by net income or cost savings generated by the CUSO. Other commenters suggested that NCUA not apply a risk weight to both the cash investment made in the CUSO and the CUSO's appreciated value.

Several commenters stated that the Original Proposal would have double counted exposure for majority-owned CUSOs. They reasoned that because risk-based capital is based on a credit union's consolidated balance sheet, adding a schedule that shows unconsolidated results is essentially double counting.

Several commenters addressed a comparison made in the Original Proposal between CUSOs and an unsecured equity investment by a bank in a non-publicly traded entity. These commenters argued that this comparison is not analogous and NCUA should abandon this approach. These commenters stated further that the regulations applying to credit union investments in CUSOs and the collaborative platform between CUSOs and credit unions makes this relationship sufficiently different, such that it should not be treated the same as a bank's unsecured equity investment in a non-publicly traded entity.

Finally, several commenters requested that risk weights for CUSOs take into account certain aspects of the specific CUSO. Many of these commenters stated that they supported risk weights that were based on the CUSO's business function. Others stated that risk weights should take into account the CUSO's historical profitability, if it is generating income for its investors, the complexity of the CUSO's operations, or how long it has been in operation. Several commenters argued that a ''one-sized-fits-all'' approach is not sufficient to accurately risk weight investments in CUSOs.

After diligent consideration of the comments discussed above, the Board has decided to rely on GAAP accounting standards to determine the reporting basis upon which any CUSO equity investments and loans are assigned risk weights. For CUSOs subject to consolidation under GAAP, the amount of CUSO equity investments and loans are eliminated from the consolidated financial statements because the loans and investments are intercompany transactions. The related CUSO assets that are not eliminated are added to the consolidated financial statement and receive risk-based capital treatment as part of the credit union's statement of financial condition. For CUSOs not subject to consolidation, the recorded value of the credit union's equity investment would be assigned a 150 percent risk weight, and the balance of any outstanding loan would be assigned a 100 percent risk weight.

NCUA recognizes the uniqueness of CUSOs and the support they provide. However, an equity investment in a CUSO is an unsecured, at-risk equity investment (first loss position), which is analogous to an investment in a non-publicly traded entity. There is no price transparency and extremely limited marketability associated with CUSO equity exposures. In addition, unlike the Other Banking Agencies, NCUA has no enforcement authority over third-party vendors, including CUSOs.

The Board recognizes there are statutory limits on how much a federal credit union can loan to and invest in CUSOs. However, the limitations are not as stringent for some state charters, and only binding for federal credit unions at the time the loan or investment is made (that is, the position can grow in proportion to assets over time). In setting capital standards (*e.g.,* Basel and FDIC), the risk of loss is central to

[221] *See, e.g.,* 12 CFR 324.32(k).

determining the risk weight—not the size of the exposure.

In addition, while a CUSO must predominantly serve credit unions or their members (more than 50 percent) to be a CUSO, it can be owned and controlled primarily by persons and organizations other than credit unions. Therefore, it may not only serve non-credit unions, it can be majority-controlled by a party or parties with interests not necessarily aligned with the credit union's interests.[222]

Also, given the equity investment in a CUSO is in a first loss position, is an unsecured equity investment in a non-publicly traded entity, the significant history of losses to the NCUSIF related to CUSOs, and the fact NCUA lacks vendor authority, the risk weight should be higher than 100 percent.

Loans to CUSOs, on the other hand, have a higher payout priority in the event of bankruptcy of a CUSO and therefore warrant a lower risk weight of 100 percent, which corresponds to the base risk weight for commercial loans.

The Board notes it may be possible to make more meaningful risk distinctions between the risk various types of CUSOs pose once the CUSO registry is in place and sufficient trend information has been collected.

Under the Original Proposal, the risk weights were derived from a review of FDIC's capital treatment of bank service organizations. FDIC's rule looks across all equity exposures.[223] If the total is ''non-significant'' (less than 10 percent of the institution's total capital), the entire amount receives a risk weight of 100 percent. Otherwise, all the exposures are matched against a complicated risk weight framework that runs from a minimum of 250 percent to 600 percent risk weight, with some subsidiary equity having to be deducted from capital. The equity investment in a CUSO would be treated the same as an equity investment in a non-publicly traded entity (limited marketability and valuation transparency), which would receive a 400 percent risk weight unless the cumulative level of all equity exposures held by the institution were ''non-significant.''

The Board recognizes the complexity of FDIC's approach and continues to believe that a simplified risk weight approach is more appropriate given the limited amount of credit union assets in CUSOs and the value CUSOs provide to credit unions in achieving economies of scale.

Mortgage Servicing Assets (MSAs).

The Original Proposal would have assigned a 250 percent risk weight to MSAs to address the complexity and volatility of these assets. In the preamble to the Original Proposal, the Board noted that MSAs typically lose value when interest rates fall and borrowers refinance or prepay their mortgage loans, leading to earnings volatility and erosion of capital.

A large number of commenters addressed this provision and generally disagreed with the 250 percent risk weight. Most commenters addressing this topic maintained that the risk weight was too high and would have been punitive to credit unions. Further, some of these commenters noted that MSAs are an important hedge for credit unions and that MSAs are very liquid assets with an active secondary market.

A few commenters provided suggestions on how to amend this provision of the rule. Most suggested lowering the risk weight to 100 percent. Others, however, suggested a phase-in approach of the 250 percent risk weight or assigning a risk weight above 100 percent when a credit union reaches a certain concentration level of MSAs.

One commenter suggested that assigning the same risk weight to all MSAs, as if they are all equivalent, is not an accurate representation of the actual risk involved. One other commenter stated that the rule should include a mechanism for differentiating between loans sold with and without recourse.

Another commenter stated, ''For many credit unions, maintaining the personal member relationship throughout the life of a transaction is of strategic importance. If the practical effect of a regulation is to force the sale of a mortgage or the servicing rights, the supervisory necessity of such a regulation must be unquestionably clear.''

Finally, a few commenters predicted that a 250 percent risk weight on MSAs could discourage loan participations and limit the options available to manage balance sheet risk. One commenter further suggested that risk weights for loan participations should be lowered not to exceed the weight of the underlying loan participated.

After considering these comments, the Board continues to believe that the 250 percent risk weight is appropriate in light of the relatively greater risks inherent in these assets, and to maintain comparability with the risk weight assigned to these assets by the Other Banking Agencies.[224] Specifically, MSA valuations are highly sensitive to unexpected shifts in interest rates and prepayment speeds. MSAs are also sensitive to the costs associated with servicing. These risks contribute to the high level of uncertainty regarding the ability of credit unions to realize value from these assets, especially under adverse financial conditions, and support assigning a 250 percent risk weight to MSAs.

While the Board acknowledges that MSAs may provide some hedge against falling rates under certain circumstances, it further believes that MSAs' effectiveness as a hedge, relative to particular credit unions' balance sheets, is subject to too many variables to conclude that MSAs warrant a lower risk weight. More importantly, since IRR has been removed from the risk weights of this proposal, this argument is no longer directly applicable.

Furthermore, NCUA does not agree with commenters who suggested that the proposed 250 percent risk weight assigned to this relatively small asset class would significantly disincentivize credit unions from granting loans, engaging in loan participations, and retaining servicing of their member loans. NCUA notes that banks have been subject to at least as stringent (if not more so) of a risk weight for MSAs for some time and continue to sell loans and retain MSAs.

The Board believes the proposed January 1, 2019 effective date for this rule would provide credit unions sufficient time to adjust to this second proposal and would provide credit unions with a phase-in period comparable to that given to banks following a similar change to the Other Banking Agencies' capital regulations.[225]

Other on-balance sheet assets. The current risk-based measure for all other balance sheet assets not otherwise assigned a specific risk weight is 100 percent of the risk-based target. Under the Original Proposal, these same assets would have received a 100 percent risk weight.[226]

[222] Further, not all CUSOs are closely held. They can have wider ownership distributed among many credit unions, none of which may have significant control. If a particular credit union has significant control, it will likely have to consolidate under GAAP and then there will be no risk weight associated with the loan or investment for the controlling credit union since it will be netted out on a consolidated basis.

[223] *See, e.g.,* 12 CFR 324.52.

[224] *See, e.g.,* 12 CFR 324.32(l)(4)(i).

[225] *See, e.g.,* 12 CFR 324.1(f).

[226] This is comparable to the Other Banking Agencies' capital rules (*e.g.,* 12 CFR 324.32), which maintained the 100 percent risk weight for assets not assigned to a risk weight category. *See, e.g.,* 78 FR 55339 (Sept. 10, 2013).

ORIGINAL PROPOSAL—RISK WEIGHTS FOR OTHER ON-BALANCE SHEET ASSETS

Other asset type	Proposed risk weight (percent)
Loans Held for Sale	100
Foreclosed and Repossessed Assets	100
Land and Building	100
Other Fixed Assets	100
Accrued Interest on Loans	100
Accrued Interest on Investments	100
All Other Assets not otherwise specifically assigned a risk weight	100

The Board received a number of comments regarding the proposed risk weights for other on-balance sheet assets.

A small number of commenters suggested that under Basel III loans held for sale are risk-weighted at zero as long as they are sold within 120 days because such assets are more of a receivable than a loan.

Commenters suggested that a 100 percent risk weight for land and building was excessive and that speculative land should be risk weighted at 50 percent and a financial institution building should be risk-weighted at 25 percent, less depreciation. Other commenters stated that all credit unions must invest in fixed assets (such as buildings, furniture and equipment) and that the current 5 percent cap on fixed assets helps to manage risk and credit unions seeking to exceed the 5 percent cap must obtain prior NCUA approval. Commenters suggested that consideration should be given to assigning a lower risk weight to investments in fixed assets when the 5 percent cap is maintained. Other commenters suggested that assigning a 100 percent risk weight on land, building and fixed assets would discourage investments in growing branch networks or modernizing equipment.

A small number of commenters suggested that accounts receivable, prepaid income items, accrued interest, and other small items that have no credit risk or IRR should be assigned a zero percent risk weight. These commenters suggested that a 100 percent risk weight assigned to accrued interest on loans and accrued interest on investments is excessive.

As with the Original Proposal, in this second proposal, where the rule does not assign a specific risk weight to an asset or exposure type, the applicable risk weight would be 100 percent. For example, premises, fixed assets, and other real estate owned would receive a risk weight of 100 percent.

The Board determined the 100 percent risk weight would be appropriate for this class of assets since the difference between the book balance of some particular fixed assets and the value of the assets in the event of liquidation can be substantial. For example, in an area that has experienced a decline in the value of real estate, the book value of a fairly recently constructed credit union headquarters could be well below the fair value. Differentiating between the risks of types of assets not otherwise identified is not currently possible due to lack of data, would add complexity to the rule, and require even more Call Report data.

The 100 percent risk weight would also be appropriate when considering that most assets in this group are predominately non-earning assets which can hinder a credit union's ability to increase capital.

Further, the proposed risk weights match the risk weights in the Other Banking Agencies' capital regulations.[227]

This proposal would include loans held for sale within the pool of loans subject to assignment of risk weights by loan type to avoid the added complexity of determining the age of the loans held for sale.

104(c)(2)(i) Category 1—Zero Percent Risk Weight

Proposed § 702.104(c)(2)(i) would provide that a credit union must assign a zero percent risk weight to the following on-balance sheet assets:

- The balance of cash, currency and coin, including vault, automatic teller machine, and teller cash.
- The exposure amount of:
  - An obligation of the U.S. Government, its central bank, or a U.S. Government agency that is directly and unconditionally guaranteed, excluding detached security coupons, ex-coupon securities, and principal and interest only mortgage-backed STRIPS.
  - Federal Reserve Bank stock and Central Liquidity Facility stock.
- Insured balances due from FDIC-insured depositories or federally insured credit unions.

Consistent with the Original Proposal, this second proposal would continue to assign a zero percent risk weight for cash, which includes the balance of cash, currency and coin, including vault, automatic teller machine, and other teller cash.

This proposal would change the assignment of risk weights for cash on deposit, assigning a zero percent risk weight to insured cash on deposit and a 20 percent risk weight for all uninsured[228] cash on deposit as outlined in the proposed changes to the revised risk weights. Cash items in process of collection (currently included in cash on deposit) would not be specifically measured or assigned a risk weight. This change would be comparable with the risk weights applicable to banks.[229] The Board believes having two risk weights for cash on deposit is appropriate because of the different risk profiles between insured and uninsured deposits.

This proposal would apply a risk weight of zero percent to the exposure amounts of an obligation of the U.S. Government, its central bank, or a U.S. Government agency that is directly and unconditionally guaranteed—excluding detached security coupons, ex-coupon securities, and principal and interest only mortgage-backed STRIPS. This zero percent risk weight would also exclude indirect ownership and securities collateralized with zero percent risk weight assets.

This proposal would apply a risk weight of zero percent to these types of exposures because they have no or very limited credit risk.

However, exposures that are through a trust, or similar vehicle, would not receive a zero percent risk weight. In addition, conditional guarantees that can be revoked if a condition(s) is not met would not receive a zero percent risk weight.

For example, the following types of investment exposures would be assigned a zero percent risk weight:[230]

- U.S. Treasury Securities
- GNMA securities (not including principal and interest only STRIPS)
- SBA pools (not including principal and interest only STRIPS)
- SBA loan participations
- FDIC-guaranteed securities
- NCUA-guaranteed securities

This proposal would also apply a zero percent risk weight to Federal Reserve Bank stock and Central Liquidity Facility stock. Under the applicable statutes, these two types of "stocks" do not carry a risk of loss of principal[231]

[227] *See, e.g.,* 12 CFR 324.32(l).

[228] Privately insured balances are included with uninsured deposits and assigned a risk weight of 20 percent as outlined in the proposed rule language.

[229] *See* 12 CFR 324.32(a)(1)(i)(B) and (d)(1).

[230] The list provided is not meant to be comprehensive. Any exposure in a principal- or interest-only mortgage-backed strip would not be assigned a zero percent risk weight.

[231] *See* 12 U.S.C. 287 and 12 U.S.C. 1795f(a).

and, therefore, the Board believes they warrant a zero percent risk weight.

This proposed rule would materially increase the amount of zero risk-weighted investments compared to the current rule. The proposed zero percent risk weight category is consistent with risk weights applicable to banks.[232] The Board believes it is appropriate to assign a zero percent risk weight to additional investments under this proposal because IRR would no longer be included in the proposed risk weights.

The Board requests comments on whether any items currently listed in this category should be assigned a higher risk weight and why. In addition, the Board requests comments on whether additional items should be assigned a zero percent risk weight and why.

104(c)(2)(ii) Category 2—20 Percent Risk Weight

Proposed § 702.104(c)(2)(ii) would provide that a credit union must assign a 20 percent risk weight to the following on-balance sheet assets:

- The uninsured balances due from FDIC-insured depositories, federally insured credit unions, and all balances due from privately insured credit unions.
- The exposure amount of:
  - A non-subordinated obligation of the U.S. Government, its central bank, or a U.S. Government agency that is conditionally guaranteed, excluding principal and interest only mortgage-backed STRIPS.
  - A non-subordinated obligation of a GSE other than an equity exposure or preferred stock, excluding principal and interest only GSE obligation STRIPS.
  - Securities issued by public sector entities in the United States that represent general obligation securities.
  - Investment funds whose portfolios are permitted to hold only part 703 permissible investments that qualify for the zero or 20 percent risk categories.
  - Federal Home Loan Bank stock.
- The balances due from Federal Home Loan Banks.
- The balance of share-secured loans.
- The portions of outstanding loans with a government guarantee.
- The portions of commercial loans secured with contractual compensating balances.

This proposal would apply a 20 percent risk weight to uninsured balances due from FDIC-insured depositories and federally insured credit unions, and all balances due from privately insured credit unions. The proposed 20 percent risk weight is consistent with the risk weights applicable to banks.[233] The Board believes it is an appropriate risk weight due to the low risk of loss with these types of exposures.

This proposal would also apply a risk weight of 20 percent to non-subordinated obligations of the U.S. Government, its central bank, or a U.S. Government agency that is conditionally guaranteed, excluding principal- and interest-only mortgage-backed STRIPS. This 20 percent risk weight is also applied to indirect and unconditionally guaranteed exposures to the U.S. Government, its central bank, or a U.S. Government agency. Additionally, a risk weight of 20 percent would be applied to non-subordinated exposures of a GSE, other than an equity exposure or preferred stock, excluding principal- and interest-only GSE obligation STRIPS.

The following are exposures that would be assigned a 20 percent risk weight:

- Farm Credit System
- Federal Home Loan Bank System
- Federal Home Loan Mortgage Corporation
- Federal National Mortgage Association
- Financing Corporation
- Resolution Funding Corporation
- Tennessee Valley Authority
- United States Postal Service

The above list is not meant to be comprehensive and includes mortgage-backed securities issued and guaranteed by U.S. Government agencies and GSEs, excluding principal- and interest-only mortgage-backed STRIPS that are assigned a 100 percent risk weight. The above risk weights are generally consistent with the risk weights applicable to banks,[234] as several commenters requested. Many commenters also requested that U.S. Government agency and GSE exposures be measured based on their risk, and not WAL, which is addressed by the risk weights above. The Board believes it is appropriate to assign these investments a 20 percent risk weight due to the fact that GSEs generally do not have the full faith and credit of the U.S. Government guaranteeing payment of their obligations. It is common, however, for GSEs to have an assigned federal regulator and an ability to borrow from the U.S. Treasury.

This proposal would also apply a 20 percent risk weight to securities issued by public sector entities in the United States that represent a general obligation. General obligation securities are backed by the full faith and credit of a public sector entity, which warrants the low risk weight. This risk weight is consistent with risk weights applicable to banks.[235] The Board believes it is an appropriate risk weight due to the low risk and full faith and credit of the public sector entities.

Indirect unconditionally guaranteed exposures to the U.S. Government, its Central Bank, or a U.S. Government agency would receive a 20 percent risk weight. An example is U.S. Treasury securities in a trust that are sold to an investor. The U.S. Treasury security would be an indirect obligation since the obligation is to the trust and not the credit union. Being indirect adds a layer of risk, which would increase the level of risk from risk-free to low, which warrants the 20 percent risk weight. This risk weight is also consistent with Other Banking Agencies' corresponding risk weight.[236]

Another example of an indirect unconditional guarantee would be a U.S. Treasury security in an investment fund. The obligation is to the investment fund, and not the owner of the fund. This is why an investment fund, or individual asset in an investment fund, cannot have a risk weight of less than 20 percent. This proposal would apply a 20 percent risk weight to investment funds with portfolios permitted to hold only part 703 permissible investments that qualify for the zero to 20 percent risk categories. This restriction must be stated in the fund documentation (*e.g.* prospectus), and must be binding (*e.g.* intent alone is not sufficient).

Based on June 2014 Call Report data, approximately 93 percent of investments held by complex credit unions would receive a risk weight of 20 percent or less, with the majority of investments receiving a 20 percent risk weight.[237]

As discussed earlier, the Board agrees with commenters who suggested that share-secured loans present a lower risk than other loan types and has added a new category in this proposal for share-secured loans under the 20 percent risk weight, as well as for portions of compensating balances on commercial loans.

The Board requests comments on whether any items currently listed in this category should be assigned a higher or lower risk weight and why. In addition, the Board requests comments

[232] *See, e.g.,* 12 CFR 324(a)(i).

[233] *See, e.g.,* 12 CFR 324.32(d)(1).

[234] *See, e.g.,* 12 CFR 324.32(a)(1)(ii) and (c).

[235] *See, e.g.,* 12 CFR 324.32(e).

[236] *See, e.g.,* 12 CFR 324.53.

[237] This analysis assumes immaterial exposures to subordinated tranches and interest-only and principal-only STRIPS.

on whether additional items should be assigned a 20 percent risk weight and why.

104(c)(2)(iii) Category 3—50 Percent Risk Weight

Proposed § 702.104(c)(2)(iii) would provide that a credit union must assign a 50 percent risk weight to the following on-balance sheet assets:

- The outstanding balance (net of government guarantees), including loans held for sale, of current first-lien residential real estate loans less than or equal to 35 percent of assets.
- The exposure amount of:
  - Securities issued by PSEs in the U.S. that represent non-subordinated revenue obligation securities.
  - Other non-subordinated, non-U.S. Government agency or non-GSE guaranteed, residential mortgage-backed security, excluding principal- and interest-only STRIPS.

As discussed earlier, this proposal would include the use of a single concentration threshold for current first-lien residential real estate loans. All current first-lien residential real estate loans less than or equal to 35 percent of assets would receive a 50 percent risk weight.

The proposal would also apply a risk weight of 50 percent to the exposure amount of securities issued by PSE in the U.S. that represent non-subordinated revenue obligation securities (revenue bonds). These securities are backed by the revenue assigned when the security is issued. An example is a revenue security backed by tolls on the toll road for which the funding was used. This risk weight is comparable to the Other Banking Agencies' capital regulations,[238] which some commenters recommended. This risk weight also reflects the greater risk that non-subordinated revenue obligations have compared to securities issued by a PSE that represent general obligation securities.

The proposal would also apply a risk weight of 50 percent to other non-subordinated, non-agency and non-GSE guaranteed, residential mortgage-backed securities (RMBS), excluding principal- and interest-only STRIPS. The underlying loans in the security must be first-lien residential real estate loans, in order to qualify. Furthermore, the security must be in the most senior position in the securitization if losses are applied to the securitization. The senior position is not based on allocation of principal, only losses. This risk weight would be consistent with the 50 percent risk weight that would be assigned to first-lien residential real estate loans under this proposal and FDIC's capital regulation.[239] Many commenters wanted risk weights more aligned with the collateral risk weight, which this risk weight does. Furthermore, this risk weight would be comparable with the FDIC's approach for calculating the risk weight for RMBSs [240] as some other commenters requested.

The Board requests comments on whether certain items currently listed in this category should be assigned a higher or lower risk weight and why. In addition, the Board requests comments on whether additional items should be assigned a 50 percent risk weight and why.

104(c)(2)(iv) Category 4—75 Percent Risk Weight

Proposed § 702.104(c)(2)(iv) would provide that a credit union must assign a 75 percent risk weight to the outstanding balance (net of government guarantees), including loans held for sale, of the following on-balance sheet assets:

- Current first-lien residential real estate loans greater than 35 percent of assets.
- Current secured consumer loans.

This proposal would apply to the amount of first-lien residential real estate loans above the single concentration threshold of 35 percent of assets, which is a reduction in the amount of capital required due to exceeding the concentration thresholds when compared to the Original Proposal.

This proposed rule would apply separate risk weights for current consumer loans based on whether they are secured or unsecured. Current secured consumer loans would receive a 75 percent risk weight because they generally have a lower credit risk than unsecured consumer loans due to the collateral available for secured loans.

The Board requests comments on whether any items currently listed in this category should be assigned a higher or lower risk weight and why. In addition, the Board requests comments on whether additional items should be assigned a 75 percent risk weight and why.

104(c)(2)(v) Category 5—100 Percent Risk Weight

Proposed § 702.104(c)(2)(v) would provide that a credit union must assign a 100 percent risk weight to the following on-balance sheet assets:

- The outstanding balance (net of government guarantees), including loans held for sale, of:
  - First-lien residential real estate loans that are not current.
  - Current junior-lien residential real estate loans less than or equal to 20 percent of assets.
  - Current unsecured consumer loans.
  - Current commercial loans, less contractual compensating balances that comprise less than 50 percent of assets.
  - Loans to CUSOs.
- The exposure amount of:
  - Industrial development bonds.
  - All stripped mortgage-backed securities (interest only and principal only STRIPS).
  - Part 703 compliant investment funds, with the option to use the look-through approaches in § 702.104(c)(3)(ii) of this section.
  - Corporate debentures and commercial paper.
  - Nonperpetual capital at corporate credit unions.
  - General account permanent insurance.
  - GSE equity exposure or preferred stock.
- All other assets listed on the statement of financial condition not specifically assigned a different risk weight under this subpart.

Unless otherwise noted below, the investment risk weights are also consistent with the risk weights applicable to banks,[241] which some commenters requested. The Board believes the 100 percent risk weight for these investments would be appropriate due to their risk of loss.

Industrial development bonds (IDB) are issued under the auspices of a state or political subdivision but are an obligation of a private party or enterprise and are therefore akin to a corporate exposure. An example of an IDB is a security issued by an airport authority for a terminal of an airliner. The security would be issued by the airport authority and be an obligation of the airliner.

Stripped mortgage-backed securities (interest-only and principal-only STRIPS) represent either the payments of principal or interest from an underlying pool of mortgages. The Board believes the increased risk associated with these two structures warrants a higher risk weight compared to non-principal-only and non-interest-only STRIPS with similar collateral. The Board chose to include principal-only STRIPS in the 100 percent risk weight category due to the explicit prohibition of this structure in part 703. The Board

[238] *See, e.g.,* 12 CFR 324.32(e)(1)(ii).

[239] *See, e.g.,* 12 CFR 324.32(g)(1).

[240] 12 CFR 324.43(e).

[241] *See, e.g.,* 12 CFR 324.32 and 324.42.

requests comments on whether risk weights for principal-only STRIPS should be more comparable to the Other Banking Agencies and assign a risk weight for STRIPS based on the underlying guarantor or collateral.

The proposal would assign a risk weight of 100 percent to part 703 compliant investment funds, with the option to use the look-through approaches in the proposal. For an investment fund to be assigned a 100 percent risk weight, compliance with part 703 of NCUA's regulations must be stated in the investment fund's documentation (such as the prospectus) and must be binding (intent alone is insufficient).

The credit union also has the ability to choose an alternate approach for investment funds. The risk weight for investment funds deviates slightly from the approach applicable to banks. The Board has added a standard risk weight of 100 percent for part 703 compliant funds, in addition to adopting the approach applicable to banks,[242] as an additional option for credit unions. However, the Board believes the approach for investment funds is consistent with recommendations received from commenters who suggested the risk weights be based on the underlying accounts and investment strategies.

The proposal would assign a risk weight of 100 percent to the balance of nonperpetual capital at corporate credit unions. Nonperpetual capital is subordinate to deposits in a corporate credit union, which warrants a higher risk weight than deposits.

The proposal would apply the 100 percent risk weight to general account permanent insurance. This type of insurance is typically associated with the funding of employee benefits. General account permanent insurance with returns indexed to equity returns should have the same risk weight as publically traded equity investments, unless it has a positive return floor. The 100 percent risk weight is reflective of the moderate risk associated with this asset.

Some commenters argued for lower risk weights for investments funding employee benefits. However, the Board disagrees with those commenters and, consistent with the general approach taken in assigning risk weights under this proposal, believes that the risk weight assigned to investments funding employee benefits should be based on the credit risk and not the purpose of the asset. The Board notes this is comparable to the approach taken by the Other Banking Agencies.[243]

Under this proposal, first-lien residential real estate loans that are not current would be assigned a 100 percent risk weight reflecting the increased credit risk and consistent with the risk weights for similar loans held by banks under the Other Banking Agencies' regulations.[244] The Board believes the proposed higher risk weight that would be assigned to non-current loans is warranted because such loans have a higher probability of default when compared to current loans. Non-current loans are more likely to default because repayment is already impaired making them one step closer to default compared to current loans. Additionally, a higher risk weight for non-current loans is consistent with the risk weights assigned by the Other Banking Agencies.

Under this proposal, current junior-lien residential real estate loans under the single concentration threshold would be assigned a 100 percent risk weight, which would be consistent with the risk weight for similar residential real estate loans assigned by the Other Banking Agencies.[245]

The 125 percent risk category that was included in the Original Proposal would be eliminated. The 125 percent risk category applied to the portion of other real estate loans that made up between 10 to 20 percent of a credit union's total assets. The reduction in the number of concentration thresholds applicable to junior-lien real estate loans resulted in the elimination of the 125 percent risk weight.

Under this proposal, secured and unsecured consumer loans would be separated into different risk-weight categories, with current unsecured consumer loans assigned a 100 percent risk weight. The higher risk weight for current unsecured consumer loans would reflect the elevated risk from this loan type compared to current secured consumer loans. Generally, unsecured loans reflect higher levels of delinquency and charge-offs, as reported on the quarterly Call Report, and, therefore, expose the credit union to higher risk than secured loans.

The Board notes that under this proposal, student loans would be incorporated into the definition of consumer loans and risk-weighted accordingly.

The approach for assigning the risk weight for commercial loans would be comparable to the Other Banking Agencies' rules.[246] As discussed previously, the changes to the definition of commercial loans would align the risk weights with actual credit risk exposure instead of assigning risk weights based on the $50,000 exemption as it relates to the statutory MBL cap[247] (which commenters pointed out). The change would result in improved and more easily reconcilable call reporting, and enhance NCUA's ability to account for all loans that support commercial ventures.[248]

Consistent with the Original Proposal, this proposed rule would assign a 100 percent risk weight to the outstanding balance of unconsolidated loans to CUSOs.

This proposal would assign a 100 percent risk weight to all other balance sheet assets not specifically assigned a different risk weight under this subpart, but reported on the statement of financial condition. This 100 percent risk weight is consistent with the risk weight applicable to banks[249] and the Board believes this risk weight is appropriate for assets not specifically assigned a risk weight.

104(c)(2)(vi) Category 6—150 Percent Risk Weight

Proposed § 702.104(c)(2)(vi) would provide that a credit union must assign a 150 percent risk weight to the following on-balance sheet assets:

- The outstanding balance, net of government guarantees and including loans held for sale, of:
  - Current junior-lien residential real estate loans that comprise more than 20 percent of assets.
  - Junior-lien residential real estate loans that are not current.
  - Consumer loans that are not current.
  - Current commercial loans (net of contractual compensating balances), which comprise more than 50 percent of assets.
  - Commercial loans (net of contractual compensating balances), which are not current.
- The exposure amount of:
  - Perpetual contributed capital at corporate credit unions.
  - Equity investments in CUSOs.

Under the Original Proposal, the risk weight for perpetual contributed capital at corporate credit unions would have

[242] *See, e.g.,* 12 CFR 324.53.

[243] *See, e.g.,* 12 CFR 324.32.

[244] *See, e.g.,* 12 CFR 324.32(g)(2).

[245] *See, e.g.,* 12 CFR 324.32(g)(2).

[246] *See, e.g.,* 12 CFR 324.32(f) (standard commercial loans) and 324.32(j) (high volatility commercial real estate loans).

[247] *See.* 12 CFR 723.1(b).

[248] Other than auto secured loans, business purpose loans below $50,000 would still receive a 100 percent risk weight as an unsecured consumer loan or fall into the ''all other assets'' category.

[249] *See, e.g.,* 12 CFR 324.32(l)(5).

been 200 percent. This proposal would lower the risk weight for perpetual contributed capital at corporate credit unions to 150 percent. Perpetual contributed capital at corporate credit unions would receive a higher risk weight than nonperpetual capital at corporate credit unions because perpetual contributed capital is available to absorb losses before nonperpetual capital. The Board believes the 150 percent risk weight is appropriate due to heightened risk of loss compared to the 100 percent risk-weighted nonperpetual capital.

Under this proposal, current junior-lien residential real estate loans that exceed 20 percent of assets would be assigned a 150 percent risk weight. Additionally, any junior-lien residential real estate loans that are not current, as defined in the proposal, would receive the 150 percent risk weight reflecting the higher credit risk of such loan than current junior-lien real estate loans up to 20 percent of assets, which would receive a 100 percent risk weight.

The Board also proposes that consumer loans that are non-current be assigned a 150 percent risk weight, as in the Original Proposal. The Board believes the proposed higher risk weight that would be assigned to non-current loans is warranted because such loans have a higher probability of default when compared to current loans. Non-current loans are more likely to default because repayment is already impaired making them one step closer to default compared to current loans. This rule would more clearly define those loans that are assigned a 150 percent risk weight through new definitions for consumer loan and current loan. The 150 percent risk weight for non-current consumer loans is also consistent with the risk weight for non-current consumer loans assigned by the Other Banking Agencies.[250]

This proposal would maintain higher risk weights for high concentrations of commercial loans as GAO and OIG recommend. A high concentration is defined as commercial loans over 50 percent of assets, which would receive the 150 percent risk weight. The amount of commercial loans subject to the 150 percent concentration risk weight would be determined as follows:

Total Commercial Loans

- Compensating Balances on Commercial Loans

- The Guaranteed Portion of Commercial Loans

- Non-Current Commercial Loans

= The Amount of Commercial Loans Subject to the Concentration Threshold

- Commercial Loans Subject to the Concentration Threshold that are less than 50% of Assets

= Commercial Loans Subject to a 150% risk weight

As discussed earlier, due to the higher credit risk of non-current commercial loans, they would receive a 150 percent risk weight.

The Board requests comments on whether any items currently listed in this category should be assigned a higher or lower risk weight and why. In addition, the Board requests comments on whether additional items should be assigned a 150 percent risk weight and why.

104(c)(2)(vii) Category 7—250 Percent Risk Weight

Proposed § 702.104(c)(2)(vii) would provide that a credit union must assign a 250 percent risk weight to the carrying value of mortgage servicing assets (MSAs) held on-balance sheet.

As discussed above, MSA valuations are highly sensitive to unexpected shifts in interest rates and prepayment speeds. As noted above, MSAs are also sensitive to the costs associated with servicing. These risks contribute to the high level of uncertainty regarding the ability of credit unions to realize value from such assets, especially under adverse financial conditions, and support this proposed rule's treatment for MSAs. Given there is no differentiation between the risk as it relates to MSAs for credit unions versus banks, the Board believes this treatment would generally maintain comparability with the Other Banking Agencies' capital regulations.[251]

The Board requests comments on whether any items currently listed in this category should be assigned a higher or lower risk weight and why. In addition, the Board requests comments on whether additional items should be assigned a 250 percent risk weight and why.

104(c)(2)(viii) Category 8—300 Percent Risk Weight

Proposed § 702.104(c)(2)(viii) would provide that a credit union must assign a 300 percent risk weight to the exposure amount of the following on-balance sheet assets:

- Publicly traded equity investments, other than a CUSO investment.
- Investment funds that are not in compliance with 12 CFR part 703, with the option to use the look-through approaches in § 702.104(c)(3)(ii) of this section.
- Separate account insurance, with the option to use the look-through approaches in § 702.104(c)(3)(ii).

The 300 percent risk weight category would be a new category relative to current rule and the Original Proposal. This second proposal would apply a 300 percent risk weight to the exposure amount of publicly traded equity

[250] *See, e.g.,* 12 CFR 324.32(k)(1).

[251] *See, e.g.,* 12 CFR 324.32(l)(4)(i).

investments, other than a CUSO investment. This proposal would also apply a 300 percent risk weight to investment funds that do not comply with part 703, and to separate account insurance, with the option to use the look-through approaches for both. The 300 percent risk weight is due to the heightened level of uncertainty and potential risks within these assets as discussed below.

Publicly traded equities have no contractual returns, no maturity date, and are generally considered more volatile than fixed-income investments. Furthermore, publically traded equities have a greater risk of loss since they are in a first loss position versus the debt of a company. Non-part 703 compliant investment funds and separate account insurance may contain equities, or other volatile and risky investments, which warrants the 300 percent risk weight. The risk exposure of both of these investments comes from the underlying assets supporting the investment fund or separate account insurance. Thus, credit unions would have the option of applying one of the look-through approaches discussed in more detail below for investment funds and separate account insurance risk weights to lower risk weights for investment funds and separate account insurance, if a credit union chooses to use one of the alternative approaches.

This proposal would allow the 300 percent risk weight to apply to all publicly traded equity exposures, both directly and indirectly. The 300 percent risk weight for publicly traded equities is generally consistent with the risk weight applicable to banks [252] and the Board believes this risk weight is appropriate due the elevated risk of loss with publicly traded equities. This would include direct exposure via purchasing an equity investment or having exposure to publicly traded equities through some other structure. An example of public equity exposure through other structures would be general account permanent insurance where the returns are indexed off of the Standard and Poor's 500 Index. A minimum positive return floor is sufficient to exclude general account permanent insurance from the 300 percent risk weight. Structured products can also be structured to have returns based off the return of an index or one or more publicly traded equities.

The risk weights for investment funds and separate account insurance deviate slightly from the Other Banking Agencies' capital regulations.[253] This proposal adds a standard risk weight of 300 percent for non-part 703 compliant funds, in addition to the approach applicable to banks,[254] as an additional option for credit unions. The approach for investment funds and separate account insurance is consistent with several commenters who requested risk weights be based on the underlying accounts and investment strategies.

The Board believes the 300 percent risk weight that would be assigned to non-part 703 compliant investment funds and separate account insurance is appropriate due to the potential risk the underlying assets may have. The risk weight of 300 percent for these exposures is due to the wide availability of equity-based investment funds and equity-based separate account insurance in the market. The Board notes that credit unions may get a lower risk weight if they use a look-through approach for investment funds and separate account insurance.

The Board requests comments on whether any items currently listed in this category should be assigned a higher or lower risk weight and why. In addition, the Board requests comments on whether additional items should be assigned a 300 percent risk weight and why.

104(c)(2)(ix) Category 9—400 Percent Risk Weight

Proposed § 702.104(c)(2)(ix) would provide that a credit union must assign a 400 percent risk weight to the exposure amount of non-publicly traded equity investments that are held on-balance sheet, other than equity investments in CUSOs.

This 400 percent risk weight is due to the greater relative risk versus publicly traded equity investments, which have a 300 percent risk weight. The greater risk is due to non-publicly traded equity investments not having the reporting requirements and active market that a publicly traded equity has. The 400 percent risk weight for non-publicly traded equity investments is consistent with the risk weight applicable to banks [255] and the Board believes this risk weight is appropriate due to the increased risk of non-publicly traded equities versus publicly traded equities.

The 400 percent risk weight category is a new category when compared to the current rule and the Original Proposal. This risk weight is unlikely to have an effect on most credit unions due to federal and state restrictions on credit union purchases of these types of investments. The Board, however, believes it is a necessary category to have in the unlikely event a credit union would own a non-publically traded non-CUSO investment. The proposed addition of this category would also be comparable to the Other Banking Agencies' capital regulations.[256]

The Board requests comments on whether any items currently listed in this category should be assigned a higher or lower risk weight and why. In addition, the Board requests comments on whether additional items should be assigned a 400 percent risk weight and why.

104(c)(2)(x) Category 10—1,250 Percent Risk Weight

Under the Original Proposal, proposed § 702.104(c)(2)(x) would have required a credit union to assign a 1,250 percent risk weight to an asset-backed investment for which the credit union is unable to demonstrate, as required under § 702.104(d), a comprehensive understanding of the features of the asset-backed investment that would materially affect its performance. A 1,250 percent risk weight is equivalent to holding capital equal to 100 percent of the investment's balance sheet value.[257]

During the recent financial crisis, it became apparent that many federally insured financial institutions relied exclusively on ratings issued by Nationally Recognized Statistical Organizations (NRSOs) and did not perform internal credit analysis of asset-backed investments.

Complex credit unions must be able to demonstrate a comprehensive understanding of any investment, particularly an understanding of the features of an asset-backed investment that would materially affect its performance. Upon purchase, and on an ongoing basis, the credit union must evaluate, review, and update as appropriate the analysis performed on an asset-backed investment. In the event a credit union is unable to demonstrate a comprehensive understanding of an asset-backed investment, the Original Proposal would have provided for assigning a risk weight of 1,250 percent to that investment.

The Board received a significant number of comments on the assignment of the 1,250 percent risk weight to certain investments and the proposed due diligence requirements in § 702.104(d). Commenters generally agreed that credit unions should have a

[252] *See, e.g.,* 12 CFR 324.52(b)(5).

[253] *See, e.g.,* 12 CFR 324.53.

[254] *See, e.g.,* 12 CFR 324.53.

[255] *See, e.g.,* 12 CFR 324.52(b)(6).

[256] *Id.*

[257] The eight percent adequately capitalized level times 1,250 percent = 100 percent.

comprehensive understanding of any investments they purchase. Several commenters objected to assigning a 1,250 percent risk weight to investments credit unions do not understand.

One commenter stated that the proposal gave the Board broad discretion to require dollar-for-dollar capital on asset-backed investments that NCUA determines the credit union is unable to demonstrate a comprehensive understanding. The commenter stated that while such an investment may represent a significant safety and soundness concern, an elevated capital requirement is not an appropriate means of addressing that risk. The commenter suggested that if a credit union does not understand an investment on its books, the regulator should rectify the situation through the supervisory process. The commenter stated further that, although this provision was adopted in the bank rule, use of these types of products is more limited in the credit union industry and risks can and should be addressed through examinations.

Other commenters suggested that the Board minimize the regulatory burdens of this provision by limiting the proposed reporting requirements to investments identified during the supervisory process as a potential concern.

A number of commenters expressed concern that NCUA would not apply the requirements in a fair and consistent manner across credit unions. A small number of commenters suggested that the Board should be required to perform an on-site evaluation and reach a joint determination with the state regulator before recommending a 1,250 percent risk weight on a state-chartered institution.

Commenters suggested that the rule should clarify the administrative level within NCUA at which this determination will be made because such a finding could have a dramatic impact on a credit union's PCA classification and major implications for that credit union's balance sheet and management structure. Other commenters suggested that the rule should specify that a 1,250 percent risk weight constitutes a material supervisory determination that is subject to appeal.

A number of commenters stated that the term ''asset-backed investment'' is not defined, which they stated could lead to wide interpretation both of the 1,250 percent risk weight as well as potential examiner expectations of the initial and ongoing depth of the review, analysis, and documentation of asset-backed investments. Commenters suggested that such depth of review is appropriate for some types of investments, but not others. For example, commenters contended that a government agency-guaranteed mortgage-backed security does not warrant the type of analysis and documentation outlined in the Original Proposal because the lack of inherent credit risk in the government agency security should reduce the concern of a large credit loss on the investment and therefore should reduce the depth of review and analysis.

Other commenters suggested if the Board determines it can provide a clear definition of ''asset-backed investments,'' it should do so in a new proposed rule that also outlines reasonable expectations and provides a method for fair and consistent application of the due diligence requirements.

One commenter agreed that complex asset backed investments (private label) with inherent credit risk exposure should have additional due diligence requirements, but argued a 250 percent risk weight would be more appropriate. Another commenter suggested that the rule should make it clear that the due diligence requirement does not apply to any asset backed investments guaranteed by the U.S. Government or any U.S. Government agency.

Based on a diligent review of these comments the Board has significantly revised this section and now proposes to require a 1,250 percent risk weight only for subordinated tranches of any investments. Specifically, the Board is proposing to change application of a 1,250 percent risk weight from ''asset-backed investments,'' to ''subordinated tranche'' investments.

Commenters requested clarity on the interpretation on what investments would be considered asset-backed investments. The Board believes subordinated tranche is a clearer term, has provided a corresponding definition, and thus will eliminate the ambiguity cited by commenters.

The Board also believes this proposed change will more accurately apply risk weights based on risk while providing clarity and consistency.

However, NCUA still expects credit unions to perform appropriate credit analysis on non-subordinated tranches of mortgage- and asset-backed securities. NCUA will address deficiencies in the credit analysis of non-subordinated tranches through the supervision process.

The Board is also proposing changes to address concerns raised by commenters with respect to securities issued by the U.S. Government and NCUA's ability to use its discretion to apply a 1,250 percent risk weight.

First, the Board is proposing to specifically exclude senior tranches and most securities issued by the U.S. Government, any U.S. Government agency, or GSEs. The Board believes this change would address a major concern expressed by commenters.

The Board is also proposing to remove the discretion for NCUA to impose a 1,250 percent risk weight by allowing credit unions to choose the standard 1,250 percent risk weight or allowing credit unions the option to use the gross-up approach, which is explained in more detail below. The Board believes that removing NCUA discretion to impose a 1,250 risk weight also addresses a major concern by commenters. As previously noted, deficiencies in credit analysis will be addressed in supervision.

The Board believes a 1,250 percent risk weight is appropriate for subordinated tranches based on the leveraged nature of the credit risk in these investments. In addition, this approach is consistent with the approach applicable to banks,[258] which some commenters requested.

The Board intends for the 1,250 percent risk weight to apply to subordinated tranches of MBS, asset-backed securities, revenue bonds, and areas where there is subordinated credit risk in a structured product. Subordinated MBS and asset-backed securities are the most common form of subordinated tranches, and include any MBS or asset-backed securities that take credit losses before a more senior class. Senior mezzanine tranches [259] would be considered subordinated unless the more senior tranches have paid off. A subordinated tranche can become a non-subordinated tranche if the more senior tranches pay off.

Subordinated revenue bonds would typically involve a bond similar to an asset-backed security that is issued as a revenue bond. An example is a subordinated revenue bond issued by a state corporation that facilitates the granting of student loans. The performance of these types of subordinated bonds is based on the revenue provided by the underlying loans, as in the case of an asset-backed security.

[258] *See, e.g.,* 12 CFR 324.43(e) and 324.44; Note, the Board is not offering the option for the Simplified Supervisory Formula Approach permitted under the Other Banking Agencies' capital regulations due to its complexity and limited applicability.

[259] Senior mezzanine tranches are subordinated to more senior tranches at issuance.

Structured products that take credit losses based on a reference pool would be considered subordinated tranches. An example would be the loss sharing bonds that are issued by Fannie Mae and Freddie Mac. These structured securities are Fannie Mae or Freddie Mac debentures that pay less than par to investors if the reference pool takes a certain amount of losses. In this case the majority of the credit risk comes from the principal payout formula, not the issuer.

As discussed above, subordinated tranches are leveraged. This leverage allocates a disproportionate amount of losses to subordinated tranches in relation to the pool of collateral, or reference pool. By applying a 1,250 percent risk weight, the Board is ensuring that the risk of highly leveraged subordinated tranches would be captured.

The Board is also proposing to provide credit unions with the ability to use the gross-up approach to apply a lower risk weight to less leveraged subordinated tranches, which may result in a lower risk weight. The gross-up approach is discussed in more detail below.

Accordingly, under this proposal, § 702.104(c)(2)(x) would provide that a credit union must assign a 1,250 percent risk weight to the exposure amount of any subordinated tranche of any investment held on balance sheet, with the option to use the gross-up approach in § 702.104(c)(3)(i).[260]

The Board is not retaining the due diligence requirement that would have been contained in § 702.104(d) of the Original Proposal. Proposed § 702.104(d) would have contained a list of due diligence requirements credit unions would have been required to implement to demonstrate a comprehensive understanding of the features of an asset-backed investment and a requirement that if a credit union is unable to demonstrate a comprehensive understanding of the features of an asset-backed investment exposure that would materially affect the performance of the exposure, the credit union must assign a 1,250 percent risk weight to the asset-backed investment exposure. The Original Proposal would have also required that the credit union's analysis be commensurate with the complexity of the asset-backed investment and the materiality of the position in relation to regulatory capital according to this part. As noted above, the Board is deleting this section from this proposal in conjunction with the changes it is making to the requirements to apply a 1,250 percent risk weight.

While it remains a best practice for credit unions to understand the features that would affect the performance of all investments, not just asset-based investments, any weakness with investment purchase analysis and documentation can be addressed through the supervision process.

The Board requests comments on this provision of the proposal.

104(c)(3) Alternative Risk Weights for Certain On-Balance Sheet Assets

Proposed § 702.104(c)(3) would provide that instead of using the risk weights assigned in § 702.104(c)(2), a credit union may determine the risk weight of investment funds and subordinated tranches of any investment using the approaches which are discussed in more detail below. The Board believes these alternative approaches would provide a credit union with the ability to risk weight based on the underlying exposure of the subordinated tranche or investment fund without exposing the NCUSIF to additional risk. This approach may also allow for lower risk weights compared to the standard risk weights proposed.

104(c)(3)(i) Gross-up Approach

Proposed § 702.104(c)(3)(i) would provide that a credit union may use the gross-up approach under 12 CFR 324.43(e) to determine the risk weight of the carrying value of any subordinated tranche of any investment. As noted above, the Board is allowing for the use of the gross-up approach, included in the Other Banking Agencies' capital rules, when applying risk weights to subordinated tranches of any investment. The Board believes this approach is appropriate in applying risk weights, if the credit union chooses to use it, since it captures the total exposure the subordinate tranche is supporting.

However, the credit union can only use one methodology to calculate the risk weight for subordinate tranches, either the gross-up approach or a 1,250 percent risk weight.

The basic logic behind the gross-up approach is that the risk weight should reflect the entire amount of exposure the subordinated tranche is supporting. Said another way, the credit union must hold capital for the subordinated tranche, as well as all the senior tranches for which the subordinated tranche provides credit support.

When calculating the risk weight using the gross-up approach, the credit union must have the following information:

- Exposure amount of the subordinated tranche;
- Current outstanding par value of the credit union's subordinated tranche;
- Current outstanding par value of the total amount of the entire tranche where the credit union has exposure;
- Current outstanding par value of the more senior positions in the securitization that are supported by the tranche the credit union owns the subordinated tranche; and
- The weighted average risk weight applicable to the assets underlying the securitization.

The following is an example of the application of the gross-up approach:[261]

A credit union owns $4 million (exposure amount and outstanding par value) of a subordinated tranche of a private label mortgage-backed security backed by first-lien residential mortgages. The total outstanding par value of the subordinated tranche that the credit union owns part of is $10 million. The current outstanding par value for the tranches that are senior to and supported by the credit union's tranche is $90 million.

		Calculation	Result
A	Current outstanding par value of the credit union's subordinated tranche divided by the current outstanding par value of the entire tranche where the credit union has exposure.	$4,000,000/$10,000,000	40%
B	Current outstanding par value of the senior positions in the securitization that are supporting the tranche the credit union owns.		$90,000,000

[260] Based on June 30, 2014, Call Report data, NCUA estimates that 93.3 percent of all investments for credit unions with more than $100 million in assets would receive a risk weight of 20 percent or less; and, 96.1 percent of all investments would receive a risk weight of 100 percent or less.

[261] More simple terminology than the FDIC rule language is used to make this example easier to follow.

		Calculation	Result
C	Pro-rata share of the more senior positions outstanding in the securitization that is supported by the credit union's subordinated tranche: (A) multiplied by (B).	40% times $90,000,000	$36,000,000
D	Current exposure amount for the credit union's subordinated tranche.		$4,000,000
E	Enter the sum of (C) and (D)	$36,000,000 + $4,000,000	$40,000,000
F	The higher of the weighted average risk weight applicable to the assets underlying the securitization or 20%.	50% primary risk weight for 1st lien residential real estate loan.	50%
G	Risk-weighted asset amount of the credit union's purchased subordinated tranche: (E) multiplied by (F).	$40,000,000 times 50%	$20,000,000

In this example, under the gross-up approach, the credit union would be required to risk weight the subordinated tranche at $20,000,000. Conversely, under the 1,250 percent risk weight approach, the credit union would be required to risk weight the subordinated tranche at $50 million (1250 percent times $4 million). The Board believes this example shows the benefit to credit unions of the proposed inclusion of the gross-up approach.

In the case of master trust [262] type structures and structured products,[263] credits unions should calculate the pro-rata share of the more senior positions using the prospectus and current servicing/reference pool reports.

104(c)(3)(i) Look-Through Approaches

Proposed § 702.104(c)(3)(ii) would provide that a credit union may use one of the look-through approaches under 12 CFR 324.53 to determine the risk weight of the fair value of mutual funds that are not in compliance with part 703 of this chapter, the recorded value of separate account insurance; or part 703 compliant mutual funds. The Board is proposing this approach to allow credit unions to use the look-through approach in the Other Banking Agencies' regulations for investment funds. This proposed provision responds to commenters who requested this authority.

Specifically, for purposes of applying risk weights to investment funds, the Board is proposing to give credit unions the option of using the three look-through approaches that FDIC allows its regulated institutions to use under 12 CFR 324.53 of its regulations, instead of using the standard risk weights of 20, 100 and 300 percent that would be assigned under proposed § 702.104(c)(2). The Board believes that including these alternative approaches makes NCUA's risk-based capital requirement more comparable to the Other Banking Agencies' regulations and grants credit unions additional flexibility.

The first of the three full look-through approaches under 12 CFR 324.53 would require a credit union to look at the underlying assets owned by the investment fund and apply an appropriate risk weight. The other two approaches under 12 CFR 324.53 would require a credit union to use the information provided in the investment fund's prospectus. The minimum risk weight for any investment fund asset would be 20 percent, regardless of which approach was used.

The Board notes that regardless of the look-through approach selected, the credit union must include any derivative contract that is part of the investment fund, unless the derivative contract is used for hedging rather than speculative purposes and does not constitute a material portion of the fund's exposure.[264]

The following examples outline each of the three look-through approaches:

Full look-through approach. The full look-through approach would allow credit unions to weight the underlying assets in the investment fund as if they were owned separately, with a minimum risk weight of 20 percent for all underlying assets. Credit unions would be required to use the most recently available holdings reports when utilizing the full look-through approach. An example of the application of the full look-through approach is as follow:

CREDIT UNION INVESTMENT—$10,000,000

Fund investment:	Fund holding (% of fund):	Credit union exposure [265]:	Risk weight:	Dollar risk weight:
U.S. Treasury Notes:	50	$5,000,000	20% [266]	$1,000,000.
FNMA PACs:	30	3,000,000	20%	$600,000.
PSE Revenue Bonds:	17.5	1,750,000	50%	$875,000.
Subordinated MBS [267]	2.5	250,000	1,250%	$3,125,000.

[262] Master trust subordinated tranches do not support any particular senior tranche in the trust. The subordinated tranche supports an amount of senior tranches as defined in the prospectus and the current servicing reports.

[263] Structured products may allocate losses based on other securities or a reference pool. The credit union should calculate the pro-rata senior tranche based on the amount the subordinated tranche would support if it were an actual tranched security.

[264] At this time FCUs are not permitted to engage in derivative contract activity for the purpose of speculation. However, federally insured, state-chartered credit unions may be permitted to use derivative contracts for speculative purposes under applicable state law, and thus the Board is including this statement to address those scenarios.

[265] Fund holdings (percent of fund) multiplied by the credit union investment.

[266] Minimum 20 percent risk weight for assets in an investment fund, even if the individual risk weight is zero percent.

[267] Use 1,250 percent risk weight or gross-up calculation.

[268] The weighted average risk weight was calculated by dividing the amount of risk assets ($5,600,000) by the credit union exposure ($10,000,000).

CREDIT UNION INVESTMENT—$10,000,000—Continued

Fund investment:	Fund holding (% of fund):	Credit union exposure [265]:	Risk weight:	Dollar risk weight:
Totals		10,000,000	56% [268] (weighted average risk weight)	$5,600,000 (amount of risk assets).

Using the above example, the investment fund would have a weighted average risk weight of 56 percent, which would be lower than the 100 percent standard risk weight for part 703 compliant investment funds or the standard 300 percent risk weight for investment funds not compliant with part 703.

Simple modified look-through approach. The simple modified look-through approach would allow credit unions to risk weight their holdings in an investment fund by the highest risk weight of any asset permitted by the investment fund's prospectus. Credit unions should use the most recently available prospectus to determine investment permissibility for an investment fund. An example of the application of the simple modified look-through approach is as follow:

CREDIT UNION INVESTMENT—$10,000,000

Permissible investments:	Fund limits (% of fund):	Risk weight (percent):
U.S. Treasury Notes:	100	[269] 20
Agency MBS (non IO or PO):	50	20
PSE GEO Bonds:	20	20
PSE Revenue Bonds:	20	50
Non-Government/Subordinated/IO/PO MBS	30	50
Subordinated MBS	10	[270] 1,250

Using the above example, the investment fund would have a risk weight of 1,250 percent using the simple modified look-through approach because the investment fund can hold 1,250 percent risk-weighted subordinated MBS. In this case, the credit union would most likely use a 100 percent standard risk weight for the part 703 compliant investment fund or the standard 300 percent risk weight for investment funds not in compliance with part 703.

Alternative modified look-through approach. The alternative modified look-through approach would allow credit unions to risk weight their holdings in an investment fund by applying the risk weights to the limits in the prospectus. In the case where the aggregate limits in the prospectus exceed 100 percent, the credit union must assume the fund will invest in the highest risk-weighted assets first. An example of the application of the simple modified look-through approach is as follows:

CREDIT UNION INVESTMENT—$10,000,000

Permissible investments:	Fund limits (% of fund):	Risk weight:	CU Exposure:	Dollar risk weight:
U.S. Treasury Notes:	100	20% [271]	$0	
Agency MBS (non IO or PO):	50	20%	2,000,000	400,000.
PSE GEO Bonds:	20	20%	2,000,000	400,000.
PSE Revenue Bonds:	20	50%	2,000,000	1,000,000.
Non-Government/ Subordinated/IO/PO MBS	30	50%	3,000,000	1,500,000.
Subordinated MBS	10	1,250% [272]	1,000,000	12,500,000.
Total		158% [273] (weighted average risk weight).	$10,000,000	15,800,000 (Amount of Risk Assets).

Using the example above, the investment fund would have a weighted average risk weight of 158 percent using the alternative modified look-through approach. In this case, the credit union would most likely use a 100 percent standard risk weight for part 703 compliant investment funds or the alternative modified look-through approach for risk weights for investment funds that are not compliant with part 703.

104(c)(4) Risk Weights for Off-Balance Sheet Activities

Under the Original Proposal, proposed § 702.104(b)(3), which has been re-numbered as § 702.104(b)(4) under this proposal, would have

[269] Minimum 20 percent risk weight for assets in an investment fund, even if the individual risk weight is zero percent.

[270] Use 1,250 percent risk weight unless the prospectus limits gross-up risk weight.

[271] Minimum 20 percent risk weight for assets in an investment fund, even if the individual risk weight is zero percent.

[272] Use 1,250 percent risk weight unless the prospectus limits gross-up risk weights.

[273] The weighted average risk weight was calculated by dividing the amount of risk assets ($15,800,000) by the credit union exposure ($10,000,000).

provided that the risk-weighted amounts for all off-balance sheet items are determined by multiplying the notional principal, or face value, by the appropriate conversion factor and the assigned risk weight as follows:

- A 75 percent conversion factor with a 100 percent risk weight for unfunded commitments for MBLs.
- A 75 percent conversion factor with a 100 percent risk weight for MBLs transferred with limited recourse.
- A 75 percent conversion factor with a 50 percent risk weight for first mortgage real estate loans transferred with limited recourse.
- A 75 percent conversion factor with a 100 percent risk weight for other real estate loans transferred with limited recourse.
- A 75 percent conversion factor with a 100 percent risk weight for non-federally guaranteed student loans transferred with limited recourse.
- A 75 percent conversion factor with a 75 percent risk weight for all other loans transferred with limited recourse.
- A 10 percent conversion factor with a 75 percent risk weight for total unfunded commitments for non-business loans.

Under the Original Proposal, a credit union would have calculated the exposure amount of an off-balance sheet component, which is typically the contractual amount multiplied by the applicable credit conversion factor (CCF). This treatment would have applied to specific off-balance sheet items, including loans transferred with limited recourse, unfunded commitments for business loans, and other unfunded commitments. The Original Proposal would have improved risk sensitivity and implemented capital requirements for certain exposures through a simple methodology.

The Board received a number of comments on the proposed risk weights for off-balance sheet activities. Commenters suggested that the off-balance sheet computations seemed excessive and added unnecessary risk assets.

One commenter disagreed with the 75 percent conversion factor with a 100 percent risk weight for unfunded commitments for MBLs, if that meant that a $10,000 line of credit that is funded to $6,000 would require a risk-based capital funding of $10,000 times 0.75, which would equal $7,500 for a $4,000 unfunded commitment.

A number of commenters suggested that under the proposed rule, credit unions would have been penalized for having unfunded commitments on non-business loans and business loans. Other commenters suggested that unfunded commitments on non-business loans and business loans should be assigned lower risk weights because the proposed risk weights would encourage credit unions to terminate or decrease lines of credit to consumers or small business owners to improve their risk-based capital classification. Another commenter agreed with including off-balance sheet activities in the assets denominator.

Others stated the 75 percent conversion factor for unfunded business loans did not give appropriate consideration to the liability side of off-balance sheet items to offset some of this risk or other risks needs to be considered for lowering the assets denominator. Another commenter appreciated the proposed approach to capture off-balance sheet items.

Still others stated that the reporting of off-balance sheet loans sold with limited recourse creates a negative impact on a credit union's balance sheet. One other commenter suggested that the rule should include a mechanism for differentiating between loans sold with and without recourse.

A number of commenters stated that some credit unions that sell conforming first mortgages through the Federal Home Loan Banks' (FHLB) mortgage partnership finance (MPF) program retain a limited contractual portion of the credit risk. Those commenters suggested that the proposed risk weight is much too high for these loans because credit unions must generate their net earnings on such transactions at origination. Those commenters stated further that to generate sufficient income under the proposed risk weights, credit unions would have to charge rates on the MPF loans that would be very high and would not be competitive with bank rates for the same types of mortgages. Other commenters suggested that MPF loans sold to FHLBs should be assigned a conversion factor of 50 percent or less (along with the proposed 50 percent risk weight) because of their low risk exposure and to allow credit unions to compete in the mortgage market. Those commenters observed that the MPF program is a unique secondary market outlet for conforming fixed rate residential mortgages, in which participating FHLB members provide a credit enhancement (CE) based on the characteristics of mortgages being originated and sold under the Program. Those commenters stated further that the CE is a fixed dollar exposure for a specific pool of loans or Master Commitment, and one piece of the credit support that absorbs losses in a specific loan pool which exceed homeowners' equity, primary mortgage insurance and an FHLB-provided first loss account (FLA). Those commenters explained that in exchange for providing the CE, members receive ongoing credit enhancement fee income over the life of the loans. Those commenters stated that this approach rewards FHLB-member credit unions for quality underwriting and provides a superior execution because it removes inefficiencies associated with charging guarantee fees based on the possible future performance of loans because, instead of assessing charges to cover projected losses, actual losses are covered by private capital provided by the FHLB and its members, resulting in strong historic performance of the MPF loans. In addition, those commenters suggested that due to the FLA covering the majority of the credit risk on MPF loans, participating member credit unions do not retain any interest rate or concentration risk on the sold loans. Those commenters recommended that, based on the historic performance of MPF loans and the very small amount of sustained credit losses, the capital charge under the Original Proposal was too high and a lower conversion factor should be used that recognizes the FLA and the strong historic performance of MPF loans.

After considering the comments, the Board continues to believe that the risks associated with recourse loans and unfunded commitments are analogous to those associated with similar on-balance sheet loans. For this reason, these items will continue to be included in the risk-based capital ratio calculation. The Board generally agrees, however, that some specific changes should be made to more accurately measure the risks this subsection of the proposal is intended to account.

In particular, the Board generally agrees that a credit union's risk-based capital ratio calculation relating to off-balance sheet items should be limited to the amount of the credit union's contractual exposure. Accordingly, the Board has amended this proposal to require that the credit equivalent amount that is applied to the appropriate risk weight category for all off-balance sheet items be determined by multiplying the off-balance sheet exposure, which is newly defined in this rule, by the appropriate credit conversion factor.

This proposal would retain the 10 percent credit conversion factor for non-commercial unused lines of credit. Commenters suggested that to improve their risk-based capital ratio credit unions would have looked to either terminate or decrease their lines of credit to consumers. Open lines of

credit to consumers, even those that are unconditionally cancellable, can quickly result in a credit union shifting assets from low risk weight investments to higher risk weight loans. Credit unions can be hesitant to cancel or reduce consumer lines of credit due to the potential for negative reputation risk. Credit unions need to monitor the amount and type of outstanding unused lines of credit. The Board believes the proposed 10 percent credit conversion factor for unused consumer lines of credit would encourage credit unions to manage open consumer lines of credit through active monitoring and review of trends and exposures, and is consistent with the calculation of off-balance sheet exposure measures contained in Basel III.[274]

The Board generally agrees with commenters' who stated that the credit conversion factor for unfunded commercial loans, in the Original Proposal, was too high and could have created a competitive disadvantage for credit unions in relation to banks. Accordingly, the Board is proposing to reduce the credit conversion factor for commercial loans from 75 percent to 50 percent. This change would be consistent with the credit conversion factor applied to longer-term commitments not unconditionally cancelable under the Other Banking Agencies' regulations.[275]

The Board also generally agrees with commenters that, based on the structure of the CE provided through the FHLBs' MPF or similar programs, loans sold under these programs should be categorized and risk-weighted separately from other types of loans transferred with limited recourse. In an effort to better match the minimum capital requirements for loans sold as part of the MPF or similar programs, the proposed credit conversion factor, which converts the off-balance sheet exposure to a credit equivalent amount, would be set at 20 percent and applied a 50 percent risk weight (the same risk weight applied to first-lien residential real estate loans), resulting in an effective minimum capital requirement of one percent of the outstanding balance.[276] Applying the CCF against the outstanding loan balance would reduce the risk-based capital requirement as loans in the MPF pool pay down. The Board believes this proposed methodology and CCF would result in a risk-based capital requirement consistent with historic credit losses in this program. The Board believes such treatment is appropriate because a credit union incurring higher than normal levels of losses from loans in the MPF or similar programs would have to record a reserve for losses that would reduce the credit union's retained earnings.

In addition, under this proposed rule, credit unions would be able to deduct any associated established valuation allowance when determining the off-balance sheet exposure amount that is multiplied by the CCF to obtain the credit equivalent amount.

The Board recognizes commenters' concerns that the conversion factors and risk weights applicable to loans transferred with limited recourse could result in a competitive disadvantage. Therefore, the Board has changed its approach with respect to loans transferred with limited recourse to amend the conversion factors to better match those used by the Other Banking Agencies. Under this proposed rule, the Board has further clarified that the conversion factors and risk weights only apply to the maximum amount of the loan exposure, rather than the whole loan[277] as in the Original Proposal. The maximum amount of exposure is the portion of the loan that a credit union could be required to take back under the recourse provision of a loan sales contract.

As shown in the charts and proposed rule text below, the Board has amended many of the conversion factors and applicable risk weights in an effort to lower the burden on credit unions while still retaining the necessary safety and soundness components of this section of the rule.

First, the Board has lowered the conversion factor for unfunded commitments for commercial loans to achieve parity with the Other Banking Agencies' approach.[278] Further, the conversion factors for loans transferred with limited recourse would be consistent with the conversion factors assigned for banks under the Other Banking Agencies' rules.

However, under this proposal the conversion factor is applied only to the credit union's off-balance sheet exposure. The Board is also proposing to apply a lower credit conversion factor to loans sold under the FHLBs' MPF to more accurately account for historical losses in this program and to reduce the risk-based capital requirement as each loan pays down.

The following tables summarize the risk weights and conversion factors included in this proposal:

Loans Sold With Recourse

ORIGINAL PROPOSAL

	Conversion factor (applied to the outstanding loan balance) (percent)	Risk weight (percent)
MBLs sold with recourse	75	100
First mortgage real estate loans sold with recourse	75	50
Other real estate loans sold with recourse	75	100
Non-federally guaranteed student loans sold with recourse	75	100
All other loans sold with recourse	75	75.

[274] Basel III was published in December 2010 and revised in June 2011. The text is available at *http://www.bis.org/publ/bcbs189.htm.*

[275] *See, e.g.,* 12 CFR 324.33.

[276] This proposed approach is based on historical loss information regarding the MPF program that was provided to NCUA by the Federal Home Loan Banks.

[277] As noted earlier, FHLBs' MPF loans are handled separately.

[278] *See, e.g.,* 12 CFR 324.33.

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Loan type transferred with limited recourse	Conversion factor (applied to the off-balance sheet exposure) (percent)	Risk weight (percent)
Outstanding balance of loans sold under the FHLB's mortgage partnership finance or similar program	20	50
Commercial loans	100	100
First-lien residential real estate loans	100	50
Junior-lien residential real estate loans	100	100
Secured consumer loans	100	75
Unsecured consumer loans	100	100

Unfunded Commitments

ORIGINAL PROPOSAL

	Conversion factor (percent)	Risk weight (percent)
Total unfunded commitments for non-business loans	10	75
Unused MBL commitments	75	100

THIS PROPOSAL

Loan Type of Unfunded Commitment	Conversion factor (percent)	Risk weight (percent)
Commercial loans	50	100
First-lien residential real estate loans	10	50
Junior-lien residential real estate loans	10	100
Secured consumer loans	10	75
Unsecured consumer loans	10	100

For the reasons discussed above, the Board has revised this section of the proposed rule and lowered many of the conversion factors and applicable risk weights. Accordingly, proposed § 702.104(b)(4) would provide that the risk-weighted amounts for all off-balance sheet items are determined by multiplying the off-balance sheet exposure amount by the appropriate credit conversion factor and the assigned risk weight as follows:

- For the outstanding balance of loans transferred to a Federal Home Loan Bank under the MPF program, a 20 percent CCF and a 50 percent risk weight.
- For other loans transferred with limited recourse, a 100 percent CCF applied to the off-balance sheet exposure and:
  - For commercial loans, a 100 percent risk weight.
  - For first-lien residential real estate loans, a 50 percent risk weight.
  - For junior-lien residential real estate loans, a 100 percent risk weight.
  - For all secured consumer loans, a 75 percent risk weight.
  - For all unsecured consumer loans, a 100 percent risk weight.
- For unfunded commitments:
  - For commercial loans, a 50 percent CCF with a 100 percent risk weight.
  - For first-lien residential real estate loans, a 10 percent CCF with a 50 percent risk weight.
  - For junior-lien residential real estate loans, a 10 percent CCF with a 100 percent risk weight.
  - For all secured consumer loans, a 10 percent CCF with a 75 percent risk weight.
  - For all unsecured consumer loans, a 10 percent CCF with a 100 percent risk weight.

The Board requests comments on this provision of the proposal.

104(c)(5) Derivatives

This section of the Original Proposal addressed the risk weights for derivative contracts. Based on NCUA's recently finalized derivatives rule, the Board is proposing to make minor changes and additions to the treatment of derivative contracts. Further, the Board is proposing to move derivative contracts to its own section of the rule for clarity and ease of reading. The full discussion of derivative contracts is included below in § 702.105.

Current § 702.105 Weighted-Average Life of Investments

As discussed above, proposed new § 702.105 below would replace current § 702.105 regarding weighted-average life of investments. The definition of weighted-average life of investments and the term ''weighted-average life of investments'' would be removed from this proposed rule altogether.

Section 702.105 Derivatives

This proposal separates derivatives into its own section, § 702.105, and includes a cross reference in the general risk weight category that indicates that all derivatives must be risk-weighted in accordance with § 702.105. This new proposed section includes all of the language from § 702.104(c)(4) of the Original Proposal, with only a few minor amendments. In addition, this proposed section addresses cleared transactions, provides further authority for recognizing the credit risk mitigation benefits of collateral, and addresses derivatives transactions by federally insured state chartered credit unions that are impermissible under NCUA's rules.

Derivatives rule. The Board finalized NCUA's derivatives rule at its January

2014 open meeting. In brief, that final rule allows FCUs to use specific types of derivatives for the purpose of mitigating IRR. The final rule also addressed ''clearing,'' which was not addressed in the proposed derivatives rule. Specifically, the final derivatives rule permits FCUs to clear derivatives transactions, provided the FCU follows applicable Commodity and Futures Trading Commission (CFTC) regulations. The Board notes, however, that NCUA's derivatives rule only applied to FCUs. As discussed in the preamble to the final rule, federally insured, state-chartered credit unions engaging in derivatives are required to follow applicable state regulations.

Proposed risk based capital treatment of derivatives. Based on its recently finalized derivatives rule, the Board is now proposing to adopt an approach to assign risk weights to derivatives that is generally consistent with the approach adopted by FDIC in its recently issued interim final rule regarding regulatory capital.[279] Under FDIC's interim rule, derivatives transactions covered under clearing arrangements are treated differently than non-cleared transactions. The Board addresses clearing separately below.

The Board is proposing to focus only on interest rate related derivatives in the proposed rule and to refer credit unions to FDIC's rules for all non-interest-rate-related derivatives. The Board is making this distinction because federal credit unions are restricted to interest rate-related contracts under the final derivatives rule approved in January 2014; however, federally insured, state-chartered credit unions may have broader authorization to use non-interest-rate contracts if approved by the respective state banking authorities. As of September 30th, 2014, NCUA is not aware of any non-interest rate derivative contracts being used by federally insured, state-chartered credit unions (as per the Call Report data) for derivative contracts.

OTC derivatives transaction risk weight. The Original Proposal only assigned risk weights to OTC derivatives transactions. While the Board received few comments on the general language in this section, the Board is now proposing to make two amendments. First, the Board is proposing to state that the current credit exposure is the greater of the fair value or zero rather than the mark to fair value or zero. This change is non-substantive and only intended as a clarifying correction.

Second, the Board is proposing to delete two subsections from the Original Proposal's section on potential future credit exposure, §§ 702.104(d)(4)(B)(2) and (3) of the Original Proposal. Section 702.104(d)(4)(B)(2) stated that for a derivatives contract that is structured such that on specified dates any outstanding exposure is settled and the terms are reset so that the fair value of the contract is zero, the remaining maturity equals the time until the next reset date. Section 702.104(d)(4)(B)(3) stated that for an interest rate derivative contract with a remaining maturity of greater than one year that meets these criteria, the minimum conversion factor is 0.005. In place of these two sections, the Board is now proposing to add the following:

> A credit union must use an OTC interest rate derivative contract's effective notional principal amount (that is, the apparent or stated notional principal amount multiplied by any multiplier in the OTC interest rate derivative contract) rather than the apparent or stated notional principal amount in calculating potential future exposure (PFE).

The Board is making these changes to improve how credit unions will calculate the PFE given the high probability of only having interest rate-related contracts. The Board believes these proposed changes make the rule clearer and more closely align this section with other changes it is proposing throughout this rule.

Including the changes discussed above, the following is a description of the process a credit union would undertake under this proposal to determine the risk weight for OTC derivative contracts. The Board is proposing to require that to determine the risk-weighted asset amount for a derivatives contract; under this proposal, a credit union would first determine its exposure amount for the contract. It would then recognize the credit mitigation of financial collateral, if qualified, and then apply to that amount a risk weight based on the counterparty or recognized collateral or exchange (Derivatives Clearing Organization or DCO). For a single interest rate derivatives contract that is not subject to a qualifying master netting agreement, the proposed rule would require the exposure amount to be the sum of (1) the credit union's current credit exposure (CCE), which is the greater of fair value or zero, and (2) PFE, which is calculated by multiplying the notional principal amount of the derivatives contract by the appropriate conversion factor, in accordance with the table below. Non-interest rate derivative contract conversion factors can be referenced in 12 CFR 324.34 of the FDIC rule.

PROPOSED CONVERSION FACTOR MATRIX FOR INTEREST RATE DERIVATIVES CONTRACTS

Remaining maturity	IRR hedge derivatives
One year or less	0.00
Greater than one year and less than or equal to five years	0.005
Greater than five years	0.015

For multiple interest rate derivatives contracts subject to a qualifying master netting agreement, a credit union would calculate the exposure amount by adding the net CCE and the adjusted sum of the PFE amounts for all derivatives contracts subject to that qualifying master netting agreement.

The net CCE is the greater of zero and the net sum of all positive and negative fair values of the individual derivatives contracts subject to the qualifying master netting agreement. The adjusted sum of the PFE amounts would be calculated as described in proposed § 702.105(a)(2)(ii)(B).

Under this proposal, to recognize the netting benefit of multiple derivatives contracts, the contracts would have to be subject to the same qualifying master netting agreement. For example, a credit union with multiple derivatives contracts with a single counterparty could net the counterparty exposure if the transactions fall under the same International Swaps and Derivatives Association, Inc. (ISDA) Master Agreement and Schedule.

If a derivatives contract is collateralized by financial collateral, a credit union would first determine the exposure amount of the derivatives contract as described in §§ 702.105(a)(i) or (ii). Next, to recognize the credit risk mitigation benefits of the financial collateral, the credit union would use the approach for collateralized transactions as described in § 702.105(c) of the proposed rule, which is discussed in more detail below.

Cleared derivatives risk weight. As discussed above, under the Original Proposal, the Board did not include a discussion of cleared derivatives contracts, but generally tried to mirror the Other Banking Agencies' approach to derivatives, which treats derivatives transactions covered under clearing arrangements differently than non-cleared transactions. NCUA's Original Proposal, however, proposed a single regulatory capital approach regardless of the credit union's derivatives transaction clearing status, because most credit unions would qualify for an exemption or exception from clearing

[279] *See* 78 FR 55339 (Sept. 10, 2013).

under CFTC's regulations. The exemption and exception applicable to credit unions is discussed below.

As noted above, the Board received only a few comments on the proposed derivatives section of the Original Proposal. However, the majority of the comments the Board did receive requested that NCUA's rules align with the rules for banks. Specifically, commenters pointed out that the derivatives industry is migrating toward clearing and that clearing provides a valuable risk- reducing component to a derivatives transaction.

Other commenters requested examples of calculations and clarification on the process by which a credit union can recognize the risk mitigation benefits of collateral and how derivatives in federally insured, state-chartered credit unions would be treated under the Original Proposal.

After carefully considering the comments and its recent final derivatives rule, the Board agrees that NCUA's risk-based capital regulations should more closely align with the Other Banking Agencies' capital regulations. To that end, the Board is now proposing to include provisions to address clearing, a more robust collateral process, and the treatment of derivatives outside of NCUA's rule. The Board notes that this is consistent with its statement in the Original Proposal that it would amend any final rule regarding NCUA's risk-based capital requirements to take into account changes made in the final derivatives rule.

As noted above, the Board is now proposing to include a separate risk weight for cleared derivatives transactions. The approach in this section mirrors the approach taken by the Other Banking Agencies and will allow credit unions to account for the lower degree of risk for cleared transactions.

In NCUA's final derivatives rule, the Board discussed recent CFTC final rules [280] on cleared derivatives and included a section allowing FCUs to elect to clear under CFTC rules. The Board noted that CFTC's final rules provide credit unions with an exception and an exemption from clearing. The CTFC exception and exemption are the End-User Exception, which applies to financial institutions with total assets of $10 billion or less and the Cooperative Exemption, which applies to entities with assets greater than $10 billion where the entity is a cooperative.[281] CFTC's definition scope includes credit unions. Therefore, all credit unions have the right, as cooperatives, to elect to either clear swaps or engage in a traditional bilateral agreement. The Board notes that the clearing structure only applies to swaps.

For cleared derivatives transactions, each party to the swap submits the transaction to a DCO [282] for clearing. This reduces counterparty risk for the original swap participants in that they each bear the same risk attributable to facing the intermediary DCO as their counterparty. In addition, DCOs exist for the primary purpose of managing credit exposure from the swaps being cleared and therefore DCOs are effective at standardizing transactions and mitigating counterparty risk through the use of exchange-based risk management frameworks. Finally, swap clearing requires both counterparties to post collateral (*i.e.,* initial margin) with the clearinghouse when they enter into a swap. The clearinghouse can use the posted collateral to cover defaults in the swap. As the valuation of the swap changes, the clearinghouse determines the fair market value of the swap and may collect additional collateral (*i.e.,* variation margin) from the counterparties in response to fluctuations in market values. The clearinghouse can apply this collateral to cover defaults in payments under the swap.

Proposed § 702.105 would adopt an approach to assign risk weights to derivatives that is generally consistent with the approach adopted by the Other Banking Agencies.[283] Under this proposed rule, a credit union would be required to calculate a trade exposure amount, determine the risk mitigation of any financial collateral, and multiply that amount by the applicable risk weight. The Board notes that this approach allows credit unions to take into account the lower degree of risk associated with cleared derivatives transactions and the benefit of collateral associated with these transactions. In addition, this approach also accounts for the risk of loss associated with collateral posted by a credit union.

Trade exposure amount. The trade exposure amount, in this proposal, would equal the amount of the derivative, calculated as if it were an OTC transaction under subsection (b) of this section, added to the fair value of the collateral posted by the credit union and held by a DCO, clearing member or custodian. This calculation would take into account the exposure amount of the derivatives transaction and the exposure associated with any collateral posted by the credit union. The Board notes that this is the same approach employed by the Other Banking Agencies.[284]

Cleared transaction risk weights. Under this proposal, after a credit union determines its trade exposure amount, it would be required to apply a risk weight that is based on agreements preventing risk of loss of the collateral posted by the counterparty to the transaction. The proposed rule would require credit unions to apply a two percent risk weight if the collateral posted by a counterparty is subject to an agreement that prevents any losses caused by the default, insolvency, liquidation, or receivership of the clearing member or any of its clients. To qualify for this risk weight, a credit union would also have conducted a sufficient legal review and determined that the agreement to prevent risk of loss is legal, valid, binding, and enforceable. If a credit union does not meet either or both of these requirements, the credit union would have to apply a four percent risk weight to the transaction.

The differing risk weights for cleared transactions take into account the risk that collateral will not be there because of a default or other event, which further exposes the credit union to loss. However, cleared transactions pose very low probability that collateral will not be available in the event of a default, which is reflected in the low overall risk weights. Again, the Board notes that this is the same approach employed by the Other Banking Agencies.[285]

Collateralized transactions. Under the Original Proposal, NCUA proposed to permit a credit union to recognize risk-mitigating effects of financial collateral in OTC transactions. The collateralized portion of the exposure would receive the risk weight applicable to the collateral. In all cases, (1) The collateral must be subject to a collateral agreement (for example, an ISDA Credit Support Annex) for at least the life of the exposure; (2) the credit union must revalue the collateral at least every three months; and (3) the collateral and the exposure must be denominated in U.S. dollars.

Generally, the risk weight assigned to the collateralized portion of the exposure would be no less than 20 percent. However, the collateralized portion of an exposure may be assigned a risk weight of less than 20 percent for the following exposures. Derivatives

[280] 78 FR 52285 (Aug. 22, 2013); *see also* 17 CFR 50.51.

[281] *Id.*

[282] DCO has the meaning as defined by the Commodity Futures Trading Commission in 17 CFR 1.3(d)

[283] *See* 78 FR 55339 (Sept. 10, 2013).

[284] *See, e.g.,* 12 CFR 324.35.

[285] *See, e.g.,* 12 CFR 324.35.

contracts that are marked to fair value on a daily basis and subject to a daily margin maintenance agreement could receive: (1) A zero percent risk weight to the extent that contracts are collateralized by cash on deposit; or (2) a 10 percent risk weight to the extent that the contracts are collateralized by an exposure that qualifies for a zero percent risk weight under § 702.104(c)(2)(i) of this proposed rule. In addition, a credit union could assign a zero percent risk weight to the collateralized portion of an exposure where the financial collateral is cash on deposit. It also could do so if the financial collateral is an exposure that qualifies for a zero percent risk weight under § 702.104(c)(2)(i) of this proposed rule, and the credit union has discounted the fair value of the collateral by 20 percent. The credit union would be required to use the same approach for similar exposures or transactions.

Risk management guidance for recognizing collateral. The Board is proposing to include a new subsection in this section to address recognizing the risk mitigation of collateral. In the Original Proposal, this section was included in the discussion on assigning risk weights to OTC derivatives transactions. The Board recognizes, however, that derivative contracts are collateralized for risk mitigation purposes whether OTC or cleared. Collateralizing derivatives transactions is now industry practice and widely accepted to reduce and mitigate the credit risk and default impact of a counterparty to a transaction not being able to meet its obligations of the contract. A collateral agreement between two counterparties or exchange will stipulate the type of collateral that may be used, otherwise known as ''eligible collateral.'' As such, this proposed subsection will be applicable to both types of transactions.

Under this proposal, before a credit union recognizes collateral for credit risk mitigation purposes, it should: (1) Conduct sufficient legal review to ensure, at the inception of the collateralized transaction and on an ongoing basis, that all documentation used in the transaction is binding on all parties and legally enforceable in all relevant jurisdictions; (2) consider the correlation between risk of the underlying direct exposure and collateral in the transaction; and (3) fully take into account the time and cost needed to realize the liquidation proceeds and the potential for a decline in collateral value over this time period.

A credit union should also ensure that the legal mechanism under which the collateral is pledged or transferred ensures that the credit union has the right to liquidate or take legal possession of the collateral in a timely manner in the event of the default, insolvency, or bankruptcy (or other defined credit event) of the counterparty and, where applicable, the custodian holding the collateral.

Finally, a credit union should ensure that it: (1) Has taken all steps necessary to fulfill any legal requirements to secure its interest in the collateral so that it has, and maintains, an enforceable security interest; (2) has set up clear and robust procedures to ensure satisfaction of any legal conditions required for declaring the borrower's default and prompt liquidation of the collateral in the event of default; (3) has established procedures and practices for conservatively estimating, on a regular ongoing basis, the fair value of the collateral, taking into account factors that could affect that value (for example, the liquidity of the market for the collateral and deterioration of the collateral); and (4) has in place systems for promptly requesting and receiving additional collateral for transactions with terms requiring maintenance of collateral values at specified thresholds.

When collateral other than cash is used to satisfy a margin requirement, then a haircut is applied to incorporate the credit risk associated with collateral, such as securities. The Board is proposing to include this concept in the revised rule so that credit unions can accurately recognize the risk mitigation benefit of collateral. The Board notes that this is the same approach taken by the Other Banking Agencies.

The table below illustrates an example of the calculations for Risk Weighted Asset Amounts for both OTC and clearing derivatives agreements. For this example both the OTC and clearing are considered to be a multiple contracts under a Qualified Master Netting Agreement. Credit unions can use this as a guide in confirming the calculations involved to produce a risk-weighted asset for derivatives. (See the number references below for each line number of the table example.)

1. The Agreement Type indicates the transaction legal agreement between the credit union and the counterparty.

2. The examples provide, but are not limited to the basis calculations required for various collateral and agreement approaches.

3. Variation Margin (amount as basis for margin calls which are satisfied with collateral) collateral used for these examples.

4. The Risk Weight of Collateral is applied when utilizing the Simple Approach in the recognition of credit risk of collateralized derivative contracts.

5. To recognize the risk-mitigating effects of financial collateral, a credit union may use the ''Simple Approach'' or the ''Collateral Haircut Approach''.

6. The Collateral Haircut is determined by using Table 2 to § 702.105 in the rule text: ''Standard Supervisor Market Price Volatility Haircuts.''

7. Counterparty risk weights are determined in § 702.104 for OTC and § 702.105 for clearing.

8–16. Are calculations based on the approach and types of agreement, collateral, fair values and notional amounts of the credit union derivatives transactions.

Example of Derivatives Risk Weight Calculations

DataSet: 31-Oct-14 (All amounts in USD whole dollars)

Product	Notional	Maturity	Fair Value	Exposure Amount Components: CCE	PFE Factor	PFE Amt and aGross
Swap	10,000,000	10/31/2017	500,000		0.005	50,000
Swap	20,000,000	11/1/2021	(250,000)		0.015	300,000
Swap	25,000,000	11/2/2025	650,000		0.015	375,000
Totals	55,000,000		900,000	***900,000***		***725,000***

Calculations:

1.) Agreement Type	OTC Multiple*			Clearing**		
2.) Scenario	A	B	C	D	E	F
3.) Variation Margin Collateral	Cash	MBS(1)	MBS(1)	Cash	MBS(1)	MBS(1)
4.) Risk Weight of Collateral (for Risk weight substitution).	0%	20%		0%	20%	
5.) Collateral Mitigation Method (c)	Simple	Simple	Haircut	Simple	Simple	Haircut
6.) Collateral Haircut (Table #2 to §702.105)			6%(2)			6%(2)
7.) Counterparty Risk Weight See (3)	100%	100%	100%	2%	2%	2%
8.) Net Current Credit Exposure (NCCE) (a)(1)(A)	900,000	900,000	900,000	900,000	900,000	900,000
9.) Potential Future Credit Exposure (PFE, Anet) (a)(1)(B)	630,435	630,435	630,435	630,435	630,435	630,435
10.) Exposure Amount	1,530,435	1,530,435	1,530,435	1,530,435	1,530,435	1,530,435
11.) Collateral: (Market value of Variation Margin)(4)	750,000	750,000	750,000	750,000	750,000	750,000
12.) Net Exposure Amount	780,435	780,435	780,435	780,435	780,435	780,435
Add:						
13.) Collateral Risk Weight (only in Simple Approach)	0	150,000		0	150,000	
14.) Haircut (2) (only in Collateral Haircut approach)			45,000			45,000
15.) Risk Asset before counterparty weighting	780,435	930,435	825,435	780,435	930,435	825,435
16.) Risk Weighted Asset Amount (3)	***780,435***	***930,435***	***825,435***	***15,609***	***18,609***	***16,509***

* Multiple OTC calculations assume qualified master netting agreement

** Initial Margin is assumed to be Bankruptcy Remote for this example and not included for Clearing Risk Weighted Asset Amount

(1) MBS considered to be GSE MBS pass-thru securities greater than 5 years of Residual Maturity

(2) See Table 2 to §702.105 for Haircut amounts

(3) Risk weight assumed to be 100% for OTC and 2% for Clearing

(4) Clearing margin thresholds are set by the exchange and will only by uncollaterized for the daily margin requirement while OTC minimum thresholds are negotiated

Federally insured, state-chartered credit unions' derivative transactions. As noted above, the Original Proposal did not specifically address derivatives transactions entered into by federally insured, state-chartered credit unions under state law that are impermissible under NCUA's regulations for FCUs. In this proposal, the Board is proposing to include language that would require federally insured, state-chartered credit unions to calculate risk weights in accordance with FDIC's rules for derivatives transactions that are not permissible under NCUA's derivatives rule.

The Board has also considered the following two approaches to addressing derivatives held by FISCUs that are not permissible under NCUA's rules, and invites stakeholders to comment on each:

- *Additional risk weights.* The Board has considered including an additional risk weight that would address any derivative entered into by a federally insured, state-chartered credit union that would be impermissible for an FCU to enter into. The Board notes that this risk weight would have to account for the added risk of additional types of transactions that are not permitted under its rules.
- *Adopting FDIC's rules verbatim.* Finally, the Board has considered incorporating FDIC's risk weights and rules for derivatives verbatim and creating a separate appendix for derivatives transactions. Incorporating FDIC's rules verbatim would add a high degree of complexity to a final risk-based capital rule and would likely address transactions into which federally insured, state chartered credit unions, while permitted to engage in, would likely not enter into.

The Board is interested in the comments of stakeholders on the pros and cons of each of these approaches, as well as any other approaches that may adequately address derivatives transactions by federally insured, state-chartered credit unions.

Current Section 702.106 Standard Calculation of Risk-based Net Worth Requirement

Consistent with the Original Proposal, this proposed rule would eliminate current § 702.106 regarding the standard RBNW requirement. The current rule is structured so that credit unions have a standard measure and optional alternatives for measuring a credit union's RBNW. The proposed rule, on the other hand, would contain only a single measurement for calculating a credit union's risk-based capital ratio. Accordingly, current § 702.106 would no longer be necessary and would be removed by this proposed rule.

Current Section 702.107 Alternative Component for Standard Calculation

Consistent with the Original Proposal, this proposed rule would eliminate current § 702.107 regarding the use of

alternative risk weight measures. The Board believes the current alternative risk weight measures add unnecessary complexity to the rule. The current alternative risk weights focus almost exclusively on IRR, which has resulted in some credit unions with higher risk operations reducing their regulatory minimum capital requirement to a level inconsistent with the risk of the credit union's business model. The proposed risk weights would provide for lower risk-based capital requirements for those credit unions making good quality loans, investing prudently, and avoiding excessive concentrations of assets.

Current Section 702.108 Risk Mitigation Credit

The Original Proposal would have eliminated current § 702.108 regarding the risk mitigation credit. The risk mitigation credit provides a system for reducing a credit union's risk-based capital requirement if it can demonstrate significant mitigation of credit risk or IRR. Credit unions have rarely taken advantage of risk mitigation credits; only one credit union has ever received a risk mitigation credit.

The Board did receive a few comments regarding the elimination of the provision for risk mitigation credit in the current rule. Commenters suggested that there should continue to be a risk mitigation credit and that the agency has well-developed procedures for credit unions under current § 701.108, as well as for examiners under its ''Guidelines for Evaluation of an Application for a PCA Risk Mitigation Credit.'' Commenters suggested that this authority could provide an important incentive for credit unions to manage certain risks more proactively—and receive an added benefit of seeing their risk-based capital requirements at least somewhat reduced as a result. Other commenters suggested that by not allowing for some method of recognizing credit unions' ability to manage risks, the Board runs the risk of de-incentivizing credit unions to invest in the resources necessary to manage and mitigate risks, which could encourage a dangerous mind-set among credit unions to hold additional capital in place of a well-managed risk mitigation program.

Consistent with the Original Proposal, this proposed rule would eliminate current § 702.108 regarding the risk mitigation credit. The review of a credit union's application for a risk mitigation credit requires a substantial commitment of NCUA and credit union resources. In practice, it is very difficult to determine the validity of the credit union's mitigation efforts and how much mitigation credit to allow. The Board appreciates the issues raised by commenters, but continues to believe that maintaining the risk mitigation credit option is unjustified given the burden it imposes on NCUA and credit unions, its limited use in the past, and its improbable use in the future.

Mandatory and Discretionary Supervisory Actions

Section 216(a)(2) of the FCUA directs the Board to take ''prompt corrective action to resolve the problems of insured credit unions.'' [286] To facilitate this purpose, the FCUA defined five regulatory capital categories that include capital thresholds for a defined net worth ratio and risk-based capital measure for ''complex'' credit unions. These five PCA categories are: Well capitalized, adequately capitalized, undercapitalized, significantly undercapitalized, and critically undercapitalized. Credit unions that fail to meet these capital measures are subject to increasingly strict limits on their activities.[287]

This proposal would generally maintain the existing mandatory and discretionary supervisory actions (PCA actions) currently contained in §§ 702.201 through 702.204,[288] with certain additions that are discussed in more detail below. The PCA actions assist the Board in accomplishing the statutory purpose of section 219 [289] of the FCUA and provide a transparent guide to the supervisory actions that a credit union can expect as capital measures decline.

Section 702.106 Prompt Corrective Action for Adequately Capitalized Credit Unions

Generally consistent with the Original Proposal, this proposed rule would renumber current § 702.201 as proposed § 702.106, and would make only minor conforming amendments to the text of the section. Consistent with the proposed elimination of the regular reserve requirement in current § 702.401(b), proposed § 702.106(a) would be amended to remove the requirement that adequately capitalized credit unions transfer the earnings retention amount from undivided earnings to their regular reserve account.

Section 702.107 Prompt Corrective Action for Undercapitalized Credit Unions

Generally consistent with the Original Proposal, this proposed rule would renumber current § 702.202 as proposed § 702.107, and would make only minor conforming amendments to the text of the section. Consistent with the proposed elimination of the regular reserve requirement in current § 702.401(b), proposed § 702.107(a)(1) would be amended to remove the requirement that undercapitalized credit unions transfer the earnings retention amount from undivided earnings to their regular reserve account.

Section 702.108 Prompt Corrective Action for Significantly Undercapitalized Credit Unions

Generally consistent with the Original Proposal, this proposed rule would renumber current § 702.203 as proposed § 702.108, and would make only minor conforming amendments to the text of the section. Consistent with the proposed elimination of the regular reserve requirement in current § 702.401(b), proposed § 702.108(a)(1) would be amended to remove the requirement that significantly undercapitalized credit unions transfer the earnings retention amount from undivided earnings to their regular reserve account.

Section 702.109 Prompt Corrective Action for Critically Undercapitalized Credit Unions

Generally consistent with the Original Proposal, this proposed rule would renumber current § 702.204 as proposed § 702.109, and would make only minor conforming amendments to the text of the section. Consistent with the proposed elimination of the regular reserve requirement in current § 702.401(b), proposed § 702.109(a)(1) would be amended to remove the requirement that critically undercapitalized credit unions transfer the earnings retention amount from undivided earnings to their regular reserve account.

Section 702.110 Consultation with State Official on Proposed Prompt Corrective Action

Generally consistent with the Original Proposal, this proposed rule would renumber current § 702.205 as proposed § 702.110, and would make only minor conforming amendments to the text of the section.

[286] 12 U.S.C. 1790d(a)(2).

[287] Credit unions defined as ''new credit unions'' under section 1790(d)(2) of the FCUA are subject to an alternative PCA system.

[288] The requirements would be moved to proposed §§ 702.106 through 702.109.

[289] 12 U.S.C. 1790d(a).

Section 702.111 Net Worth Restoration Plans (NWRPs)

Generally consistent with the Original Proposal, this proposed rule would renumber current § 702.206 as proposed § 702.111, and would make only minor conforming amendments to the text of most of the subsections, with a few exceptions discussed in more detail below.

111(c) Contents of NWRP

Consistent with the Original Proposal, proposed § 702.111(c)(1)(i) would provide that the contents of an NWRP must specify a quarterly timetable of steps the credit union will take to increase its net worth ratio *and risk-based capital ratio, if applicable,* so that it becomes adequately capitalized by the end of the term of the NWRP, and will remain so for four consecutive calendar quarters. The italicized words above ''and risk-based capital ratio, if applicable'' would be added to clarify that an NWRP prepared by a complex credit union must specify the steps the credit union will take to increase its risk-based capital ratio. This proposal would remove the sentence ''If complex, the credit union is subject to a risk-based net worth requirement that may require a net worth ratio higher than six percent to be adequately capitalized.'' This statement would be removed as repetitive and unnecessary because proposed § 702.102(a)(2)(i) already states clearly that a complex credit union must also attain a net worth ratio of higher than six percent to be adequately capitalized. No substantive changes to the requirements of this paragraph are intended by these revisions.

In addition, consistent with the proposed elimination of the regular reserve requirement in current § 702.401(b), proposed § 702.111(c)(1)(ii) would be amended by removing the requirement that credit unions transfer the earnings retention amount from undivided earnings to their regular reserve account.

111(g)(4) Submission of Multiple Unapproved NWRPs

Consistent with the Original Proposal, proposed § 702.111(g)(4) would provide that the submission of more than two NWRPs that are not approved is considered an unsafe and unsound condition and may subject the credit union to administrative enforcement actions under section 206 of the FCUA.[290] NCUA regional directors have expressed concerns that some credit unions have in the past submitted multiple NWRPs that could not be approved due to non-compliance with the requirements of the current rule, resulting in delayed implementation of actions to improve the credit union's net worth. The proposed amendments are intended to clarify that submitting multiple NWRPs that are rejected by NCUA, or the applicable state official, because of the inability of the credit union to produce an acceptable NWRP is an unsafe and unsound practice and may subject the credit union to further actions as permitted under the FCUA.

111(j) Termination of NWRP

Consistent with the Original Proposal, proposed § 702.111(j) would provide that, for purposes of part 702, an NWRP terminates once the credit union has been classified as adequately capitalized or well capitalized and for four consecutive quarters. The proposed paragraph would also provide as an example that if a credit union with an active NWRP attains the classification as adequately capitalized on December 31, 2015, this would be quarter one and the fourth consecutive quarter would end September 30, 2016. The proposed paragraph is intended to provide clarification for credit unions on the timing of an NWRP's termination.

Section 702.112 Reserves

Generally consistent with the Original Proposal, this proposed rule would renumber current § 702.401 as proposed § 702.112. Consistent with the text of current § 702.401(a), this proposal also would require that each credit union shall establish and maintain such reserves as may be required by the FCUA, by state law, by regulation, or, in special cases, by the Board or appropriate state official.

Regular Reserve Account

As mentioned above, this proposed rule would eliminate current § 702.401(b) regarding the regular reserve account from the earnings retention process. The process and substance of requesting permission for charges to the regular reserve would be eliminated upon the effective date of a final rule. Upon the effective date of a final rule, a federal credit union would close out the regular reserve balance into undivided earnings. A state-chartered, federally insured credit union may, however, still be required to maintain a regular reserve account by its respective state supervisory authority.

In the past, the Board initially included the regular reserve in part 702 for purposes of continuity from past regulatory expectations that involved this account to ease credit unions' transition to the then-new PCA rules. The regular reserve account is not necessary to satisfying the statutory ''earnings retention requirement'' and is not required under GAAP. CUMAA requires credit unions that are not well capitalized to ''annually set aside as net worth an amount equal to not less than 0.4 percent of its total assets.''[291] The earnings retention requirement in current § 702.201(a) requires a credit union that is not well capitalized to increase the ''dollar amount of its net worth either in the current quarter, or on average over the current and three preceding quarters by an amount equivalent to at least 1/10th percent of total assets.'' Under the same section of the current rule, the credit union must then ''quarterly transfer that amount'' from undivided earnings to the regular reserve account. Increasing net worth alone satisfies the statutory earnings retention requirement. The additional step of transferring earnings from the undivided earnings account to the regular reserve account is not necessary to meet the PCA statutory requirement.

The regular reserve was initially incorporated into the earnings retention process because of familiarity. Prior to PCA, credit unions used the regular reserve account under the former reserving process prescribed by the now-repealed section 116 of the FCUA.[292] However, NCUA examiner experience indicates that, since PCA was first implemented, the regular reserve account in part 702 has been a source of unnecessary confusion. Some credit unions have continued to make transfers as if the repealed section 116 were still in force. Other credit unions have confused the purpose of the regular reserve in the current PCA process. Thus, some credit unions have made earnings transfers that are not required and others have done so without first increasing net worth.

For these reasons, the Board considers the regular reserve account requirement to be obsolete and is proposing to eliminate it upon the effective date of a final rule. The proposed rule would also eliminate the cross references to the regular reserve requirement as discussed in more detail in each corresponding part of the section-by-section analysis.

Section 702.113 Full and Fair Disclosure of Financial Condition

Generally consistent with the Original Proposal, this proposed rule would renumber current § 702.402 as proposed § 702.113, and would make only minor conforming amendments to the text of

[290] 12 U.S.C. 1786 and 1790d.

[291] 12 U.S.C. 1790(e)(1).

[292] 12 U.S.C. 1762.

the section with the exception of the changes to proposed § 702.113(d) that are discussed in more detail below.

113(d) Charges for Loan and Lease Losses

Consistent with the proposed elimination of the regular reserve requirement which is discussed above, proposed § 702.113(d) would remove paragraph (d)(4) of the current rule, which provides that the maintenance of an ALLL shall not affect the requirement to transfer earnings to a credit union's regular reserve when required under subparts B or C of part 702.

In addition, the proposed rule would remove paragraph (d)(3) of the current rule, which provides that adjustments to the valuation ALLL will be recorded in the expense account ''Provision for Loan and Lease Losses.'' This is to clarify that the ALLL is to be maintained in accordance with GAAP, as discussed above.

The remaining provisions in paragraph (d) of the current rule would be amended as follows:

(d)(1)

Proposed § 702.113(d)(1) would amend current § 702.401(d)(1) to provide that charges for loan *and lease* losses shall be made *timely and* in accordance with GAAP. The proposal would add the italicized words ''and lease'' and ''timely and'' to the language in the current rule to clarify that the requirement also applies to lease losses and to require that credit unions make charges for loan and lease losses in a timely manner. As with the section above, this section was changed to clarify that charges for potential lease losses are to be recorded in accordance with GAAP through the same allowance account as loan losses. In addition, timely recording is critical to maintain full and fair disclosure as required under this section.

(d)(2)

Proposed § 702.113(d)(2) would amend current § 702.401(d)(2) to eliminate the detailed requirement and simply provide that the ALLL must be maintained in accordance with GAAP. This is necessary to provide full and fair disclosure to a credit union member, NCUA, or, at the discretion of a credit union's board of directors, to creditors to fairly inform them of the credit union's financial condition and operations.

(d)(3)

Proposed § 702.113(d)(3) would retain the language in current § 702.401(d)(5) with no changes.

Section 702.114 Payment of Dividends

Generally consistent with the Original Proposal, this proposed rule would renumber current § 702.402 as proposed § 702.114 and make a number of amendments to the text of paragraphs (a) and (b).

The Board received several comments to the Original Proposal regarding the proposed restrictions on the payments of dividends. Commenters generally stated that the rule should not prohibit states from authorizing FISCUs to declare dividends. Other commenters suggested that NCUA should not be able to restrict dividend payments.

The Board disagrees with commenters and continues to believe that reasonable restrictions on dividend payments for credit unions that are less than adequately capitalized are necessary to protect the NCUSIF. The restrictions in § 702.402 of the current rule are prudent restrictions that were brought forward into the Original Proposal and now into this proposal. The changes would simply clarify what funds are available for dividends under GAAP. Accordingly, the Board is proposing the following amendments to the current rule.

Since the implementation of PCA for credit unions, FASB has issued accounting standards that impact the accounting for credit union equity items. Most specifically in December 2007, the FASB issued Accounting Standards Codification (ASC) Topic 805, *Business Combinations.*[293] Under ASC 805, all business combinations were to be accounted for by applying the acquisition method starting in late 2008.

In June of 2010, *Interagency Supervisory Guidance on Bargain Purchases and FDIC- and NCUA-Assisted Acquisitions* was released and principally focused on bargain purchase gains and business combinations in general. The supervisory guidance addressed the special considerations to regulatory capital reporting for credit unions involved in combinations and specifically that acquired equity generated as a result of a business combination for credit unions is part of GAAP equity, but not part of net worth. Consistent with the statutory definition of net worth, a credit union includes an amount equal to the acquired credit unions retained earnings as measured in accordance with GAAP. This special consideration can result in a credit union reporting a negative balance in undivided earnings while reporting a much larger positive balance of acquired equity which produces a total positive GAAP equity position and different positive total net worth. The changes to this section seek to address this issue.

114(a) Restriction on Dividends

Current § 702.402(a) permits credit unions with a depleted undivided earnings balance to pay dividends out of the regular reserve account without regulatory approval, as long as the credit union will remain at least adequately capitalized. Under this proposal, § 702.114(a), however, only credit unions that have substantial net worth, but no undivided earnings, would be allowed to pay dividends without regulatory approval. Due to the removal of the regular reserve account, as discussed above, and to conform with GAAP, this proposal would amend the language to further clarify that dividends may be paid when there is sufficient net worth. Net worth may incorporate accounts in addition to undivided earnings. Accordingly, § 702.114(a) of this proposal would provide that dividends shall be available only from net worth, net of any special reserves established under § 702.112, if any.

114(b) Payment of Dividends and Interest Refunds

This proposed rule would eliminate the language in current § 702.403(b) and § 702.114(b) and (c) of the Original Proposal entirely and replace it with a new provision. Under this proposal, § 702.114(b) would provide that the board of directors must not pay a dividend or interest refund that will cause the credit union's capital classification to fall below adequately capitalized under subpart A of part 702 unless the appropriate regional director and, if state-chartered, the appropriate state official, have given prior written approval (in an NWRP or otherwise). Paragraph (b) would provide further that the request for written approval must include the plan for eliminating any negative retained earnings balance.

Historically, credit unions with a net worth ratio below adequately capitalized were restricted from making a dividend payment without regional director approval and, if state-chartered, approval of the appropriate state official. This proposed rule would not remove the existing regulatory requirement for credit unions to obtain prior approval from the regional director and, if state-chartered, the appropriate state official, to pay a dividend if the credit union's net worth classification is, or if the dividend payment will cause the credit union's net worth

[293] Pre-codification reference: Statement of Financial Accounting Standards No. 141(R), *Business Combinations.*

classification to fall below, adequately capitalized.

However, as addressed above, special circumstances can result in a credit union reporting a negative balance in retained earnings while reporting a much larger positive balance of acquired equity which produces a total positive GAAP equity position and a different amount of positive total net worth. The Board believes it is prudent for credit unions with negative retained earnings to develop a plan to eliminate that negative balance to ensure long-term viability and sustainability. As such, this proposal would require a credit union that must request written approval to pay dividends because the payment would cause its net worth classification to fall below adequately capitalized to also include a plan for eliminating the negative retained earnings balance as part of the written request. This will ensure credit unions that are classified below adequately capitalized and have negative retained earnings have in place a plan to increase retained earnings and thereby increase net worth.

B. Subpart B—Alternative Prompt Corrective Action for New Credit Unions

Consistent with the Original Proposal, this proposed rule would add new subpart B, which would contain most of the capital adequacy rules that apply to ''new'' credit unions. Section 216(b)(2) of the FCUA requires NCUA to prepare regulations that apply to new credit unions.[294]

The current net worth measures, net worth classification, and text of the PCA requirements applicable to new credit unions would be renumbered. They would remain mostly unchanged under the proposed rule, except for minor conforming changes and the following substantive amendments:

(1) Clarification of the language in current § 702.301(b) regarding the ability of credit unions to become ''new'' again due to a decrease in asset size after having exceed the $10 million threshold.

(2) Elimination of the regular reserve account requirement in current § 702.401(b) and all cross references to the requirement;

(3) Addition of new § 701.206(f)(3) clarifying that the submission of more than two revised business plans would be considered and unsafe and unsound condition; and

(4) Amendment of the language of current § 702.402 regarding the full and fair disclosure of financial condition.

(5) Amendment of the requirements of current § 702.403 regarding the payment of dividends.

Section 702.201 Scope

Consistent with the Original Proposal, this proposed rule would renumber current § 702.301 as proposed § 702.201. The proposed rule would also clarify that a credit union may not regain a designation of ''new'' after reporting total assets in excess of $10 million.

Section 216(b)(2)(B)(iii) of the FCUA defines a ''new'' credit union as one that has been in operation for 10 years or less, or has $10 million or less in total assets.[295] Section 216(b)(2)(B)(v) of the FCUA further requires that rules for new credit unions prevent evasion of the purpose of § 216, which provides new credit unions a period of time to accumulate net worth.[296] NCUA recently conducted a postmortem review of a credit union failure that caused a loss to the NCUSIF. The review revealed that the credit union intentionally reduced its total assets below $10 million to regain the designation as a ''new'' credit union under current part 702 and the associated lower net worth requirement. Shifting back and forth between the minimum capital requirement for ''new'' and all other credit unions resulted in slowed capital accumulation, which contributed to the loss incurred by the NCUSIF. Accordingly, consistent with the current rule, proposed § 702.201(b) would amend the definition of ''new'' credit union in current § 702.301(b) to provide that a ''new'' credit union for purposes of subpart B is a credit union that both has been in operation for less than 10 years and has total assets of not more than $10 million. In addition, consistent with section 216(b)(2) of the FCUA, proposed paragraph (b) would further provide that once a credit union reports total assets of more than $10 million on a Call Report, the credit union is no longer new, even if its assets subsequently decline below $10 million.

In general, credit unions attaining an asset size of $10 million begin to offer a greater range of services and loans, which increase the credit union's sophistication and risk to the NCUSIF. In the event a new credit union reports total assets of over $10 million and then subsequently declines to under $10 million, the additional PCA regulatory requirements under the proposed rule would not be substantially increased. Both new credit unions and non-new credit unions with net worth ratios of less than 6 percent, but over 2 percent, are required under either § 702.206 or § 702.111 of the proposal to operate under substantially similar plans to restore their net worth. For example, a new credit union with a net worth ratio of 5 percent is required to operate under a revised business plan, and a non-new credit union with a net worth ratio of 5 percent is required to operate under a NWRP. Accordingly, the Board believes any burden associated with the proposed change to the requirements of part 702 would be minimal.

Section 702.202 Net Worth Categories for New Credit Unions

Consistent with the Original Proposal, this proposed rule would renumber current § 702.302 as proposed § 702.202, and would make only minor technical edits and conforming amendments to the text of the section.

Section 702.203 Prompt Corrective Action for Adequately Capitalized New Credit Unions

Consistent with the Original Proposal, this proposed rule would renumber current § 702.303 as proposed § 702.203, and would make only minor conforming amendments to the text of the section. Consistent with the proposed elimination of the regular reserve requirement in current § 702.401(b), proposed § 702.203 would also be amended to remove the requirement that adequately capitalized credit unions transfer the earnings retention amount from undivided earnings to their regular reserve account.

Section 702.204 Prompt Corrective Action for Moderately Capitalized, Marginally Capitalized or Minimally Capitalized New Credit Unions

Consistent with the Original Proposal, this proposed rule would renumber current § 702.304 as proposed § 702.204, and would make only minor conforming amendments to the text of the section. Consistent with the proposed elimination of the regular reserve requirement in current § 702.401(b), which is discussed in more detail below, proposed § 702.204(a)(1) would be amended to remove the requirement that such credit unions transfer the earnings retention amount from undivided earnings to their regular reserve account.

Section 702.205 Prompt Corrective Action for Uncapitalized New Credit Unions

Consistent with the Original Proposal, this proposed rule would renumber current § 702.305 as proposed § 702.205,

[294] 12 U.S.C. 1790d(b)(2).

[295] 12 U.S.C. 1790d(b)(2)(B)(iii).

[296] 12 U.S.C. 1790d(b)(2)(B)(v).

and would make only minor conforming amendments to the text of the section.

Section 702.206 Revised Business Plans (RBP) for New Credit Unions

Consistent with the Original Proposal, this proposed rule would renumber current § 702.306 as proposed § 702.206, would make mostly minor conforming amendments to the text of the section, and would add new § 702.206(g)(3). Consistent with the proposed elimination of the regular reserve requirement in current § 702.401(b), which is discussed in more detail below, proposed § 702.206(b)(3) would be amended to remove the requirement that new credit unions transfer the earnings retention amount from undivided earnings to their regular reserve account.

206(g)(3) Submission of Multiple Unapproved Revised Business Plans

Consistent with the Original Proposal, proposed § 702.206(g)(3) would provide that the submission of more than two RBPs that were not approved is considered an unsafe and unsound condition and may subject the credit union to administrative enforcement actions under section 206 of the FCUA.[297] NCUA regional directors have expressed concerns that some credit unions have in the past submitted multiple RBPs that could not be approved due to non-compliance with the requirements of the current rule, resulting in delayed implementation of actions to improve the credit union's net worth. The proposed amendment is intended clarify that submitting multiple RBPs that are rejected by NCUA, or the state official, because of the failure of the credit union to produce an acceptable RBP is an unsafe and unsound practice and may subject the credit union to further actions as permitted under the FCUA.

Section 702.207 Incentives for New Credit Unions

Consistent with the Original Proposal, this proposed rule would renumber current § 702.307 as proposed § 702.207, and would make only minor conforming amendments to the text of the section.

Section 702.208 Reserves

Consistent with the Original Proposal, this proposed rule would add new § 702.208 regarding reserves for new credit unions to the rule and, consistent with the text of the current reserve requirement in § 702.401(a), would require that each new credit union establish and maintain such reserves as may be required by the FCUA, by state law, by regulation, or in special cases, by the Board or appropriate state official.

As explained under § 702.112, the proposed rule would eliminate the regular reserve account under current § 702.402(b) from the earnings retention requirement. Additionally, the process and substance of requesting permission for charges to the regular reserve would be eliminated upon the effective date of a final rule. Upon the effective date of a final rule, a federal credit union would close out the regular reserve balance into undivided earnings. A federally insured, state-chartered credit union would still be required to maintain a regular reserve account as per state law or its state supervisory authority.

Section 702.209 Full and Fair Disclosure of Financial Condition

Generally consistent with the Original Proposal, this proposed rule would renumber current § 702.402 as § 702.209 and would make only minor conforming amendments to the text of this section with the exception of the changes to paragraph (d) that are discussed in more detail below.

209(d) Charges for Loan and Lease Losses

Consistent with the proposed elimination of the regular reserve requirement in current § 702.401(b), proposed § 702.209(d) would remove paragraph (d)(4) of the current rule, which provides that the maintenance of an ALLL shall not affect the requirement to transfer earnings to a credit union's regular reserve when required under subparts B or C of part 702. In addition, this proposed rule would remove paragraph (d)(3) of the current rule, which provides that adjustments to the valuation ALLL will be recorded in the expense account ''Provision for Loan and Lease Losses.'' As discussed in § 702.113, the changes in the section emphasize the need to record the ALLL in accordance with GAAP.

The remaining provisions in paragraph (d) of the current rule would be amended as follows:

(d)(1)

Proposed § 702.209(d)(1) would amend current § 702.401(d)(1) to provide that charges for loan *and lease* losses shall be made *timely and* in accordance with GAAP. The proposal would add the italicized words ''and lease'' and ''timely and'' to the language in the current rule to clarify that the requirement also applies to lease losses and to require that credit unions make charges for loan and lease losses in a timely manner. As with the section above, this section was changed to clarify that charges for potential lease losses should be recorded in accordance with GAAP through the same allowance account as loan losses. In addition, timely recording is critical to maintain full and fair disclosure as required under this section.

(d)(2)

Proposed § 702.209(d)(2) would amend current § 702.401(d)(2) to eliminate the detailed requirement and simply provide that the ALLL must be maintained in accordance with GAAP.

This is necessary to provide full and fair disclosure to a credit union member, NCUA, or, at the discretion of a credit union's board of directors, to creditors to fairly inform them of the credit union's financial condition and operations.

(d)(3)

Proposed § 702.209(d)(3) would retain the language in current § 702.401(d)(5) with no changes.

Section 702.210 Payment of Dividends

Generally consistent with the Original Proposal, this proposed rule would reorganize the rules regarding the payment of dividends contained in the current § 702.403, which also apply to new credit unions, to new § 702.210 of the proposed rule. The proposed rule also would make a number of amendments to the text of paragraphs (a) and (b) of the current rule. Each of these changes is discussed in more detail below.

210(a) Restriction on Dividends

Current § 702.402(a) permits small credit unions with a depleted undivided earnings balance to pay dividends out of the regular reserve account without regulatory approval, as long as the credit union will remain at least adequately capitalized. Proposed § 702.210(a), however, would provide that, for small credit unions, dividends shall be available only from net worth, net of any special reserves established under § 702.208, if any.

210(b) Payment of dividends if retained earnings depleted

This proposed rule would eliminate the language in current § 702.403(b) and § 702.210(b) and (c) of the Original Proposal entirely and replace it with a new provision. Under this proposal, § 702.210 would provide that the board of directors must not pay a dividend or interest refund that will cause the credit union's capital classification to fall below adequately capitalized under

[297] 12 U.S.C. 1786 and 1790d.

subpart B of part 702 unless the appropriate regional director and, if state-chartered, the appropriate state official, have given prior written approval (in an RBP or otherwise). Paragraph (b) would provide further that the request for written approval must include the plan for eliminating any negative retained earnings balance.

As noted earlier in the section of this preamble associated with § 702.114(b), the changes in this section would retain the restrictions on payment of dividends included in the current rule. However, this proposal would require a credit union that must request written approval to pay dividends because the payment would cause its net worth classification to fall below adequately capitalized to also include a plan for eliminating the negative retained earnings balance as part of the written request. This will ensure credit unions that are classified below adequately capitalized and have negative retained earnings to have in place a plan to increase retained earnings and thereby increase net worth.

C. Other Conforming Changes to the Regulations

In addition to the amendments discussed above, and consistent with the Original Proposal, this proposed rule would make minor conforming amendments to §§ 700.2, 701.21, 701.23, 701.34, 703.14, 713.6, 723.7, 747.2001, 747.2002, and 747.2003. The conforming amendments would primarily involve updating terminology and cross citations to proposed part 702 and proposed § 747.2006. No substantive changes are intended by these amendments.

V. Effective Date

How much time would credit unions have to implement these new requirements?

The Original Proposal included an effective date of 18 months from the date of publication of a final rule. An overwhelming majority of commenters addressed this provision and nearly all disagreed with an 18-month effective date. They argued that 18 months would be insufficient to allow credit unions to make adjustments to internal systems, balance sheets, and operations in advance of the effective date.

Some commenters cited the phased-in implementation period that the Other Banking Agencies' rules provided in their final rules on risk-based capital for banks, and requested that the Board consider the same. Other commenters suggested implementation time frames from three years to nine years, with some suggesting each credit union have its own implementation period based on the complexity of its operations. The majority position, however, was that the effective date be three years from the date of publication of a final rule.

The Board agrees with the comments that a longer implementation period is necessary. Therefore, the Board is proposing an implementation date of January 1, 2019 to provide both credit unions and NCUA sufficient time to make the necessary adjustments, such as systems, processes, and procedures, and to reduce the burden on affected credit unions in meeting the new requirements.

In response to commenters who asked the Board to phase in the implementation, the Board has concluded that phasing in the new capital rules for credit unions would add additional complexity with minimal benefit, and therefore has provided for an extended implementation period. The Board believes this increase would provide credit unions with sufficient time to make the necessary adjustments to systems and operations before the effective date of this final rule. In addition, as noted above, an extended effective date would generally coincide with the full phase-in of FDIC's.

VI. Impact of the Proposed Regulation

A substantial number of commenters on the Original Proposal suggested NCUA underestimated the adverse effect the proposal would have had on credit unions. A number of commenters stated that they believed that more credit unions than the Board indicated in the proposal would be impacted because their net worth would fall to just barely over well capitalized or adequately capitalized levels. The Board has considered the concerns that were raised by commenters and has made substantial modifications in this proposal, as summarized above, to refine the scope and improve the targeting of the proposed risk-based capital requirements. These changes would reduce the number of affected credit unions substantially.

This proposal would apply to credit unions with $100 million or greater in total assets. As of December 31, 2013, there were 1,455 credit unions (21.5 percent of all credit unions) with assets of $100 million or greater. This proposal would therefore exempt almost 80 percent of all credit unions.[298] The Board notes that the risk-based capital requirements in this proposed rule would apply *only* to credit unions with assets of $100 million or more, compared to the Other Banking Agencies' rules that apply to banks of all sizes.[299]

Based on December 2013 Call Report data, NCUA estimates over 98 percent of credit unions with over $100 million in assets already have sufficient capital to remain well capitalized under this proposal.[300] NCUA estimates this proposal (based on December 2013 data) would cause fewer than 20 credit unions (with total assets of $10.9 billion) to experience a decline in their capital classification from well capitalized to adequately capitalized.[301] NCUA estimates that these credit unions would need to retain an additional $53.6 million in eligible capital in total to be well capitalized, assuming no adjustments to asset distributions.[302]

Based on December 2013 Call Report data, NCUA estimates that if the risk-based capital requirements in the current proposal were applied today, the proposed risk weights would result in a ratio of total risk-weighted assets (in the aggregate) to total assets of 57.4 percent. Further, the aggregate average risk-based capital ratio would be 18.2 percent with an average risk-based capital ratio of 19.3 percent.[303] As

[298] The Original Proposal applied to credit unions with total assets of more than $50 million. At the time, 2,237 credit unions had total assets greater than $50 million. Thus, the original proposal would have exempted over two-thirds of all credit unions. For those credit unions that would have been subject to the Original Proposal, over 90 percent would have remained well capitalized.

[299] There are 1,975 FDIC-insured banks with assets less than $100 million as of June 2014.

[300] Of the 1,455 impacted credit unions, only 27, or 1.86%, would have less than the 10 percent risk-based capital requirement to be well capitalized. Of these, eight have net worth ratios less than seven percent and therefore are already categorized as less than well capitalized.

[301] One credit union declines to undercapitalized in the estimate. However, given the proposal's provision to phase in supervisory goodwill over a longer period, which the estimation methodology could not separate out from total goodwill, this credit union's capital category would not actually decline.

[302] NCUA estimated the original proposal (based on June 2013 data) would cause 189 credit unions to experience a decline in their PCA classification from well capitalized to adequately capitalized, and 10 well capitalized credit unions to experience a decline to undercapitalized. Assuming no other adjustments to the balance sheet structure, NCUA estimated that the 10 credit unions that would experience a decline to undercapitalized would have needed to retain an additional $63 million (total) in risk-based capital to become adequately capitalized; the 189 credit unions would have needed to add roughly $700 million in capital to be restored to well capitalized.

[303] Based on June 2013 Call Report data, NCUA estimated that if risk-based capital requirements in the original Proposal were applied at that time, the aggregate risk-based capital ratio for credit unions subject to the proposed risk-based capital measure would be 14.6 percent and the average risk-based capital ratio would be 15.7 percent. By way of

shown in the two tables below, almost all complex credit unions would operate well above the proposed 10 percent requirement for classification as well capitalized.

DISTRIBUTION OF PROPOSED RISK BASED CAPITAL RATIO

Proposed RBC Ratio	<10%	10–13%	13–16%	16–20%	20–30%	30–50%	>50%
# of CUs	27	169	365	408	382	86	18

DISTRIBUTION OF NET WORTH RATIO AND PROPOSED RISK BASED CAPITAL RATIO

# of CUs	Less than well capitalized	Well capitalized to well + 2%	Well capitalized + 2% to + 3.5%	Well capitalized + 3.5% to + 5%	Greater than well capitalized + 5%
Net Worth Ratio	16	339	430	332	338
Proposed RBC Ratio	27	99	118	181	1,030

Various commenters suggested that as many as 1,000 credit unions would have been required to raise anywhere from $2 billion to $7 billion in additional capital under the original proposal to retain the same ''buffers'' that exist today to be considered well capitalized. Commenters stated that credit unions cannot easily manage their capital to the exact dollar level that equates to NCUA's proposed standards, and that the management of credit unions typically strives to maintain sufficient space or buffers between their actual net worth ratios and the minimum required levels to be well capitalized because the consequences of missing the net worth standards would be very serious. Commenters stated that to regain their buffer, credit unions would only have three choices: (1) Rebalance their assets, recognizing an opportunity cost when they forego higher earnings which would diminish their ability to grow; (2) ration services, stifling asset and membership growth; or (3) ask members to pay more, resulting in fewer member benefits and increased competition from banks.

The Board believes sound capital levels are vital to the long-term health of all financial institutions. Further, provided it is not otherwise unsafe or unsound, it is a business decision on the part of a credit union to maintain capital levels above those required by regulation. Balancing proper capital accumulation with product offering and pricing strategies helps ensure credit unions are able to provide affordable member services over time. Credit unions are already expected to incorporate into their business models and strategic plans provisions for maintaining prudent levels of capital.

This proposal is intended to ensure minimum regulatory capital levels are better correlated to risk. Regulatory capital levels correlated to risk help reduce the incentive for credit unions to hold levels of capital significantly higher than required, unless it is the credit union's choice to do so to meet member service and strategic objectives. The Board does recognize that unduly high minimum regulatory capital requirements could lead to less than optimal outcomes.

Some commenters suggested that for some credit unions the Original Proposal would have increased the amount of capital required to be well-capitalized above the current level of seven percent of total assets depending on the ratio of risk assets to total assets. The commenter claimed that on net, across all potentially affected credit unions (those with more than $40 million in assets), the total amount of capital necessary to be well capitalized would increase by $7.6 billion, or in other words, that the proposal would have increased the net worth ratio required to be well capitalized, on average, from seven percent to 7.76 percent. It is not the Board's intent to systematically increase capital requirements for all credit unions. Rather, the Board's goals are to ensure capital is commensurate with risk, thereby aligning incentives for managing risk with required capital levels, and to increase regulatory tools for addressing outliers. The Board believes this proposal will be effective in achieving these goals.

As shown in the table below, this proposal is estimated to raise minimum required capital levels above the current net worth ratio requirement for only 59 complex credit unions (four percent of the credit unions subject to the proposal). The proposed risk-based capital rule achieves a reasonable balance between requiring credit unions posing an elevated risk of failure to hold more capital while not over burdening lower-risk credit unions.

DISTRIBUTION OF RISK-BASED LEVERAGE EQUIVALENT RATIO [304]

Proposed RBC ratio—leverage equivalent	< 6%	6–7.5%	7.5–8.5%	8.5–9.5%	9.5–11%	> 11%	Average
# of CUs	878	518	42	11	6	0	5.74%

comparison, the bank aggregate total risk-weighted assets to total assets is 67.8 percent, with an average total risk-based capital ratio of 18.4 percent.

[304] This computation calculates the amount of capital required by multiplying the proposed risk weighted assets by 10 percent (the level to be well capitalized), and then dividing this result by total assets. This provides a measure comparable to the net worth ratio. Since the risk-based capital provisions provide for a broader definition of capital included in the risk-based capital ratio numerator, which on average benefits credit unions by approximately 50 basis points, the appropriate comparison point for the leverage equivalent is 7.5 percent, not the 7 percent level for well capitalized for the net worth ratio.

Unlike the Original Proposal, which was more closely tied to existing Call Report data, there are greater limitations in estimating the impact of this second proposal. Some of the key differences between the Original Proposal and the current proposal include: Assigning a risk weight to loans secured by non-owner-occupied residential property (First-Lien, 1–4 Family) of 50 percent rather than 100 percent; assigning a risk weight to insured and Federal Reserve deposits of zero percent; and assigning a risk weight to all loans with government guarantees or portions of commercial loans with compensating balances on deposit of 20 percent. These differences, among others, would benefit credit unions, as the lower risk-weights would result in lower capital requirements than those measured under the Original Proposal. Thus, NCUA reasonably believes, based on its estimates using the Call Report data currently available, that this second proposal would have a lower impact than the Original Proposal. Further, these estimates are believed to be conservative, with the expected benefit to credit unions likely being larger than projected, potentially resulting in even fewer adversely impacted credit unions than estimated.

As noted earlier, concentration risk is a material risk that NCUA addresses in this proposed rule. Based on December 31, 2013 Call Report data, if this proposal were applied today, NCUA estimates that this additional capital requirement for concentration risk would have the following impact:

Concentration threshold	Number of credit unions with total assets greater than $100 million as of 12/31/2013	Percentage of 1,455 credit unions with total assets greater than $100 million
First Lien Residential Real Estate (≤ 35% of Total Assets)	149	10.2%
Junior Lien Residential Real Estate (≤ 20% of Total Assets)	67	4.6%
Commercial Loans (Used MBLs as a proxy)[305] > 50% of Total Assets)	12	0.8%

VII. Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires that, in connection with a notice of proposed rulemaking, an agency prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of a proposed rule on small entities. A regulatory flexibility analysis is not required, however, if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities (defined for purposes of the RFA to include credit unions with assets less than $50 million) and publishes its certification and a short, explanatory statement in the **Federal Register** together with the rule.

The proposed amendments to part 702 would primarily affect complex credit unions, which are those with $100 million or more in assets. As a result, small credit unions with assets less than $50 million are much less affected by the proposed rule. NCUA recognizes, however, that even small credit unions will be affected by the proposed amendments to some minor extent in that credit unions may need to collect additional data for the NCUA Call Report.

In particular, the proposed rule, if finalized as-is, would likely impose some one-time minimal costs on credit unions mostly related to training and updates to internal data systems. NCUA estimates that for any small credit union that does have to change its current practices to deal with the expanded reporting required, it would take, on average, less than an additional three hours per quarter per credit union. For many small credit unions, it would take even less time because they would not need to collect as much data because of the simplicity of their operations and products and services offered. The costs associated with this would also be minimal. The Call Report changes prompted by this proposed rule are the kind that would easily be handled as part of the normal and routine maintenance of a credit union's data reporting system. Accordingly, the costs and other effects of this proposal on small credit unions are minor, and NCUA certifies that this proposal will not have a significant economic impact on a substantial number of small credit unions.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) applies to rulemakings in which an agency by rule creates a new paperwork burden on regulated entities or increases an existing burden.[306] For purposes of the PRA, a paperwork burden may take the form of a reporting, disclosure or recordkeeping requirement, each referred to as an information collection. The proposed changes to part 702 impose new information collection requirements.

NCUA has determined that the proposed changes to part 702 will have costs associated with updating internal policies, and updating data collection and reporting systems for preparing Call Reports. Based on December 2013 Call Report data, NCUA estimates that all 6,554 credit unions would have to amend their procedures and systems for preparing Call Reports. NCUA will address the costs and provide notice of these changes in other collections, such as the NCUA Call Report and Profile as part of its regular amendments separate from this proposed rule.

Finally, NCUA estimates that approximately 21.5 percent, or 1,455 credit unions, will be defined as ''complex'' under the proposed rule and would have additional data collection requirements related to the new risk-based capital requirements.

Title of Information Collection: Risk-Based Capital policy implications for complex credit unions
Affected Public: Complex Credit Unions
Estimated Number of Respondents: 1,455
Estimated Burden Per Respondent: One-time policy review and revision, 40 hours
Estimated Cost Per Respondent: $1,276
Title of Information Collection: Risk-Based Capital policy implications for non-complex credit unions
Affected Public: Non-Complex Credit Unions
Estimated Number of Respondents: 5,099
Estimated Burden Per Respondent: One-time policy review and revision, 20 hours
Estimated Cost Per Respondent: $638
Total Estimated One-Time:

One-time burden for policy review and revision, (20 hours times 5,099 credit unions (non-complex), or 40 hours times 1,455 credit unions (complex)). The total one-time cost for non-complex credit unions totals 101,980 hours or $3,252,142, an average

[305] Using MBL data as the current Call Report does not capture commercial loan data as defined in this proposal.

[306] 44 U.S.C. 3507(d); 5 CFR part 1320.

of $638 per credit union. The total one-time cost for complex credit unions totals 58,200 hours or $1,855,998, an average of $1,276 per credit union.

Submission of comments. NCUA considers comments by the public on this proposed collection of information in:

Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of NCUA, including whether the information will have a practical use;

Evaluating the accuracy of NCUA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

Enhancing the quality, usefulness, and clarity of the information to be collected; and

Minimizing the burden of 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.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the principles of the executive order to adhere to fundamental federalism principles. This proposed rule will apply to all federally insured natural-person credit unions, including federally insured, state-chartered natural-person credit unions. Accordingly, it may have, to some degree, a 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. The Board believes this impact is minor, and it is an unavoidable consequence of carrying out the statutory mandate to adopt a system of PCA to apply to all federally insured, natural person credit unions. Throughout the rulemaking process, NCUA has consulted with representatives of state regulators regarding the impact of PCA on state-chartered credit unions. Comments and suggestions of those state regulators are reflected in this proposed rule.

Assessment of Federal Regulations and Policies on Families

NCUA has determined that this proposed rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Public Law 105–277, 112 Stat. 2681 (1998).

List of Subjects

12 CFR Part 700

Credit unions.

12 CFR Part 701

Credit, Credit unions, Insurance, Reporting and recordkeeping requirements.

12 CFR Part 702

Credit unions, Reporting and recordkeeping requirements.

12 CFR Part 703

Credit unions, Investments, Reporting and recordkeeping requirements.

12 CFR Part 713

Bonds, Credit unions, Insurance.

12 CFR Part 723

Credit unions, Loan programs-business, Reporting and recordkeeping requirements.

12 CFR Part 747

Administrative practice and procedure, Bank deposit insurance, Claims, Credit unions, Crime, Equal access to justice, Investigations, Lawyers, Penalties.

By the National Credit Union Administration Board on January 15, 2015.

Gerard Poliquin,

Secretary of the Board.

For the reasons discussed above, the Board proposes to amend 12 CFR parts 700, 701, 702, 703, 713, 723, and 747 as follows:

PART 700—DEFINITIONS

■ 1. The authority citation for part 700 continues to read as follows:

Authority: 12 U.S.C. 1752, 1757(6), 1766.

§ 700.2 [Amended]

■ 2. Amend the definition of ''net worth'' in § 700.2 by removing ''§ 702.2(f)'' and adding in its place ''§ 702.2''.

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

■ 3. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1758, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1786, 1787, 1789. Section 701.6 is also authorized by 15 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 *et seq.;* 42 U.S.C. 1981 and 3601–3610. Section 701.35 is also authorized by 42 U.S.C. 4311–4312.

§ 701.21 [Amended]

■ 4. Amend § 701.21(h)(4)(iv) by removing ''§ 702.2(f)'' and adding in its place ''§ 702.2''.

§ 701.23 [Amended]

■ 5. Amend § 701.23(b)(2) introductory text by removing the words ''net worth'' and adding in their place the word ''capital'', and removing the words ''or, if subject to a risk-based net worth (RBNW) requirement under part 702 of this chapter, has remained ''well capitalized'' for the six (6) immediately preceding quarters after applying the applicable RBNW requirement''.

§ 701.34 [Amended]

■ 5. Amend § 701.34 as follows:

■ a. In paragraph (b)(12) remove the words ''§§ 702.204(b)(11), 702.304(b) and 702.305(b)'' and add in their place the words ''part 702''.

■ b. In paragraph (d)(1)(i) remove the words ''net worth'' and add in their place the word ''capital''.

Appendix to § 701.34 [Amended]

■ 6. In the appendix to § 701.34, amend the paragraph beginning ''8. Prompt Corrective Action'' by removing the words ''net worth classifications (*see* 12 CFR 702.204(b)(11), 702.304(b) and 702.305(b), as the case may be)'' and adding in their place the words ''capital classifications (*see* 12 CFR part 702)''.

PART 702—CAPITAL ADEQUACY

■ 7. The authority citation for part 702 continues to read as follows:

Authority: 12 U.S.C. 1766(a), 1790d.

■ 8. Revise § 702.1 to read as follows:

§ 702.1 Authority, purpose, scope, and other supervisory authority.

(a) *Authority.* Subparts A and B of this part and subpart L of part 747 of this chapter are issued by the National Credit Union Administration (NCUA) pursuant to sections 120 and 216 of the Federal Credit Union Act (FCUA), 12 U.S.C. 1776 and 1790d (section 1790d), as revised by section 301 of the Credit Union Membership Access Act, Public Law 105–219, 112 Stat. 913 (1998).

(b) *Purpose.* The express purpose of prompt corrective action under section 1790d is to resolve the problems of federally insured credit unions at the least possible long-term loss to the National Credit Union Share Insurance Fund. Subparts A and B of this part carry out the purpose of prompt corrective action by establishing a framework of minimum capital

requirements, and mandatory and discretionary supervisory actions applicable according to a credit union's capital classification, designed primarily to restore and improve the capital adequacy of federally insured credit unions.

(c) *Scope.* Subparts A and B of this part implement the provisions of section 1790d as they apply to federally insured credit unions, whether federally- or state-chartered; to such credit unions defined as ''new'' pursuant to section 1790d(b)(2); and to such credit unions defined as ''complex'' pursuant to section 1790d(d). Certain of these provisions also apply to officers and directors of federally insured credit unions. Subpart C applies capital planning and stress testing to credit unions with $10 billion or more in total assets. This part does not apply to corporate credit unions. Unless otherwise provided, procedures for issuing, reviewing and enforcing orders and directives issued under this part are set forth in subpart L of part 747 of this chapter.

(d) *Other supervisory authority.* Neither section 1790d nor this part in any way limits the authority of the NCUA Board or appropriate state official under any other provision of law to take additional supervisory actions to address unsafe or unsound practices or conditions, or violations of applicable law or regulations. Action taken under this part may be taken independently of, in conjunction with, or in addition to any other enforcement action available to the NCUA Board or appropriate state official, including issuance of cease and desist orders, orders of prohibition, suspension and removal, or assessment of civil money penalties, or any other actions authorized by law.

■ 9. Revise § 702.2 to read as follows:

§ 702.2 Definitions.

Unless otherwise provided in this part, the terms used in this part have the same meanings as set forth in FCUA sections 101 and 216, 12 U.S.C. 1752, 1790d. The following definitions apply to this part:

Allowances for loan and lease losses (ALLL) means valuation allowances that have been established through a charge against earnings to cover estimated credit losses on loans, lease financing receivables or other extensions of credit as determined in accordance with GAAP.

Amortized cost means the purchase price of a security adjusted for amortizations of premium or accretion of discount if the security was purchased at other than par or face value.

Appropriate state official means the state commission, board or other supervisory authority having jurisdiction over the credit union.

Call Report means the Call Report required to be filed by all credit unions under § 741.6(a)(2) of this chapter.

Carrying value means, with respect to an asset, the value of the asset on the statement of financial condition of the credit union, determined in accordance with GAAP.

Central counterparty (CCP) means a counterparty (for example, a clearing house) that facilitates trades between counterparties in one or more financial markets by either guaranteeing trades or novating contracts.

Commercial loan means any loan, line of credit, or letter of credit (including any unfunded commitments) to individuals, sole proprietorships, partnerships, corporations, or other business enterprises for commercial, industrial, and professional purposes, but not for investment or personal expenditure purposes. Commercial loan excludes loans to CUSOs, first- or junior-lien residential real estate loans, and consumer loans.

Commitment means any legally binding arrangement that obligates the credit union to extend credit, to purchase or sell assets, or enter into a financial transaction.

Consumer loan means a loan to one or more individuals for household, family, or other personal expenditures, including any loans secured by vehicles generally manufactured for personal, family, or household use regardless of the purpose of the loan. Consumer loan excludes commercial loans, loans to CUSOs, first- and junior-lien residential real estate loans, and loans for the purchase of fleet vehicles.

Contractual compensating balance means the funds a commercial loan borrower must maintain on deposit at the lender credit union as security for the loan in accordance with the loan agreement, subject to a proper account hold and on deposit as of the measurement date.

Credit conversion factor (CCF) means the percentage used to assign a credit exposure equivalent amount for selected off-balance sheet accounts.

Credit union means a federally insured, natural person credit union, whether federally- or state-chartered.

Current means, with respect to any loan, that the loan is less than 90 days past due, not placed on non-accrual status, and not restructured.

CUSO means a credit union service organization as defined in part 712 and 741 of this chapter.

Custodian means a financial institution that has legal custody of collateral as part of a qualifying master netting agreement, clearing agreement, or other financial agreement.

Depository institution means a financial institution that engages in the business of providing financial services; that is recognized as a bank or a credit union by the supervisory or monetary authorities of the country of its incorporation and the country of its principal banking operations; that receives deposits to a substantial extent in the regular course of business; and that has the power to accept demand deposits. Depository institution includes all federally insured offices of commercial banks, mutual and stock savings banks, savings or building and loan associations (stock and mutual), cooperative banks, credit unions and international banking facilities of domestic depository institutions, and all privately insured state chartered credit unions.

Derivatives Clearing Organization (DCO) means the same as defined by the Commodity Futures Trading Commission in 17 CFR 1.3(d).

Derivative contract means a financial contract whose value is derived from the values of one or more underlying assets, reference rates, or indices of asset values or reference rates. Derivative contracts include interest rate derivative contracts, exchange rate derivative contracts, equity derivative contracts, commodity derivative contracts, and credit derivative contracts. Derivative contracts also include unsettled securities, commodities, and foreign exchange transactions with a contractual settlement or delivery lag that is longer than the lesser of the market standard for the particular instrument.

Equity investment means investments in equity securities and any other ownership interests, including, for example, investments in partnerships and limited liability companies.

Equity investment in CUSOs means the unimpaired value of the credit union's equity investments in a CUSO as recorded on the statement of financial condition in accordance with GAAP.

Exchange means a central financial clearing market where end users can trade derivatives.

Excluded goodwill means the outstanding balance, maintained in accordance with GAAP, of any goodwill originating from a supervisory merger or combination that was completed no more than 29 days after publication of this rule in final form in the **Federal Register**. This term and definition will expire on January 1, 2025.

Excluded other intangible assets means the outstanding balance, maintained in accordance with GAAP, of any other intangible assets such as core deposit intangible, member relationship intangible, or trade name intangible originating from a supervisory merger or combination that was completed no more than 29 days after publication of this rule in final form in the **Federal Register**. This term and definition will expire on January 1, 2025.

Exposure amount means:

(1) The amortized cost for investments classified as held-to-maturity and available-for-sale, and the fair value for trading securities.

(2) The outstanding balance for Federal Reserve Bank Stock, Central Liquidity Facility Stock, Federal Home Loan Bank Stock, nonperpetual capital and perpetual contributed capital at corporate credit unions, and equity investments in CUSOs.

(3) The carrying value for non-CUSO equity investments, and investment funds.

(4) The carrying value for the credit union's holdings of general account permanent insurance, and separate account insurance.

(5) The amount calculated under § 702.105 of this part for derivative contracts.

Fair value has the same meaning as provided in GAAP.

Financial collateral means collateral approved by both the credit union and the counterparty as part of the collateral agreement in recognition of credit risk mitigation for derivative contracts.

First-lien residential real estate loan means a loan or line of credit primarily secured by a first-lien on a one-to-four family residential property where:

(1) The credit union made a reasonable and good faith determination at or before consummation of the loan that the member will have a reasonable ability to repay the loan according to its terms; and

(2) In transactions where the credit union holds the first-lien and junior lien(s), and no other party holds an intervening lien, for purposes of this part the combined balance will be treated as a single first-lien residential real estate loan.

GAAP means generally accepted accounting principles in the United States as set forth in the Financial Accounting Standards Board's (FASB) Accounting Standards Codification (ASC).

General account permanent insurance means an account into which all premiums, except those designated for separate accounts are deposited, including premiums for life insurance and fixed annuities and the fixed portfolio of variable annuities, whereby the general assets of the insurance company support the policy.

General obligation means a bond or similar obligation that is backed by the full faith and credit of a public sector entity.

Goodwill means an intangible asset, maintained in accordance with GAAP, representing the future economic benefits arising from other assets acquired in a business combination (*e.g.,* merger) that are not individually identified and separately recognized. Goodwill does not include excluded goodwill.

Government guarantee means a guarantee provided by the U.S. Government, FDIC, NCUA or other U.S. Government agency, or a public sector entity.

Government-sponsored enterprise (GSE) means an entity established or chartered by the U.S. Government to serve public purposes specified by the U.S. Congress, but whose debt obligations are not explicitly guaranteed by the full faith and credit of the U.S. Government.

Guarantee means a financial guarantee, letter of credit, insurance, or similar financial instrument that allows one party to transfer the credit risk of one or more specific exposures to another party.

Identified losses means those items that have been determined by an evaluation made by NCUA, or in the case of a state chartered credit union the appropriate state official, as measured on the date of examination in accordance with GAAP, to be chargeable against income, equity or valuation allowances such as the allowances for loan and lease losses. Examples of identified losses would be assets classified as losses, off-balance sheet items classified as losses, any provision expenses that are necessary to replenish valuation allowances to an adequate level, liabilities not shown on the books, estimated losses in contingent liabilities, and differences in accounts that represent shortages.

Industrial development bond means a security issued under the auspices of a state or other political subdivision for the benefit of a private party or enterprise where that party or enterprise, rather than the government entity, is obligated to pay the principal and interest on the obligation.

Intangible assets mean assets, maintained in accordance with GAAP, other than financial assets, that lack physical substance.

Investment fund means an investment with a pool of underlying investment assets. Investment fund includes an investment company that is registered under section 8 of the Investment Company Act of 1940, and collective investment funds or common trust investments that are unregistered investment products that pool fiduciary client assets to invest in a diversified pool of investments.

Junior-lien residential real estate loan means a loan or line of credit secured by a subordinate lien on a one-to-four family residential property.

Loan to a CUSO means the outstanding balance of any loan from a credit union to a CUSO as recorded on the statement of financial condition in accordance with GAAP.

Loan secured by real estate means a loan that, at origination, is secured wholly or substantially by a lien(s) on real property for which the lien(s) is central to the extension of the credit. A lien is ''central'' to the extension of credit if the borrowers would not have been extended credit in the same amount or on terms as favorable without the liens on real property. For a loan to be ''secured wholly or substantially by a lien(s) on real property,'' the estimated value of the real estate collateral at origination (after deducting any more senior liens held by others) must be greater than 50 percent of the principal amount of the loan at origination.

Loans transferred with limited recourse means the total principal balance outstanding of loans transferred, including participations, for which the transfer qualified for true sale accounting treatment under GAAP, and for which the transferor credit union retained some limited recourse (*i.e.,* insufficient recourse to preclude true sale accounting treatment). Loans transferred with limited recourse excludes transfers that qualify for true sale accounting treatment but contain only routine representation and warranty clauses that are standard for sales on the secondary market, provided the credit union is in compliance with all other related requirements, such as capital requirements.

Mortgage-backed security (MBS) means a security backed by first- or junior-lien mortgages secured by real estate upon which is located a dwelling, mixed residential and commercial structure, residential manufactured home, or commercial structure.

Mortgage partnership finance program means a Federal Home Loan Bank program through which loans are originated by a depository institution that are purchased or funded by the Federal Home Loan Banks, where the

depository institutions receive fees for managing the credit risk of the loans and servicing them. The credit risk must be shared between the depository institutions and the Federal Home Loan Banks.

Mortgage servicing assets mean those assets, maintained in accordance with GAAP, resulting from contracts to service loans secured by real estate (that have been securitized or owned by others) for which the benefits of servicing are expected to more than adequately compensate the servicer for performing the servicing.

NCUSIF means the National Credit Union Share Insurance Fund as defined by 12 U.S.C. 1783.

Net worth means:

(1) The retained earnings balance of the credit union at quarter-end as determined under GAAP, subject to paragraph (3) of this definition.

(2) For a low income-designated credit union, net worth also includes secondary capital accounts that are uninsured and subordinate to all other claims, including claims of creditors, shareholders, and the NCUSIF.

(3) For a credit union that acquires another credit union in a mutual combination, net worth also includes the retained earnings of the acquired credit union, or of an integrated set of activities and assets, less any bargain purchase gain recognized in either case to the extent the difference between the two is greater than zero. The acquired retained earnings must be determined at the point of acquisition under GAAP. A mutual combination, including a supervisory combination, is a transaction in which a credit union acquires another credit union or acquires an integrated set of activities and assets that is capable of being conducted and managed as a credit union.

(4) The term ''net worth'' also includes loans to and accounts in an insured credit union, established pursuant to section 208 of the Act [12 U.S.C. 1788], provided such loans and accounts:

(i) Have a remaining maturity of more than 5 years;

(ii) Are subordinate to all other claims including those of shareholders, creditors, and the NCUSIF;

(iii) Are not pledged as security on a loan to, or other obligation of, any party;

(iv) Are not insured by the NCUSIF;

(v) Have non-cumulative dividends;

(vi) Are transferable; and

(vii) Are available to cover operating losses realized by the insured credit union that exceed its available retained earnings.

Net worth ratio means the ratio of the net worth of the credit union to the total assets of the credit union rounded to two decimal places.

New credit union has the same meaning as in § 702.201.

Nonperpetual capital has the same meaning as in § 704.2 of this chapter.

Off-balance sheet items means items such as commitments, contingent items, guarantees, certain repo-style transactions, financial standby letters of credit, and forward agreements that are not included on the statement of financial condition, but are normally reported in the financial statement footnotes.

Off-balance sheet exposure means:

(1) For loans transferred under the Federal Home Loan Bank mortgage partnership finance program, the outstanding loan balance as of the reporting date, net of any related valuation allowance.

(2) For all other loans transferred with limited recourse or other seller-provided credit enhancements and that qualify for true sales accounting, the maximum contractual amount the credit union is exposed to according to the agreement, net of any related valuation allowance.

(3) For unfunded commitments, the remaining unfunded portion of the contractual agreement.

On-balance sheet means a credit union's assets, liabilities, and equity, as disclosed on the statement of financial condition at a specific point in time.

Other intangible assets means intangible assets, other than servicing assets and goodwill, maintained in accordance with GAAP. Other intangible assets does not include excluded other intangible assets.

Over-the-counter (OTC) interest rate derivative contract means a derivative contract that is not cleared on an exchange.

Perpetual contributed capital has the same meaning as in § 704.2 of this chapter.

Public sector entity (PSE) means a state, local authority, or other governmental subdivision of the United States below the sovereign level.

Qualifying master netting agreement means a written, legally enforceable agreement, provided that:

(1) The agreement creates a single legal obligation for all individual transactions covered by the agreement upon an event of default, including upon an event of conservatorship, receivership, insolvency, liquidation, or similar proceeding, of the counterparty;

(2) The agreement provides the credit union the right to accelerate, terminate, and close out on a net basis all transactions under the agreement and to liquidate or set off collateral promptly upon an event of default, including upon an event of conservatorship, receivership, insolvency, liquidation, or similar proceeding, of the counterparty, provided that, in any such case, any exercise of rights under the agreement will not be stayed or avoided under applicable law in the relevant jurisdictions, other than in receivership, conservatorship, resolution under the Federal Deposit Insurance Act, Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act, or under any similar insolvency law applicable to GSEs;

(3) The agreement does not contain a walkaway clause (that is, a provision that permits a non-defaulting counterparty to make a lower payment than it otherwise would make under the agreement, or no payment at all, to a defaulter or the estate of a defaulter, even if the defaulter or the estate is a net creditor under the agreement); and

(4) In order to recognize an agreement as a qualifying master netting agreement for purposes of this part, a credit union must conduct sufficient legal review, at origination and in response to any changes in applicable law, to conclude with a well-founded basis (and maintain sufficient written documentation of that legal review) that:

(i) The agreement meets the requirements of paragraph (2) of this definition; and

(ii) In the event of a legal challenge (including one resulting from default or from conservatorship, receivership, insolvency, liquidation, or similar proceeding), the relevant court and administrative authorities would find the agreement to be legal, valid, binding, and enforceable under the law of relevant jurisdictions.

Recourse means a credit union's retention, in form or in substance, of any credit risk directly or indirectly associated with an asset it has transferred that exceeds a *pro rata* share of that credit union's claim on the asset and disclosed in accordance with GAAP. If a credit union has no claim on an asset it has transferred, then the retention of any credit risk is recourse. A recourse obligation typically arises when a credit union transfers assets in a sale and retains an explicit obligation to repurchase assets or to absorb losses due to a default on the payment of principal or interest or any other deficiency in the performance of the underlying obligor or some other party. Recourse may also exist implicitly if the credit union provides credit enhancement beyond any contractual obligation to support assets it has transferred.

Residential mortgage-backed security means a mortgage-backed security backed by loans secured by a first-lien on residential property.

Residential property means a house, condominium unit, cooperative unit, manufactured home, or the construction thereof, and unimproved land zoned for one-to-four family residential use. Residential property excludes boats or motor homes, even if used as a primary residence, or timeshare property.

Restructured means, with respect to any loan, a restructuring of the loan in which a credit union, for economic or legal reasons related to a borrower's financial difficulties, grants a concession to the borrower that it would not otherwise consider. Restructured excludes loans modified or restructured solely pursuant to the U.S. Treasury's Home Affordable Mortgage Program.

Revenue obligation means a bond or similar obligation that is an obligation of a PSE, but which the PSE is committed to repay with revenues from the specific project financed rather than general tax funds.

Risk-based capital ratio means the percentage, rounded to two decimal places, of the risk-based capital ratio numerator to risk-weighted assets, as calculated in accordance with § 702.104(a).

Risk-weighted assets means the total risk-weighted assets as calculated in accordance with § 702.104(c).

Secured consumer loan means a consumer loan associated with collateral or other item of value to protect against loss where the creditor has a perfected security interest in the collateral or other item of value.

Senior executive officer means a senior executive officer as defined by § 701.14(b)(2) of this chapter.

Separate account insurance means an account into which a policyholder's cash surrender value is supported by assets segregated from the general assets of the carrier.

Shares means deposits, shares, share certificates, share drafts, or any other depository account authorized by federal or state law.

Share-secured loan means a loan fully secured by shares on deposit at the credit union making the loan, and does not include the imposition of a statutory lien under § 701.39 of this chapter.

STRIPS means a separately traded registered interest and principal security.

Structured product means an investment that is linked, via return or loss allocation, to another investment or reference pool.

Subordinated means, with respect to an investment, that the investment has a junior claim on the underlying collateral or assets to other investments in the same issuance. Subordinated does not apply to securities that are junior only to money market fund eligible securities in the same issuance.

Supervisory merger or combination means a transaction that involved the following:

(1) An assisted merger or purchase and assumption where funds from the NCUSIF were provided to the continuing credit union;

(2) A merger or purchase and assumption classified by NCUA as an ''emergency merger'' where the acquired credit union is either insolvent or ''in danger of insolvency'' as defined under appendix B to part 701 of this chapter; or

(3) A merger or purchase and assumption that included NCUA's or the appropriate state official's identification and selection of the continuing credit union.

Swap dealer has the meaning as defined by the Commodity Futures Trading Commission in 17 CFT 1.3(ggg).

Total assets means a credit union's total assets as measured [1] by either:

(1) *Average quarterly balance.* The credit union's total assets measured by the average of quarter-end balances of the current and three preceding calendar quarters;

(2) *Average monthly balance.* The credit union's total assets measured by the average of month-end balances over the three calendar months of the applicable calendar quarter;

(3) *Average daily balance.* The credit union's total assets measured by the average daily balance over the applicable calendar quarter; or

(4) *Quarter-end balance.* The credit union's total assets measured by the quarter-end balance of the applicable calendar quarter as reported on the credit union's Call Report.

Tranche means one of a number of related securities offered as part of the same transaction. Tranche includes a structured product if it has a loss allocation based off of an investment or reference pool.

Unsecured consumer loan means a consumer loan not secured by collateral.

U.S. Government agency means an instrumentality of the U.S. Government whose obligations are fully and explicitly guaranteed as to the timely payment of principal and interest by the full faith and credit of the U.S. Government.

[1] For each quarter, a credit union must elect one of the measures of total assets listed in paragraph (2) of this definition to apply for all purposes under this part except §§ 702.103 through 702.106 (risk-based capital requirement).

■ 10. Revise subpart A to read as follows:

Subpart A—Prompt Corrective Action

Sec.
702.101 Capital measures, capital adequacy, effective date of classification, and notice to NCUA.
702.102 Capital classifications.
702.103 Applicability of the risk-based capital ratio measure.
702.104 Risk-based capital ratio.
702.105 Derivative contracts.
702.106 Prompt corrective action for adequately capitalized credit unions.
702.107 Prompt corrective action for undercapitalized credit unions.
702.108 Prompt corrective action for significantly undercapitalized credit unions.
702.109 Prompt corrective action for critically undercapitalized credit unions.
702.110 Consultation with state officials on proposed prompt corrective action.
702.111 Net worth restoration plans (NWRP).
702.112 Reserves.
702.113 Full and fair disclosure of financial condition.
702.114 Payment of dividends.

Subpart A—Prompt Corrective Action

§ 702.101 Capital measures, capital adequacy, effective date of classification, and notice to NCUA.

(a) *Capital measures.* For purposes of this part, a credit union must determine its capital classification at the end of each calendar quarter using the following measures:

(1) The net worth ratio; and

(2) If determined to be applicable under § 702.103, the risk-based capital ratio.

(b) *Capital adequacy.* (1) Notwithstanding the minimum requirements in this part, a credit union defined as complex must maintain capital commensurate with the level and nature of all risks to which the institution is exposed.

(2) A credit union defined as complex must have a process for assessing its overall capital adequacy in relation to its risk profile and a comprehensive written strategy for maintaining an appropriate level of capital.

(c) *Effective date of capital classification.* For purposes of this part, the effective date of a federally insured credit union's capital classification shall be the most recent to occur of:

(1) *Quarter-end effective date.* The last day of the calendar month following the end of the calendar quarter;

(2) *Corrected capital classification.* The date the credit union received subsequent written notice from NCUA or, if state-chartered, from the appropriate state official, of a decline in capital classification due to correction

of an error or misstatement in the credit union's most recent Call Report; or

(3) *Reclassification to lower category.* The date the credit union received written notice from NCUA or, if state-chartered, the appropriate state official, of reclassification on safety and soundness grounds as provided under §§ 702.102(b) or 702. 202(d).

(d) *Notice to NCUA by filing Call Report.* (1) Other than by filing a Call Report, a federally insured credit union need not notify the NCUA Board of a change in its capital measures that places the credit union in a lower capital category;

(2) Failure to timely file a Call Report as required under this section in no way alters the effective date of a change in capital classification under paragraph (b) of this section, or the affected credit union's corresponding legal obligations under this part.

§ 702.102 Capital classification.

(a) *Capital categories.* Except for credit unions defined as ''new'' under subpart B of this part, a credit union shall be deemed to be classified (Table 1 of this section)—

(1) *Well capitalized* if:

(i) *Net worth ratio.* The credit union has a net worth ratio of 7.0 percent or greater; and

(ii) *Risk-based capital ratio.* The credit union, if complex, has a risk-based capital ratio of 10 percent or greater.

(2) *Adequately capitalized* if:

(i) *Net worth ratio.* The credit union has a net worth ratio of 6.0 percent or greater; and

(ii) *Risk-based capital ratio.* The credit union, if complex, has a risk-based capital ratio of 8.0 percent or greater; and

(iii) Does not meet the definition of a well capitalized credit union.

(3) *Undercapitalized* if:

(i) *Net worth ratio.* The credit union has a net worth ratio of 4.0 percent or more but less than 6.0 percent; or

(ii) *Risk-based capital ratio.* The credit union, if complex, has a risk-based capital ratio of less than 8.0 percent.

(4) *Significantly undercapitalized* if:

(i) The credit union has a net worth ratio of 2.0 percent or more but less than 4.0 percent; or

(ii) The credit union has a net worth ratio of 4.0 percent or more but less than 5.0 percent, and either—

(A) Fails to submit an acceptable net worth restoration plan within the time prescribed in § 702.110;

(B) Materially fails to implement a net worth restoration plan approved by the NCUA Board; or

(C) Receives notice that a submitted net worth restoration plan has not been approved.

(5) *Critically undercapitalized* if it has a net worth ratio of less than 2.0 percent.

TABLE 1 TO § 702.102—CAPITAL CATEGORIES

A credit union's capital classification is . . .	*Net worth ratio*		*Risk-based capital ratio also applicable if complex*	*And subject to following condition(s) . . .*
Well Capitalized	7% or greater	And	10.0% or greater.	
Adequately Capitalized	6% or greater	And	8% or greater	And does not meet the criteria to be classified as well capitalized.
Undercapitalized	4% to 5.99%	Or	Less than 8%.	
Significantly Undercapitalized	2% to 3.99%		N/A	Or if ''undercapitalized at < 5% net worth and (a) fails to timely submit, (b) fails to materially implement, or (c) receives notice of the rejection of a net worth restoration plan.
Critically Undercapitalized	Less than 2%		N/A.	

(b) *Reclassification based on supervisory criteria other than net worth.* The NCUA Board may reclassify a well capitalized credit union as adequately capitalized and may require an adequately capitalized or undercapitalized credit union to comply with certain mandatory or discretionary supervisory actions as if it were classified in the next lower capital category (each of such actions hereinafter referred to generally as ''reclassification'') in the following circumstances:

(1) *Unsafe or unsound condition.* The NCUA Board has determined, after providing the credit union with notice and opportunity for hearing pursuant to § 747.2003 of this chapter, that the credit union is in an unsafe or unsound condition; or

(2) *Unsafe or unsound practice.* The NCUA Board has determined, after providing the credit union with notice and opportunity for hearing pursuant to § 747.2003 of this chapter, that the credit union has not corrected a material unsafe or unsound practice of which it was, or should have been, aware.

(c) *Non-delegation.* The NCUA Board may not delegate its authority to reclassify a credit union under paragraph (b) of this section.

(d) *Consultation with state officials.* The NCUA Board shall consult and seek to work cooperatively with the appropriate state official before reclassifying a federally insured state-chartered credit union under paragraph (b) of this section, and shall promptly notify the appropriate state official of its decision to reclassify.

§ 702.103 Applicability of the risk-based capital ratio measure.

For purposes of § 702.102, a credit union is defined as ''complex'' and the risk-based capital ratio measure is applicable only if the credit union's quarter-end total assets exceed one hundred million dollars ($100,000,000), as reflected in its most recent Call Report.

§ 702.104 Risk-based capital ratio.

A complex credit union must calculate its risk-based capital ratio in accordance with this section.

(a) *Calculation of the risk-based capital ratio.* To determine its risk-based capital ratio, a complex credit union must calculate the percentage, rounded to two decimal places, of its risk-based capital ratio numerator as described in paragraph (b) of this section, to its total risk-weighted assets as described in paragraph (c) of this section.

(b) *Risk-based capital ratio numerator.* The risk-based capital ratio numerator is the sum of the specific capital elements in paragraph (b)(1) of this section, minus the regulatory adjustments in paragraph (b)(2) of this section.

(1) *Capital elements of the risk-based capital ratio numerator.* The capital elements of the risk-based capital numerator are:

(i) Undivided earnings;

(ii) Appropriation for non-conforming investments;

(iii) Other reserves;

(iv) Equity acquired in merger;

(v) Net income

(vi) ALLL, maintained in accordance with GAAP;

(vii) Secondary capital accounts included in net worth (as defined in § 702.2); and

(viii) Section 208 assistance included in net worth (as defined in § 702.2).

(2) *Risk-based capital ratio numerator deductions.* The elements deducted from the sum of the capital elements of the risk-based capital ratio numerator are:

(i) NCUSIF Capitalization Deposit;

(ii) Goodwill;

(iii) Other intangible assets; and

(iv) Identified losses not reflected in the risk-based capital ratio numerator.

(c) *Risk-weighted assets.* (1) *General.* Risk-weighted assets includes risk-weighted on-balance sheet assets as described in paragraphs (c)(2) and (3) of this section, plus the risk-weighted off-balance sheet assets in paragraph (c)(4) of this section, plus the risk-weighted derivatives in paragraph (c)(5) of this section, less the risk-based capital ratio numerator deductions in paragraph (b)(2) of this section. If a particular asset, derivative contract, or off balance sheet item has features or characteristics that suggest it could potentially fit into more than one risk weight category, then a credit union shall assign the asset, derivative contract, or off balance sheet item to the risk weight category that most accurately and appropriately reflects its associated credit risk.

(2) *Risk weights for on-balance sheet assets.* The risk categories and weights for assets of a complex credit union are as follows:

(i) *Category 1—zero percent risk weight.* A credit union must assign a zero percent risk weight to:

(A) The balance of cash, currency and coin, including vault, automatic teller machine, and teller cash.

(B) The exposure amount of:

(*1*) An obligation of the U.S. Government, its central bank, or a U.S. Government agency that is directly and unconditionally guaranteed, excluding detached security coupons, ex-coupon securities, and principal- and interest-only mortgage-backed STRIPS.

(*2*) Federal Reserve Bank stock and Central Liquidity Facility stock.

(C) Insured balances due from FDIC-insured depositories or federally insured credit unions.

(ii) *Category 2—20 percent risk weight.* A credit union must assign a 20 percent risk weight to:

(A) The uninsured balances due from FDIC-insured depositories, federally insured credit unions, and all balances due from privately-insured credit unions.

(B) The exposure amount of:

(*1*) A non-subordinated obligation of the U.S. Government, its central bank, or a U.S. Government agency that is conditionally guaranteed, excluding principal- and interest-only mortgage-backed STRIPS.

(*2*) A non-subordinated obligation of a GSE other than an equity exposure or preferred stock, excluding principal- and interest-only GSE obligation STRIPS.

(*3*) Securities issued by PSEs in the U.S. that represent general obligation securities.

(*4*) Investment funds whose portfolios are permitted to hold only part 703 permissible investments that qualify for the zero or 20 percent risk categories.

(*5*) Federal Home Loan Bank stock.

(C) The balances due from Federal Home Loan Banks.

(D) The balance of share-secured loans.

(E) The portions of outstanding loans with a government guarantee.

(F) The portions of commercial loans secured with contractual compensating balances.

(iii) *Category 3—50 percent risk weight.* A credit union must assign a 50 percent risk weight to:

(A) The outstanding balance (net of government guarantees), including loans held for sale, of current first-lien residential real estate loans less than or equal to 35 percent of assets.

(B) The exposure amount of:

(*1*) Securities issued by PSEs in the U.S. that represent non-subordinated revenue obligation securities.

(*2*) Other non-subordinated, non-U.S. Government agency or non-GSE guaranteed, residential mortgage-backed security, excluding principal- and interest-only STRIPS.

(iv) *Category 4—75 percent risk weight.* A credit union must assign a 75 percent risk weight to the outstanding balance (net of government guarantees), including loans held for sale, of:

(A) Current first-lien residential real estate loans greater than 35 percent of assets.

(B) Current secured consumer loans.

(v) *Category 5—100 percent risk weight.* A credit union must assign a 100 percent risk weight to:

(A) The outstanding balance (net of government guarantees), including loans held for sale, of:

(*1*) First-lien residential real estate loans that are not current.

(*2*) Current junior-lien residential real estate loans less than or equal to 20 percent of assets.

(*3*) Current unsecured consumer loans.

(*4*) Current commercial loans, less contractual compensating balances that comprise less than 50 percent of assets.

(*5*) Loans to CUSOs.

(B) The exposure amount of:

(*1*) Industrial development bonds.

(*2*) All stripped mortgage-backed securities (principal- and interest-only STRIPS).

(*3*) Part 703 compliant investment funds, with the option to use the look-through approaches in paragraph (c)(3)(ii) of this section.

(*4*) Corporate debentures and commercial paper.

(*5*) Nonperpetual capital at corporate credit unions.

(*6*) General account permanent insurance.

(*7*) GSE equity exposure or preferred stock.

(C) All other assets listed on the statement of financial condition not specifically assigned a different risk weight under this subpart.

(vi) *Category 6—150 percent risk weight.* A credit union must assign a 150 percent risk weight to:

(A) The outstanding balance, net of government guarantees and including loans held for sale, of:

(*1*) Current junior-lien residential real estate loans that comprise more than 20 percent of assets.

(*2*) Junior-lien residential real estate loans that are not current.

(*3*) Consumer loans that are not current.

(*4*) Current commercial loans (net of contractual compensating balances), which comprise more than 50 percent of assets.

(*5*) Commercial loans (net of contractual compensating balances), which are not current.

(B) The exposure amount of:

(*1*) Perpetual contributed capital at corporate credit unions.

(*2*) Equity investments in CUSOs.

(vii) *Category 7—250 percent risk weight.* A credit union must assign a 250 percent risk weight to the carrying value of mortgage servicing assets.

(viii) *Category 8—300 percent risk weight.* A credit union must assign a 300 percent risk weight to the exposure amount of:

(A) Publicly traded equity investment, other than a CUSO investment.

(B) Investment funds that are not in compliance with part 703 of this Chapter, with the option to use the look-

through approaches in paragraph (c)(3)(ii) of this section.

(C) Separate account insurance, with the option to use the look-through approaches in paragraph (c)(3)(ii) of this section.

(ix) *Category 9—400 percent risk weight.* A credit union must assign a 400 percent risk weight to the exposure amount of non-publicly traded equity investments, other than equity investments in CUSOs.

(x) *Category 10—1,250 percent risk weight.* A credit union must assign a 1,250 percent risk weight to the exposure amount of any subordinated tranche of any investment, with the option to use the gross-up approach in paragraph (c)(3)(i) of this section.

(3) *Alternative risk weights for certain on-balance sheet assets.* Instead of using the risk weights assigned in paragraph (c)(2) of this section, a credit union may determine the risk weight of investment funds and subordinated tranches of any investment as follows:

(i) *Gross-up approach.* A credit union may use the gross-up approach under § 324.43(e) of this title to determine the risk weight of the carrying value of any subordinated tranche of any investment.

(ii) *Look-through approaches.* A credit union may use one of the look-through approaches under § 324.53 of this title to determine the risk weight of the exposure amount of investment funds that are not in compliance with part 703 of this chapter, the holdings of separate account insurance; or part 703 compliant investment funds.

(4) *Risk weights for off-balance sheet activities.* The risk weighted amounts for all off-balance sheet items are determined by multiplying the off-balance sheet exposure amount by the appropriate CCF and the assigned risk weight as follows:

(i) For the outstanding balance of loans transferred to a Federal Home Loan Bank under the mortgage partnership finance program, a 20 percent CCF and a 50 percent risk weight.

(ii) For other loans transferred with limited recourse, a 100 percent CCF applied to the off-balance sheet exposure and:

(A) For commercial loans, a 100 percent risk weight.

(B) For first-lien residential real estate loans, a 50 percent risk weight.

(C) For junior-lien residential real estate loans, a 100 percent risk weight.

(D) For all secured consumer loans, a 75 percent risk weight.

(E) For all unsecured consumer loans, a 100 percent risk weight.

(iii) For unfunded commitments:

(A) For commercial loans, a 50 percent CCF with a 100 percent risk weight.

(B) For first-lien residential real estate loans, a 10 percent CCF with a 50 percent risk weight.

(C) For junior-lien residential real estate loans, a 10 percent CCF with a 100 percent risk weight.

(D) For all secured consumer loans, a 10 percent CCF with a 75 percent risk weight.

(E) For all unsecured consumer loans, a 10 percent CCF with a 100 percent risk weight.

(5) *Derivative contracts.* A complex credit union must assign a risk-weighted amount to any derivative contracts as determined under § 702.105 of this part.

§ 702.105 Derivative contracts.

(a) *OTC interest rate derivative contracts.*

(1) *Exposure amount*—(i) *Single OTC interest rate derivative contract.* Except as modified by paragraph (a)(2) of this section, the exposure amount for a single OTC interest rate derivative contract that is not subject to a qualifying master netting agreement is equal to the sum of the credit union's current credit exposure and potential future credit exposure (PFE) on the OTC interest rate derivative contract.

(A) *Current credit exposure.* The current credit exposure for a single OTC interest rate derivative contract is the greater of the fair value of the OTC interest rate derivative contract or zero.

(B) *PFE.* (*1*) The PFE for a single OTC interest rate derivative contract, including an OTC interest rate derivative contract with a negative fair value, is calculated by multiplying the notional principal amount of the OTC interest rate derivative contract by the appropriate conversion factor in Table 1 of this section.

(*2*) A credit union must use an OTC interest rate derivative contract's effective notional principal amount (that is, the apparent or stated notional principal amount multiplied by any multiplier in the OTC interest rate derivative contract) rather than the apparent or stated notional principal amount in calculating PFE.

TABLE 1 TO § 702.105—CONVERSION FACTOR MATRIX FOR INTEREST RATE DERIVATIVE CONTRACTS [2]

Remaining maturity	Conversion factor
One year or less	0.00
Greater than one year and less than or equal to five years	0.005
Greater than five years	0.015

[2] Non-interest rate derivative contracts are addressed in paragraph (d) of this section.

(ii) *Multiple OTC interest rate derivative contracts subject to a qualifying master netting agreement.* Except as modified by paragraph (a)(2) of this section, the exposure amount for multiple OTC interest rate derivative contracts subject to a qualifying master netting agreement is equal to the sum of the net current credit exposure and the adjusted sum of the PFE amounts for all OTC interest rate derivative contracts subject to the qualifying master netting agreement.

(A) *Net current credit exposure.* The net current credit exposure is the greater of the net sum of all positive and negative fair value of the individual OTC interest rate derivative contracts subject to the qualifying master netting agreement or zero.

(B) *Adjusted sum of the PFE amounts (Anet).* The adjusted sum of the PFE amounts is calculated as Anet = (0.4 × Agross) + (0.6 × NGR × Agross), where:

(*1*) Agross equals the gross PFE (that is, the sum of the PFE amounts as determined under paragraph (a)(1)(i)(B) of this section for each individual derivative contract subject to the qualifying master netting agreement); and

(*2*) Net-to-gross Ratio (NGR) equals the ratio of the net current credit exposure to the gross current credit exposure. In calculating the NGR, the gross current credit exposure equals the sum of the positive current credit exposures (as determined under paragraph (a)(1)(i) of this section) of all individual derivative contracts subject to the qualifying master netting agreement.

(3) *Recognition of credit risk mitigation of collateralized OTC derivative contracts.* A credit union may recognize credit risk mitigation benefits of financial collateral that secures an OTC derivative contract or multiple OTC derivative contracts subject to a qualifying master netting agreement (netting set) by following the requirements of paragraph (c) of this section.

(b) *Cleared transactions for interest rate derivatives*—(1) *General requirements.* A credit union must use

the methodologies described in paragraph (b) of this section to calculate risk-weighted assets for a cleared transaction.

(2) *Risk-weighted assets for cleared transactions.* (i) To determine the risk weighted asset amount for a cleared transaction, a credit union must multiply the trade exposure amount for the cleared transaction, calculated in accordance with paragraph (b)(3) of this section, by the risk weight appropriate for the cleared transaction, determined in accordance with paragraph (b)(4) of this section.

(ii) A credit union's total risk-weighted assets for cleared transactions is the sum of the risk-weighted asset amounts for all its cleared transactions.

(3) *Trade exposure amount.* For a cleared transaction the trade exposure amount equals:

(i) The exposure amount for the derivative contract or netting set of derivative contracts, calculated using the methodology used to calculate exposure amount for OTC interest rate derivative contracts under paragraph (a) of this section; plus

(ii) The fair value of the collateral posted by the credit union and held by the, clearing member, or custodian.

(4) *Cleared transaction risk weights.* A credit union must apply a risk weight of:

(i) Two percent if the collateral posted by the credit union to the DCO or clearing member is subject to an arrangement that prevents any losses to the credit union due to the joint default or a concurrent insolvency, liquidation, or receivership proceeding of the clearing member and any other clearing member clients of the clearing member; and the clearing member credit union has conducted sufficient legal review to conclude with a well-founded basis (and maintains sufficient written documentation of that legal review) that in the event of a legal challenge (including one resulting from an event of default or from liquidation, insolvency, or receivership proceedings) the relevant court and administrative authorities would find the arrangements to be legal, valid, binding and enforceable under the law of the relevant jurisdictions; or

(ii) Four percent if the requirements of paragraph (b)(4)(i) are not met.

(5) *Recognition of credit risk mitigation of collateralized OTC derivative contracts.* A credit union may recognize the credit risk mitigation benefits of financial collateral that secures a cleared derivative contract by following the requirements of paragraph (c) of this section.

(c) *Recognition of credit risk mitigation of collateralized interest rate derivative contracts.* (1) A credit union may recognize the credit risk mitigation benefits of financial collateral that secures an OTC interest rate derivative contract or multiple interest rate derivative contracts subject to a qualifying master netting agreement (netting set) or clearing arrangement by using the simple approach in paragraph (c)(3) of this section.

(2) As an alternative to the simple approach, a credit union may recognize the credit risk mitigation benefits of financial collateral that secures such a contract or netting set if the financial collateral is marked-to-fair value on a daily basis and subject to a daily margin maintenance requirement by applying a risk weight to the exposure as if it were uncollateralized and adjusting the exposure amount calculated under paragraph (a) or (b) of this section using the collateral approach in paragraph (c)(3) of this section. The credit union must substitute the exposure amount calculated under paragraphs (b) or (c) of this section in the equation in paragraph (c)(3) of this section.

(3) *Collateralized transactions.* (i) *General.* A credit union may use the approach in paragraph (c)(3)(ii) of this section to recognize the risk-mitigating effects of financial collateral.

(ii) *Simple collateralized derivatives approach.* To qualify for the simple approach, the financial collateral must meet the following requirements:

(A) The collateral must be subject to a collateral agreement for at least the life of the exposure;

(B) The collateral must be revalued at least every six months; and

(C) The collateral and the exposure must be denominated in the same currency.

(iii) *Risk weight substitution.* (A) A credit union may apply a risk weight to the portion of an exposure that is secured by the fair value of financial collateral (that meets the requirements for the simple collateralized approach of this section) based on the risk weight assigned to the collateral as established under § 702.104(c).

(B) A credit union must apply a risk weight to the unsecured portion of the exposure based on the risk weight applicable to the exposure under this subpart.

(iv) *Exceptions to the 20 percent risk weight floor and other requirements.* Notwithstanding the simple collateralized derivatives approach in paragraph (c)(3)(ii) of this section:

(A) A credit union may assign a zero percent risk weight to an exposure to a derivatives contract that is marked-to-market on a daily basis and subject to a daily margin maintenance requirement, to the extent the contract is collateralized by cash on deposit.

(B) A credit union may assign a 10 percent risk weight to an exposure to an derivatives contract that is marked-to-market daily and subject to a daily margin maintenance requirement, to the extent that the contract is collateralized by an exposure that qualifies for a zero percent risk weight under § 702.104(c)(2)(i).

(v) A credit union may assign a zero percent risk weight to the collateralized portion of an exposure where:

(A) The financial collateral is cash on deposit; or

(B) The financial collateral is an exposure that qualifies for a zero percent risk weight under § 702.104(c)(2)(i), and the credit union has discounted the fair value of the collateral by 20 percent.

(4) *Collateral haircut approach.* (i) A credit union may recognize the credit risk mitigation benefits of financial collateral that secures a collateralized derivative contract by using the standard supervisory haircuts in paragraph (c)(3) of this section.

(ii) The collateral haircut approach applies to both OTC and cleared interest rate derivatives contracts discussed in this section.

(iii) A credit union must determine the exposure amount for a collateralized derivative contracts by setting the exposure amount equal to the max{0,[(exposure amount—value of collateral)+(sum of current fair value of collateral instruments * market price volatility haircut of the collateral instruments)]}, where:

(A) The value of the exposure equals the exposure amount for OTC interest rate derivative contracts (or netting set) calculated under paragraphs (a)(1)(i) and (ii) of this section.

(B) The value of the exposure equals the exposure amount for cleared interest rate derivative contracts (or netting set) calculated under paragraph (b)(3) of this section.

(C) The value of the collateral is the sum of cash and all instruments under the transaction (or netting set).

(D) The sum of current fair value of collateral instruments as of the measurement date.

(E) A credit union must use the standard supervisory haircuts for market price volatility in Table 2 to § 702.105 of this section.

TABLE 2 TO § 702.105—STANDARD SUPERVISORY MARKET PRICE VOLATILITY HAIRCUTS

[based on a 10 business-day holding period]

Residual maturity	Haircut (in percent) assigned based on: Collateral risk weight (in percent)	
	Zero	20 or 50
Less than or equal to 1 year	0.5	1.0
Greater than 1 year and less than or equal to 5 years	2.0	3.0
Greater than 5 years	4.0	6.0
Cash collateral held	Zero	
Other exposure types	25.0	

(d) *All other derivative contracts and transactions.* Credit unions must follow the requirements of the applicable provisions of Part 324, Title 12, Chapter 3, when assigning risk weights to exposure amounts for derivatives contracts not addressed in paragraphs (a) or (b) of this section.

§ 702.106 Prompt corrective action for adequately capitalized credit unions.

(a) *Earnings retention.* Beginning on the effective date of classification as adequately capitalized or lower, a federally insured credit union must increase the dollar amount of its net worth quarterly either in the current quarter, or on average over the current and three preceding quarters, by an amount equivalent to at least 1/10th percent (0.1%) of its total assets (or more by choice), until it is well capitalized.

(b) *Decrease in retention.* Upon written application received no later than 14 days before the quarter end, the NCUA Board, on a case-by-case basis, may permit a credit union to increase the dollar amount of its net worth by an amount that is less than the amount required under paragraph (a) of this section, to the extent the NCUA Board determines that such lesser amount:

(1) Is necessary to avoid a significant redemption of shares; and

(2) Would further the purpose of this part.

(c) *Decrease by FISCU.* The NCUA Board shall consult and seek to work cooperatively with the appropriate state official before permitting a federally insured state-chartered credit union to decrease its earnings retention under paragraph (b) of this section.

(d) *Periodic review.* A decision under paragraph (b) of this section to permit a credit union to decrease its earnings retention is subject to quarterly review and revocation except when the credit union is operating under an approved net worth restoration plan that provides for decreasing its earnings retention as provided under paragraph (b) of this section.

§ 702.107 Prompt corrective action for undercapitalized credit unions.

(a) *Mandatory supervisory actions by credit union.* A credit union which is undercapitalized must—

(1) *Earnings retention.* Increase net worth in accordance with § 702.106;

(2) *Submit net worth restoration plan.* Submit a net worth restoration plan pursuant to § 702.111, *provided however,* that a credit union in this category having a net worth ratio of less than five percent (5%) which fails to timely submit such a plan, or which materially fails to implement an approved plan, is classified significantly undercapitalized pursuant to § 702.102(a)(4)(i);

(3) *Restrict increase in assets.* Beginning the effective date of classification as undercapitalized or lower, not permit the credit union's assets to increase beyond its total assets for the preceding quarter unless—

(i) *Plan approved.* The NCUA Board has approved a net worth restoration plan which provides for an increase in total assets and—

(A) The assets of the credit union are increasing consistent with the approved plan; and

(B) The credit union is implementing steps to increase the net worth ratio consistent with the approved plan;

(ii) *Plan not approved.* The NCUA Board has not approved a net worth restoration plan and total assets of the credit union are increasing because of increases since quarter-end in balances of:

(A) Total accounts receivable and accrued income on loans and investments; or

(B) Total cash and cash equivalents; or

(C) Total loans outstanding, not to exceed the sum of total assets plus the quarter-end balance of unused commitments to lend and unused lines of credit provided however that a credit union which increases a balance as permitted under paragraphs (a)(3)(ii)(A), (B) or (C) of this section cannot offer rates on shares in excess of prevailing rates on shares in its relevant market area, and cannot open new branches;

(4) *Restrict member business loans.* Beginning the effective date of classification as undercapitalized or lower, not increase the total dollar amount of member business loans (defined as loans outstanding and unused commitments to lend) as of the preceding quarter-end unless it is granted an exception under 12 U.S.C. 1757a(b).

(b) *Second tier discretionary supervisory actions by NCUA.* Subject to the applicable procedures for issuing, reviewing and enforcing directives set forth in subpart L of part 747 of this chapter, the NCUA Board may, by directive, take one or more of the following actions with respect to an undercapitalized credit union having a net worth ratio of less than five percent (5%), or a director, officer or employee of such a credit union, if it determines that those actions are necessary to carry out the purpose of this part:

(1) *Requiring prior approval for acquisitions, branching, new lines of business.* Prohibit a credit union from, directly or indirectly, acquiring any interest in any business entity or financial institution, establishing or acquiring any additional branch office, or engaging in any new line of business, unless the NCUA Board has approved the credit union's net worth restoration plan, the credit union is implementing its plan, and the NCUA Board determines that the proposed action is consistent with and will further the objectives of that plan;

(2) *Restricting transactions with and ownership of a CUSO.* Restrict the credit union's transactions with a CUSO, or

require the credit union to reduce or divest its ownership interest in a CUSO;

(3) *Restricting dividends paid.* Restrict the dividend rates the credit union pays on shares to the prevailing rates paid on comparable accounts and maturities in the relevant market area, as determined by the NCUA Board, except that dividend rates already declared on shares acquired before imposing a restriction under this paragraph may not be retroactively restricted;

(4) *Prohibiting or reducing asset growth.* Prohibit any growth in the credit union's assets or in a category of assets, or require the credit union to reduce its assets or a category of assets;

(5) *Alter, reduce or terminate activity.* Require the credit union or its CUSO to alter, reduce, or terminate any activity which poses excessive risk to the credit union;

(6) *Prohibiting nonmember deposits.* Prohibit the credit union from accepting all or certain nonmember deposits;

(7) *Dismissing director or senior executive officer.* Require the credit union to dismiss from office any director or senior executive officer, *provided however,* that a dismissal under this clause shall not be construed to be a formal administrative action for removal under 12 U.S.C. 1786(g);

(8) *Employing qualified senior executive officer.* Require the credit union to employ qualified senior executive officers (who, if the NCUA Board so specifies, shall be subject to its approval); and

(9) *Other action to carry out prompt corrective action.* Restrict or require such other action by the credit union as the NCUA Board determines will carry out the purpose of this part better than any of the actions prescribed in paragraphs (b)(1) through (8) of this section.

(c) *First tier application of discretionary supervisory actions.* An undercapitalized credit union having a net worth ratio of five percent (5%) or more, or which is classified undercapitalized by reason of failing to maintain a risk-based capital ratio equal to or greater than 8 percent under § 702.104, is subject to the discretionary supervisory actions in paragraph (b) of this section if it fails to comply with any mandatory supervisory action in paragraph (a) of this section or fails to timely implement an approved net worth restoration plan under § 702.111, including meeting its prescribed steps to increase its net worth ratio.

§ 702.108 Prompt corrective action for significantly undercapitalized credit unions.

(a) *Mandatory supervisory actions by credit union.* A credit union which is significantly undercapitalized must—

(1) *Earnings retention.* Increase net worth in accordance with § 702.106;

(2) *Submit net worth restoration plan.* Submit a net worth restoration plan pursuant to § 702.111;

(3) *Restrict increase in assets.* Not permit the credit union's total assets to increase except as provided in § 702.107(a)(3); and

(4) *Restrict member business loans.* Not increase the total dollar amount of member business loans (defined as loans outstanding and unused commitments to lend) as provided in § 702.107(a)(4).

(b) *Discretionary supervisory actions by NCUA.* Subject to the applicable procedures for issuing, reviewing and enforcing directives set forth in subpart L of part 747 of this chapter, the NCUA Board may, by directive, take one or more of the following actions with respect to any significantly undercapitalized credit union, or a director, officer or employee of such credit union, if it determines that those actions are necessary to carry out the purpose of this part:

(1) *Requiring prior approval for acquisitions, branching, new lines of business.* Prohibit a credit union from, directly or indirectly, acquiring any interest in any business entity or financial institution, establishing or acquiring any additional branch office, or engaging in any new line of business, except as provided in § 702.107(b)(1);

(2) *Restricting transactions with and ownership of CUSO.* Restrict the credit union's transactions with a CUSO, or require the credit union to divest or reduce its ownership interest in a CUSO;

(3) *Restricting dividends paid.* Restrict the dividend rates that the credit union pays on shares as provided in § 702.107(b)(3);

(4) *Prohibiting or reducing asset growth.* Prohibit any growth in the credit union's assets or in a category of assets, or require the credit union to reduce assets or a category of assets;

(5) *Alter, reduce or terminate activity.* Require the credit union or its CUSO(s) to alter, reduce, or terminate any activity which poses excessive risk to the credit union;

(6) *Prohibiting nonmember deposits.* Prohibit the credit union from accepting all or certain nonmember deposits;

(7) *New election of directors.* Order a new election of the credit union's board of directors;

(8) *Dismissing director or senior executive officer.* Require the credit union to dismiss from office any director or senior executive officer, *provided however,* that a dismissal under this clause shall not be construed to be a formal administrative action for removal under 12 U.S.C. 1786(g);

(9) *Employing qualified senior executive officer.* Require the credit union to employ qualified senior executive officers (who, if the NCUA Board so specifies, shall be subject to its approval);

(10) *Restricting senior executive officers' compensation.* Except with the prior written approval of the NCUA Board, limit compensation to any senior executive officer to that officer's average rate of compensation (excluding bonuses and profit sharing) during the four (4) calendar quarters preceding the effective date of classification of the credit union as significantly undercapitalized, and prohibit payment of a bonus or profit share to such officer;

(11) *Other actions to carry out prompt corrective action.* Restrict or require such other action by the credit union as the NCUA Board determines will carry out the purpose of this part better than any of the actions prescribed in paragraphs (b)(1) through (10) of this section; and

(12) *Requiring merger.* Require the credit union to merge with another financial institution if one or more grounds exist for placing the credit union into conservatorship pursuant to 12 U.S.C. 1786(h)(1)(F), or into liquidation pursuant to 12 U.S.C. 1787(a)(3)(A)(i).

(c) *Discretionary conservatorship or liquidation if no prospect of becoming adequately capitalized.* Notwithstanding any other actions required or permitted to be taken under this section, when a credit union becomes significantly undercapitalized (including by reclassification under § 702.102(b)), the NCUA Board may place the credit union into conservatorship pursuant to 12 U.S.C. 1786(h)(1)(F), or into liquidation pursuant to 12 U.S.C. 1787(a)(3)(A)(i), provided that the credit union has no reasonable prospect of becoming adequately capitalized.

§ 702.109 Prompt corrective action for critically undercapitalized credit unions.

(a) *Mandatory supervisory actions by credit union.* A credit union which is critically undercapitalized must—

(1) *Earnings retention.* Increase net worth in accordance with § 702.106;

(2) *Submit net worth restoration plan.* Submit a net worth restoration plan pursuant to § 702.111;

(3) *Restrict increase in assets.* Not permit the credit union's total assets to increase except as provided in § 702.107(a)(3); and

(4) *Restrict member business loans.* Not increase the total dollar amount of member business loans (defined as loans outstanding and unused commitments to lend) as provided in § 702.107(a)(4).

(b) *Discretionary supervisory actions by NCUA.* Subject to the applicable procedures for issuing, reviewing and enforcing directives set forth in subpart L of part 747 of this chapter, the NCUA Board may, by directive, take one or more of the following actions with respect to any critically undercapitalized credit union, or a director, officer or employee of such credit union, if it determines that those actions are necessary to carry out the purpose of this part:

(1) *Requiring prior approval for acquisitions, branching, new lines of business.* Prohibit a credit union from, directly or indirectly, acquiring any interest in any business entity or financial institution, establishing or acquiring any additional branch office, or engaging in any new line of business, except as provided by § 702.107(b)(1);

(2) *Restricting transactions with and ownership of CUSO.* Restrict the credit union's transactions with a CUSO, or require the credit union to divest or reduce its ownership interest in a CUSO;

(3) *Restricting dividends paid.* Restrict the dividend rates that the credit union pays on shares as provided in § 702.107(b)(3);

(4) *Prohibiting or reducing asset growth.* Prohibit any growth in the credit union's assets or in a category of assets, or require the credit union to reduce assets or a category of assets;

(5) *Alter, reduce or terminate activity.* Require the credit union or its CUSO(s) to alter, reduce, or terminate any activity which poses excessive risk to the credit union;

(6) *Prohibiting nonmember deposits.* Prohibit the credit union from accepting all or certain nonmember deposits;

(7) *New election of directors.* Order a new election of the credit union's board of directors;

(8) *Dismissing director or senior executive officer.* Require the credit union to dismiss from office any director or senior executive officer, *provided however,* that a dismissal under this clause shall not be construed to be a formal administrative action for removal under 12 U.S.C. 1786(g);

(9) *Employing qualified senior executive officer.* Require the credit union to employ qualified senior executive officers (who, if the NCUA Board so specifies, shall be subject to its approval);

(10) *Restricting senior executive officers' compensation.* Reduce or, with the prior written approval of the NCUA Board, limit compensation to any senior executive officer to that officer's average rate of compensation (excluding bonuses and profit sharing) during the four (4) calendar quarters preceding the effective date of classification of the credit union as critically undercapitalized, and prohibit payment of a bonus or profit share to such officer;

(11) *Restrictions on payments on uninsured secondary capital.* Beginning 60 days after the effective date of classification of a credit union as critically undercapitalized, prohibit payments of principal, dividends or interest on the credit union's uninsured secondary capital accounts established after August 7, 2000, except that unpaid dividends or interest shall continue to accrue under the terms of the account to the extent permitted by law;

(12) *Requiring prior approval.* Require a critically undercapitalized credit union to obtain the NCUA Board's prior written approval before doing any of the following:

(i) Entering into any material transaction not within the scope of an approved net worth restoration plan (or approved revised business plan under subpart C of this part);

(ii) Extending credit for transactions deemed highly leveraged by the NCUA Board or, if state-chartered, by the appropriate state official;

(iii) Amending the credit union's charter or bylaws, except to the extent necessary to comply with any law, regulation, or order;

(iv) Making any material change in accounting methods; and

(v) Paying dividends or interest on new share accounts at a rate exceeding the prevailing rates of interest on insured deposits in its relevant market area;

(13) *Other action to carry out prompt corrective action.* Restrict or require such other action by the credit union as the NCUA Board determines will carry out the purpose of this part better than any of the actions prescribed in paragraphs (b)(1) through (12) of this section; and

(14) *Requiring merger.* Require the credit union to merge with another financial institution if one or more grounds exist for placing the credit union into conservatorship pursuant to 12 U.S.C. 1786(h)(1)(F), or into liquidation pursuant to 12 U.S.C. 1787(a)(3)(A)(i).

(c) *Mandatory conservatorship, liquidation or action in lieu thereof*—(1) *Action within 90 days.* Notwithstanding any other actions required or permitted to be taken under this section (and regardless of a credit union's prospect of becoming adequately capitalized), the NCUA Board must, within 90 calendar days after the effective date of classification of a credit union as critically undercapitalized—

(i) *Conservatorship.* Place the credit union into conservatorship pursuant to 12 U.S.C. 1786(h)(1)(G); or

(ii) *Liquidation.* Liquidate the credit union pursuant to 12 U.S.C. 1787(a)(3)(A)(ii); or

(iii) *Other corrective action.* Take other corrective action, in lieu of conservatorship or liquidation, to better achieve the purpose of this part, provided that the NCUA Board documents why such action in lieu of conservatorship or liquidation would do so, *provided however,* that other corrective action may consist, in whole or in part, of complying with the quarterly timetable of steps and meeting the quarterly net worth targets prescribed in an approved net worth restoration plan.

(2) *Renewal of other corrective action.* A determination by the NCUA Board to take other corrective action in lieu of conservatorship or liquidation under paragraph (c)(1)(iii) of this section shall expire after an effective period ending no later than 180 calendar days after the determination is made, and the credit union shall be immediately placed into conservatorship or liquidation under paragraphs (c)(1)(i) and (ii) of this section, unless the NCUA Board makes a new determination under paragraph (c)(1)(iii) of this section before the end of the effective period of the prior determination;

(3) *Mandatory liquidation after 18 months*—(i) *Generally.* Notwithstanding paragraphs (c)(1) and (2) of this section, the NCUA Board must place a credit union into liquidation if it remains critically undercapitalized for a full calendar quarter, on a monthly average basis, following a period of 18 months from the effective date the credit union was first classified critically undercapitalized.

(ii) *Exception.* Notwithstanding paragraph (c)(3)(i) of this section, the NCUA Board may continue to take other corrective action in lieu of liquidation if it certifies that the credit union—

(A) Has been in substantial compliance with an approved net worth restoration plan requiring consistent improvement in net worth since the date the net worth restoration plan was approved;

(B) Has positive net income or has an upward trend in earnings that the NCUA Board projects as sustainable; and

(C) Is viable and not expected to fail.

(iii) *Review of exception.* The NCUA Board shall, at least quarterly, review the certification of an exception to liquidation under paragraph (c)(3)(ii) of this section and shall either—

(A) Recertify the credit union if it continues to satisfy the criteria of paragraph (c)(3)(ii) of this section; or

(B) Promptly place the credit union into liquidation, pursuant to 12 U.S.C. 1787(a)(3)(A)(ii), if it fails to satisfy the criteria of paragraph (c)(3)(ii) of this section.

(4) *Nondelegation.* The NCUA Board may not delegate its authority under paragraph (c) of this section, unless the credit union has less than $5,000,000 in total assets. A credit union shall have a right of direct appeal to the NCUA Board of any decision made by delegated authority under this section within ten (10) calendar days of the date of that decision.

(d) *Mandatory liquidation of insolvent federal credit union.* In lieu of paragraph (c) of this section, a critically undercapitalized federal credit union that has a net worth ratio of less than zero percent (0%) may be placed into liquidation on grounds of insolvency pursuant to 12 U.S.C. 1787(a)(1)(A).

§ 702.110 Consultation with state officials on proposed prompt corrective action.

(a) *Consultation on proposed conservatorship or liquidation.* Before placing a federally insured state-chartered credit union into conservatorship (pursuant to 12 U.S.C. 1786(h)(1)(F) or (G)) or liquidation (pursuant to 12 U.S.C. 1787(a)(3)) as permitted or required under subparts A or B of this part to facilitate prompt corrective action—

(1) The NCUA Board shall seek the views of the appropriate state official (as defined in § 702.2), and give him or her an opportunity to take the proposed action;

(2) The NCUA Board shall, upon timely request of the appropriate state official, promptly provide him or her with a written statement of the reasons for the proposed conservatorship or liquidation, and reasonable time to respond to that statement; and

(3) If the appropriate state official makes a timely written response that disagrees with the proposed conservatorship or liquidation and gives reasons for that disagreement, the NCUA Board shall not place the credit union into conservatorship or liquidation unless it first considers the views of the appropriate state official and determines that—

(i) The NCUSIF faces a significant risk of loss if the credit union is not placed into conservatorship or liquidation; and

(ii) Conservatorship or liquidation is necessary either to reduce the risk of loss, or to reduce the expected loss, to the NCUSIF with respect to the credit union.

(b) *Nondelegation.* The NCUA Board may not delegate any determination under paragraph (a)(3) of this section.

(c) *Consultation on proposed discretionary action.* The NCUA Board shall consult and seek to work cooperatively with the appropriate state official before taking any discretionary supervisory action under §§ 702.107(b), 702.108(b), 702.109(b), 702.204(b) and 702.205(b) with respect to a federally insured state-chartered credit union; shall provide prompt notice of its decision to the appropriate state official; and shall allow the appropriate state official to take the proposed action independently or jointly with NCUA.

§ 702.111 Net worth restoration plans (NWRP).

(a) *Schedule for filing*—(1) *Generally.* A credit union shall file a written net worth restoration plan (NWRP) with the appropriate Regional Director and, if state-chartered, the appropriate state official, within 45 calendar days of the effective date of classification as either undercapitalized, significantly undercapitalized or critically undercapitalized, unless the NCUA Board notifies the credit union in writing that its NWRP is to be filed within a different period.

(2) *Exception.* An otherwise adequately capitalized credit union that is reclassified undercapitalized on safety and soundness grounds under § 702.102(b) is not required to submit a NWRP solely due to the reclassification, unless the NCUA Board notifies the credit union that it must submit an NWRP.

(3) *Filing of additional plan.* Notwithstanding paragraph (a)(1) of this section, a credit union that has already submitted and is operating under a NWRP approved under this section is not required to submit an additional NWRP due to a change in net worth category (including by reclassification under § 702.102(b)), unless the NCUA Board notifies the credit union that it must submit a new NWRP. A credit union that is notified to submit a new or revised NWRP shall file the NWRP in writing with the appropriate Regional Director within 30 calendar days of receiving such notice, unless the NCUA Board notifies the credit union in writing that the NWRP is to be filed within a different period.

(4) *Failure to timely file plan.* When a credit union fails to timely file an NWRP pursuant to this paragraph, the NCUA Board shall promptly notify the credit union that it has failed to file an NWRP and that it has 15 calendar days from receipt of that notice within which to file an NWRP.

(b) *Assistance to small credit unions.* Upon timely request by a credit union having total assets of less than $10 million (regardless how long it has been in operation), the NCUA Board shall provide assistance in preparing an NWRP required to be filed under paragraph (a) of this section.

(c) *Contents of NWRP.* An NWRP must—

(1) Specify—

(i) A quarterly timetable of steps the credit union will take to increase its net worth ratio, and risk-based capital ratio if applicable, so that it becomes adequately capitalized by the end of the term of the NWRP, and to remain so for four (4) consecutive calendar quarters;

(ii) The projected amount of net worth increases in each quarter of the term of the NWRP as required under § 702.106(a), or as permitted under § 702.106(b);

(iii) How the credit union will comply with the mandatory and any discretionary supervisory actions imposed on it by the NCUA Board under this subpart;

(iv) The types and levels of activities in which the credit union will engage; and

(v) If reclassified to a lower category under § 702.102(b), the steps the credit union will take to correct the unsafe or unsound practice(s) or condition(s);

(2) Include pro forma financial statements, including any off-balance sheet items, covering a minimum of the next two years; and

(3) Contain such other information as the NCUA Board has required.

(d) *Criteria for approval of NWRP.* The NCUA Board shall not accept a NWRP plan unless it—

(1) Complies with paragraph (c) of this section;

(2) Is based on realistic assumptions, and is likely to succeed in restoring the credit union's net worth; and

(3) Would not unreasonably increase the credit union's exposure to risk (including credit risk, interest-rate risk, and other types of risk).

(e) *Consideration of regulatory capital.* To minimize possible long-term losses to the NCUSIF while the credit union takes steps to become adequately capitalized, the NCUA Board shall, in evaluating an NWRP under this section,

consider the type and amount of any form of regulatory capital which may become established by NCUA regulation, or authorized by state law and recognized by NCUA, which the credit union holds, but which is not included in its net worth.

(f) *Review of NWRP*—(1) *Notice of decision.* Within 45 calendar days after receiving an NWRP under this part, the NCUA Board shall notify the credit union in writing whether the NWRP has been approved, and shall provide reasons for its decision in the event of disapproval.

(2) *Delayed decision.* If no decision is made within the time prescribed in paragraph (f)(1) of this section, the NWRP is deemed approved.

(3) *Consultation with state officials.* In the case of an NWRP submitted by a federally insured state-chartered credit union (whether an original, new, additional, revised or amended NWRP), the NCUA Board shall, when evaluating the NWRP, seek and consider the views of the appropriate state official, and provide prompt notice of its decision to the appropriate state official.

(g) *NWRP not approved*—(1) *Submission of revised NWRP.* If an NWRP is rejected by the NCUA Board, the credit union shall submit a revised NWRP within 30 calendar days of receiving notice of disapproval, unless it is notified in writing by the NCUA Board that the revised NWRP is to be filed within a different period.

(2) *Notice of decision on revised NWRP.* Within 30 calendar days after receiving a revised NWRP under paragraph (g)(1) of this section, the NCUA Board shall notify the credit union in writing whether the revised NWRP is approved. The Board may extend the time within which notice of its decision shall be provided.

(3) *Disapproval of reclassified credit union's NWRP.* A credit union which has been classified significantly undercapitalized shall remain so classified pending NCUA Board approval of a new or revised NWRP.

(4) *Submission of multiple unapproved NWRPs.* The submission of more than two NWRPs that are not approved is considered an unsafe and unsound condition and may subject the credit union to administrative enforcement actions under section 206 of the FCUA, 12 U.S.C. 1786 and 1790d.

(h) *Amendment of NWRP.* A credit union that is operating under an approved NWRP may, after prior written notice to, and approval by the NCUA Board, amend its NWRP to reflect a change in circumstance. Pending approval of an amended NWRP, the credit union shall implement the NWRP as originally approved.

(i) *Publication.* An NWRP need not be published to be enforceable because publication would be contrary to the public interest.

(j) *Termination of NWRP.* For purposes of this part, an NWRP terminates once the credit union is classified as adequately capitalized and remains so for four consecutive quarters. For example, if a credit union with an active NWRP attains the classification as adequately classified on December 31, 2015 this would be quarter one and the fourth consecutive quarter would end September 30, 2016.

§ 702.112 Reserves.

Each credit union shall establish and maintain such reserves as may be required by the FCUA, by state law, by regulation, or in special cases by the NCUA Board or appropriate state official.

§ 702.113 Full and fair disclosure of financial condition.

(a) *Full and fair disclosure defined.* ''Full and fair disclosure'' is the level of disclosure which a prudent person would provide to a member of a credit union, to NCUA, or, at the discretion of the board of directors, to creditors to fairly inform them of the financial condition and the results of operations of the credit union.

(b) *Full and fair disclosure implemented.* The financial statements of a credit union shall provide for full and fair disclosure of all assets, liabilities, and members' equity, including such valuation (allowance) accounts as may be necessary to present fairly the financial condition; and all income and expenses necessary to present fairly the statement of income for the reporting period.

(c) *Declaration of officials.* The Statement of Financial Condition, when presented to members, to creditors or to NCUA, shall contain a dual declaration by the treasurer and the chief executive officer, or in the latter's absence, by any other officer designated by the board of directors of the reporting credit union to make such declaration, that the report and related financial statements are true and correct to the best of their knowledge and belief and present fairly the financial condition and the statement of income for the period covered.

(d) *Charges for loan and lease losses.* Full and fair disclosure demands that a credit union properly address charges for loan losses as follows:

(1) Charges for loan and lease losses shall be made timely and in accordance with GAAP;

(2) The ALLL must be maintained in accordance with GAAP; and

(3) At a minimum, adjustments to the ALLL shall be made prior to the distribution or posting of any dividend to the accounts of members.

§ 702.114 Payment of dividends.

(a) *Restriction on dividends.* Dividends shall be available only from net worth, net of any special reserves established under § 702.112, if any.

(b) *Payment of dividends and interest refunds.* The board of directors must not pay a dividend or interest refund that will cause the credit union's capital classification to fall below adequately capitalized under this subpart unless the appropriate Regional Director and, if state-chartered, the appropriate state official, have given prior written approval (in an NWRP or otherwise). The request for written approval must include the plan for eliminating any negative retained earnings balance.

■ 11. Revise subpart B to read as follows:

Subpart B—Alternative Prompt Corrective Action for New Credit Unions

Sec.
702.201 Scope and definition.
702.202 Net worth categories for new credit unions.
702.203 Prompt corrective action for adequately capitalized new credit unions.
702.204 Prompt corrective action for moderately capitalized, marginally capitalized, or minimally capitalized new credit unions.
702.205 Prompt corrective action for uncapitalized new credit unions.
702.206 Revised business plans (RBP) for new credit unions.
702.207 Incentives for new credit unions.
702.208 Reserves.
702.209 Full and fair disclosure of financial condition.
702.210 Payment of dividends.

Subpart B—Alternative Prompt Corrective Action for New Credit Unions

§ 702.201 Scope and definition.

(a) *Scope.* This subpart B applies in lieu of subpart A of this part exclusively to credit unions defined in paragraph (b) of this section as ''new'' pursuant to section 216(b)(2) of the FCUA, 12 U.S.C. 1790d(b)(2).

(b) *New credit union defined.* A ''new'' credit union for purposes of this subpart is a credit union that both has been in operation for less than ten (10) years and has total assets of not more than $10 million. Once a credit union

reports total assets of more than $10 million on a Call Report, the credit union is no longer new, even if its assets subsequently decline below $10 million.

(c) *Effect of spin-offs.* A credit union formed as the result of a ''spin-off'' of a group from the field of membership of an existing credit union is deemed to be in operation since the effective date of the spin-off. A credit union whose total assets decline below $10 million because a group within its field of membership has been spun-off is deemed ''new'' if it has been in operation less than 10 years.

(d) *Actions to evade prompt corrective action.* If the NCUA Board determines that a credit union was formed, or was reduced in asset size as a result of a spin-off, or was merged, primarily to qualify as ''new'' under this subpart, the credit union shall be deemed subject to prompt corrective action under subpart A of this part.

§ 702.202 Net worth categories for new credit unions.

(a) *Net worth measures.* For purposes of this part, a new credit union must determine its capital classification quarterly according to its net worth ratio.

(b) *Effective date of net worth classification of new credit union.* For purposes of subpart B of this part, the effective date of a new credit union's classification within a capital category in paragraph (c) of this section shall be determined as provided in § 702.101(c); and written notice of a decline in net worth classification in paragraph (c) of this section shall be given as required by § 702.101(c).

(c) *Net worth categories.* A credit union defined as ''new'' under this section shall be classified—

(1) *Well capitalized* if it has a net worth ratio of seven percent (7%) or greater;

(2) *Adequately capitalized* if it has a net worth ratio of six percent (6%) or more but less than seven percent (7%);

(3) *Moderately capitalized* if it has a net worth ratio of three and one-half percent (3.5%) or more but less than six percent (6%);

(4) *Marginally capitalized* if it has a net worth ratio of two percent (2%) or more but less than three and one-half percent (3.5%);

(5) *Minimally capitalized* if it has a net worth ratio of zero percent (0%) or greater but less than two percent (2%); and

(6) *Uncapitalized* if it has a net worth ratio of less than zero percent (0%).

TABLE 1 TO § 702.202—CAPITAL CATEGORIES FOR NEW CREDIT UNIONS

A new credit union's capital classification is	*If it's net worth ratio is*
Well Capitalized	7% or above.
Adequately Capitalized	6 to 7%.
Moderately Capitalized	3.5% to 5.99%.
Marginally Capitalized	2% to 3.49%.
Minimally Capitalized	0% to 1.99%.
Uncapitalized	Less than 0%.

(d) *Reclassification based on supervisory criteria other than net worth.* Subject to § 702.102(b), the NCUA Board may reclassify a well capitalized, adequately capitalized or moderately capitalized new credit union to the next lower capital category (each of such actions is hereinafter referred to generally as ''reclassification'') in either of the circumstances prescribed in § 702.102(b).

(e) *Consultation with state officials.* The NCUA Board shall consult and seek to work cooperatively with the appropriate state official before reclassifying a federally insured state-chartered credit union under paragraph (d) of this section, and shall promptly notify the appropriate state official of its decision to reclassify.

§ 702.203 Prompt corrective action for adequately capitalized new credit unions.

Beginning on the effective date of classification, an adequately capitalized new credit union must increase the dollar amount of its net worth by the amount reflected in its approved initial or revised business plan in accordance with § 702.204(a)(2), or in the absence of such a plan, in accordance with § 702.106 until it is well capitalized.

§ 702.204 Prompt corrective action for moderately capitalized, marginally capitalized, or minimally capitalized new credit unions.

(a) *Mandatory supervisory actions by new credit union.* Beginning on the date of classification as moderately capitalized, marginally capitalized or minimally capitalized (including by reclassification under § 702.202(d)), a new credit union must—

(1) *Earnings retention.* Increase the dollar amount of its net worth by the amount reflected in its approved initial or revised business plan;

(2) *Submit revised business plan.* Submit a revised business plan within the time provided by § 702.206 if the credit union either:

(i) Has not increased its net worth ratio consistent with its then-present approved business plan;

(ii) Has no then-present approved business plan; or

(iii) Has failed to comply with paragraph (a)(3) of this section; and

(3) *Restrict member business loans.* Not increase the total dollar amount of member business loans (defined as loans outstanding and unused commitments to lend) as of the preceding quarter-end unless it is granted an exception under 12 U.S.C. 1757a(b).

(b) *Discretionary supervisory actions by NCUA.* Subject to the applicable procedures set forth in subpart L of part 747 of this chapter for issuing, reviewing and enforcing directives, the NCUA Board may, by directive, take one or more of the actions prescribed in § 702.109(b) if the credit union's net worth ratio has not increased consistent with its then-present business plan, or the credit union has failed to undertake any mandatory supervisory action prescribed in paragraph (a) of this section.

(c) *Discretionary conservatorship or liquidation.* Notwithstanding any other actions required or permitted to be taken under this section, the NCUA Board may place a new credit union which is moderately capitalized, marginally capitalized or minimally capitalized (including by reclassification under § 702.202(d)) into conservatorship pursuant to 12 U.S.C. 1786(h)(1)(F), or into liquidation pursuant to 12 U.S.C. 1787(a)(3)(A)(i), provided that the credit union has no reasonable prospect of becoming adequately capitalized.

§ 702.205 Prompt corrective action for uncapitalized new credit unions.

(a) *Mandatory supervisory actions by new credit union.* Beginning on the effective date of classification as uncapitalized, a new credit union must—

(1) *Earnings retention.* Increase the dollar amount of its net worth by the amount reflected in the credit union's approved initial or revised business plan;

(2) *Submit revised business plan.* Submit a revised business plan within the time provided by § 702.206, providing for alternative means of funding the credit union's earnings deficit, if the credit union either:

(i) Has not increased its net worth ratio consistent with its then-present approved business plan;

(ii) Has no then-present approved business plan; or

(iii) Has failed to comply with paragraph (a)(3) of this section; and

(3) *Restrict member business loans.* Not increase the total dollar amount of member business loans as provided in § 702.204(a)(3).

(b) *Discretionary supervisory actions by NCUA.* Subject to the procedures set forth in subpart L of part 747 of this chapter for issuing, reviewing and enforcing directives, the NCUA Board may, by directive, take one or more of the actions prescribed in § 702.109(b) if the credit union's net worth ratio has not increased consistent with its then-present business plan, or the credit union has failed to undertake any mandatory supervisory action prescribed in paragraph (a) of this section.

(c) *Mandatory liquidation or conservatorship.* Notwithstanding any other actions required or permitted to be taken under this section, the NCUA Board—

(1) *Plan not submitted.* May place into liquidation pursuant to 12 U.S.C. 1787(a)(3)(A)(ii), or conservatorship pursuant to 12 U.S.C. 1786(h)(1)(F), an uncapitalized new credit union which fails to submit a revised business plan within the time provided under paragraph (a)(2) of this section; or

(2) *Plan rejected, approved, implemented.* Except as provided in paragraph (c)(3) of this section, must place into liquidation pursuant to 12 U.S.C. 1787(a)(3)(A)(ii), or conservatorship pursuant to 12 U.S.C. 1786(h)(1)(F), an uncapitalized new credit union that remains uncapitalized one hundred twenty (120) calendar days after the later of:

(i) The effective date of classification as uncapitalized; or

(ii) The last day of the calendar month following expiration of the time period provided in the credit union's initial business plan (approved at the time its charter was granted) to remain uncapitalized, regardless whether a revised business plan was rejected, approved or implemented.

(3) *Exception.* The NCUA Board may decline to place a new credit union into liquidation or conservatorship as provided in paragraph (c)(2) of this section if the credit union documents to the NCUA Board why it is viable and has a reasonable prospect of becoming adequately capitalized.

(d) *Mandatory liquidation of uncapitalized federal credit union.* In lieu of paragraph (c) of this section, an uncapitalized federal credit union may be placed into liquidation on grounds of insolvency pursuant to 12 U.S.C. 1787(a)(1)(A).

§ 702.206 Revised business plans (RBP) for new credit unions.

(a) *Schedule for filing* —(1) *Generally.* Except as provided in paragraph (a)(2) of this section, a new credit union classified moderately capitalized or lower must file a written revised business plan (RBP) with the appropriate Regional Director and, if state-chartered, with the appropriate state official, within 30 calendar days of either:

(i) The last of the calendar month following the end of the calendar quarter that the credit union's net worth ratio has not increased consistent with the-present approved business plan;

(ii) The effective date of classification as less than adequately capitalized if the credit union has no then-present approved business plan; or

(iii) The effective date of classification as less than adequately capitalized if the credit union has increased the total amount of member business loans in violation of § 702.204(a)(3).

(2) *Exception.* The NCUA Board may notify the credit union in writing that its RBP is to be filed within a different period or that it is not necessary to file an RBP.

(3) *Failure to timely file plan.* When a new credit union fails to file an RBP as provided under paragraphs (a)(1) or (2) of this section, the NCUA Board shall promptly notify the credit union that it has failed to file an RBP and that it has 15 calendar days from receipt of that notice within which to do so.

(b) *Contents of revised business plan.* A new credit union's RBP must, at a minimum—

(1) Address changes, since the new credit union's current business plan was approved, in any of the business plan elements required for charter approval under chapter 1, section IV.D. of appendix B to part 701 of this chapter, or for state-chartered credit unions under applicable state law;

(2) Establish a timetable of quarterly targets for net worth during each year in which the RBP is in effect so that the credit union becomes adequately capitalized by the time it no longer qualifies as ''new'' per § 702.201;

(3) Specify the projected amount of earnings of net worth increases as provided under § 702.204(a)(1) or § 702.205(a)(1);

(4) Explain how the new credit union will comply with the mandatory and discretionary supervisory actions imposed on it by the NCUA Board under this subpart;

(5) Specify the types and levels of activities in which the new credit union will engage;

(6) In the case of a new credit union reclassified to a lower category under § 702.202(d), specify the steps the credit union will take to correct the unsafe or unsound condition or practice; and

(7) Include such other information as the NCUA Board may require.

(c) *Criteria for approval.* The NCUA Board shall not approve a new credit union's RBP unless it—

(1) Addresses the items enumerated in paragraph (b) of this section;

(2) Is based on realistic assumptions, and is likely to succeed in building the credit union's net worth; and

(3) Would not unreasonably increase the credit union's exposure to risk (including credit risk, interest-rate risk, and other types of risk).

(d) *Consideration of regulatory capital.* To minimize possible long-term losses to the NCUSIF while the credit union takes steps to become adequately capitalized, the NCUA Board shall, in evaluating an RBP under this section, consider the type and amount of any form of regulatory capital which may become established by NCUA regulation, or authorized by state law and recognized by NCUA, which the credit union holds, but which is not included in its net worth.

(e) *Review of revised business plan* —(1) *Notice of decision.* Within 30 calendar days after receiving an RBP under this section, the NCUA Board shall notify the credit union in writing whether its RBP is approved, and shall provide reasons for its decision in the event of disapproval. The NCUA Board may extend the time within which notice of its decision shall be provided.

(2) *Delayed decision.* If no decision is made within the time prescribed in paragraph (e)(1) of this section, the RBP is deemed approved.

(3) *Consultation with state officials.* When evaluating an RBP submitted by a federally insured state-chartered new credit union (whether an original, new or additional RBP), the NCUA Board shall seek and consider the views of the appropriate state official, and provide prompt notice of its decision to the appropriate state official.

(f) *Plan not approved* —(1) *Submission of new revised plan.* If an RBP is rejected by the NCUA Board, the new credit union shall submit a new RBP within 30 calendar days of receiving notice of disapproval of its initial RBP, unless it is notified in writing by the NCUA Board that the new RBP is to be filed within a different period.

(2) *Notice of decision on revised plan.* Within 30 calendar days after receiving an RBP under paragraph (f)(1) of this section, the NCUA Board shall notify the credit union in writing whether the new RBP is approved. The Board may extend the time within which notice of its decision shall be provided.

(3) *Submission of multiple unapproved RBPs.* The submission of more than two RBPs that are not

approved is considered an unsafe and unsound condition and may subject the credit union to administrative enforcement action pursuant to section 206 of the FCUA, 12 U.S.C. 1786 and 1790d.

(g) *Amendment of plan.* A credit union that has filed an approved RBP may, after prior written notice to and approval by the NCUA Board, amend it to reflect a change in circumstance. Pending approval of an amended RBP, the new credit union shall implement its existing RBP as originally approved.

(h) *Publication.* An RBP need not be published to be enforceable because publication would be contrary to the public interest.

§ 702.207 Incentives for new credit unions.

(a) *Assistance in revising business plans.* Upon timely request by a credit union having total assets of less than $10 million (regardless how long it has been in operation), the NCUA Board shall provide assistance in preparing a revised business plan required to be filed under § 702.206.

(b) *Assistance.* Management training and other assistance to new credit unions will be provided in accordance with policies approved by the NCUA Board.

(c) *Small credit union program.* A new credit union is eligible to join and receive comprehensive benefits and assistance under NCUA's Small Credit Union Program.

§ 702.208 Reserves.

Each new credit union shall establish and maintain such reserves as may be required by the FCUA, by state law, by regulation, or in special cases by the NCUA Board or appropriate state official.

§ 702.209 Full and fair disclosure of financial condition.

(a) *Full and fair disclosure defined.* ''Full and fair disclosure'' is the level of disclosure which a prudent person would provide to a member of a new credit union, to NCUA, or, at the discretion of the board of directors, to creditors to fairly inform them of the financial condition and the results of operations of the credit union.

(b) *Full and fair disclosure implemented.* The financial statements of a new credit union shall provide for full and fair disclosure of all assets, liabilities, and members' equity, including such valuation (allowance) accounts as may be necessary to present fairly the financial condition; and all income and expenses necessary to present fairly the statement of income for the reporting period.

(c) *Declaration of officials.* The Statement of Financial Condition, when presented to members, to creditors or to NCUA, shall contain a dual declaration by the treasurer and the chief executive officer, or in the latter's absence, by any other officer designated by the board of directors of the reporting credit union to make such declaration, that the report and related financial statements are true and correct to the best of their knowledge and belief and present fairly the financial condition and the statement of income for the period covered.

(d) *Charges for loan and lease losses.* Full and fair disclosure demands that a new credit union properly address charges for loan losses as follows:

(1) Charges for loan and lease losses shall be made timely in accordance with generally accepted accounting principles (GAAP);

(2) The ALLL must be maintained in accordance with GAAP; and

(3) At a minimum, adjustments to the ALLL shall be made prior to the distribution or posting of any dividend to the accounts of members.

§ 702.210 Payment of dividends.

(a) *Restriction on dividends.* Dividends shall be available only from net worth, net of any special reserves established under § 702.208, if any.

(b) *Payment of dividends and interest refunds.* The board of directors may not pay a dividend or interest refund that will cause the credit union's capital classification to fall below adequately capitalized under subpart A of this Part unless the appropriate regional director and, if state-chartered, the appropriate state official, have given prior written approval (in an RBP or otherwise). The request for written approval must include the plan for eliminating any negative retained earnings balance.

Subpart C—[Removed]

■ 12. Remove subpart C.

Subpart E [Redesignated as Subpart C]

■ 13. Redesignate subpart E as subpart C and redesignate §§ 702.501 through 702.506 as §§ 702.301 through 702.306 respectively.

§ 702.304 Capital planning.

■ 14. Amend the newly redesignated § 702.304(b)(4) by replacing the citation ''§ 702.506(c)'' with ''§ 702.306(c)''.

§ 702.305 NCUA action on capital plans.

■ 15. Amend the newly redesignated § 702.305(b)(4) by replacing the citation ''§ 702.504'' with ''§ 702.304''.

§ 702.306 Annual supervisory stress testing.

■ 16. Amend the newly redesignated § 702.306(c) by replacing the citation ''§ 702.504'' with ''§ 702.304''.

PART 703—INVESTMENT AND DEPOSIT ACTIVITIES

■ 17. The authority citation for part 703 continues to read as follows:

Authority: 12 U.S.C. 1757(7), 1757(8), 1757(15).

§ 703.14 [Amended]

■ 18. Amend § 703.14 as follows:

■ a. In paragraph (i) remove the words ''net worth classification'' and add in their place the words ''capital classification'', and remove the words ''or, if subject to a risk-based net worth (RBNW) requirement under part 702 of this chapter, has remained 'well capitalized' for the six (6) immediately preceding quarters after applying the applicable RBNW requirement,''.

■ b. In paragraph (j)(4) remove the words ''net worth classification'' and add in their place the words ''capital classification'', and remove the words ''or, if subject to a risk-based net worth (RBNW) requirement under part 702 of this chapter, has remained 'well capitalized' for the six (6) immediately preceding quarters after applying the applicable RBNW requirement,''.

PART 713—FIDELITY BOND AND INSURANCE COVERAGE FOR FEDERAL CREDIT UNIONS

■ 19. The authority citation for part 713 continues to read as follows:

Authority: 12 U.S.C. 1761a, 1761b, 1766(a), 1766(h), 1789(a)(11).

■ 20. Amend § 713.6 as follows:

■ a. In paragraph (a)(1), revise the table; and

■ b. In paragraph (c) remove the words ''net worth'' each place they appear and add in their place the word ''capital'', and remove the words ''or, if subject to a risk-based net worth (RBNW) requirement under part 702 of this chapter, has remained 'well capitalized' for the six (6) immediately preceding quarters after applying the applicable RBNW requirement,''.

The revision reads as follows:

§ 713.6 What is the permissible deductible?

(a)(1) * * *

Assets	Maximum deductible
$0 to $100,000	No deductible allowed.
$100,001 to $250,000	$1,000
$250,000 to $1,000,000	$2,000
Over $1,000,000	$2,000 plus 1/1000 of total assets up to a maximum of $200,000; for credit unions that have received a composite CAMEL rating of ''1'' or ''2'' for the last two (2) full examinations and maintained a capital classification of ''well capitalized'' under part 702 of this chapter for the six (6) immediately preceding quarters the maximum deductible is $1,000,000.

* * * * *

PART 723—MEMBER BUSINESS LOANS

■ 21. The authority citation for part 723 continues to read as follows:

Authority: 12 U.S.C. 1756, 1757, 1757A, 1766, 1785, 1789.

§ 723.7 [Amended]

■ 22. In § 723.7 amend paragraph (c)(1) by removing the words ''as defined by § 702.102(a)(1)'' and adding in their place the words ''under part 702''.

PART 747—ADMINSTRATIVE ACTIONS, ADJUDICATIVE HEARINGS, RULES OF PRACTICE AND PROCEDURE, AND INVESTIGATIONS

■ 23. The authority citation for part 747 continues to read as follows:

Authority: 12 U.S.C. 1766, 1782, 1784, 1785, 1786, 1787, 1790a, 1790d; 42 U.S.C. 4012a; Pub. L. 101–410; Pub. L. 104–134; Pub. L. 109–351; 120 Stat. 1966.

§ 747.2001 [Amended]

■ 24. In § 747.2001, amend paragraph (a) by removing the citation ''702.302(d)'' and adding in its place the citation ''702.202(d)''.

§ 747.2002 [Amended]

■ 25. In § 747.2002, amend paragraph (a)(1) by removing the words ''§§ 702.202(b), 702.203(b) and 702.204(b)'' and adding in their place the words ''§§ 702.107 (b), 702.108(b) or 702.109(b)'', and by removing the words ''§§ 702.304(b), or 702.305(b)'' and adding in their place the words ''§§ 702.204(b) or 702.205(b)''.

§ 747.2003 [Amended]

■ 26. In § 747.2003, amend paragraph (a) by removing the citation ''702.302(d)'' and adding in its place the citation ''702.202(d)''.

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Part III

Federal Communications Commission

47 CFR Part 54

Connect America Fund, ETC Annual Reports and Certifications, Petition of USTelecom for Forbearance From Obsolete ILEC Regulatory Obligations That Inhibit Deployment of Next-Generation Networks; Final Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket Nos. 10–90, 14–58, 14–192; FCC 14–190]

Connect America Fund, ETC Annual Reports and Certifications, Petition of USTelecom for Forbearance From Obsolete ILEC Regulatory Obligations That Inhibit Deployment of Next-Generation Networks

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) takes momentous strides towards fully implementing a modernized universal service regime capable of meeting consumer demands for 21st century networks. The Commission also finalizes decisions necessary to proceed with the offer of support to price cap carriers in early 2015.

DATES: Effective February 26, 2015, except for §§ 54.313(a)(e) and 54.320 which contain 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 those sections.

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, WC Docket Nos. 10–90, 14–58, 14–192; FCC 14–190, adopted on December 11, 2014 and released on December 18, 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: *https://apps.fcc.gov/edocs_public/attachmatch/FCC-14-190A1.pdf.*

I. Introduction

1. With this Report and Order (Order), the Commission takes another momentous stride towards fully implementing a modernized universal service regime capable of meeting consumer demands for 21st century networks. The Commission finalizes the decisions necessary to proceed with the offer of support to price cap carriers in early 2015, thereby paving the way for the deployment of new broadband infrastructure to millions of unserved Americans. In the coming months, the Commission will turn our attention to finalizing the rules for the Phase II competitive bidding process that will occur in those states where the price cap carrier declines the offer of model-based support.

2. Throughout the universal service reform process, the Commission has sought to ensure that all consumers ''have access to . . . advanced telecommunications and information services'' and benefit from the historic technology transitions that are transforming our nation's communications services. This Report and Order continues down that path. The Commission adopts several revisions to Connect America Phase II to account for changes in the marketplace since the *USF/ICC Transformation Order,* 76 FR 73830, November 29, 2011, was adopted. In particular, the Commission revises the minimum speed requirement that recipients of high-cost universal service must offer. The Commission finds that it is in the public interest to require recipients of high-cost support subject to broadband performance obligations to serve fixed locations to provide at least a minimum broadband speed of 10 Mbps downstream.

3. The Commission adopts targeted changes to the framework established for the offer of model-based support to price cap carriers. Specifically, the Commission makes an adjustment to the term of support, adopts more evenly spaced interim deployment milestones, and concludes that adjustments of up to five percent in the number of locations that must be served with corresponding support reductions are appropriate to ensure that deployment obligations recognize conditions in the real world. The Commission also forbears from the federal high-cost universal service obligation of price cap carriers to offer voice service in low-cost areas where they do not receive high-cost support, in areas served by an unsubsidized competitor, and in areas where the price cap carrier is replaced by another eligible telecommunications carrier (ETC).

4. In addition, the Commission addresses where Phase II support will be available, both for the offer of model-based support to price cap carriers and the subsequent Phase II competitive bidding process. First, the Commission will exclude from the offer of Phase II model-based support any census block served by a subsidized facilities-based terrestrial competitor that offers fixed residential voice and broadband services meeting or exceeding 4 Mbps downstream and 1 Mbps upstream (4/1 Mbps), using 3 Mbps downstream/768 kbps upstream (3 Mbps/768 kbps) as a proxy for this standard, as determined by the Wireline Competition Bureau (Bureau) upon completion of the Phase II challenge process. The Commission also reaffirms its decision to exclude from the offer of model-based support any census block served by an unsubsidized competitor that meets or exceeds the 3 Mbps/768 kbps performance metrics. Second, the Commission concludes that those high-cost blocks served by a subsidized carrier that are excluded from the offer of model-based support—including blocks with service meeting or exceeding the new 10 Mbps downstream/1 Mbps upstream (10/1 Mbps) speed requirement—will be eligible for support in the Phase II competitive bidding process. Third, the Commission concludes that any area served by an unsubsidized facilities-based terrestrial competitor that offers 10/1 Mbps will be ineligible for support in the Phase II competitive bidding process.

5. In the April 2014 *Connect America Fund FNPRM,* 79 FR 39196, July 9, 2014, the Commission sought comment on a number of near-term and longer-term reforms for rate-of-return carriers, including developing and implementing a ''Connect America Fund'' for rate-of-return carriers. Although a number of parties have submitted proposals that may have promise, the Commission finds that further analysis and development of these proposals is necessary. The Commission will continue to explore the possibility of a voluntary path to model-based support for those rate-of-return carriers that choose to pursue it. The Commission also expects to continue to develop the record and act in the coming year on alternatives for those who do not elect to receive model-based support.

6. In this Order, the Commission focuses on near-term reforms for rate-of-return carriers. Specifically, the Commission adopts a revised methodology for applying the cap on high-cost loop support to distribute that support on a more equitable basis. The Commission also addresses the proposals from the *April 2014 Connect America FNPRM* regarding the 100 percent overlap rule.

7. In the *USF/ICC Transformation Order,* the Commission established a ''uniform national framework for accountability'' that replaced the various data and certification filing deadlines that carriers previously were

required to meet. In this Order, the Commission takes several steps to strengthen that framework, including codifying the reasonable comparability pricing requirement for broadband services, adjusting the reductions in support for late-filed annual ETC reports and certifications, and providing greater specificity regarding how the Commission will address non-compliance with the Commission's service obligations for voice and broadband.

8. The actions the Commission takes in this Order, combined with the implementation of the rural broadband experiments and the reforms the Commission implemented earlier in the year, will allow the Commission to continue to advance further down the path outlined in the *USF/ICC Transformation Order.* The Commission expects the Bureau to complete the Connect America Phase II challenge process and then make a final determination as to which census blocks will be eligible for the offer of model-based Phase II support by early 2015. That final determination will allow the Commission to extend the offers of Phase II model-based support to price cap carriers to fund the deployment of voice and broadband-capable infrastructure in their territories. The carriers will then have 120 days to consider the offer, and in those states where the price cap carrier declines the offer of support, the Commission will move forward with the Phase II competitive bidding process to determine support recipients.

II. Public Interest Obligations

A. Evolving Speed Obligations

9. *Discussion.* In this section, the Commission adopts a new minimum speed standard of 10 Mbps downstream and 1 Mbps upstream (10/1 Mbps) to further the statutory goal in section 254 of ensuring that consumers in rural and high-cost areas of the country have access to advanced telecommunications and information services that are reasonably comparable to those services in urban areas, at reasonably comparable rates. The marketplace for broadband has continued to evolve since the Commission established its initial minimum speed benchmark of 4/1 Mbps in 2011, and will continue to do so, given consumer demand for an ever growing range of services and applications. Our task is to implement policies with our available funds that will extend broadband to high-cost and rural areas where the marketplace alone does not currently provide a minimum level of broadband connectivity.

10. The most recent State Broadband Initiative (SBI) data for December 2013 show that 99 percent of Americans living in urban areas have access to fixed broadband with speeds of at least 10 Mbps downstream/768 kbps upstream (10 Mbps/768 kbps), and a majority of Americans have already chosen to adopt such service. Moreover, fixed broadband services with even higher speeds, such as 25 Mbps downstream/3 Mbps upstream (25/3 Mbps) or higher, are available to the vast majority of urban households. In contrast, the SBI data indicate that 31 percent of the population residing in rural census blocks lack access to fixed broadband providing at least 10 Mbps/768 kbps speeds.

11. Our objective with high-cost support is to extend broadband-capable infrastructure to as many high-cost locations as efficiently as possible, and at the same time ensure that the Commission is best utilizing the funds that consumers and businesses pay into the universal service system. The Commission finds that raising the minimum downstream speed requirement to 10 Mbps is an appropriate way at the present time to implement the statutory language in section 254 regarding reasonable comparability. As noted above, where available, a majority of households adopt fixed broadband with speeds of at least 10 Mbps/768 kbps. This is not surprising, as fixed broadband with speeds of at least 10 Mbps downstream offers more functionality to consumers than 4 Mbps downstream, particularly when multiple users are relying upon the broadband connection. For users browsing the Web, the total time needed to load a page decreases with higher speeds up to about 10 Mbps. High definition video requires 5 Mbps downstream. Although VoIP services are adequately supported by lower speeds, VoIP quality may suffer when household bandwidth is shared by other services. When rural households have access to speeds of 10 Mbps or more, they are just as likely to adopt a 10 Mbps service as households in urban areas.

12. The Commission is setting a standard that is achievable in the near term with support from the Connect America Fund, while mindful of the need to balance the interests of both recipients and contributors to the Fund. The Commission encourages recipients of funding to deploy to the extent possible future proof infrastructure that will be capable of meeting evolving broadband performance obligations over the longer term. That will ensure that our policies will continue to support an evolving level of universal service in the future.

13. Based on the record before us, the Commission finds ample basis for revising the current broadband performance obligations to require minimum speeds of 10 Mbps downstream. In contrast, while a few commenters supported raising the upstream speed, there is little analysis in this docket regarding the potential advantages and disadvantages associated with raising the minimum upstream speed above 1 Mbps for purposes of high-cost funding. The Commission therefore does not adjust the minimum upstream speed required for high-cost support recipients at this time, but expect to consider the matter again when the Commission revisits our broadband performance obligations for recipients of high-cost support in the future. Accordingly, pursuant to section 254, the Commission adopts a minimum speed standard of 10/1 Mbps to ensure that Connect America funding is used efficiently, to deploy broadband-capable networks to meet ever evolving consumer demand.

14. As the Commission explained in the *April 2014 Connect America FNPRM,* by increasing the current broadband downstream speed benchmark, the Commission is primarily focusing on the minimum standard for *new* deployments of broadband-capable infrastructure. Consistent with the approach the Commission adopted for the previous speed benchmark, high-cost support recipients will be expected to achieve the new standard over a period of years, as they utilize that support to extend and upgrade networks in high-cost areas that are otherwise uneconomic to serve. Price cap carriers accepting a state-level commitment will be required to offer at least 10/1 Mbps broadband service to the requisite number of high-cost locations in a given state by the end of the support term. Rate-of-return carriers will be required to offer at least 10/1 Mbps broadband service upon reasonable request, consistent with past guidance regarding our expectations regarding the reasonable request standard. If a request for 10/1 Mbps is not reasonable in a given circumstance, but offering 4/1 Mbps is reasonable, the Commission would expect a rate-of-return carrier to offer 4/1 Mbps.

15. The Commission is not persuaded by arguments that increasing the downstream speed benchmark to 10 Mbps requires fundamental changes in the terms of the offer to price cap carriers that accept a state-level commitment. Although price cap carriers generally support a 10 Mbps

speed benchmark, they contend concurrent changes should be made to other terms of the state-level offer. The Commission does not agree that by increasing the required broadband speed the Commission is upending the ''delicate balance'' adopted by the Commission in the *USF/ICC Transformation Order.* The Commission made clear in 2011 that it expected broadband performance obligations to evolve, committed to initiating a proceeding in three years to re-examine the standard, and noted that carriers were expected to build ''robust, scalable networks.'' Moreover, at that time, the Commission delegated authority to the Bureau to require price cap carriers accepting model-based support to deploy service delivering at least 6/1.5 Mbps to a number of supported locations. Thus, the framework adopted by the Commission in 2011 expressly anticipated that a higher minimum speed standard would be necessary in the future to provide an evolving level of universal service.

16. Although the Commission recognizes that carriers upgrading their networks may incur additional capital investment costs to offer 10/1 Mbps as opposed to 4/1 Mbps, how much more costly this is in the real world depends on circumstances that vary by carrier, such as the location of existing facilities and distances to unserved locations. The fact that achieving this revised standard may require additional network investment than would be the case if the speed standard remained 4/1 Mbps is not a justification, however, for not adjusting the standard at all. Rather as discussed more fully below, the Commission makes other modest adjustments to the Phase II framework to ensure that the support provided is sufficient to meet the obligations that are accepted through the state-level commitment. To the extent a carrier believes the support offered is insufficient to meet the obligations, it may turn down the offer of Phase II model-based support.

17. The Commission expects carriers planning upgrades to their networks today would take into account near term and future consumer demand. As noted above, current data show that a majority of broadband subscribers today purchase at least 10/1 Mbps. A comparison of adoption rates from 2011 to 2013 show a steady increase in adoption for this level of service. The Commission therefore finds that it is reasonable to assume that many carriers upgrading their networks with Phase II support would aim to provide the capability to provide at least 10/1 Mbps, with higher speeds available to a subset of locations.

18. Rate-of-return carriers are expected to take into account the revised 10/1 Mbps speed standard when considering whether and where to upgrade existing plant in the ordinary course of business and will be required to report on progress toward this goal in annual updates to their five-year service quality plans. As the Commission emphasized in proposing the revised speed standard, however, a rate-of-return carrier will only be required to meet the higher speed standard if the request for service is reasonable. Rate-of-return carriers will be able to comply with the revised speed standard because the Commission already has adopted a more flexible approach to determining compliance with our broadband performance obligations for this segment of the industry. The Commission previously have stated that 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 not consider only its anticipated end-user revenues, for the services to be offered over that network, both voice and broadband internet access, but also other sources of support, such as federal and, where available, state universal service funding.'' Among other things, the Commission has explained that a request would not be reasonable if the incremental cost of undertaking the necessary upgrades to a particular location exceed the revenues that could be expected from that upgraded line. The Commission has determined that carriers may take into account backhaul costs or other unique circumstance that make it cost-prohibitive to extend service to particular customers. Moreover, rate-of-return carriers have no obligation to extend broadband-capable infrastructure in any census block that is served by a competitor that meets the Commission's revised performance standards.

19. Nor is the Commission persuaded that increasing the broadband speed requirement requires enlarging the budget for rate-of-return carriers. As discussed above, carriers evaluating whether or not a request for service is reasonable may consider the cost of upgrading the network and the support available. If, for instance, the cost of extending fiber sufficiently close to a requesting customer to be able to offer 10/1 Mbps service is more than a rate-of-return carrier could cover with existing universal service support and anticipated end-user revenues, but it would be able to cover the cost of extending fiber to provide 4/1 Mbps service, the Commission would expect the carrier to extend 4/1 Mbps service.

20. The Commission is confident that these carriers will deploy broadband-capable infrastructure meeting these new requirements to the extent economically feasible in their communities and will continue to work on creative ways to partner with each other and other entities to provide service meeting these requirements. The Commission notes that rate-of-return carriers have continued to deploy broadband-capable infrastructure since the Commission adopted the landmark reforms in the *USF/ICC Transformation Order,* and the Commission expects they will continue to do so in the future. As discussed below, the Commission adopts modifications to the current high-cost loop support mechanism to provide a more equitable method of distributing funding among carriers serving high-cost areas, ensuring that some carriers in high-cost areas do not precipitously lose support. In the *April 2014 Connect America FNPRM,* the Commission proposes longer-term reforms for rate-of-return carriers, including a voluntary path to model-based support. The Commission remains interested in finding a way to distribute support on an equitable basis that will provide support for investment in infrastructure capable of delivering 10/1 Mbps where reasonable in areas served by rate-of-return carriers.

21. The Commission also rejects arguments that the Commission should increase the high-cost universal service budget, as a means of advancing broadband deployment in rural areas to an even greater degree than the Commission already does in this Order. ''[T]he Commission has to balance the principles of section 254(b) to ensure that support is sufficient but does not impose an excessive burden on all ratepayers.'' The Commission previously conducted just such a balancing in adopting the budget at issue here, and the Commission is not persuaded to depart from it at this time. In particular, ''any determination about whether the Commission has adequately implemented section 254 must look at the cumulative effect of the four support programs, acting together.'' The Commission has been undertaking comprehensive reforms of its universal service programs to facilitate broadband deployment, and the Commission continues to advance that objective through the reforms adopted in this Order. Although the Commission recognizes that there are possible broadband goals the Commission could

advance even more broadly here, the ratepayer impact that already will occur as a result of its universal service programs collectively, coupled with the particular circumstances here, persuade the Commission to proceed cautiously when weighing any benefits from increased support against the burden on ratepayers.

22. In that regard, the record here does not persuade the Commission that an increased high-cost budget is warranted. When comprehensively reforming the high-cost support mechanism to better advance broadband deployment, the Commission began implementing certain reforms immediately, while setting out a plan to advance broadband even more widely over time through additional initiatives. For example, noting that some areas may be too costly to serve with traditional wireline or terrestrial wireless broadband technologies, the Commission established the Remote Areas Fund to provide support for such ''extremely high-cost'' areas and set a budget of ''at least'' $100 million. In April 2014, the Commission concluded that extremely high-cost areas would be eligible for the Phase II competitive bidding process. In the coming year, the Commission expects to develop the rules for the Phase II auction and how to address the areas that remain unserved after that competitive bidding process. The Commission also is considering, among other things, long term high-cost universal service reforms for rate-of-return study areas. Against the backdrop of these and other existing and planned efforts, some commenters nonetheless advocate making increased high-cost support available here, but fail to meaningfully quantify or demonstrate—even in an aggregate way—the incremental cost (and associated burden on ratepayers) required to achieve an incremental advancement of broadband deployment beyond what the Commission already is achieving through the reforms adopted here and through our universal service programs more broadly. The Commission thus is not persuaded to increase high-cost universal service support further. Instead, the Commission advances our broadband universal service goals through the high-cost fund to the extent the Commission is able within the existing budget. The Commission also notes that the states have an important role to play in advancing universal service goals. The Commission welcomes and encourages states to supplement our federal funding, whether through state universal service funds or other mechanisms.

23. Finally, the Commission concludes that recipients of support through the Phase II competitive bidding process will be required to meet an evolving broadband speed standard over the ten-year term. Given the historical and anticipated trajectory of broadband speeds, the Commission anticipates that consumers will increasingly demand greater upstream speeds as well as downstream speeds. The Commission would expect to initiate a proceeding to review the performance standards for the Connect America Fund no later than 2018. While the Commission will establish the specific performance obligations and auction design in an upcoming order regarding the Phase II competitive bidding process, the Commission decides now that 10/1 Mbps should not be our end goal for recipients of support over a ten-year term. The Commission recognizes that competitive bidding is likely to be more efficient if potential bidders can predict what their performance obligations will be for the length of the term. The Commission therefore now adopts a methodology for determining the minimum speeds that will be required by the end of the ten-year term for entities receiving support through the Phase II competitive bidding process. The Commission concludes that the minimum speed shall be based on the highest speed adopted by a majority of households, as reported in the most recent Form 477 data available at the time the Commission next revisits the specific performance obligations for the Connect America Fund. The Commission encourages parties receiving ten years of support through the Phase II competitive bidding process to deploy future-proof networks that are capable of meeting future demand.

B. Term of Support for Price Cap Carriers Accepting Phase II Model-Based Support

24. The Commission makes a modest adjustment to the framework the Commission adopted in 2011 for the Connect America Fund and adopts a six-year term of support, which will begin in 2015 and extend through 2020, with an option for a seventh year in certain circumstances. The Commission recognizes that upgrading existing networks to provide 10/1 Mbps requires deploying fiber further into the distribution network. The Commission is not persuaded, however, that the ten-year term advocated by some is warranted. When the Commission adopted the five-year term it emphasized ''the limited scope and duration of the state-level commitment procedure'' and expected that ''support after such five-year period will be awarded through a competitive bidding process in which all eligible providers will be given an equal opportunity to compete.'' The Commission continues to believe that it should move to competitive bidding processes in a timely manner in those areas where support initially is awarded through the acceptance of state-level commitments. In particular, the Commission expects to conduct a competitive bidding process no later than the end of 2019 to ensure there is continuity and a transition path to Connect America Phase III.

25. To the extent a price cap carrier that accepts the offer of Phase II model-based support in a particular state is a winning bidder in the Phase III auction, it will commence receiving that support in 2021. In the event that carrier either does not win in the Phase III auction, or chooses not to bid on such support, its term of Phase II support will be completed at the end of 2020. The Commission will provide such carriers the option to elect one additional year of support, however, with Phase II support continuing in calendar year 2021 as a gradual transition to the elimination of support. This is consistent with the principle established in the *USF/ICC Transformation Order* of ''no flash cuts,'' while also recognizing that additional funding may be appropriate in particular circumstances in those states where six years of support is insufficient to cover the capital investment necessary to meet the revised 10 Mbps downstream standard. The Commission also notes that even if a new entrant is authorized to begin receiving Phase III support in 2020, there will be a certain amount of time before that new provider will be able to deploy its network and begin offering service. Providing another year of Phase II support to the incumbent provider through the end of 2021 will ensure that there is an appropriate transition from the incumbent to new ETCs.

C. Flexibility in Meeting Deployment Obligations

26. In the *April 2014 Connect America FNPRM,* the Commission sought comment on a number of measures that would provide recipients of Phase II support greater flexibility in meeting their deployment obligations. In response, price cap carriers argue that if the Commission requires 10 Mbps, it should increase the build-out period of the state-level commitment to eight or ten years. They claim that building

networks capable of providing 10/1 Mbps will take more time and more funding than networks meeting the current 4/1 Mbps speed requirement, because it will require extending fiber further into the network and deploying additional remote terminals. In addition to taking more time for planning network upgrades and obtaining necessary permits, they also argue that the broadband construction industry as a whole may not be capable of meeting the demand in a shorter timeframe.

27. Here, the Commission addresses flexibility for price cap carriers accepting Phase II model-based support. The Commission expects to provide similar flexibility to recipients of support awarded through the Phase II competitive bidding process, which will be addressed in a future order adopting the rules for the competitive bidding process.

1. Interim Deployment Obligations

28. The Commission modifies the build-out requirements established for price cap carriers accepting model-based support to create straight line interim milestones over the revised six-year term, rather than front-loading the deployment obligations in the first three years of the term. When the Commission adopted the interim deployment milestone of deploying to 85 percent of locations by the end of the third year, it noted that ''there were few concrete suggestions in the record on what those interim milestones should be.'' The Commission recognizes that the first task for any major network upgrade is to complete an overall plan and then undertake detailed engineering analyses in the field to plan the construction of particular routes. Recipients of support—whether price cap carriers or bidders in a competitive auction—will likely then proceed incrementally, route by route, working to complete construction evenly over the course of the term required for deployment. For that reason, rather than requiring price cap carriers accepting a state-level commitment to offer broadband service meeting the minimum requirements to at least 85 percent of their high-cost locations by the end of the third year, the Commission instead adopts evenly spaced annual interim milestones for price cap carriers to offer at least 10/1 Mbps to an additional 20 percent of the requisite number of high-cost locations each year, as shown in Table 1 below. Completing construction to 40 percent of the requisite number of locations in a state by the end of calendar year 2017, instead of 85 percent by mid-2018 year, is a more realistic expectation, given that carriers will not accept the offer of support until mid-year in 2015 and once authorized to receive support, will then be developing detailed network construction plans.

TABLE 1—DEPLOYMENT MILESTONES FOR PRICE CAP CARRIERS ACCEPTING PHASE II MODEL-BASED SUPPORT

	Current requirement	Revised interim milestones
Year 1 ..	.....	**%.
Year 2 ..	.....	**%.
Year 3 ..	85% of locations	40%. End of 2017.
Year 4 ..	.....	60%. End of 2018.
Year 5 ..	100% of locations	80%. End of 2019.
Year 6 ..	.....	100% End of 2020.

29. The Commission recognizes that price cap carriers may choose to prioritize construction in certain states in any given year and therefore do not expect them to be deploying new facilities in every state in every year of the Phase II term. However, the Commission does require that carriers annually deploy new infrastructure to some locations that previously lacked 4/1 Mbps in the earlier years of the Phase II term so that consumers benefit from the availability of new broadband services as early as possible. By the end of calendar year 2017, the Commission requires that, at the holding company level, at least five percent of the nationwide total of funded locations that have been reported as newly served in the annual reports must be locations that previously lacked 4/1 Mbps.

2. Number of Locations

30. In addition, the Commission recognizes that the ''facts on the ground'' when price cap carriers are deploying facilities may necessitate some additional flexibility regarding the scope of the deployment obligations. At the outset, the Commission notes that there may be some variance between the number of funded locations as specified by the forward-looking cost model adopted by the Bureau and the actual number of locations in a given area. For instance, the price cap carrier model utilizes GeoResults study area boundaries, which in some instances may be inaccurate, which in turn may result in the inaccurate assignment of certain locations to a particular price cap territory. The model also utilizes GeoResults business location data, which in some instances may be inaccurate in terms of either business counts or actual physical locations; this in turn may result in too many or too few locations in a given census block. While these minor inaccuracies should cancel one another out in most instances across multiple census blocks, the Commission recognizes that in particular areas that may not be the case, and the total number of locations assigned to a particular price cap carrier in a given state according to the model simply does not necessarily reflect the actual number of locations. The Commission also recognizes that there may be a variety of unforeseen factors, after the initial planning stage, that can cause significant changes as a network is actually being deployed in the field, and a variety of factors that can affect the time needed to deploy a planned route. Finally, the Commission notes that the customer location data utilized in the model reflect location data at a particular point in time. The precise number of locations in some funded census blocks is likely to change over time for a variety of reasons, which may impact the orderly progress of the planned construction cycle.

31. Given all of these factors, rather than requiring deployment to 100 percent of funded locations as identified by the model in a given state, the Commission will permit a modest adjustment to the number of model-determined funded locations in a given state with a corresponding reduction in support in certain instances. Price cap carriers taking advantage of this flexibility will be required to refund support based on the number of required locations without access to broadband. The Commission balances this flexibility with our goal of advancing the availability of broadband to these high-cost locations. Therefore, the Commission will require deployment to at least 95 percent of the funded locations, but in order for a price cap carrier to take advantage of this flexibility, the Commission requires them to identify by December 31, 2015, any specific census blocks where they do not intend to meet their deployment commitments, with those blocks covering at least two percent of their total eligible locations in a state. The Commission recognizes there may be discrete census blocks identified during the early planning stages that will be challenging to serve. By requiring the price cap carriers to identify up front those particular census blocks that they know they will not deploy to during Phase II, the Commission can make those census blocks eligible for support in the Phase II competitive bidding process. For those carriers that elect to

take advantage of this flexibility, the Commission then allows them to identify an additional number of the eligible locations left unserved at of the end of the term, up to three percent.

32. The Commission finds that requiring deployment to at least 95 percent of the number of funded locations will provide some flexibility to price cap carriers in meeting their deployment obligations. The Commission is not persuaded by commenters who argue that the Commission should provide much more flexibility. For example, price cap carriers argue that those accepting a state-level commitment should be permitted to deploy to as few as 90 percent of their funded locations. Although they propose to forego funding on a pro rata basis for the remaining locations, the Commission is concerned that providing that degree of flexibility across the board is inconsistent with the Commission's rationale for providing these carriers the offer of model-based support in the first instance: to ensure ubiquitous coverage. Rather, the Commission may address unique situations through the waiver process where specific circumstances justify additional flexibility.

33. Nor is the Commission persuaded by commenters who argue that requiring anything less than 100 percent would allow recipients to ''cherry pick'' and opt out of serving the highest-cost locations. As discussed above, there are a number of legitimate reasons why it may not be possible for a provider—whether a price cap carrier or a competitive provider awarded support in a competitive bidding process—to deploy to 100 percent of the funded locations in Phase II areas by the end of the deployment term. The Commission concludes that the benefits of providing some flexibility to a price cap carrier to address any variance between the cost model and real world circumstances outweigh the theoretical risk that the carrier could systematically identify and exclude the five percent of locations that are highest-cost and are likely sprinkled throughout its funded territory.

34. The Commission will require price cap Phase II recipients that have deployed to at least 95 percent, but less than 100 percent, of the number of funded locations to refund support based on the number of funded locations left unserved in the state at the end of their support term. The Commission recognizes that many factors determine a carrier's deployment decisions, and affect costs even after those decisions are made, so the Commission doubts that a carrier would or could systematically exclude the highest cost locations. At the same time, it is reasonable to assume that many of the locations left unserved would have higher than the average costs calculated by the model. A higher amount per location than the average therefore is appropriate. Moreover, the Commission wants to provide more incentive to carriers to build out to 100 percent of the required number of locations. On a nationwide basis, the average support for the top five percent of the highest-cost funded locations is 3.77 times the average support for all funded locations. The Commission recognizes that costs will vary by state and carrier, but find that the administrative simplicity of using one-half of the nationwide aggregate factor outweighs the benefits of false precision. Accordingly, the Commission will require a price cap carrier at the end of its support term to refund an amount based on the number of locations left unserved and the average Phase II support the carrier receives in a state multiplied by 1.89.

35. The Commission concludes that the administrative simplicity of this method outweighs the potential benefit of reducing support based on a more complicated determination based on the relative costs of particular locations as determined by the forward-looking cost model. As discussed below, the Commission will require price cap carriers to include in the final annual progress report that they submit with their section 54.313 reports the total number and geocodes of all funded locations to which they have deployed facilities capable of delivering broadband meeting the requisite requirements, which will provide an objective, easily verifiable basis for USAC to determine the amount of support to recover in the event there is less than 100 percent compliance with the deployment obligation.

36. Finally, for those carriers accepting Phase II model-based support, the Commission declines to adopt the proposal to substitute unserved locations within partially served census blocks for locations within funded census blocks. While the Commission will continue to explore this issue, questions remain in the record how best to determine whether or not a particular location in a partially served block is served or unserved without placing significant burdens on interested parties and Bureau staff. The Commission notes that all parties potentially interested in Connect America support—both incumbents and new entrants alike—have an interest in building economically efficient networks, and those networks do not neatly align with census boundaries. Therefore, the Commission encourages all stakeholders interested in the Phase II competitive bidding process to work together to propose for future Commission consideration an administratively feasible method for ensuring that unserved consumers in partially served census blocks are not left behind.

D. Obligations of Carriers Serving Non-Contiguous Areas That Elect Phase II Frozen Support

37. *Discussion.* Based on the record before the Commission, it concludes that the best approach is to adopt tailored service obligations for each of the non-contiguous carriers that elect to continue to receive frozen support amounts for Phase II in lieu of the offer of model-based support. The Commission recognizes that non-contiguous carriers face unique circumstances in the areas they serve and experience different challenges in deploying broadband service in those areas. Consequently, a ''one-size-fits-all'' approach would leave some of these carriers potentially unable to fulfill their service obligations. The Commission believes that tailoring specific service obligations to the individual circumstances of each non-contiguous carrier that elects to continue receiving frozen support for Phase II will best ensure that Connect America funding is put to the best possible use.

38. Because the amount of frozen support may in some cases be greater than the amount of model-based support, the Commission must reserve sufficient funds for frozen support before generally making the offer of support to price cap carriers in order to ensure that the Commission does not exceed the overall budget for the offer of model-based support. The Commission requires each non-contiguous carrier to notify the Bureau no later than 15 days after the release of this Order whether it is interested in Phase II frozen support in lieu of model-based support. The Bureau then will be able to determine the appropriate maximum amount of money that should be reserved out of the $1.8 billion budget for those carriers. The Commission concludes that waiting to extend the offer of model-based support until it adopts tailored service obligations for each non-contiguous carrier would unnecessarily delay the offer of model-based support to all other price cap carriers.

39. As the Commission stated in the *April 2014 Connect America FNPRM,* the Commission expects that any tailored service obligations 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. The Commission anticipates being able to adopt these tailored service obligations no later than the time the Commission adopts the rules for the Phase II competitive bidding process. The non-contiguous carriers then will have 60 days to determine whether to accept or decline the Phase II frozen support. If any non-contiguous carrier declines Phase II frozen support with tailored service obligations, those areas may be eligible in the Phase II competitive bidding process.

40. Though the Commission does not determine at this time specific service obligations for non-contiguous carriers receiving Phase II frozen support, the Commission concludes that carriers serving non-contiguous areas will not be permitted to use Phase II frozen support in any areas where there is a terrestrial provider of fixed residential voice and broadband service that meets Phase II requirements, as modified in this Order. Therefore, the Commission prohibits non-contiguous carriers receiving frozen support from using that support in any census block where there is a competitor providing service of 10/1 Mbps or greater. If a carrier is unable to meet this requirement in certain areas, the Commission requires it to relinquish the relevant Phase II frozen support for those areas.

E. ETC Obligations as Funding Transitions to New Mechanisms

41. *Discussion.* Based on the Commission's consideration of the relevant statutory framework and the record before it, the Commission now concludes that it is in the public interest to forbear, pursuant to section 10 of the Communications Act of 1934, as amended (the Act) from enforcing a federal high-cost requirement that price cap carriers offer voice telephony service throughout their service areas pursuant to section 214(e)(1)(A) in three types of geographic areas: (1) Census blocks that are determined to be low-cost, (2) all census blocks served by an unsubsidized competitor, as defined in our rules, offering voice and broadband at speeds of 10/1 Mbps to all eligible locations, and (3) census blocks where a subsidized competitor—*i.e.,* another ETC—is receiving federal high-cost support to deploy modern networks capable of providing voice and broadband to fixed locations. They will remain obligated, however, to maintain existing voice service unless and until they receive authority under section 214(a) to discontinue that service. They also will remain subject to the obligation to offer Lifeline service to qualifying low-income households throughout their service territory.

42. Effectively, as a result of this limited forbearance, price cap carriers that accept the state-level commitment for Phase II support will continue to have a federal high-cost universal service obligation to offer voice telephony services in those census blocks that are deemed to be extremely high-cost, unless and until they are replaced by another ETC in those areas. The Commission does not address at this time and in particular do not forbear from enforcing the section 214(e) obligation of a price cap carrier to offer voice telephony services in extremely high-cost areas where it is not receiving support, except for the two circumstances expressly described herein: Those extremely high-cost census blocks served by an unsubsidized competitor or where the price cap carrier is replaced by another ETC selected through a competitive bidding process that is required to offer voice and broadband services to fixed locations that meet the Commission's public service obligations. Price cap carriers that decline the state-level commitment will have the federal high-cost universal service obligation to offer voice telephony services in those census blocks that are determined to be high-cost or extremely high-cost, and unserved by an unsubsidized competitor, until they are replaced by another ETC that is required to offer voice and broadband service to fixed locations that meet the Commission's public service obligations.

43. As the Commission explained in the *USF/ICC Transformation FNPRM,* 76 FR 78384, December 16, 2011, states have primary authority for designating ETCs and defining their service areas except in cases where they lack jurisdiction over the entity seeking designation. In such situations, the Act gives the Commission responsibility for designating the entity as an ETC. Once an entity is designated as an ETC it must ''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 defined the service supported by universal service support mechanisms under section 254(c)(1) to be ''voice telephony'' in the *USF/ICC Transformation Order.* An ETC's ''service area'' is defined to be the geographic area as established by the relevant state commission within which an ETC has universal service obligations and may receive universal service support.

44. The Commission previously interpreted section 214(e) of the Act to require that an ETC offer voice telephony service throughout its designated service area. But with the Bureau's adoption of the CAM, the Commission is now able to determine on a more granular level which areas are low-cost and therefore do not need a subsidy because price cap carriers can recoup their costs through reasonable end-user rates. The Commission notes that these low-cost census blocks already have voice telephony service with rates well below the reasonable comparability benchmark for voice service. And in the other census blocks where the Commission now grants limited forbearance, an unsubsidized competitor exists that is offering voice telephony service at reasonably comparable rates, or there is another ETC with an obligation to offer reasonably comparable voice telephony service. Thus, the Commission no longer finds that it is necessary as a matter of federal universal service policy to require price cap carriers to offer voice telephony service in these areas to achieve the section 254(b)(3) principle of ensuring that ''[c]onsumers in all regions of the Nation . . . should have access to telecommunications . . . services, . . . that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.''

45. Accordingly, as discussed below, the Commission concludes that forbearance from the federal high-cost requirement that price cap carriers offer voice telephony services throughout their service area is warranted in these limited circumstances. The Act requires the Commission to forbear from applying any requirement of the Act or our regulations to a telecommunications carrier if the Commission determines that: (1) Enforcement of the requirement is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory; (2) enforcement of that requirement is not necessary for the protection of consumers; and (3) forbearance from applying that requirement is consistent with the public interest. The Commission concludes each of these statutory criteria is met for the specific types of areas described above.

46. *Just and Reasonable.* The Commission concludes that enforcement of the section 214(e)(1)(A) federal requirement that price cap carriers offer voice telephony throughout their service areas is not necessary to ensure that the charges, practices, or classifications of price cap carriers are just and reasonable and not unjustly or unreasonably discriminatory in specific geographic areas. The areas where the Commission forbears from enforcing the federal requirement that price cap carriers offer voice telephony services are census blocks (1) that have been deemed low-cost, (2) where there is an unsubsidized competitor meeting the Commission's standards, or (3) where there is another ETC required to offer voice and broadband services to fixed locations that meet the Commission's public service obligations.

47. ETCs receiving Connect America support will be required to offer reasonably comparable voice and broadband services in their funded high-cost census blocks at rates that are reasonably comparable to urban areas. Therefore, there is no need to require a price cap carrier that declines the offer of model-based support to offer voice telephony in those census blocks where another ETC is subject to that reasonable comparability requirement.

48. Moreover, in all the census blocks where the Commission grants forbearance, the price cap carrier will remain subject to other Title II requirements that ensure that voice telephony rates remain just and reasonable and not unjustly or unreasonably discriminatory. Price cap carriers will continue to be subject to sections 201 and 202 of the Act, which place nondiscrimination obligations on common carriers. Additionally, the Commission defers to the states' judgment in assuring that the local rates that price cap carriers offer in the areas from which the Commission forbears remain just and reasonable. It also is reasonable to expect that the rates that price cap carriers charge in these areas for voice telephony will constrain the rates of other providers. And finally, in the event that the price cap carrier seeks to cease offering voice telephony in these areas, it will be subject to the section 214(a) discontinuance process that the Commission addresses more fully below, during which any concerns that may be raised by the price cap carrier's decision to cease offering voice service can be addressed if necessary. The Commission concludes that these circumstances ensure just, reasonable, and nondiscriminatory offerings in the areas where the Commission grants forbearance. For these reasons, the Commission finds that the first prong of section 10(a) is met.

49. *Protection of Consumers.* The Commission finds that, in the three types of census blocks subject to this forbearance determination, other mechanisms will be sufficient to protect consumers, and therefore it is unnecessary to enforce the obligation of price cap carriers to offer voice telephony services to ensure that consumers are protected.

50. First, there are several safeguards that will prevent the consumers living in these areas from losing access to voice telephony services. Not enforcing the high-cost ETC obligation of price cap carriers to offer voice telephony services in these areas does not mean that price cap carriers can immediately cease providing voice telephony service. Pursuant to section 214(a) of the Act and section 63.71 of the Commission's rules, all carriers must provide notice to their customers and the relevant states in writing that they plan to discontinue service and then file an application with the Commission before discontinuing voice telephony service in an area. Outside parties have the opportunity to provide comment on the application, and the Commission may then decide that the application should not be automatically granted. The discontinuance rules are designed to ensure that customers are fully informed of any proposed change that will reduce or end service, ensure appropriate oversight by the Commission of such changes, and provide an orderly transition of service, as appropriate. This process allows the Commission to minimize harm to customers and to satisfy its obligation under the Act to protect the public interest.

51. The Commission has discretion to grant a discontinuance request in whole or in part, and may attach conditions as necessary to protect consumers and the public interest. Given the fact-intensive nature of this inquiry for each affected market, the Commission is not persuaded by suggestions in the record that it should grant blanket discontinuance to price cap carriers in the areas where it grants forbearance. Where there is a question as to appropriate alternatives available to consumers or whether the present or future public convenience and necessity will be adversely affected, the Commission will scrutinize the discontinuance application, consistent with its statutory obligations. In evaluating a section 214 discontinuance application, the Commission generally considers a number of factors, including the existence, availability, and adequacy of alternatives. Through consideration of these factors, the Commission ensures that the removal of a choice from the marketplace occurs in a manner that respects consumer expectations and needs. The Commission will not authorize a proposed discontinuance of service if customers or other end users would be unable to receive service or a reasonable alternative, or the public convenience and necessity would be otherwise adversely affected. In such circumstances, the Commission will require price cap carriers to continue offering voice telephony services in those areas in those instances where there is no reasonable alternative. Moreover, if an area is unserved and no common carrier will serve that area, the relevant state commission (or the Commission if applicable) is directed by the Act to designate an ETC to serve the area with voice telephony service.

52. Second, it is reasonable to expect that price cap carriers will continue to offer voice service in these areas even after they have been relieved of the federal ETC requirement to do so. They already have existing networks and customers in these areas. They have an economic incentive to continue to serve these customers and to offer them innovative new services.

53. Third, even if price cap carriers were to exit these areas, in areas where there is an unsubsidized competitor or another ETC receiving federal high-cost support to deploy modern networks capable of providing voice and broadband to fixed locations, there will be at least one provider in that area offering a voice telephony service that is reasonably comparable to service available in urban areas. Because consumers in these areas will have at least one other option for fixed voice telephony service at reasonable rates, there is no need to require price cap carriers to continue to offer such services as a federal ETC obligation. And as explained above, whether appropriate substitutes exist in all of the geographic areas in which the Commission grants limited forbearance will be addressed through the section 214(a) discontinuance process; thus, the Commission is comfortable that there is no need to continue to apply ETC obligations in these areas.

54. The Commission disagrees with the claim that the Commission should not forbear from section 214(e) because the Commission should ensure that there is at least one carrier that has a federal obligation to provide voice telephony service to all consumers in a particular area. As explained above, there are existing regulatory protections that provide reasonable assurance that

consumers in the areas where the Commission forbears from the federal high-cost ETC obligation to provide voice telephony service will continue to have access to voice telephony service. And as the Commission explains below, our decision to grant forbearance in these limited circumstances does not disturb existing state carrier of last resort obligations and does not preclude states that do not have carrier of last resort obligations from imposing such obligations. In sum, the Commission finds that consumers will be protected, and the second prong of section 10(a) is satisfied.

55. *Public Interest.* The Commission concludes that it is in the public interest to forbear from the federal high-cost obligation to offer voice service throughout the service territory because enforcement of that obligation is unnecessary to preserve voice service. As noted above, the section 214 discontinuance process will ensure that consumers will continue to have access to voice service. Price cap carriers that are granted the ability to discontinue their voice telephony service as a matter of federal law because there are alternatives available will no longer be required to spend their resources on maintaining existing voice telephony services or deploying new infrastructure to offer voice telephony service in newly constructed homes where there are already reasonable substitutes. Instead, price cap carriers can reallocate their resources towards making upgrades to their networks to meet the broadband needs of their existing or new customers.

56. The Commission also finds that limited forbearance from section 214(e)(1)(A) will promote competitive market conditions by giving price cap carriers the flexibility to compete on a more equal regulatory footing in the voice telephony market with competitors that already have the opportunity to make business decisions about how best to offer voice telephony service. Accordingly, the Commission's decision is consistent with the principle that universal service policies be equitable and nondiscriminatory and the principle of competitive neutrality.

57. The Commission does not take the further steps suggested by some commenters of reinterpreting section 214(e)(1) to sunset all existing ETC designations and require states to re-designate ETCs so that their service areas include only high-cost funded areas, imposing rules on state ETC designations, adopting a federal process to redefine service areas, or preempting states. State commenters argue that these approaches would give insufficient consideration to the important role that Congress has given the states in defining service areas and designating ETCs. The Commission's decision to grant limited forbearance does not redefine price cap carriers' service areas or revoke price cap carriers' ETC designations in these areas, and the Commission emphasizes that it does not preempt price cap carriers' obligation to continue to comply with any state requirements, including carrier of last resort obligations to the extent applicable. The Commission also notes that it does not relieve ETCs of their other ''incumbent-specific obligations'' like interconnection and negotiating unbundled network elements pursuant to sections 251 and 252 of the Act. The continued existence of these obligations supports the Commission's finding that the forbearance it grants in this Order is consistent with the public interest.

58. The Commission's public-interest finding is also supported by the fact that any incumbent price cap carrier must still comply with the requirements of section 214(e)(4) of the Act regarding relinquishment of ETC designation. The Commission is not persuaded that its decision to not preempt state obligations constitutes a taking. The Commission notes that no party has articulated which specific state obligations constitute a taking, submitted specific evidence to show how those state obligations are burdensome, or provided detailed analysis as to how the preemption standard has been met for these obligations.

59. *Timing.* Because many ETCs will no longer receive support for discrete census blocks upon full implementation of Phase II in price cap territories, the Commission believes that it is appropriate to clarify its expectations regarding the specific timing of this forbearance. The Commission finds that in the first month that support is disbursed to another ETC that is required to serve particular census blocks with voice and broadband service to fixed locations, incumbent price cap carriers not receiving such support will be immediately relieved of their federal high-cost ETC obligation to offer voice telephony in those specific census blocks. Also, incumbent price cap carrier ETCs will be relieved of the federal high-cost ETC obligation to offer voice telephony service in the low-cost census blocks where Phase II support is not available and also in census blocks where the average cost is above the funding benchmark where an unsubsidized provider is already providing service. Incumbent price cap carriers shall be relieved of their existing federal high-cost universal service obligations to offer voice telephony service in low-cost census blocks beginning on the date on which they accept or decline to make a state-level commitment. Incumbent price cap carriers shall be relieved of their existing federal high-cost universal service obligations to offer voice telephony service in census blocks served by unsubsidized competitors on the date that there is a determination that there is an unsubsidized competitor offering 10/1 Mbps in those census blocks.

60. Price cap carriers subject to this limited forbearance in these three specific types of census blocks must continue to satisfy all Lifeline ETC obligations. Therefore, they will effectively become Lifeline-only ETCs in the specific census blocks that are the subject of this forbearance. As such, they must continue to offer voice telephony service to qualifying low-income households in those areas unless or until they relinquish their ETC designations in those areas pursuant to section 214(e)(4), and, in any event, must continue to offer voice more generally until they receive discontinuance authority under section 214.

III. Eligibilty of Areas for Phase II Support

A. Areas Served by Competitors

61. *Discussion.* Upon consideration of the record, the Commission now adopts these proposals with certain modifications. First, to ensure support is targeted to areas lacking 4/1 Mbps, the Commission will exclude from the offer of Phase II model-based support to price cap carriers any census block served by a subsidized facilities-based terrestrial competitor that offers fixed residential voice and broadband services meeting or exceeding 3 Mbps/768 kbps speed requirement, as determined by the Bureau. Second, the Commission concludes that any such high-cost blocks served by a subsidized carrier that are excluded from the offer of model-based support—including blocks with service meeting or exceeding the new 10/1 Mbps speed requirement—will instead be eligible for support in the Phase II competitive bidding process. Third, the Commission concludes that any area served by an unsubsidized facilities-based terrestrial competitor that offers 10/1 Mbps will be ineligible for support in the Phase II competitive bidding process.

62. The Commission excludes areas served by subsidized competitors providing 3 Mbps/768 kbps or greater

service from the offer of model-based support because the Commission is persuaded that whether another provider receives high-cost universal service support should not be the determining factor in excluding a high-cost census block from the offer of model-based support. In the *USF/ICC Transformation Order,* the Commission eliminated the identical support rule and established Phase II of the Mobility Fund as the mechanism to provide ongoing support for mobile services. Competitive ETCs offering broadband services that meet the performance standards, however, only have the opportunity to compete for ongoing support if price cap companies decline the state-level commitment. Upon further consideration, the Commission now concludes that areas served by a subsidized facilities-based terrestrial competitor offering fixed residential voice and broadband services meeting or exceeding 3 Mbps/768 kbps should not be part of the price cap carrier state-level commitment.

63. By excluding these areas from the offer of Phase II model-based support and instead including them in the Phase II competitive bidding process, the Commission gives competitive ETCs serving these areas the opportunity to compete for ongoing support in their high-cost areas, regardless of whether a price cap incumbent accepts or declines the state-level commitment. This modification recognizes that these areas are high-cost and, absent such ongoing support, it may not be economically feasible for providers in these areas to continue providing service. Removing these census blocks from the offer of model-based support and instead immediately opening these areas to competitive bidding allows competition to drive support to efficient levels, to be awarded to the provider that will most effectively use funds.

64. Changing the minimum speed threshold for network deployment to 10/1 Mbps does not mean, however, that the Commission should use the 10/1 Mbps coverage map in determining what areas are served by either unsubsidized or subsidized competitors for purposes of the offer of Phase II model-based support. The version of the CAM adopted by the Bureau for purposes of identifying the initial list of eligible census blocks provides support for census blocks with an average cost per location per month of between $52.50 and $207.81 and that are unserved by an unsubsidized competitor offering 3 Mbps/768 kbps broadband service. While adjusting the CAM to provide support for census blocks not served with 10/1 Mbps service would increase the number of locations eligible for the offer of model-based support, this increase would be predominately the result of the extremely high-cost threshold shifting downwards. The end result would be that locations in those blocks that are more expensive to serve, relatively speaking, that currently do not receive even 3 Mbps/768 kbps service would no longer be eligible for the offer of model-based support. In contrast, using the same 3 Mbps/768 kbps coverage map to target the offer of Phase II model-based support to locations in these higher cost census blocks will result in Connect America model-based funding being targeted to the very same areas that the Commission intended to be subject to the offer of model-based support when it adopted the *USF/ICC Transformation Order* in 2011—those lacking the most basic Internet access.

65. The Commission is not persuaded by the suggestion that it would be more efficient to use the 10/1 Mbps coverage map because that will result in more locations being served. The fact that areas that currently have 3 Mbps/768 kbps service but not 10/1 Mbps are excluded from the offer of model-based support does not mean there is no mechanism to ensure that consumers in those areas have access to service meeting the newly established standard. Instead, the Commission concludes that any area lacking service from a facilities-based terrestrial competitor that meets our new 10/1 Mbps standard and existing latency/usage/pricing requirements will be eligible for support in the Phase II competitive bidding process. The Commission concludes it is preferable to address these areas in the competitive bidding process, as competitive forces will drive support to efficient levels in those geographic areas that now lack broadband by virtue of our adjustment of the minimum speed threshold.

66. The Commission also is not persuaded by arguments that using the 10/1 Mbps coverage map to determine eligibility for the offer of model-based support is necessary to enable price cap carriers to build more efficient networks. The Commission notes that price cap carriers—like all other providers—will be able to bid on these census blocks in the Phase II competitive bidding process, providing them with an opportunity to gain additional territory for network efficiency.

67. Utilizing the 3 Mbps/768 kbps coverage map to exclude areas eligible for model-based support also is administratively efficient. Excluding areas served by qualifying competitors providing at least 10/1 Mbps service would require the Bureau to conduct a new challenge process to determine which areas that have 3 Mbps/768 kbps lack 10/1 Mbps service. The Phase II challenge process has been underway since June 2014, and with the record now closed, the Bureau is poised to complete these adjudications. The Commission believes that undertaking such an effort to conduct a supplemental challenge process would unnecessarily delay the offer of model-based support that otherwise would occur in early 2015. The Commission therefore directs the Bureau to complete the challenge process for the offer of model-based support and to remove from eligibility any blocks it determines are served by a qualifying competitor providing service of at least 3 Mbps/768 kbps.

68. Finally, the Commission concludes that any area served by an unsubsidized facilities-based terrestrial competitor that offers 10/1 Mbps will be ineligible for support in the Phase II competitive bidding process. Because these areas already have service that meets or exceeds the new speed requirement without receiving high-cost funding, the Commission does not have the same concern as it does for areas served by subsidized competitors—that it may not be economically feasible for providers in these areas to continue providing service absent support. The Commission believes that it would be an inefficient use of Connect America support to provide funding in these areas. The Commission expects to update the list of census blocks that will be excluded from eligibility from the Phase II competitive bidding process based on the most current data available at the time shortly before that auction to take into account any new deployment that is completed in the coming year.

69. The Commission also notes that any areas left unserved after the Phase II competitive bidding process will be addressed through the Remote Areas Fund. The Commission does not establish a separate Remote Areas Fund at this time, as the Commission has concluded that parties should be free in the Phase II competitive bidding process to submit bids to bring service to the highest cost, most remote areas of the nation. Once that Phase II competitive bidding process occurs, and the Commission has determined which winning bidders are authorized to receive support, the Commission will be in a much better position to determine what areas, if any, remain unserved and can be addressed through a separate Remote Areas Fund.

B. Rural Broadband Experiments

70. *Discussion.* The Commission now establishes a process to enable the selection of next-in-line bidders for rural broadband experiments support, in the event any of the provisionally selected bidders defaults by failing to meet our technical and financial requirements before the time the Bureau finalizes the list of census blocks that will be offered to the price cap carriers. All bidders in the rural broadband experiments that wished to remain in consideration for rural broadband experiment support should have filed their financial and technical information no later than 7 p.m. EST on Tuesday, January 6, 2015, in WC Docket No. 14–259. In particular, they must file the most recent three consecutive years of audited financial statements, including balance sheets, net income, and cash flow, in order to enable a thorough financial review. They also must submit a description of the technology and system design that would be used to deliver voice and broadband service meeting the requisite speeds to all locations in the funded census blocks, including a network diagram, which must be certified by a professional engineer. This will enable Bureau staff quickly to identify additional provisionally selected bidders in the event that any of the initially selected bidders default before the Bureau finalizes the list of eligible census blocks for the offer of model-based support, which the Commission expects may occur in early 2015. All bidders that wish to remain under consideration must seek confidential treatment of their filing in order to protect the integrity of the competitive bidding process.

71. The Commission concludes that excluding from the offer of model-based support any census block included in a non-winning rural broadband experiment application submitted in funding category one will ensure the more efficient use of Connect America support. The Commission will only exclude those census blocks where a losing bidder has indicated that it wishes to remain in consideration for rural broadband experiment support as described above. The Commission will not exclude from the offer of model-based support any area where the rural broadband experiment applicant is seeking a waiver of one or more requirements established for rural broadband experiments, including the submission of the requisite financial and technical information. The Commission concludes that the time necessary to resolve such waiver requests to determine which blocks to remove from the offer of model-based support would unnecessarily delay the implementation of Phase II. The Commission emphasizes that it has no intention of delaying the offer of model-based support to the price cap carriers, and expect to proceed with that offer in early 2015.

72. The Commission determines that rural broadband experiment proposals submitted in funding category one that facially meet the requirements for submission of financial and technical information could help us achieve our universal service goals in a cost-effective manner. Though all rural broadband experiment proposals seek an amount of support at or below model-calculated levels, proposals in funding category one are required to commit to constructing networks that are capable of providing 100/25 Mbps. The Commission is not convinced that providing model-based support to a price cap carrier in an area where another entity has demonstrated an interest to provide service that so significantly exceeds the Commission's new speed requirements, for an amount at or below the model-determined support, would be an efficient use of funding. Further, because the proposals the Commission received in funding category one requested support below the level of support that the model would otherwise provide, excluding these areas from the offer of model-based support and instead making them available in the Phase II competitive bidding process should enable us to stretch our finite Connect America budget even further.

73. The Commission is not persuaded by concerns that this approach could result in an opportunity for gaming by allowing a party to submit a rural broadband experiments application that the party never intended to honor simply to reserve its opportunity to participate in the Phase II competitive bidding process. The Commission believes that the parameters it establishes above—that only rural broadband experiment proposals in category one for which the applicant submits the required technical and financial information will be excluded from the offer of model-based support—alleviate any concerns that the Commission's decision would enable applicants to game the system. The submission of a network engineering diagram certified by a professional engineer and audited financial statements as described above provides some assurance that these are serious bidders prepared to participate in the Phase II competitive bidding process. Through such action, these parties will demonstrate a baseline understanding of Commission regulations and procedures. Moreover, entities with three years of audited financial statements by definition are ongoing businesses.

74. This decision also reflects our balancing of section 254(b) principles under the circumstances here. In the *USF/ICC Transformation Order,* the Commission concluded—and it now reaffirms—that the CAF ''should ultimately rely on market-based mechanisms, such as competitive bidding, to ensure the most efficient and effective use of public resources.'' The Commission adopted a mechanism to offer incumbent price cap carriers a right of first refusal to provide service in exchange for model-based support due to its recognition that the continued existence of legacy obligations could complicate the transition to competitive bidding and might cause consumer disruption. The Commission also reasoned that the offer would generally include only areas where the incumbent price cap carrier would likely have the only wireline facilities, and that other bidders may have the ability to deliver scalable broadband meeting the Commission's requirements over time. It was also ''our predictive judgment that the incumbent LEC is likely to have at most the same, and sometimes lower, costs compared to a new entrant in many of these areas.'' Under the analysis in the *USF/ICC Transformation Order,* these considerations weighed against strict application of the competitive neutrality principle and other factors that might, on their own, otherwise have led us to move more quickly to competitive bidding.

75. The Commission is persuaded to revisit that balancing in certain targeted ways here. Today, the rural broadband experiments give the Commission more of an ability to identify areas that are likely to be candidates to transition more quickly to competitive bidding, and it is the Commission's predictive judgment that those areas will be better served, and the Connect America budget better used, by excluding those areas from price cap carrier's right of first refusal, enabling both incumbents and competitors to seek support through a competitive process. In light of these new circumstances, and against the backdrop of other changes adopted in this Order, the Commission finds that moving more quickly to competitive bidding in certain respects as a result of the changes adopted here is warranted under the Commission's reevaluation of the balancing of the competitive

neutrality principle against other universal service goals.

76. The Commission does recognize the possibility that if it removes these areas from the offer of model-based support, both the price cap carrier and the rural broadband experiment applicant ultimately may opt not to bid on such areas in the Phase II competitive bidding process. That risk exists as well for areas where the price cap carrier declines the offer of model-based support. On balance, however, the Commission concludes that this risk is outweighed by the public policy benefits potentially, and the Commission believes likely, to be gained of having consumers in these areas receive higher-quality service from a competitor at or below the amount of model-based support and being able to ensure that additional consumers are served with that unused funding. The Commission also notes that any areas left unserved after the Phase II competitive bidding process will be addressed through the Remote Areas Fund.

IV. Phase II Transitions

77. In this section, the Commission addresses several issues relating to the implementation of Phase II in areas currently served by price cap carriers. First, the Commission adopts our proposal to align the funding years for price cap carriers accepting model-based Phase II support with the calendar year, but clarify that the deployment obligation will commence on the date of public notice of authorization for Phase II funding. Second, the Commission eliminates the transition year formerly adopted by the Commission in the *USF/ICC Transformation Order.* Third, the Commission clarifies that Phase I incremental support should not be included in the calculations of transitional support for those price cap carriers that choose to accept model-based support that is less than frozen support in a given state.

A. Aligning Connect America Phase II Funding and Calendar Years

78. *Discussion.* The Commission adopts its proposal to align the funding years for the offer of model-based support with the calendar year. Thus, the Commission adopts its proposal 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. This lump sum will represent the additional amount of model-based support (above the frozen support that price cap carriers already receive) that would accrue for the beginning months of the year while price cap carriers are considering the offer of model-based support. Thus, as discussed above, carriers accepting model-based support will receive such support in calendar years 2015 through 2020.

79. The Commission anticipates extending the offer of model-based support in early 2015, with carriers responding 120 days later. Then, the Bureau will issue a Public Notice authorizing USAC to disburse the new funding amounts for those providers electing model-based support. The Commission directs USAC to disburse the lump sum payment in the month after the issuance of this Public Notice, drawing the funds from the broadband reserve account. The Commission will, however, provide an option for a carrier to elect to defer this lump sum payment until calendar year 2016, in recognition that may be the first year in which significant capital investments are made to meet the deployment obligations established for Phase II.

80. The Commission clarifies that while carriers will receive a full year of Phase II support in calendar year 2015, the deployment obligation commences on the date of the Public Notice authorizing Phase II-model based support. The Commission acknowledges recipients that accept model-based support thus will be subject to different obligations for the time periods before and after they are authorized to receive Phase II support in calendar year 2015, and direct USAC to take that into account when conducting beneficiary compliance reviews of price cap carrier ETCs for calendar year 2015.

B. Transition Where Model-Based Support is Greater Than Connect America Phase I Support

81. *Discussion.* The Commission adopts its proposal to eliminate the transition period for price cap carriers that elect to receive model-based support in states where such support is greater than the frozen support they receive under Phase I. Because the affected price cap carriers will be receiving more support in these states than they did in Phase I, the Commission finds that it is unnecessary to provide a transition year for these carriers to adjust to receiving Phase II support. Instead, it is in the public interest and will further our Connect America goals immediately to provide these price cap carriers with their full Phase II support, recognizing that significant capital investments will be required to deploy voice and broadband capable networks to unserved areas. The Commission also concludes that it will lessen administrative costs for USAC: once the Bureau issues the Public Notice authorizing model-based support for those entities electing to make a state-level commitment, that monthly support amount will remain unchanged for the duration of the term of support, rather than making adjustments to account for a transition year.

C. Base Support Amount for Transition To Connect America Phase II

82. *Discussion.* The Commission adopts its proposal to clarify that for purposes of transitioning from Connect America Phase I to Phase II, the Commission will only provide a percentage of Connect America Phase I frozen support; Phase I incremental support will not be included in this transition. Because Phase I incremental support was intended to be a one-time ''immediate boost to broadband deployment'' while the Commission worked on implementing Phase II, the Commission concludes that there is no need for price cap carriers to continue to receive a percentage of that support as ongoing support as they transition to Phase II.

V. Reforms in Rate-of-Return Study Areas

83. In the *April 2014 Connect America FNPRM,* the Commission sought comment on several proposals for near-term reform of high-cost universal service support for rate-of-return carriers. The Commission addresses these here. First, the Commission adopts a revised methodology for applying the cap on HCLS so that support is distributed more equitably among all high-cost carriers, and so that carriers with the highest loop costs have better incentives to curb waste in the operation of their study areas. Second, the Commission adopts its proposals regarding the 100 percent overlap rule, concluding that the Bureau should determine whether there is a 100 percent overlap every other year, and the prior year's support should be used as the basis for the phase-down in support for any study area with a 100 percent overlap. The Commission concludes that the Bureau should not determine 100 percent overlap based on the existence of a subsidized provider.

84. The Commission does not, at this time, take action with regard to any of the proposals for long term reform for rate-of-return carriers. Although a number of parties have submitted proposals that may have promise, the Commission find that further analysis and development of these proposals is necessary. The Commission expects to

continue to develop the record and act on long-term reform in the coming year.

A. HCLS Reimbursement Rates Under the Cap

85. In the *April 2014 Connect America FNPRM,* the Commission noted that it ''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 Commission addresses this concern for the near-term by modifying the methodology for reimbursements under HCLS.

86. The indexed cap on HCLS has seen steady reductions in recent years as a result of decreasing numbers of working loops and low inflation rates. As a result, carriers with costs close to the ever rising NACPL risk losing all HCLS for prior investments, while carriers with a higher cost per loop are sheltered from the impact of the HCLS cap. The carriers with the highest loop costs relative to the national average have minimal incentive to reduce their expenses and eliminate waste: between HCLS and interstate common line support, it is possible for 100 percent of their incremental loop costs to be recovered through universal service. The Commission observes that these carriers with the highest HCLS reimbursement rates have steadily increased their reported loop costs (by 36 percent since 2004), while carriers with lower reimbursement rates have had stable or reduced loop costs. In combination, the decreasing HCLS cap and the increasing demand from the carriers reporting the highest cost per loop create yearly increases in the NACPL used to calculate HCLS, precluding many carriers from receiving any HCLS and significantly reducing support for others with costs per loop close to the NACPL. A comparison of the 646 study areas that submitted cost studies for each year from 2004 to 2013 shows what has occurred over the last decade: in 2006, 579 of the 646 study areas were receiving HCLS support, but by 2015, only 461 of them are projected to receive support, meaning that 118 or 20 percent of these study areas fell ''off the cliff'' over this ten-year period. These features of the HCLS rule were not altered in the *USF/ICC Transformation Order.*

87. In the *April 2014 Connect America FNPRM,* the Commission proposed to mitigate these deficiencies by reducing support proportionally among all HCLS recipients through decreased reimbursement percentages for all carriers instead of adjusting the NACPL. Specifically, the Commission proposed to freeze the NACPL that is used to determine support and instead to decrease HCLS proportionately among all HCLS recipients. As specified in the proposed rule, the reduction would be achieved by multiplying each carrier's calculated HCLS by the ratio of the indexed HCLS cap to the aggregate amount of HCLS initially calculated for all carriers using the frozen NACPL. This effectively would freeze the NACPL at the capped amount as a date certain, such as December 31, 2014.

88. This proposal initially received widespread support from commenters responding to the FNPRM. Subsequent to the closing of the comment cycle, however, the Rural Associations argued the Commission's proposed methodology should be modified to lessen the impact on the companies with the highest reported cost per loop by continuing to raise the NACPL as is done under the current methodology. In particular, the Rural Associations propose that if HCLS as initially calculated based on the frozen NACPL exceeds the indexed cap, then the NACPL would be adjusted so the HCLS amounts equal the indexed cap plus half of the difference between the initially calculated amount and the indexed cap. The HCLS amounts calculated using this adjusted NACPL would then be reduced proportionally so that total HCLS matched the indexed cap. The Rural Associations argue that their proposal would mitigate what they consider disproportionate effects on the carriers with the highest cost per loop.

89. *Discussion.* After full consideration of the record, the Commission now adopts their proposal, as described in the *April 2014 Connect America Order and FNPRM,* 79 FR 39164, July 9, 2014 and 79 FR 39196, July 9, 2014. The Commission finds that this targeted rule change will be effective in addressing the lack of incentives to curb waste that results from the race to the top and providing a more equitable distribution of support to all high-cost rate-of-return carriers, including those currently facing a loss of support due to the cliff effect.

90. The Commission declines to adopt the Rural Associations' proposed modification. Under their proposal current recipients of HCLS would continue to lose HCLS as the HCLS cap is lowered, albeit not to the same extent as occurs today. Yet addressing the cliff effect was one of the core objectives of the Commission's proposal. Although the Rural Associations' proposal may, to some degree, mitigate both the cliff effect and the race to the top as compared to our current methodology, based on the record before the Commission, it finds it would be less effective at addressing both objectives than the Commission's proposal. In a set of examples provided by the Rural Associations, the two lowest cost companies in the set each would receive approximately 40 percent less in the first year after implementation of the proposed rule than they would under the Commission's proposals and would have their HCLS entirely eliminated by the fifth year of operation. Indeed, under NTCA's proposal, the cliff effect would immediately eliminate support from 11 study areas that would continue to receive support under the Commission's proposal. In other words, the cliff effect would remain significant if the Rural Associations' proposal were implemented. Similarly, the Rural Associations' proposal significantly preserves the advantages under HCLS of being a company reporting a relatively higher cost per loop, even if it does eliminate the possibility that a carrier could recover 100 percent of any marginal loops costs it incurs.

91. Although the Rural Associations express concern that the Commission's proposal may have a disproportionate effect on the carriers with the highest cost per loop, in their own examples, the Commission does not believe that this will result in insufficient support for any carrier. Using NTCA's analysis, the highest cost carrier would lose only seven percent of HCLS as compared to the current rules (and receives only three percent less than it would receive under the Commission's proposal). Because that carrier would likely also be receiving a significant amount of ICLS, the reduction as a fraction of total support would be even less than seven percent. Moreover, the fact that reported costs have increased for some high-cost recipients at rates substantially above that for other high-cost recipients suggests that the current construct of the rule does not create structural incentives for these carriers to take measures to reduce their expenses to the extent possible. There are several potential reasons why reported costs per loop for certain carriers are increasing at rates in excess of that for other high-cost recipients: They are investing more, they are subject to greater competition and therefore experiencing line loss, or they are spending imprudently. One of the Commission's goals as it considers proposals for longer-term reform is to provide a more equitable opportunity for all carriers in high-cost areas to invest in broadband-capable infrastructure. In the meanwhile, the

rule change the Commission is adopting in this Order will strengthen the incentive for the carriers with the highest reported costs per loop to manage their expenditures in light of the existence of the cap on HCLS.

92. The Commission also is not persuaded by commenters arguing that these changes are unnecessary. TCA argues that the $250 per-line per month cap effectively addresses the race to the top. In fact, the $250 per-line cap affects only a small number of the very highest cost carriers and, for the reasons explained above, does not, it concludes, comprehensively address the race to the top or the cliff effect. Those higher cost carriers not subject to the $250 per-line cap still have limited incentive to curb waste, and numerous others are hurt by the cliff effect.

93. The Commission does not agree with the Concerned Rural ILECs that the race to the top is a budgetary problem and could be solved by increasing the size of the HCLS budget. Although significantly increasing the HCLS budget might address the cliff effect, it would, if anything, exacerbate the race to the top by eliminating the limited constraints the HCLS mechanism currently has on carrier spending and undermining the carriers' incentives to curb wasteful expenses related to common line costs.

94. The Commission disagrees with TCA's contention that it should not adopt its proposal due to retroactivity. As a matter of law, the proposed rule is not impermissibly retroactive. The Commission notes that the Tenth Circuit recently rejected arguments that the changes the Commission made to the HCLS and Safety Net Additive (SNA) rules in the *USF/ICC Transformation Order* violated the presumption against retroactivity. The court there found that ''the Order . . ., which makes only prospective changes to the reimbursement framework, including the elimination of SNA, is not retroactive.'' A rule does not operate retroactively merely because it is ''applied in a case arising from conduct antedating [its] enactment'' or ''upsets expectations based on prior law.'' Rather, a rule operates retroactively if it ''takes away or impairs vested rights acquired under existing law, or creates a new obligation, imposes a new duty, or attaches a new disability in respect to transactions or considerations already past.'' The application of the rules adopted here will not take away or impair a vested right, create a new obligation, impose a new duty, or attach a new disability in respect to the carriers' previous expenditures. There is no statutory provision or Commission rule that provides companies with a vested right to continue to receive support at particular levels or through the use of a specific methodology. Although application of these rules may affect the amount of support a carrier receives for expenditures made in 2013, it does not change the legal landscape in which those expenditures were made. Rather, as the Commission observed in the *USF/ICC Transformation Order,* ''section 254 directs the Commission to provide support that is sufficient to achieve universal service goals, [but] that obligation does not create any entitlement or expectation that ETCs will receive any particular level of support or even any support at all.''

95. Moreover, as a matter of policy, the Commission is not persuaded that even the highest cost rate-of-return carriers will be unduly harmed by this rule. As noted above, in the Rural Associations' examples, the highest cost company sees a reduction of only six percent of its HCLS (and a smaller fraction of its total high-cost support) as a result of this rule. TCA nonetheless argues that this rule change ''unfairly penalizes'' rate-of-return carriers ''that have made investments to bring broadband to their customers in accordance with the FCC's goals.'' TCA provides no basis, however, for distinguishing between carriers that have, in fact, prudently invested in broadband facilities and those that have failed to curb wasteful expenses. The Commission notes that if any rate-of-return carrier suffers significant harm as a result of this rule change and the carrier's earlier prudent investment, it may seek waiver of our rules.

96. The Commission declines to adopt the Eastern Rural Telecom Association's (ERTA) proposal that the frozen NACPL be indexed to inflation or some other low-growth factor as a method of removing the cliff effect. The Commission finds that the other steps taken here will effectively address this issue. Moreover, because the Commission anticipates that it will adopt more comprehensive reforms for rate-of-return carriers in the coming year, indexing the NACPL is unlikely to have a material effect.

97. The Commission recognizes that NTCA's analysis is sensitive to a number of forecasting assumptions, including line growth or loss and changes in cost per loop. For that reason, the Commission will closely monitor the effects of this rule change on rate-of-return carriers and will revisit this issue in the event that it has unanticipated results. In sum, however, the Commission is not convinced based on the record before us that the Rural Associations' proposal is superior to what the Commission proposed in the *April 2014 Connect America NPRM.*

B. 100 Percent Overlap Rule

98. *Discussion.* The Commission previously 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.'' The Commission expects the Bureau will, in 2015, review study area boundary data in conjunction with other data collected via FCC Form 477 or the State Broadband Initiative to determine whether and where 100 percent overlaps exist. The Bureau will publish its preliminary determination of those areas subject to 100 percent overlap and then provide an opportunity for comment on these preliminary determinations, building on experience gained in conducting the Phase II challenge process in price cap areas. Once the comment period is complete, the Bureau then will finalize its determination of where there is a 100 percent overlap. The Commission directs the Bureau to repeat this process every other year to determine whether additional study areas have become subject to the 100 percent overlap rule. Finally, the Commission adopts its proposal to base support reduction phase down on the amount of support awarded in the year prior to the determination, rather than 2010. Because implementation of the 100 percent overlap determinations for rate-of-return carriers has taken longer than initially anticipated, the Commission believes that basing reductions on current support will lead to a smoother transition.

99. The Commission declines to modify the 100 percent overlap rule to eliminate support in any study area with a qualifying competitor, as opposed to an unsubsidized competitor. As explained above, the reason the Commission is removing high-cost census blocks with a qualifying competitor from eligibility for Connect America Phase II model support is to provide an opportunity for all parties to compete for support for those areas through a competitive bidding process. There is no comparable process in place in rate-of-return study areas for several subsidized competitors to compete with each other for support to serve the study area. In the case of rate-of-return carriers, removing study areas from eligibility where there are qualifying competitors would mean that there is no mechanism to provide support for high-cost areas that presumably need support in order for consumers to have access to voice and broadband services, once the

phase-down in competitive ETC support is complete.

VI. Accountability and Oversight

100. In this section, the Commission takes several steps to strengthen the uniform national framework for accountability that the Commission adopted in the *USF/ICC Transformation Order.* First, the Commission codifies a broadband reasonable comparability rates certification requirement for all recipients of high-cost support that are subject to obligations to deploy broadband to fixed locations. Second, the Commission requires price cap carriers that accept model-based support to submit specific location information with their service quality improvement plans and progress reports to enhance the Commission's ability to monitor their use of Connect America support. Third, the Commission adjusts the framework for reduction in support for late-filed section 54.313 and 54.314 reports and certifications. Fourth, the Commission adopts measures to be used in the event specific ETCs do not meet certain terms and conditions of high-cost support.

A. Reasonably Comparable Rates Certification for Broadband

101. *Discussion.* The Commission amends section 54.313(a) to include a new subsection 12 that requires recipients of high-cost and/or Connect America Fund support that are subject to broadband performance obligations to submit a broadband reasonable comparability rate certification with their annual section 54.313 report (FCC Form 481). In that certification, support recipients must certify that the pricing of the broadband offering they are relying upon to meet their broadband performance obligation is no more than the applicable benchmark as specified in a public notice annually issued by the Bureau, or is no more than the non-promotional prices charged for a comparable fixed wireline service in urban areas in the state or U.S. Territory where that high-cost support recipient receives support. Recognizing that high-cost support recipients are permitted to offer a variety of broadband service offerings as long as they offer at least one standalone voice service plan and one service plan that provides broadband that meets our requirements, the Commission only requires that they make the above certification for one of their broadband service offerings that satisfies all of the Commission's requirements, including that the service be offered throughout the high-cost support recipient's supported area in the relevant state or U.S. Territory, or for rate-of-return carriers, be made available upon reasonable request. The Commission concludes that requiring high-cost support recipients to make this certification will ensure that the Commission can monitor their compliance with conditions that fulfill the section 254(b) principle that ''[c]onsumers in all regions of the Nation . . . should have access to telecommunications and information services . . . that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.''

102. The Commission requires high-cost support recipients that elect to certify that their pricing of services in rural areas is no greater than their pricing in urban areas to rely upon the non-promotional prices charged for comparable *fixed wireline* services. The Commission declines to permit high-cost support recipients to certify that the pricing they offer for their broadband services is no more than the non-promotional prices charged for comparable ''broadband'' services. The Commission notes that the applicable benchmark adopted by the Bureau is two standard deviations above the average urban rates for a specific set of service characteristics, consistent with the Commission's precedent for the voice reasonable comparability benchmark. The Commission also already provides a presumption for high-cost support recipients that offer rates that exceed the applicable benchmark that those rates are reasonably comparable if they are the same as rates being offered in urban areas for a comparable fixed wireline service. Fixed wireless services tend to be more expensive than fixed wireline services even when data usage allowances and the speeds offered are taken into account. Moreover, consumers living in urban areas typically have the choice of obtaining broadband service from at least one fixed wireline provider. The Commission therefore concludes it is appropriate to use fixed wireline services in urban areas as the reference point for reasonably comparable rates, recognizing that rates in rural areas may be higher than urban areas.

103. This certification will be included in the FCC Form 481 to be filed in 2016, addressing performance during 2015, after the requirement has received Paperwork Reduction Act (PRA) approval from the Office of Management and Budget. All parties subject to a broadband public interest requirement to serve fixed locations that file this report in 2016 will be required to make the certification, and annually thereafter.

104. Recipients of funding through the Phase II competitive bidding process must submit their first certification with the first section 54.313 annual report they are required to submit after support is authorized, and each year thereafter with their annual report.

B. Monitoring Progress in Meeting Deployment Obligations

105. *Discussion.* Here, the Commission takes action to enhance our ability to monitor the use of Connect America support and ensure that price cap carriers that accept model-based support use that support for its intended purpose. Specifically, as proposed by USTelecom, the Commission requires all price cap carriers accepting model-based support to include in the annual progress report that they submit each year with their section 54.313 annual reports a list of the geocoded locations to which they have newly deployed facilities capable of delivering broadband meeting the requisite requirements with Connect America support in the prior year. The list must identify which locations are located in a Phase II-funded block and which locations are located in extremely high-cost census blocks. The first list must be submitted with their July 2016 annual report, reflecting deployment status through the end of 2015. This first list should also include the geocoded locations that a price cap carrier had already built out to with service meeting the Commission's requirements before receiving Phase II support. In subsequent years, the list should provide the relevant information for newly built locations in the prior calendar year. The last list that price cap carriers submit with their July 2021 annual reports must include the total number and geocodes of all supported locations to which they have deployed facilities capable of delivering broadband meeting the requisite requirements.

106. The Commission concludes that it is in the public interest to require price cap carriers accepting model-based support to provide this data on an annual basis. The Commission and USAC will analyze the data to determine how Connect America support is being used to ''improve broadband availability, service quality, and capacity,'' consistent with a recent recommendation of the Government Accountability Office. The Commission also intends to make such data available to the public on its Web site in a user-friendly manner so that the public will be able to see at a granular level how

high-cost funds are being used to invest in new broadband infrastructure to bring new services to the area. The Commission finds that the benefits in collecting this data outweigh any potential burdens on the price cap carriers in reporting this data annually, given that the Commission expects that price cap carriers will already be collecting such data for their own business purposes and to be prepared to respond to the compliance reviews that the Commission directs USAC to undertake.

107. The Commission will also collect from price cap carriers in their annual section 54.313 reports the total amount of Connect America Phase II support, if any, they used for capital expenditures in the previous calendar year. The Commission concludes that the benefit to the Commission of being able to determine how price cap carriers are using Phase II funding outweighs any potential burden on price cap carriers in submitting this information given that it expects that price cap carriers will track their capital expenditures for Phase II in the regular course of business.

108. The Commission directs USAC to review Phase II recipients' compliance with deployment obligations and the Commission's public interest obligations at the state level—that is, whether the carrier is meeting interim and final deployment obligations for the total number of locations required for the state. As discussed above, the Commission concludes that conducting compliance reviews at the state level would be less administratively burdensome for the Commission, USAC, and the recipients of Phase II support than at the census block level. The Commission expects USAC to review compliance with the deployment obligations for all price cap recipients over the course of the Phase II support term. This will ensure the Commission is able to fulfill our responsibility to monitor each Phase II recipient's use of high-cost support in areas subject to the state-level commitment.

C. Reduction in Support for Late Filing

109. *Discussion.* The Commission adopts a rule to reduce on a pro-rata daily basis the support for ETCs that miss certification and data submission deadlines. Based on the Commission's experience to date with the current support reduction scheme, it has determined that reducing support for late filers on a quarterly basis is unduly harsh given that most late filings are inadvertent, particularly for those recipients that file closer to the beginning of the quarter than the end of the quarter. The Commission concludes that readjusting the support reductions to more closely calibrate the reduction of support with the period of non-compliance is a more reasonable approach for handling the recurring problem of an occasional failure to file.

110. The Commission will impose a minimum reduction of support of seven days given the importance of ETCs meeting filing deadlines. After the initial seven days, support will be reduced further on a day-by-day basis until the high-cost recipient files the required report or certification, plus the minimum seven-day reduction. Reducing support on a day-by-day basis plus an additional seven-day reduction is an appropriate measure to create incentives for high-cost recipients to make their filings as soon as they have determined that they have missed the applicable deadlines.

111. The Commission recognizes that despite its best efforts, an ETC may miss a deadline due to an administrative oversight but still file within a few days of the deadline. For a late filer, the Commission finds that it is appropriate to provide a one-time grace period of three days so that an ETC that quickly rectifies its error within three days of the deadline will not be subject to the seven-day minimum loss of support. The Commission directs USAC to send a letter to such an ETC notifying the ETC that its filing was late but cured within the grace period. If the ETC again files any high-cost filing late, the grace period will not be available. Repeated mistakes, even inadvertent, are indicative of a lack of adequate policies and procedures to ensure timely filing. If an ETC misses a filing deadline more than once due to its inadvertence, the Commission finds that the support reductions that it adopts should provide an incentive to ETCs to revise their procedures to ensure that such inadvertence does not become a pattern.

112. The Commission disagrees with arguments that it should lengthen the one-time grace period because new ETCs receiving support may be unfamiliar with high-cost filing requirements or that ETCs may inadvertently forget to file. The Commission imposes support reductions on late filers to impress upon high-cost recipients the importance of understanding obligations that come with high-cost funding and the need for the Commission and USAC to receive the data in a timely manner so that it can properly administer the Universal Service Fund. A one-time grace period of three days achieves an appropriate balance between requiring strict compliance with our rules and providing an opportunity for ETCs that may be first time filers or that make an uncharacteristic mistake to rectify quickly an error.

113. Although ETCs are required to submit separate filings for each operating company, the Commission notes that many holding companies administer the filings for all of their operating companies that may hold an ETC designation. The Commission expects that holding companies will take measures to ensure that all of their operating companies meet the required deadlines. Thus, the Commission will apply the grace period at the holding company level. If an ETC misses the deadline and exercises the grace period in a prior year, that grace period will not be available for all subsequent years to another one of the holding company's operating companies that holds an ETC designation to serve a different study area.

114. The Commission is not persuaded by the Rural Associations' argument, relying on precedent related to the Eighth Amendment to the Constitution ''Excessive Fines'' clause, that the support reductions are ''unreasonable'' and ''excessive penalties.'' Because ETCs have no property interest in or right to continued universal service support, nor any right to support other than as provided for by the Commission's rules, the reduction of an ETC's universal support payment does not constitute a payment by the ETC to the government that is subject to the Excessive Fines clause of the Eighth Amendment.

115. In any case, even if that framework were viewed as applicable, given the important role these data and certifications play in the administration of the Universal Service Fund, the Commission finds that the support reductions that it adopts are sufficiently proportional to the harm caused by late filings. The reductions increase as the length in delay of the filings increase, and thus are proportional to the amount of harm that is caused when the Commission, state commissions, and USAC are delayed in being able to monitor the use of universal service funds. Moreover, by basing the support reductions on each ETC's daily support amount, the Commission has calibrated the amount of support that a late filer will have reduced with the benefit they receive from the Universal Service Fund. Contrary to the arguments of some commenters, the Commission finds that the benefits for consumers nationwide of an effective oversight scheme outweigh the potential impact of support reductions on the customers of late filing ETCs. Congress gave the Commission broad discretion under

section 254 to determine support levels and adjust them as needed, and hence any reductions in support provided for under the Commission's rules are well within our legislative mandate.

116. The Commission is not persuaded by suggestions that the Commission should refrain from imposing support reductions for untimely filings and instead rely on Commission enforcement authority in the event of non-compliance. If the Commission were to conduct an enforcement proceeding every time an ETC misses a deadline, that would divert Commission resources from other Commission priorities. Instead, by adopting a clear and predictable support reduction scheme, the Commission, USAC, and ETCs will know exactly what consequences will result under the rules if filings are missed, rather than having to handle each issue on a case-by-case basis. Similarly, the Commission is not persuaded that support reductions are unnecessary because ETCs are already motivated to file on time to avoid a delay in receiving their support. Support reductions provide more of an incentive to file on time because ETCs actually lose support under the mechanism established in our rules rather than simply have it delayed if they do not meet a deadline.

117. Given the Commission's decision to modify the support reductions for late filings, the Commission adopts its proposal to require strict adherence to filing deadlines. The Commission will cease the practice of finding there is good cause for a waiver of high-cost filing deadlines in circumstances where an ETC has missed the deadline due to an administrative or clerical oversight and where that ETC has promised to revise its procedures to ensure future compliance, as proposed in the *April 2014 Connect America FNPRM.* The Commission expects all ETCs, even those new to the Commission's processes or with small staffs, to implement appropriate procedures to ensure compliance with the Commission's filing deadlines and other regulatory requirements.

D. Measures To Address Non-Compliance

118. *Discussion.* In this Order the Commission adopts specific measures that the Bureau will take in the event that certain ETCs do not meet their high-cost support deployment obligations for fixed services or do not offer rates for fixed services that are reasonably comparable to rates offered in urban areas.

119. In addition, the Commission reminds all ETCs that they may also be subject to other sanctions for non-compliance with the terms and conditions of high-cost funding, including, but not limited to, potential revocation of ETC designation and suspension or debarment. The Commission emphasizes that it will enforce the terms and conditions of high-cost support vigorously. The Enforcement Bureau may initiate an enforcement proceeding in situations where waiver is not appropriate. In proposing any forfeiture, consistent with the Commission's rules, the Enforcement Bureau shall take into account the nature, circumstances, extent, and gravity of the violations.

1. Non-Compliance With Deployment Obligations

120. For ETCs that must meet specific build-out milestones, the Commission adopts a framework for support reductions that are calibrated to the extent of an ETC's non-compliance with these deployment milestones. The Commission concludes that adopting support reductions that scale with the extent of an ETC's non-compliance will create incentives for ETCs to come into compliance as soon as possible, and that a support reduction scheme that is tied to specific milestones is a clear, straightforward approach.

121. The Commission has given rate-of-return carriers greater flexibility to build out their networks by requiring that they deploy service meeting the Commission's requirements upon reasonable request. Because rate-of-return carriers are not at this time required to build out to a certain number of locations, the Commission concludes it is appropriate to handle matters regarding their potential non-compliance on a case-by-case basis.

122. *Trigger for Default.* A default will occur if an ETC is receiving support and then fails to meet its high-cost support deployment obligations. For example, a default will occur if a recipient of Phase II funding fails to meet a build-out milestone. The Commission directs USAC to confirm that Phase II ETCs are in fact meeting the terms and conditions of that support by verifying the build-out certifications that recipients of Phase II support are required to provide to ensure that Connect America funds are being used to deploy infrastructure to eligible locations.

123. To the extent that an ETC determines that it will not meet a build-out milestone, that ETC must notify the Commission, USAC, and the relevant state or U.S. Territory, and Tribal government as appropriate, no later than ten business days after the relevant deadline, rather than waiting until the filing of the next annual report. The Commission also expects that the states, U.S. Territories, and Tribal governments will continue to aid us in our joint oversight role and notify the Commission when an ETC is not meeting its obligations.

124. *Support Reductions for ETCs with Defined Build-Out Milestones.* If an ETC begins receiving support and the Bureau subsequently determines that the ETC has defaulted, the Bureau will issue a letter documenting the default, and USAC will take the steps outlined below in the following month. The measures that will be taken will be dependent on the extent of an ETC's non-compliance.

125. Specifically, for interim milestones that occur during the support term:

- Tier 1: If an ETC has a compliance gap of at least five percent but less than 15 percent of the number of locations that the ETC is required to have built out to by the interim milestone, the Bureau will issue a letter to that effect. The ETC will then be required to file quarterly reports identifying the geocoded locations to which the ETC has newly deployed facilities capable of delivering broadband meeting the requisite requirements with Connect America support in the previous quarter. The ETC must continue to file these quarterly reports until the ETC reports that it has reduced the compliance gap to less than five percent of the required number of locations for that interim milestone and the Bureau issues a letter to that effect.
- Tier 2: If an ETC has a compliance gap of at least 15 percent but less than 25 percent of the number of locations that the ETC is required to have built out to by the interim milestone, USAC will withhold 15 percent of the ETC's monthly support for the state and the ETC will be required to file quarterly reports. Once the ETC has reported that it has reduced the compliance gap to less than 15 percent of the required number of locations for that interim milestone for that state, the Bureau will issue a letter to that effect, USAC will stop withholding support, and the ETC will receive all of the support that had been withheld. The ETC will then move to Tier 1 status.
- Tier 3: If an ETC has a compliance gap of at least 25 percent but less than 50 percent of the number of locations that the ETC is required to have built out to by the interim milestone, USAC will withhold 25 percent of the ETC's monthly support for the state and the ETC will be required to file quarterly reports. Once the ETC has reported that it has reduced the compliance gap to

less than 25 percent of the required number of locations for that interim milestone, the Bureau will issue a letter to that effect, the ETC will move to Tier 2 status, and USAC will withhold 15 percent of its monthly support for that state until the ETC reports that it is eligible to move to Tier 1 status. Once the ETC has reported that it qualifies for Tier 1 status, and the Bureau issues a letter to that effect, it will be eligible to have all of its support restored, the ETC will receive all of the support that had been withheld, and it will move to Tier 1.

• Tier 4: If an ETC has a compliance gap of 50 percent or more of the number of locations that the ETC is required to have built out to by the interim milestone, USAC will withhold 50 percent of the ETC's monthly support for the state, and the ETC will be required to file quarterly reports. As with the other tiers, as the ETC reports that it has lessened the extent of its non-compliance, and the Bureau issues a letter to that effect, it will move down the tiers until it reaches Tier 1 (or no longer is out of compliance with the relevant interim milestone). At that point, the ETC will be eligible to have all of its support restored, the ETC will receive all of the support that had been withheld, and, if it now is meeting the interim milestone, it will no longer be required to file quarterly reports.

On the other hand, if after having 50 percent of its support withheld for six months the ETC has not reported that it is eligible for Tier 3 status (or one of the other lower tiers), USAC will withhold 100 percent of the ETC's support for that state and will commence recovery action for a percentage of support that is equal to the ETC's compliance gap plus ten percent of the ETC's support that has been paid to that point. For example, if an ETC has not built out to 75 percent of the required number of locations in a state, USAC would recover 85 percent of the ETC's support that had been paid to that point. The Commission concludes that recovering the additional ten percent of the ETC's support that has been disbursed up to that point will deter ETCs from deciding that they would rather return the support than meet their commitments for the supported area. Because these are high-cost areas that lack unsubsidized providers at the outset of the support term, an ETC's refusal to serve these locations could potentially leave the locations with no options for reasonably comparable service.

• If at any point during the support term the ETC reports that it is eligible for Tier 1 status, it will have its support fully restored including any support that had been withheld, USAC will repay any funds that were recovered, and the ETC will move to Tier 1 status.

126. As noted above, the Commission requires ETCs to report to the Commission, USAC, and the relevant state or U.S. Territory, and Tribal government as appropriate, within ten business days of the final build-out milestone if they have missed this milestone. If an ETC misses the final build-out milestone, it must identify by what percentage it has missed the final build-out milestone. Absent an extension of time for circumstances beyond the ETC's control, the ETC will then have twelve months from the date of the final build-out milestone deadline to come into full compliance with this milestone. If an ETC does not report that it has come into full compliance within twelve months, the Bureau will issue a letter to this effect. USAC will then recover an amount of support that is equal to 1.89 times the average amount of support per location received in the state over the six-year term for the relevant number of locations that the ETC has failed to deploy to, plus ten percent of the ETC's total Phase II support received in the state over the six-year term. As explained above, the Commission concludes that recovering an additional ten percent of the ETC's total Phase II support will deter ETCs from deciding to return their support rather than build out to more than a de minimis number of locations.

127. If after the ETC's support term has ended, USAC determines in the course of a compliance review that the ETC has not retained sufficient evidence to demonstrate that it has built out to all of the locations required by the final build-out milestone, USAC must recover support from that ETC. Specifically, if the ETC does not have sufficient evidence to demonstrate that it has built out to the total number of required locations, USAC will recover an amount of support that is equal to 1.89 times the average amount of support per location received in the state over the six-year term for the relevant number of locations for which the ETC has failed to retain sufficient evidence, plus ten percent of the ETC's total support received in that state over the six-year term. The Commission expects that ETCs will have strong incentives to adopt policies and procedures to retain sufficient evidence to aid the Commission and USAC in our oversight responsibility.

128. Table 2 below summarizes the regime the Commission adopts in this Order.

TABLE 2—NON-COMPLIANCE MEASURES

Tier	Compliance gap	Non-compliance measure
1	5% to less than 15%	Quarterly reporting.
2	15% to less than 25%	Quarterly reporting + withhold 15% of monthly support.
3	25% to less than 50%	Quarterly reporting + withhold 25% of monthly support.
4	50% or more	Quarterly reporting + withhold 50% of monthly support for six months; after six months withhold 100% of monthly support and recover percentage of support equal to compliance gap plus 10% of support disbursed to date.
Recovery after Last Milestone.	If carrier elects the flexibility option: its compliance gap will be determined by the percentage of total locations it does not build to after subtracting the percentage of locations it has identified it will not serve (*e.g.*, if a carrier is offered 100 total locations, and it elects not to serve 4 locations but by the end of the term it has not served 20 locations, its compliance gap is 16% (20% minus 4% = 16%)). If carrier does not elect flexibility option: anything less than 100% compliance.	Twelve months to come into full compliance; after twelve months recover support equal to 1.89 times the average amount of support per location received in the state over the six-year term for the relevant locations, plus 10% of total Phase II support.

129. The Commission provides the following example in Table 3 of how these compliance measures will be implemented for a price cap carrier that accepts the state-level commitment. For simplicity, the Commission assumes the price cap carrier must serve 100 total locations and does not elect the flexibility option.

TABLE 3—NON-COMPLIANCE MEASURES EXAMPLE

Milestone	Tier	Compliance gap
December 31, 2017—40% of total locations (40 locations)	1	Serves 35 to 38 locations.
	2	Serves 31 to 34 locations.
	3	Serves 21 to 30 locations.
	4	Serves 20 locations or fewer.
December 31, 2018—60% of total locations (60 locations)	1	Serves 52 to 57 locations.
	2	Serves 46 to 51 locations.
	3	Serves 31 to 45 locations.
	4	Serves 30 locations or fewer.
December 31, 2019—80% of total locations (80 locations)	1	Serves 69 to 76 locations.
	2	Serves 61 to 68 locations.
	3	Serves 41 to 60 locations.
	4	Serves 40 locations or fewer.
December 31, 2020—100% of total locations (100 locations)	Recovery	Serves 99 locations or fewer.

130. The Commission concludes that the approach it adopts in the Order is preferable to the other alternative the Commission sought comment on—permitting ETCs to submit a plan to USAC for coming into compliance before support reductions would begin. Such an approach would likely to be resource-intensive for Commission staff and USAC because each default would need to be handled on a case-by-case basis. When there are clear milestones that must be met, such an approach is unnecessary. Moreover, it likely would take a significant amount of time for an ETC to develop a compliance plan and for the plan to be approved, and then it will take even more time for the ETC to come into full compliance. During this extended period consumers will be without service meeting the Commission's requirements. The Commission finds that the more automatic support reduction scheme it adopts above will more quickly motivate ETCs to come into compliance and is a clearer, less resource-intensive process for the Commission, USAC, and ETCs.

131. *Non-Compliance Measures for Rate-of-Return Carriers.* The Commission will determine on a case-by-case basis whether rate-of-return carriers are fulfilling their obligation to provide voice and broadband services meeting the Commission's requirements upon reasonable request. The Commission clarifies that rate-of-return carriers should report any requests that are deemed unreasonable as unfulfilled requests in their section 54.313 annual reports. The Commission expects that USAC will verify that rate-of-return carriers have sufficient evidence to demonstrate that any unfulfilled requests were in fact unreasonable. Rate-of-return carriers should consult the *Declaratory Ruling* contained in the *April 2014 Connect America Order,* 79 FR 39164, July 9, 2014, for guidance on what constitutes an unreasonable request to determine the types of evidence they should retain to demonstrate that unfilled requests were unreasonable. The Commission declines at this time to specify a schedule of support reductions for rate-of-return carriers because they are not subject to defined build-out milestones. To the extent USAC determines in the course of an audit that a carrier has insufficient evidence to support a decision to deny a request for service, such findings shall be reported as ''other matters.'' Because rate-of-return carriers are not required to serve a set number of locations, and the Commission only recently issued guidance on the reasonable request standard, the Commission does not have sufficient experience to create specific milestones that would require support reductions. However, the Commission reserves the right to adopt a more automatic support reduction framework for rate-of-return carriers at a future date.

132. *Adjustment of Deployment Obligations.* In the event an ETC is unable to meet the required deployment obligations due to circumstances beyond its control (*e.g.,* a severe weather event, an inability to secure a right of way, or an unforeseen obstacle that prevents building to a location), that ETC may petition for an extension of time or waiver of the relevant build-out milestone pursuant to section 1.3 of the Commission's rules. The Commission notes that to the extent the ETC is seeking an extension or waiver of a specific build-out milestone, the Commission expects that the ETC would file its petition seeking that relief no later than 30 days prior to the build-out milestone. The Commission encourages ETCs that submit such petitions to continue to work diligently towards meeting the terms and conditions of their support while their petitions are pending. If the petitioning ETC is unable to meet the terms and conditions by the time the build-out milestone occurs, then the Bureau will issue a letter finding default, and if applicable, reporting obligations and support reductions will begin as described above. If an extension of time or waiver subsequently is granted, the petitioning ETC will have all of the funds that have been withheld or recovered restored and will be entitled to receive its subsequent disbursements.

2. Non-Compliance With Reasonably Comparable Pricing Obligations

133. The Commission concludes that this issue is best dealt with on a case-by-case basis for the time being for all ETCs that must certify that the rates they offer are reasonably comparable. The Commission finds that it would not be appropriate to apply a uniform support reduction to all ETCs that fail to offer reasonably comparable prices. It would be inequitable to reduce support by the same percentage amount regardless of whether the ETC was charging prices a few dollars above what is considered to be reasonably comparable or charging much higher prices. Similarly, because the pricing benchmarks for voice and broadband are

presumptions, not mandates, the Commission must provide an opportunity for affected ETCs to present information to rebut the presumption. Because there may be a variety of factors that go into determining whether prices are reasonably comparable (*e.g.,* speeds and data usage limits being offered), the Commission is not prepared at this time to establish a method for scaling the support reductions based on a level of non-compliance. The Commission finds that it would be beneficial to consider each potential instance of non-compliance separately and gather more information to inform future judgments as to what is a reasonable approach.

134. The Commission directs USAC to gather additional information when ETCs fail to make the reasonably comparable certification about their voice or broadband rates in their section 54.313 annual report and transmit that information to the Commission. The ETC may present factual evidence explaining the unique circumstances that preclude it from offering service at a rate meeting the requisite benchmark. Based on this information, the Commission will be in a better position at a future date to determine the appropriate steps to take when there is non-compliance with this requirement.

VII. Procedural Matters

A. Paperwork Reduction Act Analysis

135. 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, the Commission 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).

B. Final Regulatory Flexibility Analysis

136. As required by the Regulatory Flexibility Act of 1980 (RFA), as amended, an Initial Regulatory Flexibility Analyses (IRFA) was incorporated in the *April 2014 Connect America FNPRM.* The Commission sought written public comment on the proposals in the *April 2014 Connect America FNPRM,* including comment on the IRFA. The Commission did not receive any relevant comments on the *April 2014 Connect America FNPRM* IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

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

137. With this Order, the Commission takes another momentous stride towards fully implementing a modernized universal service regime capable of meeting consumer demands for 21st century networks. The Commission finalizes the decisions necessary to proceed with the offer of support to price cap carriers in early 2015, thereby paving the way for the deployment of new broadband infrastructure to millions of unserved Americans. In the coming months, the Commission will turn its attention to finalizing the rules for the Phase II competitive bidding process that will occur in those states where the price cap carrier declines the offer of model-based support.

138. Throughout the universal service reform process, the Commission has sought to ensure that all consumers ''have access to . . . advanced telecommunications and information services'' and benefit from the historic technology transitions that are transforming our nation's communications services. The Order continues down that path. The Commission adopts several revisions to Connect America Phase II to account for changes in the marketplace since the *USF/ICC Transformation Order* was adopted. In particular, the Commission revises the minimum speed requirement that recipients of high-cost universal service must offer. The Commission finds that it is in the public interest to require recipients of high-cost support subject to broadband performance obligations to serve fixed locations to provide at least a minimum broadband speed of 10 Mbps downstream.

139. The Commission adopts targeted changes to the framework established for the offer of model-based support to price cap carriers. Specifically, the Commission makes an adjustment to the term of support, adopts more evenly spaced interim deployment milestones, and concludes that adjustments of up to five percent in the number of locations that must be served with corresponding support reductions are appropriate to ensure that deployment obligations recognize conditions in the real world. The Commission also forbears from the federal high-cost universal service obligation of price cap carriers to offer voice service in low-cost areas where they do not receive high-cost support, in areas served by an unsubsidized competitor, and in areas where the price cap carrier is replaced by another ETC.

140. In addition, the Commission addresses where Phase II support will be available, both for the offer of model-based support to price cap carriers and the subsequent Phase II competitive bidding process. First, the Commission will exclude from the offer of Phase II model-based support any census block served by a subsidized facilities-based terrestrial competitor that offers fixed residential voice and broadband services meeting or exceeding the 3 Mbps downstream/768 kbps upstream (3 Mbps/768 kbps) performance metrics, as determined by the Bureau upon completion of the Phase II challenge process. The Commission also reaffirms its decision to exclude from the offer of model-based support any census block served by an unsubsidized competitor that meets or exceeds the 3 Mbps/768 kbps performance metrics. Second, the Commission concludes that those high-cost blocks served by a subsidized carrier that are excluded from the offer of model-based support—including blocks with service meeting or exceeding the new 10 Mbps downstream/1 Mbps upstream (10/1 Mbps) speed requirement—will be eligible for support in the Phase II competitive bidding process. Third, the Commission concludes that any area served by an unsubsidized facilities-based terrestrial competitor that offers 10/1 Mbps will be ineligible for support in the Phase II competitive bidding process. Fourth, the Commission excludes from the offer of model-based support those areas that are the subject of category one bids that were not selected for the rural broadband experiments and where a losing bidder has filed specific information indicating that it wishes to remain in consideration for rural broadband experiment support.

141. In the *Connect America Fund FNPRM,* the Commission sought comment on a number of near-term and longer-term reforms for rate-of-return carriers, including developing and implementing a ''Connect America Fund'' for rate-of-return carriers. Although a number of parties have submitted proposals that may have promise, the Commission finds that further analysis and development of these proposals is necessary. The Commission will continue to explore the possibility of a voluntary path to model-based support for those rate-of-return carriers that choose to pursue it. The Commission also expects to continue to develop the record and act in the coming year on alternatives for

those who do not elect to receive model-based support.

142. In this Order, the Commission focuses on near-term reforms for rate-of-return carriers. Specifically, the Commission adopts a revised methodology for applying the cap on high-cost loop support to distribute that support on a more equitable basis. The Commission also addresses the proposals from the *April 2014 Connect America FNPRM* regarding the 100 percent overlap rule.

143. In the *USF/ICC Transformation Order,* the Commission established a ''uniform national framework for accountability'' that replaced the various data and certification filing deadlines that carriers previously were required to meet. In the Order, the Commission takes several steps to strengthen that framework, including codifying the reasonable comparability pricing requirement for broadband services, adjusting the reductions in support for late-filed annual ETC reports and certifications, and providing greater specificity regarding how the Commission will address non-compliance with the Commission's service obligations for voice and broadband.

144. The actions the Commission takes in this Order, combined with the implementation of the rural broadband experiments and the reforms the Commission implemented earlier in the year, will allow the Commission to continue to advance further down the path outlined in the *USF/ICC Transformation Order.* The Commission expects the Bureau to complete the Connect America Phase II challenge process and then make a final determination as to which census blocks will be eligible for the offer of model-based Phase II support by early 2015. That final determination will allow the Commission to extend the offers of Phase II model-based support to price cap carriers to fund the deployment of voice and broadband-capable infrastructure in their territories. The carriers will then have 120 days to consider the offer, and in those states where the price cap carrier declines the offer of support, the Commission will move forward with the Phase II competitive bidding process to determine support recipients.

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

145. There were no relevant comments filed that specifically addressed the rules and policies proposed in the *April 2014 Connect America FNPRM* IRFA. Nonetheless, the agency considered the potential impact of the rules proposed in the IRFA on small entities and reduced the compliance burden for all small entities in order to reduce the economic impact of the rules enacted herein on such entities.

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

146. 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.

147. Small Businesses. Nationwide, there are a total of approximately 28.2 million small businesses, according to the SBA.

148. 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.

149. 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.

150. 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

151. 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.

152. 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.

153. 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.

154. 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.

155. 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.

156. 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.

157. 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.

158. 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.

159. 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.

160. 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.

161. 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.

162. 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.

163. 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.

164. 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.

165. 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.

166. 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.

167. 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.

168. 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.

169. 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.

170. 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.

171. 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.

172. 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.

173. 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).

174. 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.

175. 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.

176. 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.

177. 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.

178. 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.

179. 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.

180. 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 the Commission's evaluations in this analysis, it 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.

181. 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.

182. 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.

183. 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.

184. 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.

185. 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.

186. 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.

187. 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.

188. 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 7433 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.

189. 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 the Commission 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.

190. 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.

191. 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.

192. 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.

193. 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.

194. 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.

195. 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.

196. 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 the Commission is unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

197. 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.

198. 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 Order.

199. 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.

200. 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.

201. 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

202. In the Order, the Commission amends section 54.313(a) to include a new subsection 12 that requires recipients of high-cost and/or Connect America Fund support that are subject to broadband performance obligations to submit a broadband reasonable comparability certification with their annual section 54.313 report (FCC Form 481). In that certification, support recipients must certify that the pricing of the broadband offering they are relying upon to meet their broadband performance obligation is no more than the applicable benchmark as specified in a public notice issued by the Bureau, or is no more than the non-promotional prices charged for a comparable fixed wireline service in urban areas in the states or U.S. Territories where the high-cost support recipient receives support. For purposes of the latter certification, the Commission does not require that the high-cost support recipient offer a particular rate nationwide; rather it is sufficient if for each state or U.S. Territory where the high-cost support recipient receives funding, the high-cost support recipient or another provider offers the same rate for a comparable fixed wireline service in an urban area in that state or U.S. Territory. Recognizing that high-cost support recipients are permitted to offer a variety of broadband service offerings as long as they offer at least one standalone voice service plan and one service plan that provides broadband that meets the Commission's requirements, it only requires that they make the above certification for one of their broadband service offerings that satisfies all of the Commission's requirements, including that the service be offered throughout the high-cost support recipient's supported area, or for rate-of-return carriers, be made available upon reasonable request.

203. The Commission concludes that requiring high-cost support recipients to make this certification will ensure that the Commission can monitor their compliance with the section 254(b) principle that ''[c]onsumers in all regions of the Nation . . . should have access to telecommunications and information services that are reasonably comparable to rates charged for similar services in urban areas.''

204. The Commission requires that high-cost support recipients that elect to certify that their pricing of services in rural areas is no greater than their pricing in urban areas to rely upon the non-promotional prices charged for comparable *fixed wireline* services. This certification will be included in the FCC Form 481 to be filed in 2016, addressing performance during 2015, after the requirement has received Paperwork Reduction Act (PRA) approval from the Office of Management and Budget. All parties subject to a broadband public interest requirement that file this report in 2016 will be required to make the certification, and annually thereafter. Recipients of funding through the Phase II competitive bidding process must submit their first certification with the first section 54.313 annual report they are required to submit after support is authorized, and each year thereafter with their annual report.

205. In the Order, the Commission requires all price cap carriers accepting model-based support to include in the annual progress report that they submit with their section 54.313 annual reports a list of the geocoded locations to which they have newly deployed facilities capable of delivering broadband meeting the requisite requirements with Connect America support in the prior year. The list must identify which locations are located in a Phase II-funded block and which locations are located in extremely high-cost census blocks. The first list must be submitted with their July 2016 annual report, reflecting deployment status through the end of 2015. This first list should also include the geocoded locations that a price cap carrier had already built out to with service meeting the Commission's requirements before receiving Phase II support. The Commission will also collect from price cap carriers accepting model-based support in their annual section 54.313 reports the total amount of Connect America Phase II support, if any, they used for capital expenditures in the previous calendar year. In the Order, the Commission finds that it is in the public interest to require price cap carriers accepting model-based support to provide this data on an annual basis.

206. In the Order, the Commission also takes a necessary step to ensure the most efficient use of high-cost support by reducing on a pro-rata daily basis the support of any ETC that misses certification or data submission deadlines. The Commission recognizes that despite its best efforts, an ETC may miss a deadline due to an administrative oversight but still file within a few days of the deadline, and therefore implement a one-time grace period of three days. A one-time grace period of three days achieves an appropriate balance between requiring strict compliance with our rules and providing an opportunity for ETCs that may be first time filers or that make an uncharacteristic mistake to rectify quickly an error.

207. Given our decision to modify the support reductions for late filings, the Order announces that the Commission otherwise requires strict adherence to filing deadlines. The Commission will cease the practice of finding there is good cause for a waiver of high-cost filing deadlines in circumstances where an ETC has missed the deadline due to an administrative or clerical oversight and where that ETC has promised to revise it procedures to ensure future compliance.

208. Lastly, the Commission adopts specific measures in the event that certain ETCs do not meet their high-cost obligations for fixed services. Specifically, in the Order, the Commission adopts a support reduction regime for ETCs that fail to meet their

deployment obligations subsequent to accepting Connect America Phase II support. For price cap ETCs the Commission adopts a framework for support reductions that are calibrated to the extent of an ETC's non-compliance with these deployment milestones. Because rate-of-return carriers are not at this time required to build out to a certain number of locations, the Commission concludes it is appropriate to handle matters regarding their potential non-compliance on a case-by-case basis. Additionally, the Commission concludes that non-compliance of the reasonable comparability requirement is best dealt with on a case-by-case basis for all ETCs that must certify that the rates they offer are reasonably comparable. The Commission finds that it would not be appropriate to apply a uniform support reduction to all ETCs that fail to offer reasonably comparable prices.

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

209. 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.

210. The rules that the Commission adopts in the Order provide flexibility in meeting the public interest obligations that are a condition of the receipt of high-cost support for those price cap carriers accepting the offer of model-based support, the Commission adopts targeted adjustments to the framework established by the Commission in the *USF/ICC Transformation Order* to provide carriers flexibility. Specifically, the Commission adopts evenly spaced annual interim milestones for price cap carriers to offer at least 10/1 Mbps to an additional 20 percent of the requisite number of high-cost locations each year. The Commission also modifies the build-out requirements established for price cap carriers accepting model-based support to create evenly spaced annual interim milestones. The Commission requires price cap carriers accepting model-based support to complete construction to 40 percent of the requisite number of locations in a state by the end of calendar year 2017, instead of 85 percent by the mid-2018, which is a more realistic expectation, given that carriers will not accept the offer of support until mid-year in 2015 and then will be developing detailed network construction plans. The Commission also will permit a modest adjustment to the number of model-determined funded locations in a given state with a corresponding reduction in support. The Commission expects the flexibility in deployment for price-cap carriers accepting model-based Phase II support will minimize the economic impact on small entities.

211. Additionally, as the Commission did in 2011, it continues to offer a more flexible approach to deploying broadband for rate-of-return carriers. Rate-of-return carriers are only 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. Rate-of-return carriers will be required to offer at least 10/1 Mbps broadband service upon reasonable request, consistent with past guidance regarding our expectations regarding the reasonable request standard. If a request for 10/1 Mbps is not reasonable in a given circumstance, but offering 4/1 Mbps is reasonable, the Commission would expect a rate-of-return carrier to offer 4/1 Mbps.

212. The Commission also concludes, based on our consideration of the relevant statutory framework and the record before us, that it is in the public interest to forbear from enforcing a federal high-cost requirement that price cap carriers offer voice telephony service throughout their service areas pursuant to section 214(e)(1)(A) of the Act in three types of geographic areas: (1) Census blocks that are determined to be low-cost, (2) census blocks served by an unsubsidized competitor, and (3) census blocks where a subsidized competitor—*i.e.,* another ETC—is receiving federal high-cost support to deploy modern networks capable of providing voice and broadband to fixed locations. The Commission finds that limited forbearance from section 214(e)(1)(A) will promote competitive market conditions by giving affected carriers the flexibility to compete on a more equal regulatory footing in the voice telephony market with competitors that already have the opportunity to make decisions about how best to offer voice telephone service.

213. For those price cap carriers serving non-contiguous areas that elect to continue receiving frozen support amounts in lieu of the offer of model-based support, the Commission recognizes that such carriers face unique circumstances in the areas they serve and experience different challenges in deploying broadband service in those areas. Consequently, a ''one-size-fits-all'' approach would leave some of these carriers potentially unable to fulfill their service obligations. The Commission is confident that tailoring specific service obligations to the individual circumstances of each non-contiguous carrier that elects to continue receiving frozen support will best ensure that Connect America funding is put to the best possible use.

214. The Commission institutes 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. Although the Commission notes that filing deadlines will be strictly enforced, it adjusts the reduction of support for all ETCs, including small entities, and provides a grace period to ensure it is not unduly punitive given the nature of non-compliance.

215. The Commission also adopts specific measures that the Bureau will take in the event that certain ETCs do not meet their high-cost support deployment obligations for fixed services or does not offer rates that are reasonably comparable to rates offered in urban areas. The reductions represent a detailed calculus to ensure that no carrier is penalized inappropriately for its non-compliance. As such, price cap ETC support reductions scale with the extent of an ETC's non-compliance, and create incentives for ETCs to come into compliance as soon as possible. For rate-of-return ETCs, given that their obligation is to provide voice and broadband service upon reasonable request and the Commission does not have sufficient experience to create specific deployment milestones, the Commission finds it appropriate to handle matters regarding their potential non-compliance on a case-by-case basis. Additionally, determined that non-compliance with the reasonable comparability requirement is best dealt with on a case-by-case basis for all ETCs because of the variety of factors that go into determining whether prices are reasonably comparable. Accordingly, the Commission determined that it would not be appropriate to apply a uniform support reduction to all ETCs that fail to offer reasonably comparable prices.

6. Report to Congress

216. The Commission will send a copy of the Order, 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, including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Report and Order and FRA (or summaries thereof) will also be published in the **Federal Register**.

7. Additional Information

217. *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).

218. *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.

VIII. Ordering Clauses

219. Accordingly, IT IS ORDERED, pursuant to the authority contained in sections 1, 2, 4(i), 5, 10, 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, 160, 201–206, 214, 218–220, 251, 252, 254, 256, 303(r), 332, 403, 405, 1302, and sections 1.1, 1.427, and 1.429 of the Commission's rules, 47 CFR 1.1, 1.427, and 1.429, that this Report and Order, IS ADOPTED, effective thirty (30) days after publication of the text or summary thereof in the **Federal Register**, except for those rules and requirements involving Paperwork Reduction Act burdens, which shall become effective immediately upon announcement in the **Federal Register** of OMB approval, and except as otherwise provided below. It is the Commission's intention in adopting these rules that if any of the rules that it retains, 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.

220. IT IS FURTHER ORDERED that the requirement for non-contiguous carriers that wish to elect Phase II frozen support in lieu of model-based support discussed in paragraph 39 and the requirement that bidders in the rural broadband experiments that wish to remain in consideration for rural broadband experiment support discussed in paragraph 71 are effective upon release.

221. IT IS FURTHER ORDERED that for the reasons stated in paragraph 71 the Commission finds good cause exists to make excluding from the offer of model-based support any census block included in a non-winning rural broadband experiment application submitted in funding category one discussed in paragraph 72 effective upon **Federal Register** publication.

222. IT IS FURTHER ORDERED that Part 54 of the Commission's rules, 47 CFR part 54, IS AMENDED as set forth below, and such rule amendments SHALL BE EFFECTIVE February 26, 2015, except for §§ 54.313(a)(e) and 54.320 which contain 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 those sections.

223. IT IS FURTHER ORDERED that, pursuant to the authority contained in sections 4(i), 4(j), 10, 214, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 160, 214 and 254, the petition for forbearance filed by the United States Telecom Association on October 6, 2014, IS GRANTED IN PART to the extent described herein.

224. 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 August 8, 2014, IS DISMISSED to the extent described herein.

225. 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 National Exchange Carrier Association, Inc., et al. on August 8, 2014, IS DISMISSED to the extent described herein.

226. IT IS FURTHER ORDERED that the Commission SHALL SEND a copy of this Report and Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

227. IT IS FURTHER ORDERED, that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 54

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

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 54 as follows:

PART 54—UNIVERSAL SERVICE

■ 1. The authority citation for part 54 is revised to read as follows:

Authority: 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 adding the following term and definition ''Qualifying competitor'' in alphabetical order to read as follows:

§ 54.5 Terms and definitions.

* * * * *

Qualifying competitor. A ''qualifying competitor'' is a facilities-based terrestrial provider of residential fixed voice and broadband service access meeting or exceeding 3 Mbps downstream and 768 kbps upstream.

* * * * *

■ 3. Amend § 54.201 by revising paragraph (d) introductory text and adding paragraph (d)(3) to read as follows:

§ 54.201 Definitions of eligible telecommunications carriers, generally.

* * * * *

(d) A common carrier designated as an eligible telecommunications carrier under this section shall be eligible to receive universal service support in accordance with section 254 of the Act and, except as described in paragraph (d)(3) of this section, shall throughout

the service area for which the designation is received:

* * * * *

(3) *Exception.* Price cap carriers that serve census blocks that are identified by the forward-looking cost model as low-cost, census blocks that are served by an unsubsidized competitor as defined in § 54.5 meeting the requisite public interest obligations specified in § 54.309, or census blocks where a subsidized competitor is receiving federal high-cost support to deploy modern networks capable of providing voice and broadband to fixed locations, are not required to comply with paragraphs (d)(1) and (2) of this section in these specific geographic areas. Such price cap carriers remain obligated to maintain existing voice telephony service in these specific geographic areas unless and until a discontinuance is granted pursuant to § 63.71 of this chapter.

* * * * *

■ 4. Add § 54.308 to read as follows:

§ 54.308 Broadband public interest obligations for recipients of high-cost support.

(a) Rate-of-return carrier recipients of high-cost support 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 reasonably comparable to rates for comparable offerings in urban areas, upon reasonable request. If a request for broadband service at actual speeds of at least 10 Mbps downstream/1 Mbps upstream is unreasonable, and offering broadband service at actual speeds of at least 4 Mbps downstream/1 Mbps upstream is reasonable, rate-of-return recipients of high-cost support are required to offer broadband service at actual speeds of at least 4 Mbps downstream/1 Mbps upstream. For purposes of determining reasonable comparability of rates, recipients are presumed to meet this requirement if they offer rates at or below the applicable benchmark to be announced annually by public notice issued by the Wireline Competition Bureau, or no more than the non-promotional prices charged for a comparable fixed wireline service in urban areas in the state or U.S. Territory where the eligible telecommunications carrier receives support.

(b) [Reserved]

■ 5. Revise § 54.309 to read as follows:

§ 54.309 Connect America Fund Phase II Public Interest Obligations.

(a) Recipients of Connect America Phase II model-based support 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 reasonably 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 applicable benchmark to be announced annually by public notice issued by the Wireline Competition Bureau, or no more than the non-promotional prices charged for a comparable fixed wireline service in urban areas in the state or U.S. Territory where the eligible telecommunications carrier receives support.

(b) [Reserved]

■ 6. Amend § 54.310 by revising paragraphs (b) and (c) to read as follows:

§ 54.310 Connect America Fund for Price Cap Territories—Phase II.

* * * * *

(b) *Term of support.* Connect America Phase II model-based support shall be provided to price cap carriers that elect to make a state-level commitment for six years. Connect America Phase II support awarded through a competitive bidding process shall be provided for ten years.

(c) *Deployment obligation.* Recipients of Connect America Phase II model-based support must complete deployment to 40 percent of supported locations by December 31, 2017, to 60 percent of supported locations by December 31, 2018, to 80 percent of supported locations by December 31, 2019, and to 100 percent of supported locations by December 31, 2020. Compliance shall be determined based on the total number of supported locations in a state.

(1) For purposes of meeting the obligation to deploy to the requisite number of supported locations in a state, 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 supported locations in the state.

(2) Recipients of Connect America Phase II model-based support may elect to deploy to 95 percent of the number of supported locations in a given state with a corresponding reduction in support computed based on the average support per location in the state times 1.89.

* * * * *

■ 7. Amend § 54.313 by adding paragraph (a)(12) and revising paragraphs (e) and (j) to read as follows:

§ 54.313 Annual reporting requirements for high-cost recipients.

(a) * * *

(12) A certification that the pricing of a service that meets the Commission's broadband public interest obligations is no more than the applicable benchmark to be announced annually in a public notice issued by the Wireline Competition Bureau, or is no more than the non-promotional price charged for a comparable fixed wireline service in urban areas in the states or U.S. Territories where the eligible telecommunications carrier receives support.

* * * * *

(e) In addition to the information and certifications in paragraph (a) of this section, any price cap carrier that elects to receive Connect America Phase II model-based support shall provide:

(1) On July 1, 2016 an initial service quality improvement plan that includes a list of the geocoded locations already meeting the § 54.309 public interest obligations at the end of calendar year 2015, and the total amount of Phase II support, if any, the price cap carrier used for capital expenditures in 2015.

(2) On July 1, 2017 and every year thereafter ending July 1, 2021, a progress report on the company's service quality improvement plan, including the following information:

(i) A certification that it is meeting the interim deployment milestones as set forth;

(ii) The number, names, and addresses of community anchor institutions to which the eligible telecommunications carrier newly began providing access to broadband service in the preceding calendar year;

(iii) A list of the geocoded locations to which the eligible telecommunications carrier newly deployed facilities capable of delivering broadband meeting the § 54.309 public interest obligations with Connect America support in the prior year. The final progress report filed on July 1, 2021 must include the total number and geocodes of all the supported locations that a price cap carrier has built out to

with service meeting the § 54.309 public interest obligations; and

(iv) The total amount of Phase II support, if any, the price cap carrier used for capital expenditures in the previous calendar year.

(3) On July 1, 2018, a certification that the recipient offered broadband meeting the requisite public interest obligations specified in § 54.309 to 40% of its supported locations in the state on December 31, 2017.

(4) On July 1, 2019, a certification that the recipient offered broadband meeting the requisite public interest obligations specified in § 54.309 to 60% of its supported locations in the state on December 31, 2018.

(5) On July 1, 2020, a certification that the recipient offered broadband meeting the requisite public interest obligations specified in § 54.309 to 80% of its supported locations in the state on December 31, 2019.

(6) On July 1, 2021, a certification that the recipient offered broadband meeting the requisite public interest obligations specified in § 54.309 to 100% of its supported locations in the state on December 31, 2020.

* * * * *

(j) *Filing deadlines.* (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:

(i) An eligible telecommunications carrier that files after the July 1 deadline, but by July 8, will have its support reduced in an amount equivalent to seven days in support;

(ii) An eligible telecommunications carrier that files on or after July 9 will have its support reduced on a pro-rata daily basis equivalent to the period of non-compliance, plus the minimum seven-day reduction.

(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 its holding company, operating companies, and affiliates as reported pursuant to paragraph (a)(8) of this section have not missed the July 1 deadline in any prior year.

* * * * *

■ 8. Amend § 54.314 by revising paragraph (d) to read as follows:

§ 54.314 Certification of support for eligible telecommunications carriers.

* * * * *

(d) *Filing deadlines.* (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 a state or eligible telecommunications carrier files the annual certification after the October 1 deadline, the carrier subject to the certification shall receive a reduction in its support pursuant to the following schedule:

(i) An eligible telecommunications carrier subject to certifications filed after the October 1 deadline, but by October 8, will have its support reduced in an amount equivalent to seven days in support;

(ii) An eligible telecommunications carrier subject to certifications filed on or after October 9 will have its support reduced on a pro-rata daily basis equivalent to the period of non-compliance, plus the minimum seven-day reduction.

(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 its holding company, operating companies, and affiliates as reported pursuant to § 54.313(a)(8) have not missed the October 1 deadline in any prior year.

■ 9. Revise § 54.319 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 rate-of-return 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 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 $3000 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 $3000 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.

■ 10. Amend § 54.320 by adding paragraph (d) to read as follows:

§ 54.320 Compliance and recordkeeping for the high-cost program.

* * * * *

(d) Eligible telecommunications carriers subject to defined build-out milestones must notify the Commission and USAC, and the relevant state, U.S. Territory, or Tribal government, if applicable, within 10 business days after the applicable deadline if they have failed to meet a build-out milestone.

(1) *Interim build-out milestones.* Upon notification that an eligible telecommunications carrier has defaulted on an interim build-out milestone after it has begun receiving high-cost support, the Wireline Competition Bureau will issue a letter evidencing the default. The issuance of this letter shall initiate reporting obligations and withholding of a percentage of the eligible telecommunication carrier's total monthly high-cost support, if applicable, starting the month following the issuance of the letter:

(i) *Tier 1.* If an eligible telecommunications carrier has a compliance gap of at least five percent but less than 15 percent of the number of locations that the eligible telecommunications carrier is required to have built out to by the interim milestone, the Wireline Competition Bureau will issue a letter to that effect. Starting three months after the issuance of this letter, the eligible telecommunications carrier will be required to file a report every three

months identifying the geocoded locations to which the eligible telecommunications carrier has newly deployed facilities capable of delivering broadband meeting the requisite requirements with Connect America support in the previous quarter. Eligible telecommunications carriers that do not file these quarterly reports on time will be subject to support reductions as specified in § 54.313(j). The eligible telecommunications carrier must continue to file quarterly reports until the eligible telecommunications carrier reports that it has reduced the compliance gap to less than five percent of the required number of locations for that interim milestone and the Wireline Competition Bureau issues a letter to that effect.

(ii) *Tier 2.* If an eligible telecommunications carrier has a compliance gap of at least 15 percent but less than 25 percent of the number of locations that the eligible telecommunications carrier is required to have built out to by the interim milestone, USAC will withhold 15 percent of the eligible telecommunications carrier's monthly support for that state and the eligible telecommunications carrier will be required to file quarterly reports. Once the eligible telecommunications carrier has reported that it has reduced the compliance gap to less than 15 percent of the required number of locations for that interim milestone for that state, the Wireline Competition Bureau will issue a letter to that effect, USAC will stop withholding support, and the eligible telecommunications carrier will receive all of the support that had been withheld. The eligible telecommunications carrier will then move to Tier 1 status.

(iii) *Tier 3.* If an eligible telecommunications carrier has a compliance gap of at least 25 percent but less than 50 percent of the number of locations that the eligible telecommunications carrier is required to have built out to by the interim milestone, USAC will withhold 25 percent of the eligible telecommunications carrier's monthly support for that state and the eligible telecommunications carrier will be required to file quarterly reports. Once the eligible telecommunications carrier has reported that it has reduced the compliance gap to less than 25 percent of the required number of locations for that interim milestone for that state, the Wireline Competition Bureau will issue a letter to that effect, the eligible telecommunications carrier will move to Tier 2 status.

(iv) *Tier 4.* If an eligible telecommunications carrier has a compliance gap of 50 percent or more of the number of locations that the eligible telecommunications carrier is required to have built out to by the interim milestone:

(A) USAC will withhold 50 percent of the eligible telecommunications carrier's monthly support for that state, and the eligible telecommunications carrier will be required to file quarterly reports. As with the other tiers, as the eligible telecommunications carrier reports that it has lessened the extent of its non-compliance, and the Wireline Competition Bureau issues a letter to that effect, it will move down the tiers until it reaches Tier 1 (or no longer is out of compliance with the relevant interim milestone).

(B) If after having 50 percent of its support withheld for six months the eligible telecommunications carrier has not reported that it is eligible for Tier 3 status (or one of the other lower tiers), USAC will withhold 100 percent of the eligible telecommunications carrier's monthly support and will commence a recovery action for a percentage of support that is equal to the eligible telecommunications carrier's compliance gap plus 10 percent of the ETC's support that has been disbursed to that date.

(v) If at any point during the support term, the eligible telecommunications carrier reports that it is eligible for Tier 1 status, it will have its support fully restored, USAC will repay any funds that were recovered or withheld, and it will move to Tier 1 status.

(2) *Final build-out milestone.* Upon notification that the eligible telecommunications carrier has not met a final build-out milestone, the eligible telecommunications carrier will have twelve months from the date of the final build-out milestone deadline to come into full compliance with this milestone. If the eligible telecommunications carrier does not report that it has come into full compliance with this milestone within twelve months, the Wireline Competition Bureau will issue a letter to this effect. USAC will then recover the percentage of support that is equal to 1.89 times the average amount of support per location received in the state over the six-year term for the relevant number of locations plus 10 percent of the eligible telecommunications carrier's total Phase II support over the six-year term for that state.

(3) *Compliance reviews.* If subsequent to the eligible telecommunications carrier's support term, USAC determines in the course of a compliance review that the eligible telecommunications carrier does not have sufficient evidence to demonstrate that it has built out to all of the locations required by the final build-out milestone, USAC shall recover a percentage of support from the eligible telecommunications carrier as specified in paragraph (d)(2) of this section.

■ 11. Amend § 54.1309 by revising paragraphs (a) introductory text, (c) introductory text, and (c)(2) and adding paragraph (d) to read as follows:

§ 54.1309 National and study area average unseparated loop costs.

(a) *National average unseparated loop cost per working loop.* Except as provided in paragraphs (c) and (d) 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. Until June 30, 2015 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 is frozen at $240.00.

* * * * *

(c) Until June 30, 2015, the national average unseparated loop Cost per working loop shall be the greater of:

* * * * *

(2) An amount calculated to produce the maximum rural incumbent local exchange carrier portion of the nationwide loop cost expense adjustment allowable pursuant to § 54.1302(a).

(d) Beginning July 1, 2015, the national average unseparated loop cost per working loop shall be frozen at the national average unseparated loop cost per working loop as recalculated by the National Exchange Carrier Association to reflect the March 2015 update filing.

■ 12. Revise § 54.1310 to read as follows:

§ 54.1310 Expense adjustment.

(a) Until June 30, 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 (a)(1) and (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.

(b) Beginning July 1, 2015, the expense adjustment for each study area calculated pursuant to paragraph (a) of this section will be adjusted as follows:

(1) If the aggregate expense adjustments for all study areas exceed the maximum rural incumbent local exchange carrier portion of nationwide loop cost expense adjustment allowable pursuant to § 54.1302(a) (the HCLS cap), then each study area's expense adjustment will be reduced by multiplying it by the ratio of the HCLS cap to the aggregate expense adjustments for all study areas.

(2) If the aggregate expense adjustments for all study areas are less than the HCLS cap set pursuant to § 54.1302(a), then the expense adjustments for all study areas pursuant to paragraph (a) of this section shall be recalculated using a cost per loop calculated to produce an aggregate amount equal to the HCLS cap in place of the national average cost per loop.

(c) The expense adjustment calculated pursuant to paragraphs (a) and (b) of this section 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 paragraphs (a) and (b) of this section 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 paragraphs (a) and (b) of this section for the following year.

[FR Doc. 2015–00939 Filed 1–26–15; 8:45 am]

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Part IV

Environmental Protection Agency

40 CFR Part 711

Partial Exemption of Certain Chemical Substances From Reporting Additional Chemical Data; Final Rule and Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 711

[EPA–HQ–OPPT–2014–0809; FRL–9921–56]

RIN 2070–AK01

Partial Exemption of Certain Chemical Substances From Reporting Additional Chemical Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is amending the list of chemical substances that are partially exempt from reporting additional information under the Chemical Data Reporting (CDR) rule. EPA has determined that, based on the totality of information available on the chemical substances listed in this direct final rule, the Agency has low current interest in their CDR processing and use information. EPA reached this conclusion after considering a number of factors, including: The risk of adverse human health or environmental effects, information needs for CDR processing and use information, and the availability of other sources of comparable processing and use information.

DATES: This direct final rule is effective March 30, 2015 without further notice, unless EPA receives adverse comment on or before February 26, 2015. If EPA receives written adverse comments, EPA will withdraw the applicable partial exemption in this direct final rule before its effective date. See also Unit II. of the **SUPPLEMENTARY INFORMATION.**

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2014–0809 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.
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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: Niva Kramek, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–2897; email address: *kramek.niva@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. Executive Summary

A. What action is the Agency taking?

This partial exemption eliminates an existing reporting requirement under 40 CFR 711.6(b)(2). With this direct final rule, the following chemical substances are being exempted from reporting of the information described in 40 CFR 711.15(b)(4): Fatty acids, C14–18 and C16–18-unsatd., Me esters (Chemical Abstract Services Registry Number (CASRN) 67762–26–9); Fatty acids, C16–18 and C–18-unsatd., Me esters (CASRN 67762–38–3); Fatty acids, canola oil, Me esters (CASRN 129828–16–6); Fatty acids, corn oil, Me esters (CASRN 515152–40–6); Fatty acids, tallow, Me esters (CASRN 61788–61–2); and Soybean oil, Me ester (CASRN 67784–80–9). However, by existing terms at 40 CFR 711.6, this partial exemption will become inapplicable to a subject chemical substance in the event that the chemical substance later becomes the subject of a rule proposed or promulgated under section 4, 5(a)(2), 5(b)(4), or 6 of the Toxic Substances Control Act (TSCA); an enforceable consent agreement developed under the procedures of 40 CFR part 790; an order issued under TSCA section 5(e) or 5(f); or relief that has been granted under a civil action under TSCA section 5 or 7.

B. Why is the Agency taking this action?

This direct final rule is in response to petitions on these chemical substances (Refs. 1 and 2) submitted under 40 CFR 711.6(b)(2)(iii)(A). EPA reviewed the information put forward in the petitions and additional information against the considerations listed at 40 CFR 711.6(b)(2)(ii). EPA's chemical substance-specific analysis is detailed in supplementary documents available in the docket under docket ID number EPA–HQ–OPPT–2014–0809 (Refs. 3, 4, 5, 6, 7, and 8). The Agency is adding these chemical substances to the partially exempt chemical substances list because it has concluded that, based on the totality of information available, the CDR processing and use information for these chemical substances is of low current interest.

C. What is the Agency's authority for taking this action?

This direct final rule is issued under the authority of TSCA, 15 U.S.C. 2600 *et seq.,* to carry out the provisions of TSCA section 8(a), 15 U.S.C. 2607(a). Section 8(a) of TSCA authorizes EPA to promulgate rules under which manufacturers of chemical substances and mixtures must submit such information as the Agency may reasonably require. The partial exemption list was established in 2003 (Ref. 9) and can be found in 40 CFR 711.6.

D. What are the impacts of this action?

There are no costs associated with this action and the benefits provided are related to avoiding potential costs. This partial exemption eliminates an existing reporting requirement without imposing any new requirements. See also the discussion in Unit V.

E. Does this action apply to me?

You may be potentially affected by this action if you manufacture (defined by statute at 15 U.S.C. 2602(7) to include import) the chemical substances contained in this direct final rule. The North American Industrial Classification System (NAICS) codes provided here are not intended to be exhaustive, but rather provide a guide to help readers determine whether this document applies to them. Potentially affected entities may include chemical manufacturers subject to CDR reporting of one or more subject chemical substances (NAICS codes 325 and 324110), *e.g.,* chemical manufacturing and petroleum refineries.

F. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit CBI 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 preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

II. Direct Final Rule Procedures

EPA is issuing this partial exemption as a direct final rule because it views this as a non-controversial action and anticipates no adverse comment. This direct final rule allows for comments to be submitted on or before February 26, 2015. In any comment submitted, please specify whether the comment is adverse and whether it applies to a certain chemical substance or chemical substances or all of the chemical substances in the direct final rule.

If EPA receives timely adverse comment, we will publish a withdrawal in the **Federal Register** informing the public that the amendments related to the adverse comment will not take effect. At that time, EPA may also issue a notice of proposed rulemaking respecting the addition of one or more of these chemical substances to the list of chemical substances that are exempt from reporting the information described in 40 CFR 711.15(b)(4).

If EPA does not receive any timely adverse comment, this direct final rule will become effective as indicated under **DATES** without any further action by EPA.

III. Petition Process and ''Low Current Interest'' Partial Exemption

In 2003 (Ref. 9), EPA established a partial exemption for certain chemical substances for which EPA determined the processing and use information required in 40 CFR part 711 to be of ''low current interest.'' That provision enables the public to petition EPA to add or remove a chemical substance to or from the list of partially exempt chemical substances. In determining whether the partial exemption should apply to a particular chemical substance, EPA considers the totality of information available for the chemical substance in question, including but not limited to information associated with one or more of the considerations listed at 40 CFR 711.6(b)(2)(ii).

The addition of a chemical substance under this partial exemption will not necessarily be based on its potential risks. The addition is based on the Agency's current assessment of the need for collecting CDR processing and use information for that chemical substance, based upon the totality of information available during the petition review process. Additionally, interest in a chemical substance or a chemical substance's processing and use information may increase in the future, at which time EPA will reconsider the applicability of a partial exemption for a chemical substance.

IV. Rationale for These Partial Exemptions

EPA is granting a partial exemption for: Fatty acids, C14–18 and C16–18-unsatd., Me esters (CASRN) 67762–26–9); Fatty acids, C16–18 and C–18-unsatd., Me esters (CASRN 67762–38–3); Fatty acids, canola oil, Me esters (CASRN 129828–16–6); Fatty acids, corn oil, Me esters (CASRN 515152–40–6); Fatty acids, tallow, Me esters (CASRN 61788–61–2); and Soybean oil, Me ester (CASRN 67784–80–9) because the Agency has concluded it has low current interest in the processing and use information for these chemical substances. EPA made these determinations based on its analysis of the totality of information available on the six chemical substances, including information about the chemical substances relevant to the considerations defined at 40 CFR 711.6(b)(2)(ii). EPA's chemical substance-specific analysis is detailed in supplementary documents available in the docket under docket ID number EPA–HQ–OPPT–2014–0809 (Refs. 3, 4, 5, 6, 7, 8, and 9).

V. Economic Impacts

EPA has evaluated the economic consequences associated with amending the CDR partially exempt chemical substances list. Since this direct final rule creates a partial exemption from CDR reporting, without creating any new reporting or recordkeeping requirements, this action does not impose any new burden. Based on the currently approved Information Collection Request (ICR), the burden estimates for reporting processing and use information are 65.63 hours per submission. Based on 2012 CDR reporting, EPA estimates that 61 submissions with manufacture volumes of 25,000 pounds or greater will be received for these chemical substances in 2016 and subsequent reporting years. Eliminating the requirement to report processing and use information for these submissions results in a total burden savings of approximately 4,003 hours and $246,867 in future reporting cycles (Ref. 10).

VI. References

The following is a listing of the documents that are specifically referenced in this document. The docket includes these documents and other information considered by EPA, including documents that are referenced within the documents that are included in the docket, even if the referenced document is not physically located in the docket. For assistance in locating these other documents, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

1. Letter from Biobased and Renewable Products Advocacy Group, to EPA, OPPT CDR Submission Coordinator, October 21, 2014. Docket ID number EPA–HQ–OPPT–2014–0809, regarding request for exemption of biodiesel products.
2. Letter from Biobased and Renewable Products Advocacy Group, to EPA, OPPT CDR Submission Coordinator, November 5, 2014. Docket ID number EPA–HQ–OPPT–2014–0809, supplement to request for exemption of biodiesel products.
3. EPA, OPPT. Fatty acids, C14–18 and C16–18–unsatd., Me esters (CASRN 67762–26–9) Partial Exemption Analysis. December 2014.
4. EPA, OPPT. Fatty acids, C16–18 and C–18–unsatd, Me esters (CASRN 67762–38–3) Partial Exemption Analysis. December 2014.
5. EPA, OPPT. Fatty acids, canola oil, Me esters (CASRN 129828–16–6) Partial Exemption Analysis. December 2014.
6. EPA, OPPT. Fatty acids, corn oil, Me esters (CASRN 515152–40–6) Partial Exemption Analysis. December 2014.
7. EPA, OPPT. Fatty acids, tallow, Me esters (CASRN 61788–61–2) Partial Exemption Analysis. December 2014.
8. EPA, OPPT. Soybean oil, Me esters (CASRN 67784–80–9) Partial Exemption Analysis. December 2014.
9. EPA. TSCA Inventory Update Rule Amendments; Final Rule. **Federal Register** (68 FR 848, January 7, 2003) (FRL–6767–4).
10. EPA, OPPT. Cost Savings Estimate of Adding Six Chemicals to the 40 CFR 711.6(b)(2)(iv) List of Chemical Substances. December 2014.

VII. 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 as defined by Executive Order 12866 (58 FR 51735, October 4, 1993). Accordingly, this action was not submitted to the Office of Management and Budget (OMB) for review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

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 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, as applicable.

The information collection requirements related to CDR have already been approved by OMB pursuant to PRA under OMB control number 2070–0162 (EPA ICR No. 1884.06). Since this action creates a partial exemption from that reporting, without creating any new reporting or recordkeeping requirements, this action does not impose any new burdens that require additional OMB approval.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under RFA, 5 U.S.C 601 *et seq.* In making this determination, the impact of concern is any significant adverse economic impact on small entities, because the primary purpose of a final regulatory flexibility analysis is to identify and address regulatory alternatives that ''minimize the significant economic impact on small entities'' 5 U.S.C. 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 has no net burden effect on the small entities subject to the rule.

As indicated previously, EPA is eliminating an existing reporting requirement for the chemical substances identified in this action. In granting a partial exemption from existing reporting, this action will not have a significant economic impact on any affected entities, regardless of their size.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1501 *et seq.,* and does not significantly or uniquely affect small governments. In granting a partial exemption from existing reporting, this action imposes no new enforceable duty on any State, local, or Tribal governments, or on the private sector. In addition, based on EPA's experience with CDR under TSCA, State, local, and Tribal governments are not engaged in the activities that would require them to report chemical data under 40 CFR part 711.

E. Executive Order 13132: Federalism

This action would 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 (64 FR 43255, August 10, 1999).

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

This action does not have Tribal implications because it is not expected to have substantial direct effects on Indian Tribes. This action does not significantly or uniquely affect the communities of Indian Tribal governments, nor involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of Executive Order 13175 (65 FR 67249, November 9, 2000) do not apply to this action.

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

This action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because this action does not address environmental health or safety risks disproportionately affecting children.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because this action is not expected to affect energy supply, distribution, or use.

I. National Technology Transfer Advancement Act (NTTAA)

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: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

EPA has determined that this action will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. As such, this action does not entail special considerations of environmental justice related issues as delineated by Executive Order 12898 (59 FR 7629, February 16, 1994).

VIII. Congressional Review Act (CRA)

Pursuant to CRA, 5 U.S.C. 801 *et seq.,* 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 action 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 711

Environmental protection, Biodiesel, Canola oil, Chemicals, Corn oil, Fatty acids, Hazardous substances, Reporting and recordkeeping requirements, Soybean oil, Tallow.

Dated: January 16, 2015.

James Jones,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

Therefore, 40 CFR chapter I is amended as follows:

PART 711—[AMENDED]

■ 1. The authority citation for part 711 continues to read as follows:

Authority: 15 U.S.C. 2607(a).

■ 2. In § 711.6, add in numerical order by CASRN number the following entries to Table 2 in paragraph (b)(2)(iv) to read as follows:

§ 711.6 Chemical substances for which information is not required.

* * * * *

(b) * * *

(2) * * *

(iv) * * *

TABLE 2—CASRN OF PARTIALLY EXEMPT CHEMICAL SUBSTANCES

CASRN	Chemical
* * * *	* * *
61788–61–2	Fatty acids, tallow, Me esters.
* * * *	* * *
67762–26–9	Fatty acids, C14–18 and C16–18–unsatd., Me esters.
67762–38–3	Fatty acids, C16–18 and C–18–unsatd., Me esters.
67784–80–9	Soybean oil, Me esters.
* * * *	* * *
129828–16–6	Fatty acids, canola oil, Me esters.
515152–40–6	Fatty acids, corn oil, Me esters.

* * * * *

[FR Doc. 2015–01279 Filed 1–26–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 711

[EPA–HQ–OPPT–2014–0826; FRL–9921–57]

TSCA Section 8(a) Partial Exemption in Chemical Data Reporting; TSCA Section 21 Petition; Reasons for Agency Response

AGENCY: Environmental Protection Agency (EPA).

ACTION: Petition; reasons for Agency response.

SUMMARY: This document announces the availability of EPA's response to a petition received under the Toxic Substances Control Act (TSCA). The TSCA section 21 petition was received from the Biobased and Renewable Products Advocacy Group on October 21, 2014. The petitioner requested EPA initiate a rulemaking to amend the TSCA section 8 Chemical Data Reporting (CDR) partially exempted chemical list as cited in Unit III.B. of this document. After careful consideration, EPA denied the TSCA section 21 petition for the reasons discussed in this document.

DATES: EPA's response to this TSCA section 21 petition was signed January 16, 2015.

FOR FURTHER INFORMATION CONTACT:

For technical information contact: Niva Kramek, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–2897; email address: *kramek.niva@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?

This action is directed to the public in general. This action may, however, be of interest to those persons who manufacture (defined by statute at 15 U.S.C. 2602(7) to include import) the fatty acids of vegetable oil methyl esters. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

B. How can I access information about this petition?

The docket for this TSCA section 21 petition, identified by docket identification (ID) number EPA–HQ–OPPT–2014–0826, is available at *http://www.regulations.gov* or at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 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 OPPT Docket is (202) 566–0280. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

II. TSCA Section 21

A. What is a TSCA Section 21 petition?

Under TSCA section 21 (15 U.S.C. 2620), any person can petition EPA to initiate a rulemaking proceeding for the issuance, amendment, or repeal of a rule under TSCA section 4, 6, or 8 or an order under TSCA section 5(e) or 6(b)(2). A TSCA section 21 petition must set forth the facts that are claimed to establish the necessity for the action requested. EPA is required to grant or deny the petition within 90 days of its filing. If EPA grants the petition, the Agency must promptly commence an appropriate proceeding. If EPA denies the petition, the Agency must publish its reasons for the denial in the **Federal Register**. A petitioner may commence a civil action in a U.S. district court to compel initiation of the requested rulemaking proceeding within 60 days of either a denial or the expiration of the 90-day period.

B. What criteria apply to a decision on a TSCA Section 21 petition?

Section 21(b)(1) of TSCA requires that the petition ''set forth the facts which it is claimed establish that it is necessary'' to issue the rule or order requested. 15 U.S.C. 2620(b)(1). Thus, TSCA section 21 implicitly incorporates the statutory standards that apply to the requested actions. In addition, TSCA section 21 establishes standards a court must use to decide whether to order EPA to initiate rulemaking in the event of a lawsuit filed by the petitioner after denial of a TSCA section 21 petition. 15 U.S.C. 2620(b)(4)(B). Accordingly, EPA has relied on the standards in TSCA section 21 and in the provisions under which actions have been requested to evaluate this TSCA section 21 petition.

III. Summary of the TSCA Section 21 Petition

A. What action was requested?

On October 21, 2014, the Biobased and Renewable Products Advocacy Group petitioned EPA to initiate a rulemaking to add six chemical substances to the list of ''[p]etroleum process streams'' at 40 CFR 711.6(b)(1) (Ref. 1). This list affords a partial exemption from reporting under CDR. The partial exemption provides that processing and use information (defined in 40 CFR 711.15(b)(4)) generally would not need to be reported for such chemical substances under CDR. 40 CFR 711.6. Specifically, the petition asks EPA to add '''biodiesel' as a chemical category for partial exemption with the following chemicals and associated Chemical Abstracts Service Registry Numbers (CASRN): Tallow, Methyl Ester: CASRN 61788–61–2; Soy Oil, Methyl Ester: CASRN 67784–80–9; Canola Oil, Methyl Ester: CASRN 129828–16–6; Fatty acids, corn oil, Me esters: CASRN 515152–40–6; Fatty acids, C16–18 and C–18-unsaturated, Me esters: CASRN 67762–38–3; and Fatty acids, C14–18 and C16–18 unsaturated, Me esters: CASRN 67762–26–9.'' Where the CASRN supplied by the petitioner did not exactly match the chemical substance's name supplied by the petitioner, EPA construed the CASRN supplied by the petitioner as the most accurate reflection of the petitioner's intent to identify particular chemical substances.

Concurrently with the submission of this petition, the petitioner filed a separate petition, under 40 CFR 711.6(b)(2)(iii)(A), to have the same six chemical substances receive a partial exemption from CDR reporting by means of a different kind of listing under CDR. In that separate petition, the petitioner requested that these six chemical substances be placed on a list of chemical substances at 40 CFR 711.6(b)(2)(iv) for which EPA has determined that processing and use information is of ''low current interest'' (Refs. 2 and 3).

The consequence of placing a chemical substance on the low current interest list at 40 CFR 711.6(b)(2)(iv) is identical to the consequence of amending the regulations to add a chemical substance to the petroleum process stream list at 40 CFR 711.6(b)(1). In either instance, processing and use information (defined in 40 CFR 711.15(b)(4)) generally would not need to be reported for the

substance under CDR. See 40 CFR 711.6(b).

Similarly, the range of factors that EPA would take into account if it were to consider amending the regulations to add a chemical substance to the petroleum process stream list at 40 CFR 711.6(b)(1) would be equivalent to the range of factors that EPA takes into account when deciding whether to place a chemical substance on the low current interest list at 40 CFR 711.6(b)(2)(iv). In either case, EPA would consider the totality of the information available. Relatedly, EPA notes that the petitioners did not fully characterize EPA's July 11, 2014 communication to petitioners in this respect. Though the partial exemption at 40 CFR 711.6(b) does not specify the criteria EPA would consider in evaluating a request to amend the regulations to add to the chemical substances listed in 40 CFR 711.6(b)(1), EPA would consider the totality of available information as well as every important aspect of whether an exemption is warranted if it were to consider adding chemical substances to that list.

EPA has separately evaluated the petitioner's request to add these six chemical substances to the list of chemical substances at 40 CFR 711.6(b)(2)(iv). The Agency agrees that there is low current interest in the processing and use information for these chemical substances and has accordingly granted the petitioner's separate request that these six chemical substances be placed on the low current interest list at 40 CFR 711.6(b)(2)(iv). By a direct final rule published elsewhere in this **Federal Register**, EPA has added the chemical substances to the list at 40 CFR 711.6(b)(2)(iv), contingent on the absence of adverse comment. EPA decided to issue that direct final rule following an analysis of the totality of the information available on the six chemical substances, including information about the chemical substances relevant to the considerations defined at 40 CFR 711.6(b)(2)(ii).

B. What support does the petitioner offer?

The petitioner states that the six chemical substances that it identified as a ''biodiesel'' category are similar in toxicity and use to the chemical substances already on the petroleum process stream list. The petitioner also states that these six chemical substances are transported, processed, and maintained in vessels similarly to the chemical substances already on the petroleum process stream list.

IV. Disposition of TSCA Section 21 Petition

A. What is EPA's response?

After careful consideration, EPA denied the petition. A copy of the Agency's response, which consists of a letter to the petitioner, is available in the docket for this TSCA section 21 petition and is briefly summarized in this document.

B. What is EPA's reason for this response?

EPA has issued a direct final rule to place the six chemical substances identified in this petition on the low current interest list at 40 CFR 711.6(b)(2)(iv). If the direct final rule becomes effective, these six chemical substances will generally be partially exempt from reporting under CDR. The partial exemption afforded by the low current interest list is identical to that which would be afforded by the petroleum process stream list. Therefore, an additional decision to place these six chemical substances on the petroleum process stream list at 40 CFR 711.6(b)(1), either individually or as a ''biodiesel'' category, would afford no further relief to the petitioner. Because no further relief is available to the petitioner, EPA is denying this petition as moot.

Several of the issues the petitioner raised in their section 21 petition are duplicated in their petition filed by the petition under 40 CFR 711.6(b)(2)(iii)(A). EPA's analysis conducted in response to that petition is available in the docket identified by docket ID number EPA–HQ–OPPT–2014–0809. For assistance in locating this docket, see Unit I.B.

V. References

The following is a listing of the documents that are specifically referenced in this document. The docket includes these documents and other information considered by EPA, including documents that are referenced within the documents that are included in the docket, even if the referenced document is not physically located in the docket. For assistance in locating these other documents, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

1. Letter from Biobased and Renewable Products Advocacy Group, to EPA, Administrator, received October 21, 2014. Docket ID number EPA–HQ–OPPT–2014–0826.
2. Letter from Biobased and Renewable Products Advocacy Group, to EPA, OPPT CDR Submission Coordinator, received October 21, 2014. Docket ID number EPA–HQ–OPPT–2014–0809.
3. Letter from Biobased and Renewable Products Advocacy Group, to EPA, OPPT CDR Submission Coordinator, received November 5, 2014. Docket ID number EPA–HQ–OPPT–2014–0809.

List of Subjects in 40 CFR Part 711

Environmental protection, Biodiesel, Canola oil, Chemicals, Corn oil, Fatty acids, Hazardous substances, Reporting and recordkeeping requirements, Soybean oil, Tallow.

Dated: January 16, 2015.

James Jones,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2015–01278 Filed 1–26–15; 8:45 am]

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