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DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

Common Crop Insurance Regulations

CFR Correction

In Title 7 of the Code of Federal Regulations, Parts 400 to 699, revised as of January 1, 2015, on page 278, in § 457.137, under the subheading ''12. Settlement of Claim'', in the second paragraph (4) under paragraph (b), remove the term ''4450,000'' and add the term ''450,000'' in its place.

[FR Doc. 2015–33015 Filed 12–30–15; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 984

Walnuts Grown in California

CFR Correction

In Title 7 of the Code of Federal Regulations, Parts 900 to 999, revised as of January 1, 2015, on page 512, in § 984.450, at the end of paragraph (b), add the word ''walnuts'' followed by a period.

[FR Doc. 2015–33016 Filed 12–30–15; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1150

Dairy Promotion Program

CFR Correction

In Title 7 of the Code of Federal Regulations, Parts 1000 to 1199, revised as of January 1, 2015, on page 204, in § 1150.153, in paragraph (c)(2)(i), remove the term ''State or regional''.

[FR Doc. 2015–33018 Filed 12–30–15; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1430

Dairy Products

CFR Correction

In Title 7 of the Code of Federal Regulations, Parts 1200 to 1599, revised as of January 1, 2015, on page 690, in § 1430.202, the definition of ''Department or USDA'' is reinstated to read as follows:

§ 1430.202 Definitions.

* * * * *

Department or USDA means the United States Department of Agriculture.

* * * * *

[FR Doc. 2015–33019 Filed 12–30–15; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1726

Electric System Construction Policies and Procedures

CFR Correction

In Title 7 of the Code of Federal Regulations, Parts 1600 to 1759, revised as of January 1, 2015, on page 252, in § 1726.14, the definition of ''minor error or irregularity'' is reinstated to read as follows:

§ 1726.14 Definitions.

* * * * *

Minor error or irregularity means a defect or variation in a bid that is a matter of form and not of substance. Errors or irregularities are ''minor'' if they can be corrected or waived without being prejudicial to other bidders and when they do not affect the price, quantity, quality, or timeliness of construction. A minor error or irregularity is not an exception for purposes of determining whether a bid is responsive.

* * * * *

[FR Doc. 2015–33020 Filed 12–30–15; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business—Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Part 1924

Construction and Repair

CFR Correction

In Title 7 of the Code of Federal Regulations, Parts 1760 to 1939, revised as of January 1, 2015, on page 579, in part 1924, subpart A, exhibit J, under Part B, remove the first paragraph C.1. under IV. Accessory Structures and Related Facilities.

[FR Doc. 2015–33037 Filed 12–30–15; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business—Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Part 1924

Construction and Repair

CFR Correction

In Title 7 of the Code of Federal Regulations, Parts 1760 to 1939, revised as of January 1, 2015, on page 525, in part 1924, in § 1924.5, paragraph (g)(4) is reinstated to read as follows:

§ 1924.5 Planning development work.

* * * * *

(g) * * *

(4) Releases requested by the borrower or the buyer will be processed in accordance with applicable release

procedures in 7 CFR part 3550, as appropriate.

* * * * *

[FR Doc. 2015–33038 Filed 12–30–15; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF AGRICULTURE

National Institute of Food and Agriculture

7 CFR Part 3400

Special Research Grants Program

CFR Correction

In Title 7 of the Code of Federal Regulations, Part 2000 to End, revised as of January 1, 2015, on page 209, in § 3400.4, in paragraph (c)(14), remove the term ''engaged by Director'' and add the term ''engaged by the Director'' in its place.

[FR Doc. 2015–33039 Filed 12–30–15; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF AGRICULTURE

National Institute of Food and Agriculture

7 CFR Part 3415

Biotechnology Risk Assessment Research Grants Program

CFR Correction

In Title 7 of the Code of Federal Regulations, Part 2000 to End, revised as of January 1, 2015, on page 307, in § 3415.5, in paragraph (a), remove the term ''upon which the Administrator'' and add in its place the term ''upon which the Director or Administrator''.

[FR Doc. 2015–33041 Filed 12–30–15; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF AGRICULTURE

Rural Housing Service

7 CFR Part 3550

Direct Single Family Housing Loans and Grants

CFR Correction

In Title 7 of the Code of Federal Regulations, Part 2000 to End, revised as of January 1, 2015, on page 406, in § 3550.150, remove the third sentence.

[FR Doc. 2015–33043 Filed 12–30–15; 8:45 am]

BILLING CODE 1505–01–D

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 325

Capital Maintenance

CFR Correction

In Title 12 of the Code of Federal Regulations, Parts 300 to 499, revised as of January 1, 2015, on page 406, in § 325.203, in paragraph (b)(3), the following phrase is added to the last sentence: ''nonmember bank or state savings association becomes a covered bank.''

[FR Doc. 2015–33048 Filed 12–30–15; 8:45 am]

BILLING CODE 1505–01–D

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 745

Share Insurance and Appendix

CFR Correction

In Title 12 of the Code of Federal Regulations, Parts 600 to 899, revised as of January 1, 2015, on page 876, in subpart B, remove § 745.14.

[FR Doc. 2015–33056 Filed 12–30–15; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–0683; Directorate Identifier 2014–NM–196–AD; Amendment 39–18355; AD 2015–26–07]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all The Boeing Company Model 767–200, –300, and –300F series airplanes. This AD was prompted by a finding that certain barrel nuts installed at the vertical fin may be subject to stress corrosion and cracking. This AD requires either repetitive inspections of vertical fin barrel nuts for corrosion or a magnetic check to identify certain barrel nuts, and corrective actions if necessary. We are issuing this AD to detect and correct corroded and loose barrel nuts that attach the vertical fin to body section 48; this condition could result in reduced structural integrity of the vertical fin attachment joint, loss of the vertical fin, and consequent loss of controllability of the airplane.

DATES: This AD is effective February 4, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of February 4, 2016.

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–0683; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Wayne Lockett, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6447; fax: 425–917–6590; email: *wayne.lockett@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all The Boeing Company Model 767–200, –300, and –300F series airplanes. The NPRM published in the **Federal Register** on April 10, 2015 (80 FR 19248). The NPRM was prompted by a finding that certain barrel nuts installed at the vertical fin may be subject to stress corrosion and cracking. The NPRM proposed to require either

repetitive inspections of vertical fin barrel nuts for corrosion or a magnetic check to identify certain barrel nuts, and corrective actions if necessary. We are issuing this AD to detect and correct corroded and loose barrel nuts that attach the vertical fin to body section 48; this condition could result in reduced structural integrity of the vertical fin attachment joint, loss of the vertical fin, and consequent loss of controllability of the airplane.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the NPRM (80 FR 19248, April 10, 2015) and the FAA's response to each comment.

Request To Revise Applicability

Boeing and Air New Zealand requested that additional clarification be added to paragraph (c) of the proposed AD (80 FR 19248, April 10, 2015). Boeing stated that this addition will add clarity because there is an existing AD (AD 2003–10–11, Amendment 39–13156 (68 FR 28703, May 27, 2003)) of a similar subject that covers only Boeing Model 767 airplanes, line numbers 1 through 574 inclusive. Boeing requested we clarify that Boeing Alert Service Bulletin 767–53A0261, dated August 12, 2014, addresses only Boeing Model 767 airplanes with line numbers 575 through 681 inclusive. Air New Zealand asked whether the NPRM would supersede AD 2003–10–11.

We agree to provide clarification. Only Model 767 airplanes with line numbers 575 through 681 inclusive are affected by this AD. Some proposed requirements overlap with the requirements of AD 2003–10–11, Amendment 39–13156 (68 FR 28703, May 27, 2003). We have therefore revised the applicability of this AD to specify airplanes identified in Boeing Alert Service Bulletin 767–53A0261, dated August 12, 2014, which limits the applicability to line numbers 575 through 681 inclusive.

Request To Add Clarification About the Previous Replacement of Discovered H–11 Barrel Nuts With Inconel Alternatives

Boeing stated that operators may have already replaced discovered H–11 barrel nuts with Inconel alternatives. Boeing requested that we revise the NPRM (80 FR 19248, April 10, 2015) to specify the ''Compliance Time Exceptions'' noted in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 767–53A0261, dated August 12, 2014. Those ''exceptions'' would specify that no further action is required at the vertical stabilizer attachment point, provided the following conditions are met:

- The vertical stabilizer attachment barrel nut has been inspected;
- No H–11 steel barrel nut was found during the inspection; and
- Any replacement barrel nut is either a drawing configuration barrel nut made from an alternative material to H–11 steel; or a barrel nut made from alternative material to H–11 steel approved by the FAA or by a Boeing Company Authorized Representative.

We do not agree with the request because paragraph (g) of this AD already makes reference to paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 767–53A0261, dated August 12, 2014, which lists the compliance time exceptions. We have not changed this AD regarding this issue.

Request To Clarify Terminating Action for Repetitive Inspections and Replacement

United Parcel Service (UPS) requested that we provide terminating action similar to that provided in paragraph (i) of AD 2013–18–02, Amendment 39–17575 (78 FR 57049, September 17, 2013).

We agree with the commenter's request. The NPRM (80 FR 19248, April 10, 2015) is not clear whether the repetitive inspections are terminated by replacement with an Inconel barrel nut or by a finding of no H–11 steel barrel nut installed. Replacing a barrel nut at an attachment point location with a new Inconel barrel nut in accordance with Part 5 of Boeing Alert Service Bulletin 767–53A0261, dated August 12, 2014, terminates the inspections and replacement required by paragraph (g) of this AD for that attachment point location only. In addition, if no H–11 steel barrel nut is found installed at an attachment point location, the repetitive inspections and replacement required by paragraph (g) of this AD are terminated for that attachment location only. We have added a new paragraph (h) to this AD to clarify the terminating action and redesignated the subsequent paragraphs accordingly.

Request For Clarification of Barrel Nuts To Be Replaced

UPS requested that we provide clarification of paragraph (g)(1)(ii)(B) of the proposed AD (80 FR 19248, April 10, 2015). UPS stated that its interpretation of paragraph (g)(1)(ii)(B) of the proposed AD is that replacement of only H–11 steel barrel nuts is required, although it appears that all barrel nuts are to be replaced, even if the installed barrel nuts are Inconel or other approved barrel nuts.

We agree that clarification is necessary. Operators are required to do all actions specified in either paragraph (g)(1) or (g)(2) of this AD. Paragraph (g)(1) of this AD is only an internal and external detailed inspection of the barrel nuts and does not provide a method for determination of the material of the barrel nuts. Paragraph (g)(2) of this AD provides the method to determine if the material of the barrel nuts is H–11 steel.

Therefore, if operators have chosen to do the internal and external inspections along with the torque check specified in paragraph (g)(1) of this AD, and have not chosen to do the magnetic check specified in paragraph (g)(2) of this AD, then they have not determined the material of the barrel nuts. For airplanes on which the material of the barrel nuts has not been determined, the requirement is to replace all barrel nuts, as required by paragraph (g)(1)(ii)(B) of this AD.

Operators choosing to do the magnetic check specified in paragraph (g)(2) of this AD would have determined the material of the barrel nuts, and may replace only H–11 steel barrel nuts, as required by paragraph (g)(2)(i)(B)(*2*) of this AD.

Operators are not permitted to mix actions from paragraphs (g)(1) and (g)(2) of this AD. Operators may, however, submit requests for approval of an alternative method of compliance (AMOC) to the requirements of paragraph (g) of this AD along with justification of an equivalent level of safety. We have not changed this AD regarding this issue.

Request For Clarification of Compliance Time

UPS requested that we provide an exception to the initial inspection thresholds of the ''last Torque Check Inspection'' specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 767–53A0261, dated August 12, 2014. The specified compliance time is the later of 24 months after issuance of the service information or 36 months after the last torque check inspection specified in Task 53–734–00, ''Internal, Special Detailed, Vertical Stabilizer Attach Bolt, of Section 2, ''Structural Maintenance Requirements,'' of the Boeing Model 767 Maintenance Planning Document. The commenter understands that the most recent accomplishment of Task 53–734–00 must be done prior to the effective date of this AD. The commenter added that if the initial inspection required by paragraph (g)(1) or (g)(2) of the proposed AD (80 FR 19248, April 10, 2015) is

done from the most recent accomplishment of Task 53–734–00 and that accomplishment occurs after the effective date of this AD, the time limits given in paragraphs (g)(1)(ii)(B) and (g)(2)(i)(B)(*2*) of this proposed AD may be exceeded (*i.e.,* will have already passed).

We agree with the commenter's request and rationale regarding providing an exception to the specified initial inspection threshold. We have redesignated paragraph (h) of the proposed AD (80 FR 19248, April 10, 2015) as paragraph (i)(1) of this AD and added new paragraph (i)(2) to this AD to provide a compliance time exception to address the issue described by the commenter. If the most recent accomplishment of Task 53–734–00 occurs after the effective date of this AD, then operators still have to comply with the requirements of paragraph (g)(1) or (g)(2) of this AD.

Request For Clarification of Effect of Winglets on Accomplishment of the Proposed Actions

Aviation Partners Boeing stated that accomplishing the supplemental type certificate (STC) ST01920SE (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/59027F43B9A7486E86257B1D006591EE*) does not affect the actions specified in the NPRM (80 FR 19248, April 10, 2015).

We agree with the commenter's statement. We have redesignated paragraph (c) of the proposed AD (80 FR 19248, April 10, 2015) as paragraph (c)(1) of this AD, and added new paragraph (c)(2) to this AD to state that installation of STC ST01920SE (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/59027F43B9A7486E86257B1D006591EE*) does not affect the ability to accomplish the actions required by this AD. Therefore, for airplanes on which STC ST01920SE (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/59027F43B9A7486E86257B1D006591EE*) is installed, a ''change in product'' AMOC approval request is not necessary to comply with the requirements of 14 CFR 39.17.

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM (80 FR 19248, April 10, 2015) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (80 FR 19248, April 10, 2015).

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

Related Service Information Under 1 CFR Part 51

Boeing has issued Alert Service Bulletin 767–53A0261, dated August 12, 2014. The service information describes procedures for repetitive internal and external detailed inspections of the barrel nut holes and sealant for cracked/damaged sealant, corrosion, or a cracked/broken barrel nut, and replacement of the barrel nut with a new Inconel barrel nut if necessary. The service information also describes procedures for repetitive torque checks on each affected vertical fin attachment bolt, or, alternatively, a magnetic check to identify H–11 steel barrel nuts, and replacement with a new Inconel barrel nut if necessary.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 38 airplanes of U.S. registry. We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Option 1: Detailed inspections and torque check.	4 work-hours × $85 per hour = $340 per inspection cycle.	(1)	Up to $482,661 per inspection cycle.	Up to $18,341,118.
Option 2: Magnetic check	4 work-hours × $85 per hour = $340.	$0	$340	$12,920.

[1] For the torque check, operators may choose to rent a special tool, with rental costs up to $482,321.

We estimate that replacing any barrel nut would take 1 work-hour, at an average labor rate of $85 per work-hour. We have received no definitive data that would enable us to provide cost estimates for the cost of replacement parts. We have no way of determining the number of aircraft that might need these replacements.

According to the manufacturer, some of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all available costs in our cost estimate.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2015–26–07 The Boeing Company: Amendment 39–18355; Docket No. FAA–2015–0683; Directorate Identifier 2014–NM–196–AD.

(a) Effective Date

This AD is effective February 4, 2016.

(b) Affected ADs

None.

(c) Applicability

(1) This AD applies to The Boeing Company Model 767–200, –300, –300F series airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin 767–53A0261, dated August 12, 2014.

(2) Installation of Supplemental Type Certificate (STC) ST01920SE (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/59027F43B9A7486E86257B1D006591EE*) does not affect the ability to accomplish the actions required by this AD. Therefore, for airplanes on which STC ST01920SE (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/59027F43B9A7486E86257B1D006591EE*) is installed, a ''change in product'' alternative method of compliance (AMOC) approval request is not necessary to comply with the requirements of 14 CFR 39.17.

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Unsafe Condition

This AD was prompted by a finding that certain barrel nuts installed at the vertical fin may be subject to stress corrosion and cracking. We are issuing this AD to detect and correct corroded and loose barrel nuts that attach the vertical fin to body section 48; this condition could result in reduced structural integrity of the vertical fin attachment joint, loss of the vertical fin, and consequent loss of controllability of the airplane.

(f) Compliance

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

(g) Inspection

For airplanes identified in Boeing Alert Service Bulletin 767–53A0261, dated August 12, 2014: Do the actions specified in paragraph (g)(1) or (g)(2) of this AD, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 767–53A0261, dated August 12, 2014. Signs of corrosion include, but are not limited to, sealant cracks, sealant bulging, powder residue, and cracked barrel nuts.

(1) At the applicable time specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 767–53A0261, dated August 12, 2014, except as provided by paragraph (i) of this AD: Do internal and external detailed inspections of the barrel nuts and sealant for signs of corrosion, and do a torque check of the vertical stabilizer attachment bolts for loose barrel nuts.

(i) If corrosion or any loose barrel nut is found at any attachment point location, before further flight, replace the barrel nut with a new Inconel barrel nut.

(ii) If no corrosion or loose barrel nut is found at any attachment point location, do the actions specified in paragraphs (g)(1)(ii)(A) and (g)(1)(ii)(B) of this AD.

(A) Repeat the inspections and torque check thereafter at intervals not to exceed 18 months until the replacement specified in paragraph (g)(1)(ii)(B) of this AD is done at that attachment point location.

(B) Within 36 months after the effective date of this AD, replace all barrel nuts with new Inconel barrel nuts.

(2) At the applicable time specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 767–53A0261, dated August 12, 2014, except as provided by paragraph (i) of this AD: Do a magnetic check to identify H–11 steel barrel nuts.

(i) If any H–11 steel barrel nut is found at any attachment point location, before further flight, do an internal and external detailed inspection of the barrel nut holes and sealant for signs of corrosion, and do a torque check of the vertical stabilizer attachment bolts for loose barrel nuts.

(A) If corrosion or any loose barrel nut is found, before further flight, replace the barrel nut with a new Inconel barrel nut.

(B) If no corrosion or loose barrel nut is found, do the actions specified in paragraphs (g)(2)(i)(B)(*1*) and (g)(2)(i)(B)(*2*) of this AD.

(*1*) Repeat the inspections and torque check thereafter at intervals not to exceed 18 months until the replacement specified in paragraph (g)(2)(i)(B)(*2*) of this AD is done at that attachment point location.

(*2*) Within 36 months after the effective date of this AD, replace all H–11 steel barrel nuts with new Inconel barrel nuts.

(ii) If no H–11 steel barrel nut is found at all attachment point locations, no further work is required by this paragraph.

(h) Terminating Action for Repetitive Inspections and Replacement

(1) Replacing a barrel nut at an attachment point location with a new Inconel barrel nut, in accordance with Part 5 of Boeing Alert Service Bulletin 767–53A0261, dated August 12, 2014, terminates the inspections and replacement required by paragraph (g) of this AD for that attachment point location only.

(2) If no H–11 steel barrel nut is found installed at an attachment point location, the repetitive inspections and replacement required by paragraph (g) of this AD are terminated for that attachment location only.

(i) Exception to Service Information Specifications

(1) Where Boeing Alert Service Bulletin 767–53A0261, dated August 12, 2014, specifies a compliance time ''after the Original Issue date of this Service Bulletin,'' this AD requires compliance within the specified compliance time after the effective date of this AD.

(2) Where Boeing Alert Service Bulletin 767–53A0261, dated August 12, 2014, specifies a compliance time after the ''last Torque Check Inspection'' in accordance with Task 53–734–00, ''Internal, Special Detailed, Vertical Stabilizer Attach Bolt, of Section 2, Structural Maintenance Requirements,'' of the Boeing Model 767 Maintenance Planning Document, that compliance time only applies if the most recent accomplishment of Task 53–734–00 occurred on or before the effective date of this AD.

(j) Parts Installation Prohibition

As of the effective date of this AD, no person may install an H–11 steel barrel nut on the vertical stabilizer of any airplane.

(k) Alternative Methods of Compliance (AMOCs)

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

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle

ACO, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) For service information that contains steps that are labeled as Required for Compliance (RC), the provisions of paragraphs (k)(4)(i) and (k)(4)(ii) apply.

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

(ii) Steps not labeled as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

(l) Related Information

(1) For more information about this AD, contact Wayne Lockett, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6447; fax: 425–917–6590; email: *wayne.lockett@faa.gov.*

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

(m) Material Incorporated by Reference

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

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

(i) Boeing Alert Service Bulletin 767–53A0261, dated August 12, 2014.

(ii) Reserved.

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

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

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

Issued in Renton, Washington, on December 9, 2015.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–32596 Filed 12–30–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–1480; Directorate Identifier 2014–SW–071–AD; Amendment 39–18352; AD 2015–26–04]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters (Previously Eurocopter France)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are superseding airworthiness directive (AD) 2002–13–11 for Eurocopter France (now Airbus Helicopters) Model EC120B helicopters. AD 2002–13–11 required installing front and side covers on the cabin floor to protect the yaw control at both the pilot and co-pilot stations. Since we issued AD 2002–13–11, we have determined that the required actions should apply only to the cabin's right-hand pilot station. This AD retains the requirements of AD 2002–13–11 but for only the pilot station. These actions are intended to prevent an object from sliding between the canopy and the cabin floor, loss of yaw control, and subsequent loss of helicopter control.

DATES: This AD is effective February 4, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of February 4, 2016.

ADDRESSES: For service information identified in this final rule, contact Airbus Helicopters, Inc., 2701 N. Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *http://www.airbushelicopters.com/techpub.* You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy, Room 6N–321, Fort Worth, TX 76177.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–1480 or in person at the Docket Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the Direction Generale de l'Aviation Civile (DGAC) AD, any incorporated-by-reference service information, the economic evaluation, any comments received, and other information. The street address for the Docket Operations Office (phone: 800–647–5527) is U.S. Department of Transportation, Docket Operations Office, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Robert Grant, Aviation Safety Engineer, Safety Management Group, Rotorcraft Directorate, FAA, 10101 Hillwood Pkwy, Fort Worth, TX 76177; telephone (817) 222–5110; email *robert.grant@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to remove AD 2002–13–11, Amendment 39–12799 (67 FR 45295, July 9, 2002) and add a new AD. AD 2002–13–11 applied to Airbus Model EC120B helicopters, serial numbers 1001 through 1278, and required installing front and side covers to protect the yaw control at the pilot and co-pilot flight control stations. AD 2002–13–11 was prompted by AD No. 2001–386–007(A), dated September 5, 2001, issued by the DGAC, the airworthiness authority for France, to correct an unsafe condition for the Model EC120B helicopter. The DGAC advises of a yaw-control jamming caused by an object that slid between the canopy and the cabin floor.

After we issued AD 2002–13–11 (67 FR 45295, July 9, 2002), we determined that the front and side protections are required only at the pilot station. The NPRM published in the **Federal Register** on May 14, 2015 (80 FR 27605), and proposed to supersede AD 2002–13–11 to require installing the front and side covers only at the pilot station. It also reflected that Eurocopter France had changed its name to Airbus Helicopters.

Since we issued the NPRM, we discovered it contains a typographical error in the date of the service information. Also, the FAA Southwest Regional Office has relocated and a group email address has been established for requesting an FAA Alternate Method of Compliance for a helicopter of foreign design. We have

corrected the error in the service information date and revised the contact information throughout this Final Rule.

Comments

We gave the public the opportunity to participate in developing this AD, but we received no comments on the NPRM (80 FR 27605, May 14, 2015).

FAA's Determination

These helicopters have been approved by the aviation authority of France and are approved for operation in the United States. Pursuant to our bilateral agreement with France, the DGAC, its technical representative, has notified us of the unsafe condition described in the DGAC AD. We are issuing this AD because we evaluated all information provided by the DGAC and determined the unsafe condition exists and is likely to exist or develop on other helicopters of these same type designs and that air safety and the public interest require adopting the AD requirements as proposed, except for the minor editorial changes described previously. These changes are consistent with the intent of the proposals in the NPRM (80 FR 27605, May 14, 2015) and will not increase the economic burden on any operator nor increase the scope of this AD.

Related Service Information Under 1 CFR Part 51

We reviewed Eurocopter Alert Service Bulletin No. 67A005, Revision 0, dated August 1, 2001 (ASB), which specifies installing a front and side protection on the cabin floor to protect the yaw control. The DGAC classified this ASB as mandatory and issued AD No. 2001–386–007(A), dated September 5, 2001, and AD 2001–386–007(A)R1, dated February 6, 2002, to ensure the continued airworthiness of these helicopters in France.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 37 helicopters of U.S. Registry and that labor costs average $85 a work-hour. Required parts cost about $584 and it takes about 2 work-hours to accomplish the required actions. Based on these figures, we estimate that the total cost of this AD is $754 per helicopter and $27,898 for the U.S. fleet.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2002–13–11, Amendment 39 12799 (67 FR 45295, July 9, 2002), and adding the following new AD:

2015–26–04 Airbus Helicopters (Previously Eurocopter France): Amendment 39–18352; Docket No. FAA–2015–1480; Directorate Identifier 2014–SW–071–AD.

(a) Applicability

This AD applies to Model EC120B helicopters, serial numbers 1001 through 1278, inclusive, certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as an object sliding between the canopy and the cabin floor. This condition could result in loss of yaw control and subsequent loss of control of the helicopter.

(c) Affected ADs

This AD supersedes AD 2002–13–11, Amendment 39–12799 (67 FR 45295, July 9, 2002).

(d) Effective Date

This AD becomes effective February 4, 2016.

(e) Compliance

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

(f) Required Actions

Within 90 days, install front and side covers (protections) to protect the yaw control in accordance with the Accomplishment Instructions, paragraph 2.B., of Eurocopter Alert Service Bulletin No. 67A005, Revision 0, dated August 1, 2001, except the correct reference to the Aircraft Maintenance Manual in subparagraph 2.B.2 of the ASB is 20–10–00, 3–8.

(g) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Group, FAA, may approve AMOCs for this AD. Send your proposal to: Robert Grant, Aviation Safety Engineer, Safety Management Group, Rotorcraft Directorate, FAA, 10101 Hillwood Pkwy, Fort Worth, TX 76177; telephone (817) 222–5110; email *9-ASW-FTW-AMOC-Requests@faa.gov*.

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

(h) Additional Information

The subject of this AD is addressed in the Direction General De L'Aviation Civile (DGAC) AD No. 67A005, Revision 1, dated February 6, 2002. You may view the DGAC AD on the Internet at *http://*

www.regulations.gov in Docket No. FAA–2015–1480.

(i) Subject

Joint Aircraft Service Component (JASC) Code: 2500, Cabin Equipment/Furnishings.

(j) Material Incorporated by Reference

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

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

(i) Eurocopter Alert Service Bulletin No. 67A005, Revision 0, dated August 1, 2001.

(ii) Reserved.

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

(4) You may view this service information at FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy, Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110.

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

Issued in Fort Worth, Texas, on December 15, 2015.

Lance T. Gant,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2015–32258 Filed 12–30–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 744

Control Policy: End-User and End-Use Base

CFR Correction

In Title 15 of the Code of Federal Regulations, Parts 300 to 799, revised as of January 1, 2015, on page 414, in supplement no. 4 to part 744, remove the entry for ''Sergey Grinenko'' from ''GREECE'' and add it in alphabetical order under ''GERMANY''.

[FR Doc. 2015–33049 Filed 12–30–15; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 774

The Commerce Control List

CFR Correction

In Title 15 of the Code of Federal Regulations, Parts 300 to 799, revised as of January 1, 2015, on page 999, in Supplement 1 to Part 774, in Category 9, Export Control Classification Number (ECCN) 9E003, in the Items section, remove the second introductory text of paragraph f.1.

[FR Doc. 2015–33047 Filed 12–30–15; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 342

[Docket No. RM15–20–000]

Five-Year Review of the Oil Pipeline Index

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order establishing index level.

SUMMARY: The Federal Energy Regulatory Commission (Commission) issues this Final Order concluding its five-year review of the index level used to determine annual changes to oil pipeline rate ceilings. The Commission establishes an index level of Producer Price Index for Finished Goods plus 1.23 percent (PPI–FG+1.23) for the five-year period commencing July 1, 2016.

DATES: December 31, 2015.

FOR FURTHER INFORMATION CONTACT:

Andrew Knudsen (Legal Information), Office of the General Counsel, 888 First Street NE., Washington, DC 20426, (202) 502–6527

Monil Patel (Technical Information), Office of Energy Market Regulation, 888 First Street NE., Washington, DC 20426, (202) 502–8296

SUPPLEMENTARY INFORMATION:

Order Establishing Index Level

(Issued December 17, 2015)

1. On June 30, 2015, the Commission issued a Notice of Inquiry initiating its five-year review to establish the oil pipeline index level for the July 1, 2016 to June 30, 2021 time period.[1] The June 2015 NOI requested comment regarding (a) a proposed index level between Producer Price Index for Finished Goods (PPI–FG)+2.0 percent and PPI–FG+2.4 percent[2] and (b) any alternative methodologies for calculating that index level.

2. For the reasons discussed below, the Commission adopts an index level of the PPI–FG+1.23 percent. The departure from the June 2015 NOI results from (a) the use of FERC Form No. 6 page 700 (page 700) data that directly measures changing pipeline costs as opposed to the estimates previously used to calculate the index level[3] and (b) updated Form No. 6 filings and other corrections to the data set. The Commission's indexing calculations and other data analysis are contained in Attachment A to this order. As discussed below, the Commission rejects other changes to the index calculation proposed by commenters.

I. Background

A. Establishment of the Indexing Methodology

3. The Energy Policy Act of 1992 (EPAct 1992) required the Commission to establish a ''simplified and generally applicable'' ratemaking methodology[4] that also was consistent with the just and reasonable standard of review of the Interstate Commerce Act (ICA).[5] To implement EPAct 1992's mandate, the Commission issued Order No. 561[6] establishing an indexing methodology that allows oil pipelines to change their rates subject to certain ceiling levels as opposed to making cost-of-service filings.[7]

[1] *Five-Year Review of the Oil Pipeline Index,* 80 FR 39010 (July 8, 2015), FERC Stats. & Regs. ¶ 35,053 (cross-referenced at 151 FERC ¶ 61,278 at P 1 (June 2015 NOI)).

[2] The June 2015 NOI included a range as opposed to a specific index level because some pipelines had yet to report FERC Form No. 6 (Form No. 6) data for 2014.

[3] The index range presented in the June 2015 NOI was calculated based on estimates derived from FERC Form No. 6 accounting data on pages 110–111, 114, and page 600.

[4] Public Law 102–486, 106 Stat. 3010, 1801(a) (Oct. 24, 1992). EPAct 1992's mandate to establish a simplified and generally applicable method of regulating oil transportation rates specifically excluded the Trans-Alaska Pipeline System (TAPS), or any pipeline delivering oil, directly or indirectly, into it. *Id.* 1804(2)(B).

[5] 49 U.S.C. app. 1 (1988).

[6] *See Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992,* Order No. 561, FERC Stats. & Regs. ¶ 30,985 (1993), *order on reh'g,* Order No. 561–A, FERC Stats. & Regs. ¶ 31,000 (1994), *aff'd, Assoc. of Oil Pipelines* v. *FERC,* 83 F.3d 1424 (D.C. Cir. 1996).

[7] Pursuant to the Commission's indexing methodology, oil pipelines change their rate ceiling levels effective every July 1 by ''multiplying the previous index year's ceiling level by the most recent index published by the Commission.'' 18 CFR 342.3(d)(1) (2015). Oil pipeline rates may be adjusted to the ceiling levels pursuant to the

4. In Order No. 561, the Commission committed to review the index level every five years to ensure that it adequately reflects changes to industry costs.[8] The Commission conducted such reviews in 2000,[9] 2005,[10] and 2010.[11] In the 2010 five-year review, the Commission established the index level of PPI–FG+2.65, to be effective for the five-year period commencing July 1, 2011. The index level established herein results from the Commission's fourth five-year review of the index level.

B. The Kahn Methodology

5. In Order No. 561 and each successive index review, the Commission has calculated the index level based upon a methodology developed by Dr. Alfred E. Kahn.[12] The Kahn Methodology uses pipeline data from the prior five year period to determine an adjustment to be applied to a current year PPI–FG. The calculation is as follows. Each pipeline's cost change on a per barrel-mile basis over the prior five-year period (*e.g.,* the years 2009–2014 in this proceeding) is calculated. In order to remove statistical outliers and spurious data, the resulting data set is trimmed to those pipelines in the middle 50 percent of cost changes. The Kahn Methodology then calculates three measures of the middle 50 percent's central tendency: The median, the mean, and a weighted mean.[13] The Kahn Methodology calculates a composite by averaging these three measures of central tendency and measures the difference between the composite and the PPI–FG index data over the prior five year period. The index level is then set at PPI–FG plus (or minus) this differential, which tracks the relationship over the last five years between PPI–FG and oil pipeline costs.

C. The 2015 Proceeding

6. The Commission initiated this proceeding on June 30, 2015, with the issuance of a Notice of Inquiry initiating its five-year review to establish the oil pipeline index level for the July 1, 2016 to June 30, 2021 time period.[14] The June 2015 NOI proposed a range for the index level of between Producer Price Index for Finished Goods (PPI–FG)+2.0 percent and PPI–FG+2.4 percent. The June 2015 NOI included a range as opposed to a specific index level because some pipelines had yet to report FERC Form No. 6 data for 2014. Importantly, the NOI sought comment not only on the proposed level but also any alternative methodologies for calculating that index level. To facilitate the development of the new index and gain an understanding of the positions of the parties in advance of the filed comments, the Commission announced plans to hold a technical conference. That conference occurred on July 30, 2015.

II. Comments

7. Initial Comments filed in response to the June 2015 NOI and technical conference were due on August 24, 2015, and reply comments were due on September 21, 2015. Comments were filed by the Association for Oil Pipelines (AOPL),[15] APV Shippers,[16] Liquids Shippers Group (Liquids Shippers),[17] Suncor Energy Marketing Inc. (Suncor), Canadian Association of Petroleum Producers (CAPP),[18] HollyFrontier/Western Refining, the Pipeline Safety Trust, and the Pipeline and Hazardous Materials Safety Administration (PHMSA). On October 16, 2015 AOPL filed supplemental reply comments. On October 21, 2015, APV Shippers also filed supplemental reply comments.

8. The commenters raised a number of issues related to the index range proposed by the Commission in the June 2015 NOI and possible alternatives for calculating the index level. The commenters advocated varying index levels, including AOPL's proposal of PPI–FG+2.47, APV Shippers' proposal of PPI–FG+0.5, and Liquids Shippers' proposal of PPI–FG+0.23.[19] These proposed index levels were based upon various modifications to the Kahn Methodology, as discussed in greater detail below.

III. Discussion

9. The Commission adopts an index level of PPI–FG+1.23 percent for the five-year period commencing July 1, 2016. The Commission adopts APV Shippers' proposal to use page 700 data that directly measures changing pipeline costs as opposed to the previously used Form No. 6 accounting data. The Commission rejects other modifications proposed by industry comments, including: (a) Various manual data trimming methodologies, (b) the consideration of the middle 80 percent in addition to the middle 50 percent of the cost changes in the data set, (c) separate index levels for product and crude pipelines, and (d) Liquids Shippers' proposals to temporarily set the index level at PPI–FG while initiating a proceeding to revise the Commission's indexing regulations.

A. Form No. 6 Page 700

1. Comments

10. APV Shippers propose calculating the index level based upon page 700 total cost-of-service data as opposed to the Form No. 6 accounting data used in the June 2015 NOI and prior five-year review proceedings.[20] APV Shippers state that page 700 data is superior because page 700 data provides a direct measure of changing pipeline barrel-mile costs.[21] In reply comments, HollyFrontier/Western Refining, CAPP and Liquids Shippers support APV Shippers' proposal.

11. AOPL opposes the use of page 700 data to calculate the index. Among other assertions, AOPL argues that page 700 data should not be used because the page 700 total cost-of-service incorporates returns on equity (ROEs) that may be volatile due to industry-wide fluctuations in the equity

Commission's regulations as long as no protest or complaint demonstrates that the index rate change substantially diverges from the pipeline's cost changes. 18 CFR 343.2(c)(1) (2015).

[8] Order No. 561, FERC Stats. & Regs. ¶ 30,985 at 30,941.

[9] *Five-Year Review of Oil Pipeline Index,* 93 FERC ¶ 61,266 (2000) (2000 Index Review), *aff'd in part and remanded in part sub nom. AOPL* v. *FERC,* 281 F.3d 239 (D.C. Cir. 2002) (AOPL II), *Five-Year Review of Oil Pipeline Pricing Index,* 102 FERC ¶ 61,195 (2003) (2000 Index Review Remand Order), *aff'd sub nom. Flying J Inc.* v. *FERC,* 363 F.3d 495 (D.C. Cir. 2004).

[10] *Five-Year Review of Oil Pipeline Index,* 114 FERC ¶ 61,293 (2006) (2005 Index Review).

[11] *Five-Year Review of Oil Pipeline Index,* 133 FERC ¶ 61,228 (2010) (2010 Index Review), *order on reh'g,* 135 FERC ¶ 61,172 (2011) (2010 Index Review Rehearing Order).

[12] The Commission's use of the Kahn Methodology has been affirmed by the United States Court of Appeals for the District of Columbia Circuit. *Assoc. of Oil Pipelines* v. *FERC,* 83 F.3d 1424 (D.C. Cir. 1996); *Flying J Inc., et al.* v. *FERC,* 363 F.3d 495 (D.C. Cir. 2004).

[13] The weighted mean assigns a different weight to each pipeline's cost change based on the pipeline's total barrel-miles.

[14] June 2015 NOI, 151 FERC ¶ 61,278 at P 1.

[15] AOPL is a trade association that represents the interests of common carrier oil pipelines.

[16] APV Shippers include Airlines for America, the National Propane Gas Association (NPGA), and Valero Marketing and Supply Company. Airlines for America members include: Alaska Airlines, Inc.; American Airlines Group; Atlas Air, Inc.; Delta Air Lines, Inc.; Federal Express Corporation; Hawaiian Airlines; JetBlue Airways Corp.; Southwest Airlines Co.; United Continental Holdings, Inc.; and United Parcel Service Co. Air Canada is an associate member.

[17] Liquids Shippers consists of crude oil or natural gas liquids producers, including: Anadarko Energy Services Company; Apache Corporation; Cenovus Energy Marketing Services Ltd.; ConocoPhillips Company; Devon Gas Services, L.P.; Encana Marketing (USA) Inc.; Marathon Oil Company; Murphy Exploration & Production Company—USA; Noble Energy, Inc.; Pioneer Natural Resources USA, Inc.; Statoil Marketing & Trading (US) Inc.; and WPX Energy Marketing, LLC.

[18] CAPP represents companies that develop and produce natural gas and crude oil throughout Canada.

[19] Not every party filing comments attempted to calculate a proposed index level.

[20] APV Shippers Initial Comments at 9–16.

[21] *Id.*

markets.[22] AOPL also argues that page 700 cost-of-service data may include allocations that distort the index calculation.[23]

2. Discussion

12. The Commission will update its calculation of the five-year oil pipeline index to use page 700 data to measure changing barrel-mile costs. Page 700 provides a summarized total cost-of-service and a pipeline's interstate barrel-miles. Page 700 did not exist when the Kahn Methodology was first developed in Order No. 561, and, as a result, the Commission estimated pipeline total cost changes using accounting data from elsewhere on Form No. 6. Now that page 700 is available, the Commission concludes that page 700 data provides a superior data source for use in the Kahn Methodology.[24]

13. Using page 700 data provides four primary benefits. First, the index is meant to reflect changes to recoverable pipeline costs, and, thus, the calculation of the index should use data that is consistent with the Commission's cost-of-service methodology.[25] In contrast to the accounting data historically used in the Kahn Methodology as a proxy for this information, page 700 includes actual total cost-of-service data.

14. Second, using page 700 data eliminates the need to use proxies to measure capital costs and income tax costs. Because direct measures of these costs were not available when the index was first established,[26] the Kahn Methodology used net carrier property as a proxy for capital costs and income taxes. At that time, the Commission acknowledged the net carrier property proxy was ''highly unsatisfactory'' and ''imperfect.'' [27] Although net carrier property measures changes to the book value of the pipeline's asset base, it does not incorporate changes to the costs of financing the asset base (*i.e.,* interest costs of debt and investor demanded equity return). The relationship between net carrier property and income tax costs is similarly attenuated because income taxes are dependent upon the pipeline's return (specifically the ROE), not merely the size of the pipeline's asset base. Despite these flaws, the Commission used net carrier property proxy in the absence of a ''better solution.'' [28] Now that page 700 data is available, such a better solution exists.

15. Third, using page 700 data eliminates the need for an ''operating ratio'' to estimate each pipeline's annual cost changes. When using Form No. 6 accounting data, the operating ratio is necessary because a pipeline's annual total cost change cannot be calculated by simply adding (a) the annual change in operating costs to (b) the annual change in net carrier property (the proxy used for capital costs). This is because a one-year change to net carrier property is a change in the net investment in the pipeline, not the pipeline's annual capital cost consisting of the pipeline's yearly debt payments and yearly return to investors. Thus, a pipeline's annual total cost change is estimated based on a ratio of operating expenses to operating revenue, which assumes that the residual revenues equate to a pipeline's annual capital costs.[29] This provides, at best, a rough proxy for total pipeline cost changes. For example, the operating ratio unrealistically assumes that pipelines incur no capital costs in years in which the operating expenses exceed revenues.[30] This assumption is deficient because, at a minimum, a pipeline must service its debt obligations.[31] In contrast to the rough proxy provided by the operating ratio, page 700 total cost-of-service incorporates an annual capital cost based upon established ratemaking techniques.

16. Fourth, page 700 contains cost and barrel-mile data exclusively related to interstate pipeline operations, as opposed to the combined intrastate and interstate data used in prior five-year reviews. These interstate and intrastate costs do not necessarily apply to the same facilities.[32] The index applies only to interstate pipelines, and thus, to the extent possible, it is appropriate to use interstate-only data to derive the index.[33]

17. The Commission is also not persuaded by AOPL's arguments against using page 700 data. The Commission disagrees with AOPL's argument that page 700 data should not be used because it incorporates ROEs that may be volatile on an industry-wide basis due to fluctuations in the equity markets. The index is designed to capture changing capital costs, of which financing costs are an important component. To the extent that industry-wide equity costs change with market conditions, those changes should be captured by the index. Furthermore, the record does not support AOPL's claim that ROEs were erratic on an industry-wide basis during the 2009–2014 period. AOPL's own calculations show that the average ROEs in the middle 50 percent stayed within a roughly 100 basis point range throughout the 2009–2014 period.[34] Additionally, the Commission notes that to the extent that a particular pipeline's per barrel-mile cost changes (including its equity cost changes) departed substantially from industry norms, that pipeline would not be among the middle 50 percent used to calculate the index level.

18. The Commission is also not persuaded by AOPL's argument that page 700 contains various allocations

[22] AOPL Reply Comments at 41.

[23] *Id.* at 44 (citing Shehadeh September 2015 Affidavit at 10).

[24] Page 700 was created in 1994 after Order Nos. 561 and 561–A. *Cost-of-Service Reporting and Filing Requirements for Oil Pipelines,* Order No. 571, FERC Stats. & Regs. ¶ 31,006, at 31,168 (1994), *order on reh'g,* Order No. 571–A, FERC Stats. & Regs. ¶ 31,012 at 31,251. The Commission considered using Page 700 data during the 2010 Index Review. However, the Commission declined to adopt such a proposal due to erroneous reporting instructions on page 700 that caused pipelines to report mismatching data, specifically, interstate-only costs and combined intrastate and interstate throughput. 2010 Index Review, 133 FERC ¶ 61,228 at PP 83–85. The Commission was concerned that widespread mismatching data could skew the index. Following the 2010 Index Review, the Commission corrected the page 700 instructions, and the Commission also required pipelines to file corrected data from 2009–2011 so that page 700 could be used ''during the 2015 Five-Year Index Review if deemed appropriate.'' *Revision to Form No. 6,* Order No. 767, FERC Stats. & Regs. ¶ 31,335, at P 19 (2012).

[25] When lamenting the difficulty of estimating industry cost changes, Order No. 561–A specifically noted that industry-wide total cost-of-service data was not then available. Order No. 561–A, FERC Stats. & Regs. ¶ 31,000 at 31,096.

[26] *Id.* at 31,096, 31,098.

[27] *Id.*

[28] *Id.* at 31,098. When the index was established, AOPL itself argued that net carrier property was a poor measure of capital costs. *Id.*

[29] Using the operating ratio, the total cost change is estimated by using the two formulas below:

Total Cost Changes = Operating Costs Changes * Operating Ratio + (Net Carrier Property Changes * (1 − Operating Ratio)).

Operating Ratio = ((Operating Expense at Year 1/Operating Revenue at Year 1) + (Operating Expense at Year 5/Operating Revenue at Year 5))/2. If the operating ratio is greater than one, then it is assigned the value of 1 in the Kahn Methodology calculations. Applying the ratio, Total Cost Changes = (1 − operating ratio) * net plant + operating ratio * operating expenses.

[30] The operating ratio is set between 0 and 1 based upon the ratio of (a) operating expenses to (b) pipeline revenues. If operating expenses exceed revenues, then the operating ratio is set to 1, meaning that no weight is assigned to capital costs (net plant under the prior methodology) in the formula.

[31] Although operating expenses may exceed revenues in a particular year, a pipeline may nonetheless be able to attain new financing for capital investments based upon anticipated future profitability. Moreover, a company may continue to pay dividends (or other payments) to investors even in years in which the company is not profitable.

[32] Although sometimes intrastate and interstate shipments share parts of the same pipe, the overlap is often not exact. On other occasions, the same parent pipeline may own entirely separate interstate and intrastate facilities.

[33] Although it is unclear whether there is a substantial difference between the cost changes for interstate and intrastate service, there is no reason to base the index on combined intrastate and interstate data when an interstate-only data alternative is available.

[34] Shehadeh September 2015 Affidavit at 10.

that may distort the index calculation. The allocation methodologies used by pipelines on page 700 should reflect established ratemaking practices, and thus these allocation methodologies should be sufficiently robust to calculate the index. Furthermore, some assumptions and allocations are necessary in any pipeline's measurement of its costs, including the Form No. 6 accounting data previously used in the Kahn Methodology.[35] In addition, to the extent a pipeline's page 700 ratemaking assumptions change over a period of time, pipelines are obligated to note them on their page 700.[36] Yet, despite the availability of this information, AOPL points to no specific circumstances in which such changing allocations have distorted the page 700 calculations in this proceeding. The mere presence of allocation methodologies is not a reason to reject the use of page 700 data.[37] Overall, the changes we make in this order to use the page 700 data eliminates the need for several assumptions and more closely aligns the index with changing oil pipeline costs.

B. Manual Data Trimming

19. APV Shippers, Liquids Shippers, CAPP, and Suncor advocate various forms of manual data trimming in addition to the statistical data trimming to the middle 50 percent. The manual data trimming proposals assume two broad forms: (1) Removing from the data set pipelines that underwent expansions between 2009 and 2014 and (2) removing from the data set pipelines that appeared to report flawed or anomalous data.[38]

1. Alternative Rate Treatment

a. Comments

20. Several shipper commenters advocate removing pipelines from the data set that underwent expansions, arguing that the expansions distorted index calculation. APV Shippers and CAPP propose to remove from the data set the pipelines that filed petitions for declaratory order seeking approval for committed shipper rates.[39] Other shipper parties solely analyzed pipeline costs. Suncor proposes to remove 36 pipelines that had shown greater than 25 percent year-over-year increases in both (a) their net plant and (b) net plant per barrel mile.[40] Liquids Shippers propose a variant that removes only those pipelines with rate base changes of 25 percent between 2013 and 2014, asserting that because these new expansions may still be ramping-up to long term throughput levels, costs per barrel-mile may be exaggerated.[41]

21. AOPL opposed these proposals asserting, among other arguments, that (a) this manual data trimming lacks methodological integrity and (b) statistically trimming of the data set (such as data trimming via the middle 50 percent or middle 80 percent) more appropriately addresses anomalous cost changes.

b. Discussion

22. The Commission declines to adopt the various proposals to manually remove from the data set pipelines making capital expansions during the 2009 to 2014 period. In the 2010 Index Review, Commission rejected a similar proposal.[42] As explained below, comments in this proceeding have not provided a basis for the Commission to depart from its prior determination.

23. As the Commission explained in the 2010 Index Review, statistically trimming the data set to the middle 50 percent already removes anomalous cost/barrel-mile changes.[43] To the extent that a capital expansion caused a pipeline's per barrel-mile costs to deviate from industry norms, that pipeline's cost changes will not be among the middle 50 percent.[44]

24. As the Commission also explained in 2010, it is both subjective and arbitrary to state which circumstances render a pipeline's 2009 barrel-mile costs non-comparable to its 2014 costs.[45] Pipelines operate amidst continually changing business circumstances affecting throughput and costs.[46] These manual data trimming proposals subjectively and arbitrarily focus upon one aspect, expansions, while ignoring other factors (such as changing product demand and supplies) that can also alter per barrel-mile costs.[47] As APV Shippers concede, the data set includes a wide dispersion in barrel-mile cost changes that exists independently from pipelines using alternative rate base methodologies[48] or those experiencing expansions. As the Commission concluded in the 2010 Index Review, without attempting to assess each pipeline's underlying circumstances, the Kahn Methodology appropriately addresses extraordinary or anomalous cost changes by trimming the data set to the middle 50 percent.[49]

[35] For example, several pipelines are subsidiaries of parent companies, and, thus their Form No. 6 data include costs allocated from those parent entities.

[36] As instruction six on page 700 states, ''If the company makes major changes to its application of the Opinion No. 154–B *et al.* methodology, it must describe such changes in a footnote, and calculate the amounts in columns (b) and (c) of lines No. 1–12 using the changed application.''

[37] The Commission similarly dismisses AOPL's argument that using page 700 data may create illusory cost changes due to shifts involving interstate and intrastate volumes. AOPL fails to distinguish between page 700 data and the accounting estimates historically used by the Commission. Under any circumstance, increasing intrastate barrel-miles absorb a larger portion of the pipeline's fixed costs and cause interstate barrel-mile costs to decline. Similarly, decreasing intrastate volumes absorb less of a pipeline's fixed costs, causing the pipeline's interstate per barrel-mile costs to rise.

[38] APV Shippers state that applying both of these data trimming methodologies to page 700 data would reduce the index from approximately PPI–FG+1.3 to their proposed PPI–FG+0.5.

[39] Commission policy allows pipelines making significant capital expansions to seek committed shipper rates. Although not required, pipelines generally file petitions for declaratory order in order to ensure Commission approval of the committed rate structure.

[40] Suncor states that this adjustment would change the index to PPI–FG+0.67.

[41] The Liquids Shippers presented this proposal in their reply comments. By presenting this argument so late in the proceeding, the Liquids Shippers did not provide other entities adequate opportunity to respond in reply comments.

[42] 2010 Index Review, 133 FERC ¶ 61,228 at PP 48–55 (rejecting proposal that manually trimmed pipelines that (a) experienced large rate base changes and (b) sought alternative rate treatment).

[43] *Id.* PP 48–55.

[44] *Id.* P 48. APV Shippers, CAPP, and Liquids Shippers incorrectly assume that all pipelines seeking petitions for declaratory order in order to implement contractual rates have experienced ''extraordinary'' *per barrel-mile* cost changes. Pipelines filing for committed rate structures are making significant infrastructural investments; however, because an expansion generally leads to increased throughput, an expansion does not necessarily equate to a large relative increase in barrel-mile costs. For example, of the 10 pipelines APV Shippers exclude from the data set based upon committed shipper contracts, three of them are within the middle 50 percent of the Commission's index calculation, three of them are in the bottom 25 percent of pipelines excluded from the middle 50 percent and four of them are in the top 25 percent of pipelines included within the middle 50 percent. Attachment A, Exhibit 2.

[45] 2010 Index Review, 133 FERC ¶ 61,228 at P 49.

[46] The Commission also rejects APV Shipper's claim that other adjustments to the data set are analogous to removing pipelines that filed petitions for declaratory order for committed shipper rates during the 2009–2014 period. As discussed, *infra,* the Commission these adjustments serve a different purpose than ''comparability'' to justify any aspect of the Kahn Methodology.

[47] Suncor and Liquids Shippers' proposed adjustments may be particularly skewed because they manually remove pipelines from the data set based upon rate base increases of 25 percent but ignore pipelines with rate base decreases.

[48] APV Shippers state that after manually trimming all pipelines which filed a petition for declaratory order requesting approval of committed shipper rate structures (in addition to other manual data trimming), the data set continues to include significant dispersion. O'Loughlin August 2015 Affidavit at 22.

[49] Unlike the other parties, the APV Shippers did not solely focus upon rate base changes or pipelines seeking committed shipper rates. The APV Shippers also manually trimmed two pipelines that sought cost-of-service changes during the 2009–2014

Continued

25. Furthermore, the Commission emphasizes that the index properly reflects capital cost changes. Consistent with the EPAct 1992's mandate of general applicability, capital costs changes have always been part of the index calculation.[50] To the extent that a pipeline's total cost changes are within the middle 50 percent of all pipelines, those pipelines' capital cost changes are appropriately considered in the derivation of the index.

26. The Commission rejects other arguments raised in support of manually removing pipelines undergoing expansions from the data set. The Commission rejects CAPP and APV Shippers' argument that such manual data trimming is necessary to avoid double recovery.[51] In this proceeding, the historic costs are being used to estimate the future relationship between oil pipeline per-barrel mile costs changes and PPI–FG. It is contrary to basic ratemaking principles (not to mention APV Shippers' own index calculations in this case) to suggest that the use of historic cost data to estimate future cost changes leads to a double-recovery of pipeline costs. All pipelines in the data set had rates in effect which were intended to recover their costs during the 2009–2014 period. Furthermore, the fact that some pipelines sought a cost-of-service or other form of rate increase during the 2009–2014 data collection period is irrelevant. Any index filing made during the 2016–2021 period will be based upon the then-existing PPI–FG and will be for the recovery of the pipeline's *future* costs—not costs incurred during the 2009–2014 data collection period.

27. The Commission adopts the same rationale that the Commission articulated in the 2010 Index Order and rejects APV Shippers' argument that because the Commission removes costs associated with Ultra Low Sulfur Diesel (ULSD) surcharges from the index calculation, it must also remove costs associated with committed shipper rates and cost-of-service filings.[52] The ULSD surcharge involves EPA regulations solely applicable to the shipment of diesel fuel whereas all pipelines incur investment costs related to building and maintaining rate base.[53] Second, whereas the ULSD surcharge is solely assessed as a separate charge upon diesel shipments, rate base related costs are recovered through the primary transportation rates that apply to all crude and product shipments.[54] Moreover, the ULSD surcharge presents a particular set of circumstances regarding a relatively modest cost, and it does not support the fundamental modification of the Kahn Methodology as proposed by the manual data trimming methodologies.

28. The Commission also rejects CAPP's contention that the contractual rates are ''cross-contaminating'' the calculation of the index.[55] The calculation of the index is based upon a pipeline's costs, not the rate methodology used by the pipeline to recover those costs. In some cases, pipelines using non-indexed rate methodologies can provide useful data that helps inform our understanding of industry-wide cost experience, and, as noted above, the middle 50 percent data trimming removes pipelines with anomalous costs. Further, CAPP's argument for the manual data trimming relies upon its position that contractual committed shipper agreements reduce pipeline risk.[56] This argument is contrary to CAPP's argument that inclusion of such pipelines inflates the index level. To the extent that volume commitments in these agreements have reduced the pipeline's risk, the page 700 total cost-of-service would reflect this reduction in the embedded costs of equity and costs of debt. CAPP's argument provides no basis for the exclusion of pipelines with committed shipper contracts.

29. The Commission dismisses Liquids Shippers' proposal to remove from the data set pipelines with rate base changes of 25 percent between 2013–2014. Liquids Shippers' argument that these expansions are ''non-recurring'' is unsupported—unlike non-recurring costs in a rate case, capital investments represent a long term change in the pipeline's cost level. The proposal also errs by focusing solely on expansions without also considering other cost changes (increases or decreases) which may be ''non-recurring.'' Moreover, Liquids Shippers' proposal is internally inconsistent. First, Liquids Shippers' proposal focuses solely on rate base increases while ignoring commensurate rate base decreases. Second, although Liquids Shippers argue that new 2014 expansions could be skewing the 2014 costs per barrel-mile upward while throughput is ramped up, the Liquids Shippers make no similar adjustments for 2008–2009 expansions which could be having a similar upward effect on 2009 costs per barrel-mile (thereby, minimizing the change between 2009 and 2014).[57] As noted elsewhere in this

period. However, this does not change the Commission's disposition of the manual data trimming issue, including the potential for bias. As an initial matter, both of these pipelines were excluded by the middle 50 percent. Attachment A, Exhibit 3. Moreover, the APV Shippers inconsistently apply their own principle that use of a non-indexing rate mechanism demonstrates that these pipelines experienced anomalous cost changes. For example, APV Shippers do not exclude pipelines (such as Colonial) that were required to file *reduced* rates as a result of the settlement of complaints against their rates. *E.g., Southwest Airlines Co.* v. *Colonial Pipeline Co.,* 148 FERC ¶ 61,161 (2014). Because Colonial is a large pipeline, it heavily influences the weighted average in the Kahn Methodology, and its removal alone would increase the index in the Commission's own calculation from PPI–FG+1.23 to PPI–FG+1.54. Attachment A, Exhibit 4. APV Shippers' inconsistency only further emphasizes the risk of arbitrariness and bias inherent to manual data trimming methodologies.

[50] Order No. 561, FERC Stats. & Regs. ¶ 30,985 at 30,951–52, *aff'd AOPL I,* 83 F.3d at 1437; 2010 Index Review, 133 FERC ¶ 61,228 at P 101.

[51] The Commission acknowledges CAPP's assertion that some committed shipper agreements include both (a) index increases and (b) additional provisions environmental health and safety cost increases. CAPP's concern appears to be that such committed rates may allow for double recovery. CAPP Reply Comments at 11. However, the vast majority of pipelines do not recover safety or environmental costs in this manner, and the index has never been calculated to exclude the effects of safety and environmental costs. To the extent that a shipper is concerned that double-recovery is being permitted in a particular petition for declaratory order or an index filing, that shipper may file a protest.

[52] When the Commission first approved the ULSD surcharge in 2006, it explained that because these charges were recovered in a separate surcharge and not the base transportation rates, the Commission would exclude the ULSD cost data from the data used to calculate the indexed rates. *Magellan Pipeline Co.,* L.P., 115 FERC ¶ 61,276, at P 13 (2006). The ULSD surcharge applies to costs incurred due to Environmental Protection Agency (EPA) regulations that affected a subset of pipelines transporting certain diesel products. The ULSD surcharge was assessed on shippers of ULSD only, and not shippers of other distillates and the ULSD surcharge was not subject to indexing. *Id.* P 9. Unlike APV Shippers' proposal, which would require the Commission to remove entire pipelines from the calculation of the index, the Commission's ULSD surcharge policies required pipelines to separately record their ULSD related costs so that they could be removed from the calculation of the index.

[53] 2010 Index Review Rehearing Order, 135 FERC ¶ 61,172 at P 18.

[54] Moreover, unlike APV Shippers' proposal, the Commission does not remove pipelines from the data set based upon ULSD costs—rather the ULSD costs are removed from the pipeline's page 700 costs of service. Were the APV Shippers to attempt to exclude other costs in a manner consistent with the ULSD precedent, they would need to identify those costs and remove them from the pipeline's page 700 data. They have made no such attempt.

[55] CAPP Reply Comments at 15. The Commission further notes that the policy permitting committed shipper rates has existed for nearly 20 years. Notwithstanding increased filings requesting committed shipper rates during the 2009–2014 period, the application of the Kahn Methodology to the 2009–2014 period results in a *lower* index than the Commission developed based upon 2004–2009 data in the 2010 Index Review. This is true whether one uses the accounting data historically used by the Commission or page 700 data adopted in this order.

[56] CAPP Reply Comments at 5–9.

[57] Inflated 2009 costs per barrel-mile would lower the apparent cost changes over the 2009–2014 period.

order, to the extent that expansions lead to extraordinary cost per barrel-mile changes, the pipelines will not be among the middle 50 percent.

30. The Commission also rejects Liquids Shippers' assertion that Enbridge Energy, Limited Partnership (Enbridge Lakehead) distorts the index calculation. As shown in Attachment A, Enbridge Lakehead is not included in the middle 50 percent of page 700 per barrel-mile cost change data adopted herein. Further, to the extent that Enbridge Lakehead heavily influenced the calculations in the June 2015 NOI, this resulted from the Kahn Methodology's longstanding (and unchallenged) use of a weighted average based upon pipeline barrel-miles.[58]

2. APV Shippers Additional Manual Trimming Adjustments

a. Comments

31. APV Shippers propose additional manual trimming adjustments to the data set in order to remove pipelines which they state reported 2009 data that was ''non-comparable'' to the pipeline's 2014 data. Toward this objective, APV Shippers propose that the Commission remove the following from the data set:

- Four pipelines that began or ceased operations during 2009 or 2014 because these pipelines' page 700 may include a full year's rate base, but only a partial year's operating costs.
- Ten pipelines with significant divestitures or acquisitions between 2009 and 2014.
- Four pipelines with other operational changes or data reporting anomalies on page 700.
- Eleven pipelines that APV Shippers assert report a combination intrastate and interstate barrel-mile data on page 700.

32. AOPL opposes these proposed adjustments, claiming that such manual data trimming is prone to bias and error. AOPL states that statistical data trimming using the middle 50 percent or middle 80 percent provides a more appropriate resolution for these issues.

b. Discussion

33. The Commission declines to adopt APV Shippers' manual data trimming proposal. As previously explained, the Commission trims the data set to the middle 50 percent to address any potential distortions caused either by (a) outlying data or (b) spurious data.[59] To the extent reporting errors or other circumstances cause a pipeline's cost changes to differ significantly from industry norms, such outlying pipelines will not be among the middle 50 percent. APV Shippers have not demonstrated that data anomalies within the middle 50 percent are distorting the Kahn Methodology's calculations.[60]

34. Any potential improvement from manual data trimming is outweighed by the increase in the potential for error or manipulation. Manual data trimming requires a pipeline-by-pipeline analysis of page 700 data and subjective decisions involving that data. Fully validating APV Shippers' proposal would require the Commission and industry participants to evaluate the specific circumstances for nearly 130 pipelines.[61] Consistent application of the ''non-comparability'' standard would also require addressing whether APV Shippers identified every possible characteristic which could render a pipeline's data ''non-comparable.''[62] Without such a comprehensive review, there is no way to verify that the selective data trimming methods employed by APV Shippers do not skew the index calculation either upward or downward.

35. Illustrating the difficulty of such a process, APV Shippers concede that their manual data trimming methodology does not remove from the data set all pipelines reporting ''non-comparable'' data. When AOPL presented evidence that the six pipelines with the lowest per barrel-mile cost remaining in APV Shippers' data set should have been removed under the ''non-comparability'' standard, the APV Shippers conceded that these six pipelines ''likely had sufficient reason to be excluded.''[63] The failure to remove these pipelines affected APV Shippers' index calculation.[64] Moreover, attempting to minimize the effect of retaining these pipelines in the data set, APV Shippers emphasized that additional pipelines (this time with higher cost changes) with ''non-comparable data'' were also not removed.[65] By APV Shippers' own concession, the processes used by APV Shippers were inadequate for consistently identifying and removing ''non-comparable'' data.[66]

36. APV Shippers have failed to demonstrate that manual data trimming should be incorporated into the Kahn Methodology. As the Commission explained both in the 2010 Index Review and this proceeding, to manually trim the data set solely based upon one factor (such as large rate base changes) is biased and has the potential to distort the index calculation.[67] On the other hand, the manual identification of every pipeline with potentially anomalous or idiosyncratic characteristics would require several highly subjective decisions. This subjective process is prone to bias and error. In contrast, statistical data trimming using the middle 50 percent is objective, transparent, and minimizes the need to analyze individual pipeline data.

37. Further, contrary to APV Shippers' arguments, manual data

[58] Enbridge Lakehead transported over 15 percent of total industry barrel-miles in 2014. Attachment A, Exhibit 7.

[59] *E.g.,* 2010 Index Review, 133 FERC ¶ 61,228 at P 7.

[60] Fifteen of the 41 pipelines that APV Shippers seek to remove from the data set via manual trimming remain in the Commission's middle 50 percent. Attachment A, Exhibit 10. When those 15 pipelines are manually removed from the middle 50 percent, the cost-of-service per barrel-mile increases by a very small amount, from 1.23 to 1.33. Attachment A, Exhibit 8.

[61] Starting with a preliminary data set of 129 pipelines, APV Shippers manually data trim 41 pipelines. O'Loughlin August 2015 Affidavit at 21.

[62] Under manual data trimming, the decision regarding which pipelines should be retained in the data set is as subjective (and as important) as to which pipelines to remove. Yet, as explained below, APV Shippers' methodology provides little certainty that the pipelines remaining in the data set reported ''comparable data'' between 2009 and 2014.

[63] O'Loughlin October 2015 Affidavit at 70. Of these six pipelines, Arrowhead Louisiana Gathering, LLC explained that a significant shift in its page 700 data was due to an accounting change. Shehadeh October 2015 Affidavit at 14–17. Another, Conoco Offshore Pipeline, experienced a leak that caused its costs per barrel-mile to temporarily spike in 2009, thereby distorting the measure of cost change between 2009 and 2014. *Id.* A third, Mobile Eugene Island divested 50 percent of its assets. *Id.* Two others reported data anomalies, Belle Rose NGL Pipeline (throughput dropping from 273 million to 6 million without any commensurate change in assets) and Total Petrochemical Pipeline US Inc. (reporting both 100 percent debt and equity capital structure). The sixth pipeline, Valero MKS Logistics LLC, showed ROE percentages of five percent in 2008 and five percent in 2010, with an unexplained spike to 16.73 percent 2009. In the last instance, it is unclear whether this spike was erroneous or in some sense captured real changing pipeline costs during the economic upheaval of the 2008–2009 recession. In any case, this type of uncertainty and the requirement for this type of subjective decision further supports the rejection of the ''non-comparability'' manual data trimming methodology.

[64] Removing these six pipelines alone would have raised the index level in APV Shippers' final calculation from PPI–FG+0.5 to PPI–FG+0.9. Attachment A, Exhibit 9.

[65] O'Loughlin October 2015 Affidavit at 70–71.

[66] APV Shippers relied upon certain filters for determining which pipelines to scrutinize further. O'Loughlin September 2015 Affidavit at 31–32; O'Loughlin October 2015 Affidavit at 66–71. As discussed above, these filters were not sufficient for identifying those pipelines that needed to be evaluated in order to consistently apply APV Shippers manual data screening methodology. Most of the anomalies identified by AOPL were apparent from the data reported on Form No. 6, and, to the extent that AOPL obtained this information from other filings with the Commission or other sources, it is not clear why a manual trimming methodology should exclude this information.

[67] 2010 Index Review, 133 FERC ¶ 61,228 at P 49.

trimming is not a mere extension to the existing processes in the Kahn Methodology. The Commission disagrees with APV Shippers' claim that the Commission already makes other adjustments to the data set to ensure ''comparability.'' [68] The adjustments made by the Commission have served a different purpose. The Commission's removal of pipelines with incomplete data is inapposite to the manual data trimming proposed by APV Shippers. It is mathematically impossible to evaluate a pipeline's year-on-year changes in barrel-mile costs when no such data exist. Thus, those pipelines with incomplete data cannot be incorporated into the data set.[69] In contrast, APV Shippers propose to remove pipelines that have reported the data necessary to evaluate annual barrel-mile cost changes. The use of an objective measure not to incorporate those pipelines that mathematically cannot be used is distinct from the subjective process proposed by APV Shippers.

38. Likewise, the Commission rejects APV Shippers' analogy of manual data trimming to the Kahn Methodology's traditional treatment of mergers. Historically, when two pipelines have combined, the Commission has added separate costs the pipelines reported on Form No. 6 in the first year of the data set (*e.g.* 2009) and compared this sum to the newly combined company's costs in the last year of the data set (*e.g.* 2014). Without this step, the absorbed pipeline's cost data would be needlessly discarded.[70] Commission efforts to preserve cost change data should not be confused with an effort to ensure ''comparability.'' On the contrary, a merger may change several aspects of company operations and significantly alter the pipeline's business circumstances. Preserving data, not ''comparability,'' was the justification for the Kahn Methodology's historic treatment of mergers.[71]

39. The Commission also rejects APV Shippers' analogy to the Kahn Methodology's full utilization of the data on Form No. 6 in order to correct missing or erroneous data. As APV Shippers note, when data has been missing or erroneous in one portion of a pipeline's Form No. 6, the Commission has sometimes substituted data from elsewhere on the Form No. 6.[72] Such substitutions, which utilize data that the pipeline has already reported on Form No. 6, are not akin to manual data trimming that completely removes pipelines from the data set in an effort to achieve an undefinable ''comparability.'' [73]

C. Middle 80 Percent Data Trimming

1. Comments

40. AOPL urges the Commission to determine the index using an average of applying the Kahn Methodology to the (a) middle 50 percent and (b) middle 80 percent. In the June 2015 NOI, the Commission trimmed the data set to the middle 50 percent, which removes the 25 percent of pipelines with the greatest cost increases and the 25 percent of pipelines with the greatest cost decreases. AOPL states that the Commission should also consider the middle 80 percent because: (a) The accuracy of the middle 80 percent data is supported by its conformity to a lognormal distribution and (b) using the middle 80 percent accounts for more barrel-miles.[74]

41. CAPP,[75] HollyFrontier/Western,[76] Liquid Shippers,[77] and APV Shippers [78] assert that the middle 50 percent is a superior data source because, among other reasons, the middle 50 percent removes more anomalous and erroneous data.

2. Discussion

42. The Commission rejects AOPL's proposal to calculate the index based upon both the middle 80 percent and the middle 50 percent.[79] In the 2010 Index Review, the Commission determined that the index should be calculated based upon the middle 50 percent alone.[80] As the Commission explained in the 2010 Index Review, the middle 50 percent, more effectively than the middle 80 percent, excludes pipelines with anomalous cost changes while avoiding the complexity and distorting effects of subjective, manual data trimming methodologies.[81]

43. The record in this proceeding does not provide a basis for altering that position. We are not persuaded by AOPL's argument that the middle 80 percent should be considered merely because it conforms to a lognormal distribution. Conformity with a particular statistical distribution may generally support the accuracy of the middle 80 percent data. However, by definition, costs at the top (or bottom) of the middle 80 percent deviate significantly from the cost experience of other pipelines.[82] To the extent that the

[68] O'Loughlin August 2015 Affidavit at 17.

[69] 2010 Index Review Rehearing Order, 135 FERC ¶ 61,172 at P 15.

[70] If a pipeline is completely absorbed by another pipeline, this pipeline no longer reports Form No. 6 data and such data would not be available for measuring cost changes.

[71] We further note that APV Shippers' treatment of mergers and divestitures is not analogous to the Kahn Methodology's treatment of mergers and divestitures. As opposed to preserving data, APV Shippers propose to remove from the data set (a) pipelines that sold a portion (not all) of their pipeline assets and (b) the pipeline that acquired those assets. This step is not justified. Notwithstanding the asset transfer, many of the pipelines that APV Shippers propose to remove have filed page 700 data over the entire 2009–2014 data collection period. Moreover, there is no evidence that these asset transfers are improperly influencing the index level. A merger may cause a pipeline's barrel-mile costs to go up or down depending upon the barrel-mile costs of the transferred asset. Of course, if the acquiring or purchasing pipeline experienced particularly large (or small) barrel-mile cost changes, those pipelines would be trimmed by the application of the middle 50 percent.

[72] 2005 Index Review, 114 FERC ¶ 61,293 at PP 43–44 (reconciling operating revenue data from different sections of the Form No. 6). In addition, a similar process has been applied to the use of Form No. 6 page 700 barrel-mile data for missing or erroneous barrel-mile data reported on Form No. 6 page 600. Although APV Shippers raise methodological objections to this particular adjustment, this issue has been rendered moot by the Commission's adoption of page 700 data.

[73] The Commission further dismisses APV Shippers' reference to the 2010 Index Review Rehearing's statement that ''Although the Kahn Methodology removes from the data set those pipelines that reported erroneous or incomplete data, erroneous or incomplete data differ from the accurately reported actual costs Valero and ATA seek to remove using the rate base screening methodology.'' APV Shippers Initial Comments at 22 (citing 2010 Index Review Rehearing Order, 135 FERC ¶ 61,172 at P 15). Placed in proper context, this statement is not an endorsement of manual data trimming for erroneous data. This comment regarding erroneous data was made solely in the context of rejecting an analogy made by Valero. Elsewhere, the 2010 Index Review order explained that the Commission uses the middle 50 percent to remove pipelines reporting spurious (*i.e.* erroneous) data. 2010 Index Review order, 133 FERC ¶ 61,228 at P 7. As discussed above, the specific analogies made by APV Shippers to prior Commission applications of the Kahn Methodology do not support the adoption of their proposed manual data trimming.

[74] AOPL Initial Comments at 4; Shehadeh August 2015 Affidavit at 8.

[75] CAPP Reply Comments at 15.

[76] HollyFrontier/Western Reply Comments at 7.

[77] Liquids Shippers Reply Comments at 13.

[78] APV Shippers Reply Comments at 17–19.

[79] AOPL's proposal averages the results by applying the Kahn Methodology using the middle 50 percent of the data set and the middle 80 percent of the data set. This would raise the index level from the approximately PPI–FG+1.2 to PP–FG+1.65 when applied to the page 700 data.

[80] As the Commission explained in the 2010 Index Review, this returned the Commission's policy to the application of the Kahn Methodology in Order No. 561, which based its calculation of the index on the middle 50 percent alone. 2010 Index Review, 133 FERC ¶ 61,228 at P 60. Although the middle 80 percent was used in the 2000 and 2005 reviews, the Commission made this change without providing a rationale for the change or explaining the departure from previous practice. *Id.* Once the issue was presented to the Commission in the 2010 Index Review, the Commission determined that the middle 50 percent alone provided a more appropriate means for trimming the data sample. *Id.* P 61.

[81] 2010 Index Review, 133 FERC ¶ 61,228 at PP 60–63.

[82] *Id.* P 61.

middle 80 percent data conforms to a lognormal distribution, outlying cost increases per barrel-mile will not be offset by similarly outlying cost decreases. Thus, using the middle 80 percent would skew the index upward based upon these outlying cost increases, which is contrary to the objective of the index to reflect normal industry-wide cost changes.

44. Similarly, the Commission rejects AOPL's argument that the middle 80 percent should be used merely because it contains more barrel-miles. The Kahn Methodology aims to capture the central tendency of the data set so that the index is not distorted by outlying costs. Pipelines in the middle 80 percent, as opposed to the middle 50 percent, are more likely to have outlying cost changes which could result from idiosyncratic factors particular to that pipeline.[83] By considering the entire data set (without manual trimming) [84] and then applying statistical data trimming to the middle 50 percent, the Commission addresses these issues via a methodology that is objective and transparent.[85]

D. Crude Versus Product Pipelines

1. Comments

45. APV Shippers state that if the Commission declines to adjust the data set for large capital expenditures and other erroneous data, the Commission should establish separate indices for crude and product pipelines. APV Shippers state that, using page 700 data without data trimming, the middle 50 percent of crude pipelines had an index differential of PPI–FG+3.36 percent and the middle 50 percent of petroleum product pipelines showed an index differential of PPI–FG+0.4 percent.[86] APV Shippers state that these differentials result from significant crude pipeline projects over the past few years. AOPL and Liquids Shippers oppose the use of separate indices for crude and product pipelines.

2. Discussion

46. The Commission declines to adopt the proposal to use different indices for crude and product pipelines. Contrary to APV Shippers' claim that the differences in the index differentials result from wide-spread crude pipeline expansions, the discrepancy primarily occurs due to (a) the effect of two very large crude pipelines which happen to have above average cost changes and (b) one very large product pipeline which happens to have below average cost changes. Data discrepancies caused by only three pipelines do not justify the claim that crude and product pipelines as a whole are experiencing dramatically different cost changes.[87] Moreover, to the extent that a somewhat disproportionate number of crude pipelines recorded outlying barrel-mile cost changes, this issue is sufficiently addressed by application of the middle 50 percent to the combined data set of all pipelines.[88]

E. Liquids Shippers & CAPP Proposal To Set Index at PPI–FG and To Revise Commission Regulations To Abandon Indexing

1. Comments

47. Liquids Shippers state that the Commission should temporarily set the index at PPI–FG while undertaking a review of the Commission's oil pipeline regulations. Among other things, the Liquids Shippers complain that oil pipeline indexing increases have exceeded interstate natural gas pipeline rate increases, that the indexing increases have exceeded the consumer price index (CPI), and that certain oil pipelines have been over-recovering. The Liquids Shippers state that the Commission should consider abolishing the indexing methodology, or, to the extent that indexing is retained, change the manner in which the Commission evaluates oil pipeline index filings. In its reply comments, CAPP endorses these proposals. AOPL opposes Liquids Shippers' proposals and disputes their various claims.

2. Discussion

48. The Commission declines to adopt the Liquids Shippers' proposal to temporarily set the index at PPI–FG as unsupported. The evidence in this proceeding demonstrates that oil pipeline cost changes between 2009 and 2014 have exceeded PPI–FG. Liquids Shippers provide no compelling reason to depart from the longstanding practice of calculating the index based upon historic pipeline costs.[89] In particular, the Commission rejects Liquids Shippers' claim that recent audits revealed reporting errors rendering Form No. 6 data unusable; on the contrary, the errors discovered by these audits were relatively limited.[90] Furthermore, as discussed previously, the middle 50 percent data trimming removes the allegedly anomalous data that Liquids Shippers claim distorts the index calculation.[91] Finally, Liquids

[83] The middle 80 percent of the Commission's page 700 data set includes 30 of the 41 pipelines identified by APV Shippers as warranting exclusion from the data set because they have anomalous data during 2009–2014, including 10 of the 12 pipelines APV Shippers excluded because they filed cost-of-service rate increases or petitions seeking approval of committed shipper rates. Attachment A, Exhibit 10. In contrast, the middle 50 percent includes only 15 of the pipelines APV Shippers seek to manually trim from the data set, and, in particular, only three of the 12 pipelines APV Shippers proposes to exclude due to cost-of-service rate filings or committed shipper rates. *Id.*

[84] The data set consists of pipelines that have filed complete data and are subject to the indexing regulations.

[85] It is also not the case that the middle 50 percent represents a narrow or selective sector of the industry. On the contrary, the Commission began with a page 700 data set that, prior to statistical data trimming, includes more pipelines (130) than AOPL's data set (123). Once the middle 50 percent has been applied, the statistically trimmed data set includes more than 50 percent of industry barrel-miles. Attachment A, Exhibit 1. Although this is a lower percentage than in some prior reviews, this is not a sufficient basis to risk including more outlying data. Moreover, much of the difference in barrel-miles from the 2010 Index Review can be attributed to the fact that Enbridge Lakehead, a pipeline representing over 15 percent of the barrel-miles in the data set, was in the middle 50 percent in 2010, but is not in the middle 50 percent in this proceeding. *Compare* Appendix A, Exhibit 1 *with* AOPL, Initial Comments, Docket No. RM10–25–000, Declaration of Ramsey Shehadeh, Appendix B.

[86] APV Shippers Initial Comments at 42 (citing O'Loughlin August 2015 Affidavit at 91).

[87] The relatively large crude pipelines are (a) Enbridge Lakehead and (b) Mid-Valley Pipeline Company. The very large product pipeline is Colonial Pipeline Company. These pipelines have a disproportionate effect because the Kahn Methodology uses a weighted average in conjunction with a simple average to measure the central tendency. Although the size of these pipelines makes their data particularly relevant for assessing industry-wide barrel-mile cost changes, data from such a small number of crude pipelines (2 out of 60) or product pipelines (1 out of 48) appears insufficient to demonstrate an extreme difference between crude and product pipelines costs. Simply removing the effect caused by those few pipelines' data reduces the differential between crude and product pipelines from 295 basis points, as calculated by APV Shippers, to a much smaller differential of 48 basis points, or PPI–FG+1.14 (crude pipelines) and PPI–FG+0.66 (product pipelines). Attachment A, Exhibit 11.

[88] Of the pipelines in the middle 50 percent of page 700 data used by the Commission, the included product pipelines (excluding Colonial, as explained *supra*) would result in an index level of PPI–FG+1.05 and crude pipelines would have an index level of PPI–FG+1.14. Attachment A, Exhibit 12.

[89] *E.g. AOPL II,* 281 F.3d at 247 (quoting EPAct 1992, at 1801(a) and noting that the Commission satisfied the statutory objective by calculating the index based upon historic costs).

[90] Liquids Shippers have made no showing that the issues raised in these audits are such that they would materially alter the industry-wide index calculation.

[91] In initial comments, Liquids Shippers identified four pipelines (Enbridge Lakehead; TransCanada Keystone Pipeline, LP; Seaway Crude Pipeline Company Co.; Enterprise TE Products Pipeline Company LLC) as reporting anomalous data. Yet, none of these pipelines are included in the middle 50 percent, and, in fact, TransCanada Keystone is not even in the data set because they did not file 2009 Form No. 6 information. Attachment A, Exhibit 6.

Shippers' claim that oil pipeline index increases exceed the CPI does not support changes to the index because Liquids Shippers have not demonstrated that historic, industry-wide oil pipeline cost changes have corresponded to the CPI.[92]

49. Liquids Shippers' arguments that the Commission should change its regulations governing indexing are beyond the scope of this proceeding. The June 2015 NOI sought comment regarding two narrow issues, (a) the proposed index level and (b) possible changes to the Kahn Methodology used to calculate the index level.[93] Liquids Shippers' comments regarding the Commission's indexing policies, committed shipper contracts,[94] and other issues are beyond the scope of this limited inquiry.

50. Further, Liquids Shippers' comments have not persuaded us to reexamine the Commission-approved indexing methodology.[95] In general terms, Liquids Shippers have not substantiated their claims of unchecked oil pipeline over-recoveries. For example, of the 20 pipelines (out of Liquids Shippers' sample of 42) that Liquids Shippers allege are over-recovering, evidence provided in this proceeding indicates that 15 actually under-recovered their cost-of-service in one (and in many cases more) of the years between 2009 and 2014.[96] Furthermore, to the extent issues arise on a particular pipeline, a shipper may file complaints or protests against indexed rate increases[97] or complaints against an oil pipeline's underlying base rates. In addition to being beyond the scope of the June 2015 NOI, Liquids Shippers have not substantiated their claims.[98]

F. Suncor's Proposals

51. The Commission will not adopt the various proposals advanced by Suncor. The Commission's adoption of page 700 data addresses several of these proposals, which were advanced as alternatives should the Commission not adopt page 700 data. In addition, the Commission also will not adopt Suncor's proposed alternative methodology to trim the data set based upon anomalous years (as opposed to trimming pipelines reporting anomalous data) because the justification for this proposal, including the use of broader data set, was based upon the previously used Form No. 6 accounting data, not the page 700 data. Moreover, AOPL has presented evidence that Suncor's proposal included significant computational errors.[99]

IV. 2016–2021 Oil Pipeline Index

52. Based on the foregoing, the Commission calculates the five-year review of the index level used to determine annual changes to oil pipeline rate ceilings for the five-year period commencing July 1, 2016 as follows. First, as shown in Attachment A (Exhibit 13, Exhibit 14) we remove those pipelines that did not provide Form No. 6, page 700 data or provided incomplete data. Second, as shown in Attachment A (Exhibit 15) we look at the data on Form No. 6, page 700 to calculate each pipeline's cost change on a per barrel-mile basis over the prior five-year period (*e.g.* the years 2009–2014 in this proceeding). Third, in order to remove statistical outliers and spurious data, we trim the data set to those pipelines in the middle 50 percent of cost changes. Fourth, as shown in Attachment A (Exhibit 15) we calculate three measures of the middle 50 percent's central tendency: The median, the mean, and a weighted mean. Fifth, we calculate a composite by taking a simple average of those three measures of central tendency, as shown in Attachment A (Exhibit 1). Finally, this composite is compared to the value of the PPI–FG index data over the same period. The index level is then set at PPI–FG plus (or minus) this differential. Using these calculations, the Commission establishes an index level of PPI–FG plus 1.23 percent (PPI–FG+1.23) for the five-year period commencing July 1, 2016.

The Commission Orders

Consistent with the discussion in this order, the Commission determines that the appropriate oil pricing index for the next five years, July 1, 2016 through June 30, 2021, is PPI–FG+1.23.

By the Commission.

Issued: December 17, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–32701 Filed 12–30–15; 8:45 am]

BILLING CODE 6717–01–P

[92] Similarly, Liquids Shippers' comparison to natural gas pipeline rate changes is misleading because Liquids Shippers' data only includes a portion of natural gas pipelines (not all natural gas pipelines) and does not include all rate changes proposed by those pipelines. Shehadeh October 2015 Affidavit at 31. The underlying economic premise of this analysis is also flawed. First, as Dr. Shehadeh explains, the analogy to natural gas pipelines depends upon a misunderstanding of prices—as price levels, not price growth, are determined by the level of competition in an industry. *Id.* at 30. Second, Liquids Shippers do not establish that the same market forces determining natural gas pipeline prices apply to oil pipelines. *Id.*

[93] June 2015 NOI, 151 FERC ¶ 61,278 at P 1.

[94] This five-year review addresses the calculation of the industry-wide index-level. Negotiated committed shipper contracts only incorporate indexing when both the pipeline and the committed shippers accept such terms. Any objections to these negotiated provisions (including the application of indexing) may be raised during the applicable petition for declaratory order process.

[95] The Commission's indexing methodology was affirmed on appeal following Order No. 561. *AOPL I,* 281 F.3d 239. The dissents and other materials from that proceeding cited by Liquids Shippers were part of the record at that time. In addition, Liquids Shippers cite a Congressional letter which was written before the indexing regulations were finalized, and does not accurately portray how those regulations have been implemented. For example, the letter implies that the index may only increase rates, when, in fact, under Commission regulations the index may require rates to go down. *See* 18 CFR 342.3(e) (2015).

[96] *See* Shehadeh September 2015 Affidavit at 32. Further, the industry as a whole continues to show an under-recovery of the aggregate page 700 cost-of-service. Moreover, as has been recognized from the inception of indexing, some pipelines costs will exceed the rate increases allowed by indexing whereas efficient pipelines may benefit from controlling their costs. Order No. 561, FERC Stats. & Regs. ¶ 30,985 at 30,948–49.

[97] Liquids Shippers argue that pipelines with page 700 revenues exceeding page 700 cost of service should not receive index increases. To the extent that index rate filings of particular pipelines substantially exacerbate pre-existing over-recoveries, current Commission policies allow shippers to file complaints against those index increases. *BP West Coast Products, LLC* v. *SFPP, L.P.,* 121 FERC ¶ 61,141 (2007).

[98] Remaining issues regarding the Commission's regulatory policies may be raised in an adjudicatory context or another, more appropriate forum.

[99] Shehadeh September 2015 Affidavit at 38.

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 578

Cyber-Related Sanctions Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is issuing regulations to implement Executive Order 13694 of April 1, 2015 (''Blocking the Property of Certain Persons Engaging in Significant Malicious Cyber-Enabled Activities''). OFAC intends to supplement this part 578 with a more comprehensive set of regulations, which may include additional interpretive and definitional guidance and additional general licenses and statements of licensing policy.

DATES: *Effective:* December 31, 2015.

FOR FURTHER INFORMATION CONTACT: The Department of the Treasury's Office of Foreign Assets Control: Assistant Director for Licensing, tel.: 202–622–2480, Assistant Director for Regulatory Affairs, tel.: 202–622–4855, Assistant

Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490; or the Department of the Treasury's Office of the Chief Counsel (Foreign Assets Control), Office of the General Counsel, tel.: 202–622–2410.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*www.treasury.gov/ofac*). Certain general information pertaining to OFAC's sanctions programs also is available via facsimile through a 24-hour fax-on-demand service, tel.: 202/622–0077.

Background

On April 1, 2015, the President issued Executive Order 13694 (80 FR 18077, April 2, 2015) (E.O. 13694), invoking the authority of, *inter alia,* the International Emergency Economic Powers Act (50 U.S.C. 1701–1706). OFAC is issuing the Cyber-Related Sanctions Regulations, 31 CFR part 578 (the ''Regulations''), to implement E.O. 13694, pursuant to authorities delegated to the Secretary of the Treasury in E.O. 13694. A copy of E.O. 13694 appears in Appendix A to this part.

The Regulations are being published in abbreviated form at this time for the purpose of providing immediate guidance to the public. OFAC intends to supplement this part 578 with a more comprehensive set of regulations, which may include additional interpretive and definitional guidance, including regarding ''cyber-enabled'' activities, and additional general licenses and statements of licensing policy. The appendix to the Regulations will be removed when OFAC supplements this part with a more comprehensive set of regulations.

Public Participation

Because the Regulations involve a foreign affairs function, the provisions of Executive Order 12866 and the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

Paperwork Reduction Act

The collections of information related to the Regulations are contained in 31 CFR part 501 (the ''Reporting, Procedures and Penalties Regulations''). Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), those collections of information have been approved by the Office of Management and Budget under control number 1505–0164. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

List of Subjects in 31 CFR Part 578

Administrative practice and procedure, Banking, Banks, Blocking of assets, Brokers, Credit, Critical infrastructure, Cyber, Cybersecurity, Foreign trade, Investments, Loans, Securities, Services, Trade secrets.

For the reasons set forth in the preamble, the Department of the Treasury's Office of Foreign Assets Control adds part 578 to 31 CFR chapter V to read as follows:

PART 578—CYBER-RELATED SANCTIONS REGULATIONS

Subpart A—Relation of This Part to Other Laws and Regulations

Sec.

Subpart B—Prohibitions

Subpart C—General Definitions

Subpart D—Interpretations

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

Subparts F–G—[Reserved]

Subpart H—Procedures

Subpart I—Paperwork Reduction Act

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 110–96, 121 Stat. 1011 (50 U.S.C. 1705 note); E.O. 13694, 80 FR 18077, April 2, 2015.

Subpart A—Relation of This Part to Other Laws and Regulations

§ 578.101 Relation of this part to other laws and regulations.

This part is separate from, and independent of, the other parts of this chapter, with the exception of part 501 of this chapter, the recordkeeping and reporting requirements and license application and other procedures of which apply to this part. Actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part. Differing foreign policy and national security circumstances may result in differing interpretations of similar language among the parts of this chapter. No license or authorization contained in or issued pursuant to those other parts authorizes any transaction prohibited by this part. No license or authorization contained in or issued pursuant to any other provision of law or regulation authorizes any transaction prohibited by this part. No license or authorization contained in or issued pursuant to this part relieves the involved parties from complying with any other applicable laws or regulations.

Note to § 578.101: This part has been published in abbreviated form for the purpose of providing immediate guidance to the public. OFAC intends to supplement this part with a more comprehensive set of regulations, which may include additional interpretive and definitional guidance, including regarding ''cyber-enabled''

activities, and additional general licenses and statements of licensing policy.

Subpart B—Prohibitions

§ 578.201 Prohibited transactions.

All transactions prohibited pursuant to Executive Order 13694 of April 1, 2015, are also prohibited pursuant to this part.

Note 1 to § 578.201: The names of persons designated pursuant to Executive Order 13694, whose property and interests in property therefore are blocked pursuant to this section, are published in the **Federal Register** and incorporated into OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) with the identifier ''[CYBER].'' The SDN List is accessible through the following page on OFAC's Web site: *www.treasury.gov/sdn.* Additional information pertaining to the SDN List can be found in Appendix A to this chapter. *See* § 578.406 concerning entities that may not be listed on the SDN List but whose property and interests in property are nevertheless blocked pursuant to this section.

Note 2 to § 578.201: The International Emergency Economic Powers Act (50 U.S.C. 1701–1706), in Section 203 (50 U.S.C. 1702), authorizes the blocking of property and interests in property of a person during the pendency of an investigation. The names of persons whose property and interests in property are blocked pending investigation pursuant to this section also are published in the **Federal Register** and incorporated into the SDN List with the identifier ''[BPI–CYBER]''.

Note 3 to § 578.201: Sections 501.806 and 501.807 of this chapter describe the procedures to be followed by persons seeking, respectively, the unblocking of funds that they believe were blocked due to mistaken identity, or administrative reconsideration of their status as persons whose property and interests in property are blocked pursuant to this section.

§ 578.202 Effect of transfers violating the provisions of this part.

(a) Any transfer after the effective date that is in violation of any provision of this part or of any regulation, order, directive, ruling, instruction, or license issued pursuant to this part, and that involves any property or interest in property blocked pursuant to § 578.201, is null and void and shall not be the basis for the assertion or recognition of any interest in or right, remedy, power, or privilege with respect to such property or property interest.

(b) No transfer before the effective date shall be the basis for the assertion or recognition of any right, remedy, power, or privilege with respect to, or any interest in, any property or interest in property blocked pursuant to § 578.201, unless the person who holds or maintains such property, prior to that date, had written notice of the transfer or by any written evidence had recognized such transfer.

(c) Unless otherwise provided, a license or other authorization issued by OFAC before, during, or after a transfer shall validate such transfer or make it enforceable to the same extent that it would be valid or enforceable but for the provisions of this part and any regulation, order, directive, ruling, instruction, or license issued pursuant to this part.

(d) Transfers of property that otherwise would be null and void or unenforceable by virtue of the provisions of this section shall not be deemed to be null and void or unenforceable as to any person with whom such property is or was held or maintained (and as to such person only) in cases in which such person is able to establish to the satisfaction of OFAC each of the following:

(1) Such transfer did not represent a willful violation of the provisions of this part by the person with whom such property is or was held or maintained (and as to such person only);

(2) The person with whom such property is or was held or maintained did not have reasonable cause to know or suspect, in view of all the facts and circumstances known or available to such person, that such transfer required a license or authorization issued pursuant to this part and was not so licensed or authorized, or, if a license or authorization did purport to cover the transfer, that such license or authorization had been obtained by misrepresentation of a third party or withholding of material facts or was otherwise fraudulently obtained; and

(3) The person with whom such property is or was held or maintained filed with OFAC a report setting forth in full the circumstances relating to such transfer promptly upon discovery that:

(i) Such transfer was in violation of the provisions of this part or any regulation, ruling, instruction, license, or other directive or authorization issued pursuant to this part;

(ii) Such transfer was not licensed or authorized by OFAC; or

(iii) If a license did purport to cover the transfer, such license had been obtained by misrepresentation of a third party or withholding of material facts or was otherwise fraudulently obtained.

Note to paragraph (d): The filing of a report in accordance with the provisions of paragraph (d)(3) of this section shall not be deemed evidence that the terms of paragraphs (d)(1) and (2) of this section have been satisfied.

(e) Unless licensed pursuant to this part, any attachment, judgment, decree, lien, execution, garnishment, or other judicial process is null and void with respect to any property and interests in property blocked pursuant to § 578.201.

§ 578.203 Holding of funds in interest-bearing accounts; investment and reinvestment.

(a) Except as provided in paragraphs (e) or (f) of this section, or as otherwise directed by OFAC, any U.S. person holding funds, such as currency, bank deposits, or liquidated financial obligations, subject to § 578.201 shall hold or place such funds in a blocked interest-bearing account located in the United States.

(b)(1) For purposes of this section, the term *blocked interest-bearing account* means a blocked account:

(i) In a federally-insured U.S. bank, thrift institution, or credit union, provided the funds are earning interest at rates that are commercially reasonable; or

(ii) With a broker or dealer registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), provided the funds are invested in a money market fund or in U.S. Treasury bills.

(2) Funds held or placed in a blocked account pursuant to paragraph (a) of this section may not be invested in instruments the maturity of which exceeds 180 days.

(c) For purposes of this section, a rate is commercially reasonable if it is the rate currently offered to other depositors on deposits or instruments of comparable size and maturity.

(d) For purposes of this section, if interest is credited to a separate blocked account or subaccount, the name of the account party on each account must be the same.

(e) Blocked funds held in instruments the maturity of which exceeds 180 days at the time the funds become subject to § 578.201 may continue to be held until maturity in the original instrument, provided any interest, earnings, or other proceeds derived therefrom are paid into a blocked interest-bearing account in accordance with paragraphs (a) or (f) of this section.

(f) Blocked funds held in accounts or instruments outside the United States at the time the funds become subject to § 578.201 may continue to be held in the same type of accounts or instruments, provided the funds earn interest at rates that are commercially reasonable.

(g) This section does not create an affirmative obligation for the holder of blocked tangible property, such as chattels or real estate, or of other blocked property, such as debt or equity

securities, to sell or liquidate such property. However, OFAC may issue licenses permitting or directing such sales or liquidation in appropriate cases.

(h) Funds subject to this section may not be held, invested, or reinvested in a manner that provides immediate financial or economic benefit or access to any person whose property and interests in property are blocked pursuant to § 578.201, nor may their holder cooperate in or facilitate the pledging or other attempted use as collateral of blocked funds or other assets.

§ 578.204 Expenses of maintaining blocked property; liquidation of blocked property.

(a) Except as otherwise authorized, and notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or contract entered into or any license or permit granted prior to the effective date, all expenses incident to the maintenance of physical property blocked pursuant to § 578.201 shall be the responsibility of the owners or operators of such property, which expenses shall not be met from blocked funds.

(b) Property blocked pursuant to § 578.201 may, in the discretion of OFAC, be sold or liquidated and the net proceeds placed in a blocked interest-bearing account in the name of the owner of the property.

Subpart C—General Definitions

§ 578.300 Applicability of definitions.

The definitions in this subpart apply throughout the entire part.

§ 578.301 Blocked account; blocked property.

The terms *blocked account* and *blocked property* shall mean any account or property subject to the prohibitions in § 578.201 held in the name of a person whose property and interests in property are blocked pursuant to § 578.201, or in which such person has an interest, and with respect to which payments, transfers, exportations, withdrawals, or other dealings may not be made or effected except pursuant to a license or other authorization from OFAC expressly authorizing such action.

Note to § 578.301: See § 578.406 concerning the blocked status of property and interests in property of an entity that is 50 percent or more owned by persons whose property and interests in property are blocked pursuant to § 578.201.

§ 578.302 Effective date.

The term *effective date* refers to the effective date of the applicable prohibitions and directives contained in this part, and, with respect to a person whose property and interests in property are blocked pursuant to § 578.201, is the earlier of the date of actual or constructive notice that such person's property and interests in property are blocked.

§ 578.303 Entity.

The term *entity* means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization.

§ 578.304 Financial, material, or technological support.

The term *financial, material, or technological support,* as used in Executive Order 13694 of April 1, 2015, means any property, tangible or intangible, including but not limited to currency, financial instruments, securities, or any other transmission of value; weapons or related materiel; chemical or biological agents; explosives; false documentation or identification; communications equipment; computers; electronic or other devices or equipment; technologies; lodging; safe houses; facilities; vehicles or other means of transportation; or goods. ''Technologies'' as used in this definition means specific information necessary for the development, production, or use of a product, including related technical data such as blueprints, plans, diagrams, models, formulae, tables, engineering designs and specifications, manuals, or other recorded instructions.

§ 578.305 Interest.

Except as otherwise provided in this part, the term *interest,* when used with respect to property (*e.g.,* ''an interest in property''), means an interest of any nature whatsoever, direct or indirect.

§ 578.306 Licenses; general and specific.

(a) Except as otherwise provided in this part, the term *license* means any license or authorization contained in or issued pursuant to this part.

(b) The term *general license* means any license or authorization the terms of which are set forth in subpart E of this part or made available on OFAC's Web site: *www.treasury.gov/ofac.*

(c) The term *specific license* means any license or authorization issued pursuant to this part but not set forth in subpart E of this part or made available on OFAC's Web site: *www.treasury.gov/ofac.*

Note to § 578.306: *See* § 501.801 of this chapter on licensing procedures.

§ 578.307 OFAC.

The term *OFAC* means the Department of the Treasury's Office of Foreign Assets Control.

§ 578.308 Person.

The term *person* means an individual or entity.

§ 578.309 Property; property interest.

The terms *property* and *property interest* include, but are not limited to, money, checks, drafts, bullion, bank deposits, savings accounts, debts, indebtedness, obligations, notes, guarantees, debentures, stocks, bonds, coupons, any other financial instruments, bankers acceptances, mortgages, pledges, liens or other rights in the nature of security, warehouse receipts, bills of lading, trust receipts, bills of sale, any other evidences of title, ownership or indebtedness, letters of credit and any documents relating to any rights or obligations thereunder, powers of attorney, goods, wares, merchandise, chattels, stocks on hand, ships, goods on ships, real estate mortgages, deeds of trust, vendors' sales agreements, land contracts, leaseholds, ground rents, real estate and any other interest therein, options, negotiable instruments, trade acceptances, royalties, book accounts, accounts payable, judgments, patents, trademarks or copyrights, insurance policies, safe deposit boxes and their contents, annuities, pooling agreements, services of any nature whatsoever, contracts of any nature whatsoever, and any other property, real, personal, or mixed, tangible or intangible, or interest or interests therein, present, future, or contingent.

§ 578.310 Transfer.

The term *transfer* means any actual or purported act or transaction, whether or not evidenced by writing, and whether or not done or performed within the United States, the purpose, intent, or effect of which is to create, surrender, release, convey, transfer, or alter, directly or indirectly, any right, remedy, power, privilege, or interest with respect to any property. Without limitation on the foregoing, it shall include the making, execution, or delivery of any assignment, power, conveyance, check, declaration, deed, deed of trust, power of attorney, power of appointment, bill of sale, mortgage, receipt, agreement, contract, certificate, gift, sale, affidavit, or statement; the making of any payment; the setting off of any obligation or credit; the appointment of

any agent, trustee, or fiduciary; the creation or transfer of any lien; the issuance, docketing, or filing of, or levy of or under, any judgment, decree, attachment, injunction, execution, or other judicial or administrative process or order, or the service of any garnishment; the acquisition of any interest of any nature whatsoever by reason of a judgment or decree of any foreign country; the fulfillment of any condition; the exercise of any power of appointment, power of attorney, or other power; or the acquisition, disposition, transportation, importation, exportation, or withdrawal of any security.

§ 578.311 United States.

The term *United States* means the United States, its territories and possessions, and all areas under the jurisdiction or authority thereof.

§ 578.312 United States person; U.S. person.

The term *United States person* or *U.S. person* means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States.

§ 578.313 U.S. financial institution.

The term *U.S. financial institution* means any U.S. entity (including its foreign branches) that is engaged in the business of accepting deposits, making, granting, transferring, holding, or brokering loans or credits, or purchasing or selling foreign exchange, securities, or commodity futures or options, or procuring purchasers and sellers thereof, as principal or agent. It includes depository institutions, banks, savings banks, trust companies, securities brokers and dealers, commodity futures and options brokers and dealers, forward contract and foreign exchange merchants, securities and commodities exchanges, clearing corporations, investment companies, employee benefit plans, and U.S. holding companies, U.S. affiliates, or U.S. subsidiaries of any of the foregoing. This term includes those branches, offices, and agencies of foreign financial institutions that are located in the United States, but not such institutions' foreign branches, offices, or agencies.

Subpart D—Interpretations

§ 578.401 [Reserved]

§ 578.402 Effect of amendment.

Unless otherwise specifically provided, any amendment, modification, or revocation of any provision in or appendix to this part or chapter or of any order, regulation, ruling, instruction, or license issued by OFAC does not affect any act done or omitted, or any civil or criminal proceeding commenced or pending, prior to such amendment, modification, or revocation. All penalties, forfeitures, and liabilities under any such order, regulation, ruling, instruction, or license continue and may be enforced as if such amendment, modification, or revocation had not been made.

§ 578.403 Termination and acquisition of an interest in blocked property.

(a) Whenever a transaction licensed or authorized by or pursuant to this part results in the transfer of property (including any property interest) away from a person whose property and interests in property are blocked pursuant to § 578.201, such property shall no longer be deemed to be property blocked pursuant to § 578.201, unless there exists in the property another interest that is blocked pursuant to § 578.201, the transfer of which has not been effected pursuant to license or other authorization.

(b) Unless otherwise specifically provided in a license or other authorization issued pursuant to this part, if property (including any property interest) is transferred or attempted to be transferred to a person whose property and interests in property are blocked pursuant to § 578.201, such property shall be deemed to be property in which such a person has an interest and therefore blocked.

§ 578.404 Transactions ordinarily incident to a licensed transaction.

Any transaction ordinarily incident to a licensed transaction and necessary to give effect thereto is also authorized, except:

(a) An ordinarily incident transaction, not explicitly authorized within the terms of the license, by or with a person whose property and interests in property are blocked pursuant to § 578.201; or

(b) An ordinarily incident transaction, not explicitly authorized within the terms of the license, involving a debit to a blocked account or a transfer of blocked property.

§ 578.405 Setoffs prohibited.

A setoff against blocked property (including a blocked account), whether by a U.S. bank or other U.S. person, is a prohibited transfer under § 578.201 if effected after the effective date.

§ 578.406 Entities owned by persons whose property and interests in property are blocked.

Persons whose property and interests in property are blocked pursuant to § 578.201 have an interest in all property and interests in property of an entity in which such blocked persons own, whether individually or in the aggregate, directly or indirectly, a 50 percent or greater interest. The property and interests in property of such an entity, therefore, are blocked, and such an entity is a person whose property and interests in property are blocked pursuant to § 578.201, regardless of whether the name of the entity is incorporated into OFAC's Specially Designated Nationals and Blocked Persons List (SDN List).

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

§ 578.501 General and specific licensing procedures.

For provisions relating to licensing procedures, see part 501, subpart E of this chapter. Licensing actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part. General licenses and statements of licensing policy relating to this part also may be available through the Cyber-Related sanctions page on OFAC's Web site: *www.treasury.gov/ofac.*

§ 578.502 [Reserved]

§ 578.503 Exclusion from licenses.

OFAC reserves the right to exclude any person, property, transaction, or class thereof from the operation of any license or from the privileges conferred by any license. OFAC also reserves the right to restrict the applicability of any license to particular persons, property, transactions, or classes thereof. Such actions are binding upon actual or constructive notice of the exclusions or restrictions.

§ 578.504 Payments and transfers to blocked accounts in U.S. financial institutions.

Any payment of funds or transfer of credit in which a person whose property and interests in property are blocked pursuant to § 578.201 has any interest that comes within the possession or control of a U.S. financial institution must be blocked in an account on the books of that financial institution. A transfer of funds or credit by a U.S. financial institution between blocked accounts in its branches or offices is authorized, provided that no transfer is made from an account within the

United States to an account held outside the United States, and further provided that a transfer from a blocked account may be made only to another blocked account held in the same name.

Note to § 578.504: *See* § 501.603 of this chapter for mandatory reporting requirements regarding financial transfers. *See also* § 578.203 concerning the obligation to hold blocked funds in interest-bearing accounts.

§ 578.505 Entries in certain accounts for normal service charges authorized.

(a) A U.S. financial institution is authorized to debit any blocked account held at that financial institution in payment or reimbursement for normal service charges owed it by the owner of that blocked account.

(b) As used in this section, the term *normal service charges* shall include charges in payment or reimbursement for interest due; cable, telegraph, internet, or telephone charges; postage costs; custody fees; small adjustment charges to correct bookkeeping errors; and, but not by way of limitation, minimum balance charges, notary and protest fees, and charges for reference books, photocopies, credit reports, transcripts of statements, registered mail, insurance, stationery and supplies, and other similar items.

§ 578.506 Provision of certain legal services authorized.

(a) The provision of the following legal services to or on behalf of persons whose property and interests in property are blocked pursuant to § 578.201 or any further Executive orders relating to the national emergency declared in Executive Order 13694 of April 1, 2015, is authorized, provided that receipt of payment of professional fees and reimbursement of incurred expenses must be specifically licensed, authorized pursuant to § 578.507, which authorizes certain payments for legal services from funds originating outside the United States, or otherwise authorized pursuant to this part:

(1) Provision of legal advice and counseling on the requirements of and compliance with the laws of the United States or any jurisdiction within the United States, provided that such advice and counseling are not provided to facilitate transactions in violation of this part;

(2) Representation of persons named as defendants in or otherwise made parties to legal, arbitration, or administrative proceedings before any U.S. federal, state, or local court or agency;

(3) Initiation and conduct of legal, arbitration, or administrative proceedings before any U.S. federal, state, or local court or agency;

(4) Representation of persons before any U.S. federal, state, or local court or agency with respect to the imposition, administration, or enforcement of U.S. sanctions against such persons; and

(5) Provision of legal services in any other context in which prevailing U.S. law requires access to legal counsel at public expense.

(b) The provision of any other legal services to persons whose property and interests in property are blocked pursuant to § 578.201 or any further Executive orders relating to the national emergency declared in Executive Order 13694 of April 1, 2015, not otherwise authorized in this part, requires the issuance of a specific license.

(c) Entry into a settlement agreement or the enforcement of any lien, judgment, arbitral award, decree, or other order through execution, garnishment, or other judicial process purporting to transfer or otherwise alter or affect property or interests in property blocked pursuant to § 578.201 or any further Executive orders relating to the national emergency declared in Executive Order 13694 of April 1, 2015, is prohibited unless licensed pursuant to this part.

Note to § 578.506: U.S. persons seeking administrative reconsideration or judicial review of their designation or the blocking of their property and interests in property may apply for a specific license from OFAC to authorize the release of a limited amount of blocked funds for the payment of legal fees where alternative funding sources are not available. For more information, see OFAC's *Guidance on the Release of Limited Amounts of Blocked Funds for Payment of Legal Fees and Costs Incurred in Challenging the Blocking of U.S. Persons in Administrative or Civil Proceedings,* which is available on OFAC's Web site: *www.treasury.gov/ofac.*

§ 578.507 Payments for legal services from funds originating outside the United States authorized.

(a) Receipts of payment of professional fees and reimbursement of incurred expenses for the provision of legal services authorized pursuant to § 578.506(a) to or on behalf of any person whose property and interests in property are blocked pursuant to § 578.201 or any further Executive orders relating to the national emergency declared in Executive Order 13694, of April 1, 2015, are authorized from funds originating outside the United States, provided that the funds received by U.S. persons as payment of professional fees and reimbursement of incurred expenses for the provision of legal services authorized pursuant to § 578.506(a) do not originate from:

(1) A source within the United States;

(2) Any source, wherever located, within the possession or control of a U.S. person; or

(3) Any individual or entity, other than the person on whose behalf the legal services authorized pursuant to § 578.506(a) are to be provided, whose property and interests in property are blocked pursuant to any part of this chapter or any Executive order.

Note to paragraph (a) of § 578.507: This paragraph authorizes the blocked person on whose behalf the legal services authorized pursuant to § 578.506(a) are to be provided to make payments for authorized legal services using funds originating outside the United States that were not previously blocked. Nothing in this paragraph authorizes payments for legal services using funds in which any other person whose property and interests in property are blocked pursuant to § 578.201, any other part of this chapter, or any Executive order has an interest.

(b) *Reports.* (1) U.S. persons who receive payments in connection with legal services authorized pursuant to § 578.506(a) must submit annual reports no later than 30 days following the end of the calendar year during which the payments were received providing information on the funds received. Such reports shall specify:

(i) The individual or entity from whom the funds originated and the amount of funds received; and

(ii) If applicable:

(A) The names of any individuals or entities providing related services to the U.S. person receiving payment in connection with authorized legal services, such as private investigators or expert witnesses;

(B) A general description of the services provided; and

(C) The amount of funds paid in connection with such services.

(2) The reports, which must reference this section, are to be mailed to: Licensing Division, Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW., Annex, Washington, DC 20220.

Note to § 578.507: U.S. persons who receive payments in connection with legal services authorized pursuant to § 578.506(a) do not need to obtain specific authorization to contract for related services that are ordinarily incident to the provision of those legal services, such as those provided by private investigators or expert witnesses, or to pay for such services. Additionally, U.S. persons do not need to obtain specific authorization to provide related services that are ordinarily incident to the provision of legal services authorized pursuant to § 578.506(a).

§ 578.508 Authorization of emergency medical services.

The provision of nonscheduled emergency medical services in the United States to persons whose property and interests in property are blocked pursuant to § 578.201 or any further Executive orders relating to the national emergency declared in Executive Order 13694 of April 1, 2015 and all receipt of payment for such services are authorized.

Subparts F–G—[Reserved]

Subpart H—Procedures

§ 578.801 [Reserved]

§ 578.802 Delegation by the Secretary of the Treasury.

Any action that the Secretary of the Treasury is authorized to take pursuant to Executive Order 13694 of April 1, 2015, and any further Executive orders relating to the national emergency declared therein, may be taken by the Director of OFAC or by any other person to whom the Secretary of the Treasury has delegated authority so to act.

Subpart I—Paperwork Reduction Act

§ 578.901 Paperwork Reduction Act notice.

For approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) of information collections relating to recordkeeping and reporting requirements, licensing procedures (including those pursuant to statements of licensing policy), and other procedures, see § 501.901 of this chapter. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

Appendix A to Part 578—Executive Order 13694

Executive Order 13694 of April 1, 2015

Blocking the Property of Certain Persons Engaging in Significant Malicious Cyber-Enabled Activities

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 *et seq.*) (NEA), section 212(f) of the Immigration and Nationality Act of 1952 (8 U.S.C. 1182(f)), and section 301 of title 3, United States Code,

I, BARACK OBAMA, President of the United States of America, find that the increasing prevalence and severity of malicious cyber-enabled activities originating from, or directed by persons located, in whole or in substantial part, outside the United States constitute an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States. I hereby declare a national emergency to deal with this threat.

Accordingly, I hereby order:

Section 1. (a) All property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person of the following persons are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in:

(i) any person determined by the Secretary of the Treasury, in consultation with the Attorney General and the Secretary of State, to be responsible for or complicit in, or to have engaged in, directly or indirectly, cyber-enabled activities originating from, or directed by persons located, in whole or in substantial part, outside the United States that are reasonably likely to result in, or have materially contributed to, a significant threat to the national security, foreign policy, or economic health or financial stability of the United States and that have the purpose or effect of:

(A) harming, or otherwise significantly compromising the provision of services by, a computer or network of computers that support one or more entities in a critical infrastructure sector;

(B) significantly compromising the provision of services by one or more entities in a critical infrastructure sector;

(C) causing a significant disruption to the availability of a computer or network of computers; or

(D) causing a significant misappropriation of funds or economic resources, trade secrets, personal identifiers, or financial information for commercial or competitive advantage or private financial gain; or

(ii) any person determined by the Secretary of the Treasury, in consultation with the Attorney General and the Secretary of State:

(A) to be responsible for or complicit in, or to have engaged in, the receipt or use for commercial or competitive advantage or private financial gain, or by a commercial entity, outside the United States of trade secrets misappropriated through cyber-enabled means, knowing they have been misappropriated, where the misappropriation of such trade secrets is reasonably likely to result in, or has materially contributed to, a significant threat to the national security, foreign policy, or economic health or financial stability of the United States;

(B) to have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, any activity described in subsections (a)(i) or (a)(ii)(A) of this section or any person whose property and interests in property are blocked pursuant to this order;

(C) to be owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to this order; or

(D) to have attempted to engage in any of the activities described in subsections (a)(i) and (a)(ii)(A)–(C) of this section.

(b) The prohibitions in subsection (a) of this section apply except to the extent provided by statutes, or in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the effective date of this order.

Sec. 2. I hereby determine that the making of donations of the type of articles specified in section 203(b)(2) of IEEPA (50 U.S.C. 1702(b)(2)) by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to section 1 of this order would seriously impair my ability to deal with the national emergency declared in this order, and I hereby prohibit such donations as provided by section 1 of this order.

Sec. 3. The prohibitions in section 1 of this order include but are not limited to:

(a) the making of any contribution or provision of funds, goods, or services by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to this order; and

(b) the receipt of any contribution or provision of funds, goods, or services from any such person.

Sec. 4. I hereby find that the unrestricted immigrant and nonimmigrant entry into the United States of aliens determined to meet one or more of the criteria in section 1(a) of this order would be detrimental to the interests of the United States, and I hereby suspend entry into the United States, as immigrants or nonimmigrants, of such persons. Such persons shall be treated as persons covered by section 1 of Proclamation 8693 of July 24, 2011 (Suspension of Entry of Aliens Subject to United Nations Security Council Travel Bans and International Emergency Economic Powers Act Sanctions).

Sec. 5. (a) Any transaction that evades or avoids, has the purpose of evading or avoiding, causes a violation of, or attempts to violate any of the prohibitions set forth in this order is prohibited.

(b) Any conspiracy formed to violate any of the prohibitions set forth in this order is prohibited.

Sec. 6. For the purposes of this order:

(a) the term ''person'' means an individual or entity;

(b) the term ''entity'' means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization;

(c) the term ''United States person'' means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States;

(d) the term ''critical infrastructure sector'' means any of the designated critical infrastructure sectors identified in Presidential Policy Directive 21; and

(e) the term ''misappropriation'' includes any taking or obtaining by improper means, without permission or consent, or under false pretenses.

Sec. 7. For those persons whose property and interests in property are blocked pursuant to this order who might have a constitutional presence in the United States, I find that because of the ability to transfer

funds or other assets instantaneously, prior notice to such persons of measures to be taken pursuant to this order would render those measures ineffectual. I therefore determine that for these measures to be effective in addressing the national emergency declared in this order, there need be no prior notice of a listing or determination made pursuant to section 1 of this order.

Sec. 8. The Secretary of the Treasury, in consultation with the Attorney General and the Secretary of State, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by IEEPA as may be necessary to carry out the purposes of this order. The Secretary of the Treasury may redelegate any of these functions to other officers and agencies of the United States Government consistent with applicable law. All agencies of the United States Government are hereby directed to take all appropriate measures within their authority to carry out the provisions of this order.

Sec. 9. The Secretary of the Treasury, in consultation with the Attorney General and the Secretary of State, is hereby authorized to submit the recurring and final reports to the Congress on the national emergency declared in this order, consistent with section 401(c) of the NEA (50 U.S.C. 1641(c)) and section 204(c) of IEEPA (50 U.S.C. 1703(c)).

Sec. 10. This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

Barack Obama
THE WHITE HOUSE,
April 1, 2015

Dated: December 11, 2015.

John E. Smith,

Acting Director, Office of Foreign Assets Control.

Approved:
Dated: December 16, 2015.

Adam J. Szubin,

Acting Under Secretary, Office of Terrorism and Financial Intelligence, Department of the Treasury.

[FR Doc. 2015–32881 Filed 12–30–15; 8:45 am]

BILLING CODE P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 217

[Docket ID: DOD–2007–OS–0001]

RIN 0790–AI19

Service Academies

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness, DoD.

ACTION: Final rule.

SUMMARY: This rule establishes policy, assigns responsibilities, and prescribes procedures for DoD oversight of the Service academies (referred to in this rule as ''the academies''). It implements the United States Code for the establishment and operation of the United States Military Academy, the United States Naval Academy, and the United States Air Force Academy.

DATES: *Effective Date:* This rule is effective December 31, 2015.

FOR FURTHER INFORMATION CONTACT: Lt. Col. Keithen Washington, 703 695–5529.

SUPPLEMENTARY INFORMATION:

Executive Summary

I. Purpose of the Regulatory Action

a. Purpose. This rule provides required updates to DoD policy and procedures because some policy changes and court decisions have had a great impact on the eligibility of potential applicants' entry into a military academy. All language addressing homosexuality, homosexual acts, homosexual statements and homosexual marriage has been removed in accordance with the December 22, 2010 repeal of Don't Ask, Don't Tell policy, which opened military service to homosexuals, and the subsequent United States v. Windsor decision (570 U.S. 12, 133 S. Ct. 2675 (2013), 1 U.S.C. 7; 28 U.S.C. 1738c) which found section 3 of the Defense of Marriage Act (DOMA) unconstitutional. By removing all references to homosexual conduct, acts or marriage as grounds for discharge, otherwise qualified applicants are now free to apply and enroll in a military academy without prejudice or fear of reprisal regardless of their sexual orientation. This rule is required immediately to remove any legal and policy restrictions which would prevent a potential applicant from entry into a military academy based solely on their sexual orientation.

Additionally, the academies must attract, recruit and retain high achieving citizens who are pursuing undergraduate degrees critical to the DoD's national security mission. A highly qualified and diverse pool of citizens is needed to replenish and fortify DoD's workforce. The academies finance higher education and provide opportunities to individuals who may not otherwise have the means nor the opportunity to pursue. Furthermore, because the Military Services provide critical national security, providing them with a skilled and talented workforce is vitally necessary to defend the United States. Updating these policies and procedures is vital to the DoD meeting its mission to man an all-volunteer force with qualified citizens.

b. Succinct statement of legal authority for the regulatory action.

Authority: 10 U.S.C. Chapters 403, 603, and 903.

II. Summary of the Major Provisions of the Regulatory Action

The academies annually provide newly commissioned officers to each Service who have been immersed in the history, traditions, and professional values of the Military Services and developed to be leaders of character, dedicated to a career of professional excellence in service to the Nation. The accession of these officers generates a core group of innovative leaders capable of thinking critically who will exert positive peer influence to convey and sustain these traditions, attitudes, values, and beliefs essential to the long-term readiness and success of the Military Services.

III. Costs and Benefits

Administrative costs are negligible and the benefits would be clear, concise rules that enable the Secretary of Defense to ensure that the Service Academies operate efficiently and meet the needs of the armed forces.

Retrospective Review

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://www.regulations.gov/#!docketDetail;dct=FR+PR+N+O+SR;rpp=10;po=0;D=DOD-2011-OS-0036.*

Public Comment

Notice and comment are not required for this rule under the Administrative Procedure Act because, as the rule establishes policy, assigns responsibility, and prescribes procedures for DoD oversight of the academies, it directly relates to a military function of the United States (See 5 U.S.C. 553(a)(1)). However, DoD previously published a proposed rule on October 18, 2007 (72 FR 59053–59064), but that version was never finalized. One public comment was received that was provided as a means for improvement.

Comment: The comment received concerned the protocol requiring that all new cadets and midshipmen to undergo Human Immunodeficiency Virus (HIV), drug, and alcohol testing within 72 hours of reception, and the requirement that any appointment as a cadet or

midshipman to any of the Service Academies will be terminated if and ''when it is determined the individual is HIV positive or dependent on drugs or alcohol.'' The individual who submitted the comment did not contest the justification for appointment termination if any of the mentioned conditions existed. Rather the individual took issue with the fact that HIV positive status was paired with drug and alcohol dependency and believes it implies a similarity between drug and alcohol dependency and affliction with HIV.

Response: It is recognized that HIV affliction and drug and alcohol abuse are very different issues. Accordingly, the three are no longer linked. Additionally, due to comments received during interagency coordination of this rule, language addressing HIV affliction as well as language addressing drug and alcohol abuse have been removed from this rule. A reference to the appropriate DoD Instructions that address these conditions has been included in the rule.

Other Changes

(1) Language addressing foreign students has been included and/or clarified.

(2) Language addressing homosexuality, homosexual acts, homosexual statements and homosexual marriage has been removed.

(3) For additional understanding and clarity, added a definition for excess leave.

(4) Reworded some language for clarity based on additional internal comments received.

Regulatory Procedures

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

Executive Orders 13563 and 12866 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 ''significant regulatory action,'' although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget (OMB).

Sec. 202, Public Law 104–4, ''Unfunded Mandates Reform Act'' (2 U.S.C. Chapter 25)

It has been determined that 32 CFR part 217 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 217 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)

This rule does not add any new information or reporting requirements. Existing collections approved under OMB Control Number 0701–0026, ''Nomination for Appointment to the United States Military Academy, Naval Academy, and Air Force Academy,'' will be used. The Department will continue to review its processes to identify additional collection instruments and consider how these collection tools may be improved and make revisions accordingly. We welcome your comments on how you think we can improve on our information collection activities that are expiring and scheduled for extension and/or revision.

Executive Order 13132, ''Federalism''

It has been determined that 32 CFR part 217 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 217

Colleges and universities, Education.

Accordingly 32 CFR part 217 is added to read as follows:

PART 217—SERVICE ACADEMIES

Sec.

Authority: 10 U.S.C. Chapters 403, 603, and 903.

§ 217.1 Purpose.

This part establishes policy, assigns responsibilities, and prescribes procedures for DoD oversight of the Service academies (referred to in this part as ''the academies'').

§ 217.2 Applicability.

This part applies to Office of the Secretary of Defense, 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 (IG DoD), 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'').

§ 217.3 Definitions.

These terms and their definitions are for the purposes of this part.

Academic year. The time period beginning the first day of the fall semester and ending on the last day of the spring semester.

Academy(ies). The U.S. Military, the U.S. Naval, and the U.S. Air Force Academy.

Academy preparatory schools. Postsecondary educational institutions operated by each of the Military Departments to provide enhanced opportunities for selected candidates to be appointed to the academies.

Active duty lists. A single list of certain officers serving on active duty. Officers are carried on the active duty list of the Military Service of which they are members in order of seniority. (See 10 U.S.C. 620 for additional information.)

Active duty service obligation. A commitment of active military service for a specified period of time.

Agreement. The agreement signed by a U.S. cadet or midshipman in accordance with 10 U.S.C. 2005, 4348(a), 6959(a), or 9348(a).

Appointment. U.S. applicants who are selected for admission to the academies are appointed by the President as cadets or midshipmen. Those U.S. cadets and midshipmen who complete the course of instruction at an academy may be appointed as a commissioned officer in a Military Service. Foreign students admitted to the academies for a course of study pursuant to 10 U.S.C. chapters 403, 603, and 903 and this part, are not formally appointed as cadets or midshipmen.

Boards of Visitors. Boards that visit the academies annually and provide a

report to the President of their views and recommendations about the academies. 10 U.S.C. chapters 403, 603, and 903 define the composition and purpose of those boards.

Cadets and midshipmen. U.S. citizens having been appointed to one of the academies and having taken the oath as cadets or midshipmen. Although not eligible for a formal appointment, foreign students admitted to the academies for a course of study will be called cadets and midshipmen and will be accountable to policies and procedures that govern attendance and will receive all emoluments commensurate with a U.S. citizen cadet or midshipman. Foreign students will not take the oath of office, are at no time considered to be serving on active duty in the Military Services, and will not be eligible for nor offered a commission in a Military Service upon satisfactory completion of their academy course of study nor be eligible to be called to active duty if disenrolled.

Cost of education. Those costs attributable directly to educating a person at an academy under regulations prescribed by the Secretary of the Military Department concerned and approved by the Assistant Secretary of Defense for Manpower and Reserve Affairs (ASD(M&RA)) and Under Secretary of Defense (Comptroller)/Chief Financial Officer (USD(C)/CFO). Such costs include a reasonable charge for the provided education, books, supplies, room, board, transportation, and other miscellaneous items furnished at government expense. Excluded are the costs for cadet or midshipman pay and allowances in accordance with 37 U.S.C. 203, uniforms, military training, and support for nonacademic military operations.

Dependency. Any person for whom an individual has a legally recognized obligation to provide support, including but not limited to spouse and natural, adoptive, or stepchildren.

Disenrollment. The voluntary or involuntary termination of a cadet or midshipman from one of the academies.

Excess leave. Leave granted that exceeds accrued and advance leave and for which the Service member is not entitled to pay and allowances. Generally, a negative leave balance at the time of release from active military duty, discharge, first extension of an enlistment, desertion, or death shall be considered excess leave regardless of the authority under which the leave resulting in the negative balance was granted.

Hazing. Any unauthorized assumption of authority by a cadet or midshipman whereby another cadet or midshipman suffers or is exposed to any cruelty, indignity, humiliation, oppression, or the deprivation or abridgment of any right. The Secretaries of the Military Departments or academy superintendents may issue regulations that augment this definition to amplify or clarify local guidelines.

Honor code (concept). A prescribed standard of ethical behavior applicable to cadets or midshipmen, as determined by the Secretary of the Military Department concerned.

Military service obligation. A commitment of military service for a specified period of time.

§ 217.4 Policy.

It is DoD policy, pursuant to 10 U.S.C. chapters 403, 603, and 903 and consistent with this part, that:

(a) The academies provide, each year, newly commissioned officers to each Service that have been immersed in the history, traditions, and professional values of the Military Services and developed to be leaders of character, dedicated to a career of professional excellence in service to the Nation.

(b) The accession of those officers generates a core group of innovative leaders capable of thinking critically who will exert positive peer influence to convey and sustain these traditions, attitudes, values, and beliefs essential to the long-term readiness and success of the Military Services.

(c) Active duty service is the primary means of reimbursement for education.

(d) Cadets and midshipmen disenrolling or those disenrolled after the beginning of the third academic year from a Service academy normally will be called to active duty in enlisted status, if fit for service.

§ 217.5 Responsibilities.

(a) The Under Secretary of Defense for Personnel and Readiness (USD(P&R)):

(1) Serves as the DoD focal point for matters affecting the academies.

(2) Provides DoD oversight and management of the academies.

(b) Under the authority, direction, and control of the USD(P&R), the ASD(M&RA):

(1) Serves as the OUSD(P&R) focal point for matters affecting the academies and resolves matters of conflict that may arise among the Military Departments.

(2) Assesses and monitors academy operations to ensure cost-effective employment of resources in the accomplishment of the academies' mission.

(3) Develops policy and provides guidance for DoD oversight and management of the academies.

(4) Develops overall DoD policy and provides guidance for the conduct and administration of a uniform academy disenrollment policy.

(5) Approves or disapproves requests to exceed the foreign student limitation from a single country provision in § 217.6(d)(2).

(6) Approves or disapproves requests to release a cadet or midshipman prior to the completion of 2 years of active service.

(c) Under the authority, direction, and control of the USD(P&R), the Assistant Secretary of Defense for Health Affairs (ASD(HA)) establishes medical standards for applicants to the academies that are applied through the DoD Medical Examination Review Board, according to DoD Directive 5154.25E, ''DoD Medical Examination Review Board'' (available at *http://www.dtic.mil/whs/directives/corres/pdf/515425e.pdf*).

(d) The Under Secretary of Defense for Policy (USD(P)):

(1) Oversees the management of admission vacancies for foreign students.

(2) Designates countries from which foreign students may be selected.

(3) Issues implementing guidance as necessary, including waiver of tuition or fees reimbursement either wholly or partially for management of admission vacancies for foreign students.

(e) The USD(C)/CFO establishes and publishes the tuition rate for foreign students.

(f) Under the authority, direction, and control of the USD(C)/CFO and with the coordination of the superintendents of the academies, the Director, Defense Finance and Accounting Service (DFAS), is responsible for billing and collecting reimbursements due to the academies for foreign students, except when those reimbursements have been waived by the USD(P).

(g) The IG DoD evaluates programs, as set forth in DoD Directive 5106.01, ''Inspector General of the Department of Defense'' (available at *http://www.dtic.mil/whs/directives/corres/pdf/510601p.pdf*) and 5 U.S.C. Appendix (also known as and referred to in this part as the ''Inspector General Act of 1978,'' as amended).

(h) The Secretaries of the Military Departments:

(1) Establish and maintain a military academy pursuant to 10 U.S.C. chapters 33, 47, 61, 403, 603, and 903 and 10 U.S.C. 702 and 2005 and this part. 10 U.S.C. chapter 47 is also known and referred to in this part as ''The Uniform Code of Military Justice (UCMJ),'' as amended.

(2) Ensure appropriate oversight and management of the academies.

(3) Develop quantified performance goals and measures, linked with the schools' mission statements to annually evaluate the performance of the academies and preparatory schools.

(4) Prescribe a written agreement when providing an academy appointment to U.S. candidates who agree to conditions in § 217.6(f) and are otherwise qualified.

(5) Prescribe regulations on:

(i) A breach of a cadet's or midshipman's ''agreement to serve'' for the purpose of ordering that individual to active duty.

(ii) Procedures for determining whether such a breach has occurred.

(iii) Standards for determining the period of time for which a person may be ordered to serve on active duty according to § 217.6(j). (See also 10 U.S.C. 4348(c), 6959(c), and 9348(c).

(6) Work with the Director, DFAS, to establish and maintain jointly developed, uniform accounting procedures for determining the cost of education at their respective academies. These procedures must be consistent with Chapter 6 of Volume 11A of DoD 7000.14–R, ''Department of Defense Financial Management Regulation'' (available at *http://comptroller.defense.gov/Portals/45/documents/fmr/Volume_11a.pdf*) and DoD Instruction 5010.40, ''Managers' Internal Control (MIC) Program Procedures'' (available at *http://www.dtic.mil/whs/directives/corres/pdf/501040p.pdf*). A standard method for computing reimbursement of the cost of education will be in these procedures and accounts receivable will be recorded as follows:

(i) Establish an accounts receivable for the cost of education when a cadet or midshipman disenrolls or is disenrolled from an academy.

(ii) Reduce the accounts receivable proportionately to the period of active duty served by the disenrolled cadets or midshipmen.

(7) Prescribe the repayment procedures of an individual's outstanding debt so that the total amount due—based on 37 U.S.C. 303a, monthly repayment schedules, repayment method, and other information—clearly will be explained in writing to the debtor.

(8) Ensure that proper credit management and debt collection procedures are followed pursuant to chapters 28–32 of Volume 5, and chapters 38 and 50 of Volume 7A of DoD 7000.14–R (available at *http://comptroller.defense.gov/Portals/45/documents/fmr/Volume_05.pdf* and *http://comptroller.defense.gov/Portals/45/documents/fmr/Volume_07a.pdf*), to include prescribing repayment procedures of an individual's outstanding academy financial obligation.

(9) Develop an organizational capability to collect, maintain, and submit information on resources in support of an academy, the academy preparatory school, and any other associated training programs.

§ 217.6 Procedures.

(a) *Academies.* Academies are 4-year educational institutions operated by each of the Military Departments to provide successful candidates with degrees of Bachelor of Science and commissions as military officers. The core of the academies' mission statements will be to educate, train, and inspire men and women to become officers in the Military Services to serve the United States.

(b) *Organization of the academies.* (1) There will be at each academy a superintendent and Commandant appointed by the President, a dean of the faculty, chaplain, permanent professors, an athletic director, and a director of admissions. The Secretaries of the Military Departments may employ as many civilian faculty members as considered necessary.

(2) Incumbents of dean, director of admissions, and permanent professorships held by military personnel will be appointed by the President of the United States by and with the advice and consent of the Senate. The superintendent and the commandant will be detailed to those positions by the President.

(3) The immediate governance of the academies is by their superintendents, who also will serve as the commanding officers of the academies and their military posts.

(4) The superintendent is responsible for the day-to-day operation of the academy as well as the welfare of cadets or midshipmen and staff.

(5) The dean of the faculty of the academy directs and manages the development and execution of an undergraduate curriculum that recognizes the requirement for graduates to understand technology, while gaining a sound historical perspective and an understanding of different cultures. The curriculum will be broadly based in the physical and social sciences, the study of languages and cultures in areas in which the DoD is engaged, and the arts and humanities.

(6) The commandant directs and manages military education and training programs and exercises command over cadets or midshipmen, as established by law and determined by the superintendent.

(7) The director of athletics directs and manages the intercollegiate athletic programs and other physical fitness programs, as determined by the superintendent. Intercollegiate athletic programs will be in full compliance with all applicable National Collegiate Athletics Association rules and requirements while maintaining the professional and ethical values of the Services.

(8) The academic faculty will consist of civilian and military members in proportions determined by the Secretary of the Military Department concerned. Faculty members will possess a mix of operational experience, academic expertise, and teaching ability. They:

(i) Exemplify the highest standards of ethical and moral conduct and performance established by the Secretaries of the Military Departments concerned, and the superintendents concerned, consistent with this part.

(ii) Participate in the full spectrum of academy programs and activities and the development of their curriculum.

(iii) Actively participate in the professional, moral, and ethical development of cadets and midshipmen as role models, mentors, and through the enforcement of standards of behavior and conduct.

(9) Service members will conduct themselves in accordance with the requirement of exemplary conduct as specified in 10 U.S.C. 3583, 5947, and 8583.

(10) The superintendent will ensure that noninstructional staff consists of the minimum number of people consistent with effective achievement of the objectives of the academy and its military post.

(11) Compensation and benefits for civilian faculty members will be sufficiently competitive to achieve academic excellence at pay levels determined by the Secretary of the Military Department concerned.

(12) Additional guidance about organization of the academies is in 10 U.S.C. chapters 403, 603, and 903.

(c) *Nomination and appointment of cadets and midshipmen.* (1) Nomination, appointment, admission, authorized strength, and allocation of strength among nominating authorities for cadets and midshipmen are prescribed in 10 U.S.C. chapters 403, 603, and 903 and this part.

(2) U.S. cadets and midshipmen will be appointed by the President alone. An appointment is conditional until the cadet or midshipman is admitted.

(3) Appointments will be offered on a competitive basis to nominated

candidates having the strongest potential for success as cadets or midshipmen, and ultimately as commissioned officers. The nominating sources will be notified of candidates selected for appointment.

(4) Those selected for appointment must have demonstrated, through evaluations prescribed by the Secretary of the Military Department concerned:

(i) High standards of moral character, personal conduct, and integrity.

(ii) The potential to successfully complete the program of instruction.

(iii) An acceptable level of physical fitness.

(iv) Medical qualification for appointments to the academies and for commissioning as required in 10 U.S.C. chapter 33 and further delineated through examination procedures defined in DoD Directive 5154.25E and medical standards defined in DoD Instruction 6130.03, ''Physical Standards for Appointment, Enlistment, or Induction in the Military Services'' (available at *http://www.dtic.mil/whs/directives/corres/pdf/613003p.pdf*), DoD Instruction 6485.01, ''Human Immunodeficiency Virus in Military Service Members'' (available at *http://www.dtic.mil/whs/directives/corres/pdf/648501p.pdf*), and DoD Instruction 1010.16, ''Technical Procedures for the Military Personnel Drug Abuse Testing Program'' (available at *http://www.dtic.mil/whs/directives/corres/pdf/101016p.pdf*).

(5) Specific eligibility criteria also guide selection:

(i) *Age.* Applicants must be at least 17 years of age, and not have passed their 23rd birthday on July 1 of the year of entry into an academy.

(ii) *Citizenship.* Except for foreigners admitted to the academies under 10 U.S.C. chapters 403, 603, and 903 and this part, those appointed must be citizens or nationals of the United States.

(iii) *Residence.* If nominated by an authority designated in the ''Congressional'' and ''U.S. Possession'' categories as defined in 10 U.S.C. chapters 403, 603, and 903, applicants must be domiciled in the constituency of such authorities.

(iv) *Dependents.* Those appointed as cadets or midshipmen must not have dependents.

(v) *Marital Status.* Those appointed as cadets or midshipmen cannot have a spouse.

(6) The academies will work to ensure timely medical evaluations of applicants. Issues relating to the administrative management of those evaluations that are not resolved to the satisfaction of the academies and the activity performing the evaluation will be forwarded to the ASD(M&RA) for resolution.

(7) To be admitted to an academy, U.S. appointees must take and subscribe to an oath prescribed by law or by the Secretary of the Military Department concerned. If a U.S. candidate for admission refuses to take and subscribe to the prescribed oath, the appointment is terminated.

(d) *Cadets and midshipmen from foreign countries.* (1) Foreign students may receive instruction at an academy; the number may not exceed the limits in 10 U.S.C. chapters 403, 603, and 903. Such instruction will be on a reimbursable basis. The USD(P) designates the countries from which candidates may be selected, and may waive reimbursement, either wholly or partially.

(i) Although not eligible for a formal appointment, foreign students admitted to the academies for a course of study will be called cadets and midshipmen, will be accountable to policies and procedures that govern attendance, and are entitled to the equivalent pay and allowances of a cadet or midshipmen appointed from the United States, and from the same appropriation.

(ii) Foreign students will not take the oath addressed in paragraph (c)(7) of this section, are at no time considered to be serving in any status in the Military Services, and will not be eligible for nor offered a commission in the Military Services upon satisfactory completion of their academy course of study nor eligible to be called to active duty if disenrolled.

(2) Not more than three foreign students from a single country may be enrolled at a single academy without ASD(M&RA) approval. Requests for such approval will be submitted by the Secretary of the Military Department concerned, through the USD(P) to the ASD(M&RA). The enrollment restriction does not apply to students participating in exchange programs of up to two semesters' duration.

(3) By the end of May of each year, the USD(C)/CFO will establish the tuition rate for the succeeding school year and publish that rate to the Secretaries of the Military Departments, the USD(P), and the ASD(M&RA).

(4) By the end of June of each year, the USD(P) will publish a list of countries eligible to send students to the academies during the subsequent academic year, specifying reimbursement requirements. That list will be provided to the Secretaries of the Military Departments, the ASD(M&RA), and the responsible U.S. Defense Attaché Offices (USDAOs) or the American embassies, if no servicing USDAO exists.

(5) By the end of August of each year, the superintendent of each academy will extend application invitations, through applicable USDAOs (or the American embassies), to each eligible country. Those invitations will describe admissions procedures and define the country's official sponsorship responsibilities.

(6) The superintendent will manage the selection and notification of candidates and, with the assistance of the applicable USDAO or American embassy, obtain written acknowledgment from the sending government of sponsorship responsibilities and their agreement to reimburse tuition costs, when applicable.

(7) Questions on enrollment or reimbursement will be forwarded to the ASD(M&RA), for resolution with the USD(P).

(e) *Development of cadets and midshipmen.* (1) Development of cadets and midshipmen is prescribed in 10 U.S.C. chapters 403, 603, and 903 and this part.

(2) The normal course of instruction at an academy is 4 years, with selected promising cadets or midshipmen pursuing longer terms when required to meet academy educational or other graduation requirements. The Secretaries of the Military Departments will arrange the course of instruction so that cadets or midshipmen are not required to attend classes on Sunday.

(3) Besides academic preparation, each academy will provide for development of military and leadership skills and physical fitness.

(4) The practice of hazing is prohibited by Department policy and law (see 10 U.S.C. 4352, 6964, and 9352).

(5) An important component in the growth of cadets or midshipmen is the leadership development system. Its purpose is to motivate graduates to seek leadership responsibilities and enable them to think clearly, decide wisely, and act decisively under pressure and in a variety of leadership situations. The leadership development system will be based on:

(i) Positive leadership, equal opportunity, and respect for one another's values, beliefs, and personal dignity.

(ii) Elimination of dysfunctional stress. The Secretaries of the Military Departments concerned and superintendents determine knowledge requirements and procedures for the development and indoctrination of cadets and midshipmen. Memorization

of trivia, such as complete menus for meals, is generally inappropriate. Establishment of such requirements will be closely monitored by the academies.

(iii) Emphasis on proper bearing, fitness, and posture. These are important to effective leadership and contribute to overall well-being. Exaggerated forms of posture, speech, or movement generally do not constitute proper military bearing. Establishment of such requirements will be closely monitored by the academies and used only with the knowledge and approval of the superintendents.

(iv) Positive role models; opportunities to learn, practice, and receive feedback; and access to support. Direct support to leadership development will be provided by concurrent and relevant coursework, athletic competition, and hands-on experience to show the relationship between theories of leadership in the classroom and practice of leadership outside the classroom.

(6) The highest ethical and moral standards are expected of the officer corps. The honor systems of the academies will support that expectation by enforcing adherence to standards of behavior embodied in the honor codes or concepts of the academies. Violations of honor standards may constitute a basis for disenrollment.

(f) *Management of cadets and midshipmen.* (1) A U.S. cadet or midshipman entering an academy directly from civilian status assumes a Military Service obligation (MSO) of 8 years, under 10 U.S.C. 651 and DoD Instruction 1304.25, ''Fulfilling the Military Service Obligation'' (available at *http://www.dtic.mil/whs/directives/corres/pdf/130425p.pdf*).

(2) Cadet and midshipman pay is prescribed by 37 U.S.C. 203(c).

(3) Cadets and midshipmen will meet medical accession standards outlined in paragraph (c)(4)(iv) of this section.

(4) As a condition for providing education at an academy, the Secretary of the Military Department concerned will require that each U.S. cadet or midshipman enter into a written agreement in which he or she agrees:

(i) To complete the course of instruction for graduation specified in the agreement to accept an appointment as a commissioned officer, if tendered, and to serve on active duty for a period specified in the agreement if called to active duty or, at the option of the Secretary of the Military Department concerned, to reimburse the United States for the amount specified by the Secretary of Military Department concerned, as prescribed in this section.

(ii) That if such cadet or midshipman fails to complete the educational requirements specified in the agreement, such person, if so ordered by the Secretary of the Military Department concerned, will serve on active duty for a period specified in the agreement.

(iii) That if such person fails to complete the period of active duty specified in the agreement, he or she will reimburse the United States for the amount specified by the Secretary of the Military Department concerned in accordance with the requirements of 10 U.S.C. 2005 and 37 U.S.C. 303a.

(iv) To such other terms and conditions as the Secretary of the Military Department concerned may prescribe to protect U.S. interests.

(5) An obligation to repay the United States under this section is, for all purposes, a debt owed the United States. A discharge in bankruptcy under Title 11 U.S.C. does not discharge a person from such debt if the discharge order is entered less than 5 years after:

(i) The date of the termination of the agreement or contract on which the debt is based; or

(ii) In the absence of such agreement or contract, the date of the termination of the service on which the debt is based.

(6) The sustainment of high performance standards ensures that cadets and midshipmen who are unwilling or unable to successfully complete the program of instruction at the academy are identified quickly. As defined by the Military Department concerned, cadets or midshipmen who are identified as ''deficient'' in conduct, studies, or physical fitness, and disenrolled from any academy may not, unless recommended by an academic or academy board, be returned or reappointed to an academy. Those cadets or midshipmen selected for return will be reappointed consistent with the criteria prescribed by the board.

(i) Individuals failing to complete the required course of academy instruction (including disenrollment for academics, conduct, honor code violations, or physical deficiency) will be disenrolled.

(ii) If an appointment is terminated before graduation due to a U.S. cadet's or midshipman's breaching his or her agreement, or if a U.S. cadet or midshipman refuses to accept a commission following graduation, the 8 year MSO will be fulfilled by the period for which the member is ordered to serve on active duty or in the Reserve Component in an applicable enlisted status. He or she may be ordered to active duty for a period not to exceed 4 years under 10 U.S.C. 4348(b), 6959(b), or 9348(b). Policies that apply to U.S. cadets or midshipmen disenrolled from an academy who entered the academy directly from civilian status are:

(A) Fourth and Third Classmen (First and Second Years). A fourth or third classman disenrolled will retain their MSO in accordance with 10 U.S.C. chapter 47 and DoD Instruction 1304.25 but have no active duty service obligation (ADSO).

(B) Second Classmen (Third Year). A second classman resigning before the start of the second class academic year or disenrolled for cause resulting from actions that occurred only before the start of the second class academic year will be discharged as if he or she were a third classman.

(C) Second or First Classmen (Third and Fourth or Subsequent Years). Any second or first classman who is disenrolled and who is not suited for enlisted Military Service for reasons of demonstrated unsuitability, unfitness, or physical disqualification, will be discharged in accordance with the current Military Service regulations that implement this part, to include monetary recoupment. Other second or first class cadets and midshipmen disenrolled after the beginning of the second class academic year, but before completing the course of instruction, may be transferred to the Reserve Component in an enlisted status and ordered to active duty for not less than 2 years, but not more than 4 years and incur an MSO, in accordance with 10 U.S.C. 4348(b), 6959(b), or 9348(b).

(D) First Classman (Declining Appointment). Any first classman completing the course of instruction and declining to accept an appointment as a commissioned officer may be transferred to the respective Reserve Component in an enlisted status and ordered to active duty for 4 years and incurs a MSO in accordance with 10 U.S.C. 4348(b), 6959(b), and 9348(b) and DoD Directive 1235.10, ''Activation, Mobilization, and Demobilization of the Ready Reserve'' (available at *http://www.dtic.mil/whs/directives/corres/pdf/123510p.pdf*).

(iii) The disposition of cadets and midshipmen entering an academy from the Regular or Reserve Component of any Military Service (except those who enter an academy by way of its preparatory school from civilian status) and then not completing the program will be determined in accordance with 10 U.S.C. 516:

(A) Fourth and Third Classmen (First and Second Years). If disenrolled during the fourth or third class year, the cadet's or midshipman's Military Service commitment will be equal to the time

not served on the original enlistment contract, with all service as a cadet or midshipman counted as service under that contract. Those individuals with less than 1 year remaining in the original enlistment contract may be discharged on approval of the disenrollment by the Military Department concerned.

(B) Second Classmen (Third Year). If disenrolled before the beginning of the second class academic year, the cadet's or midshipman's Military Service commitment will be the same as in paragraph (f)(6)(iii)(C) of this section.

(C) Second or First Classmen (Third and Fourth or Subsequent Years). If first and second classmen are disenrolled for issues occurring after the beginning of the second class academic year, their Military Service commitment will be the same as in paragraphs (f)(6)(ii)(C) and (D) of this section, as appropriate, or will be equal to the time not served on the original enlistment contract (with all service as a cadet or midshipman counted as service under that contract), whichever period is longer.

(D) Disenrolled Cadets or Midshipmen not Suited for Enlisted Military Service. A cadet or midshipman who entered into an academy from the Regular or Reserve Component of a Military Service who is subsequently disenrolled from an academy and is not suited for enlisted Military Service because of demonstrated unsuitability, unfitness, or physical disqualification, will be discharged in accordance with DoD Instruction 1332.14, ''Enlisted Administrative Separations'' (available at *http://www.dtic.mil/whs/directives/corres/pdf/133214p.pdf*) and Military Department regulations that specifically address the disenrollment of cadets or midshipmen.

(E) Military Grade of Disenrolled Cadets or Midshipmen Transferred to the Reserve Component or Active Duty. Whether transferred to the Reserve Component or reverted back to active duty status, the disenrolled cadets and midshipmen retain their prior enlisted grade. However, in no case will the cadet or midshipman be transferred to the Reserve Component in a grade lower than would a similarly situated cadet or midshipman who entered the academy from a civilian status.

(iv) The disposition of U.S. cadets and midshipmen entering an academy by way of its preparatory school from civilian status and then not completing the program will be managed in accordance with paragraph (f)(6)(ii) through (iv) of this section.

(v) A cadet or midshipman tendering a resignation will be required to state a reason for this action. A resignation may be accepted when in the interest of the Military Service. Accepting the resignation will not in and of itself constitute a determination of the U.S. cadet's or midshipman's qualification for enlisted Military Service.

(vi) U.S. cadets or midshipmen who are not ordered to active duty due to their misconduct or unsuitability, or because their petition for relief from an active duty obligation was approved by the Secretary of the Military Department concerned, must reimburse the United States in accordance with the requirements of 10 U.S.C. 2005 and 37 U.S.C. 303a for education costs commensurate with time spent at the academy. The Secretary of the Military Department concerned may remit or cancel any part of the indebtedness of a cadet or midshipman to the United States. There may be circumstances when neither Active Duty nor reimbursement is appropriate. The Secretaries of the Military Departments will carefully review the circumstances to determine whether waiving Active Duty or reimbursement is consistent with existing statutory requirements, personnel policies or management objectives, equity and good conscience, and is in the best interest of the United States. Such circumstances may include, but are not limited to, a cadet's or midshipman's death, illness, injury, or other impairment that is not the result of the cadet's or midshipman's misconduct; or needs of the Service.

(vii) Change in Status Notification. When a U.S. cadet or midshipman is disenrolled from an academy and discharged from the Service concerned, the Selective Service System will be notified by the Military Department of the individual's status change.

(viii) Dependency Disenrollment or Resignation. U.S. cadets or midshipman who resign or are disenrolled for violation of the dependency policy may request transfer to the Reserve Officer Training Corps (ROTC). Approval and method of transfer is at the discretion of the Secretary of the Military Departments concerned. Cadets and midshipmen who are approved to transfer to ROTC, graduate, receive a commission, and fulfill their Active Duty Service Obligation (ADSO) are not subject to reimbursement as outlined in this section.

(ix) Disenrollment of cadets and midshipmen for medical disqualification.

(A) Persons separated for being medically disqualified from further Military Service will be separated and will not be obligated for further Military Service or for reimbursing education costs in accordance paragraph (f)(6)(vi) of this section.

(B) Persons separated for reasons in addition to being medically disqualified from further Military Service may be obligated for reimbursing education costs at the discretion of the Military Department concerned.

(C) Cadets and midshipmen who become medically disqualified for appointment (including pregnancy) as a commissioned officer during their senior year, who otherwise would be qualified to complete the course of instruction and be appointed as a commissioned officer, and who are capable of completing the academic course of instruction with their peers, may be permitted by the Secretary of the Military Department concerned to complete the academic course of instruction with award of an academic credential determined by the Secretary of the Military Department concerned.

(D) Pursuant to 10 U.S.C. 1217, when the Secretary of the Military Department concerned determines that a U.S. cadet or midshipman is medically disqualified for appointment as a commissioned officer due to injury, illness, or disease aggravated or incurred in the line of duty while entitled to cadet or midshipman pay, the Secretary may retire the cadet or midshipman with retired pay in accordance with 10 U.S.C. chapter 61.

(g) *Graduation and commission.* (1) Cadets and midshipmen who complete all requirements prescribed by the Secretary of the Military Department concerned for graduation and appointment may be awarded a bachelor of science degree, and U.S. cadets and midshipmen who meet medical accession standards outlined in paragraph (c)(4)(iv) of this section are eligible to be commissioned, in accordance with 10 U.S.C. chapters 33, 403, 603, and 903.

(2) Graduation leave will be administered in accordance with 10 U.S.C. 702.

(3) Officers appointed from cadet or midshipman status will not be voluntarily released from active duty principally to pursue a professional sports activity with the potential of public affairs or recruiting benefit to the DoD during the initial 2 years of active commissioned service. A waiver to release a cadet or midshipman prior to the completion of 2 years of active service must be approved by the ASD(M&RA). Exceptional personnel with unique talents and abilities may be authorized excess leave or be released from active duty and transferred to the Selective Reserve after completing 2 years of active commissioned service

when there is a strong expectation their professional sports activity will provide the DoD with significant favorable media exposure likely to enhance national recruiting or public affairs.

(i) *Approval authority and processing requirements.* Secretaries of the Military Departments will establish the approval authority and specific processing requirements for all requests for excess leave and early release from active duty under this program.

(ii) *Excess leave.* Officers may apply for excess leave, after serving a minimum of 24 months of the current obligated active duty period, for a period not to exceed 1 year, for the purpose of pursuing a professional sports activity with potential recruiting or public affairs benefits to the DoD. The agreement between the individual and the professional sports team or organization must reflect the intent of both parties to employ the individual in a way that brings credit to the DoD. The agreement between the individual and the professional sports team or organization must reflect the intent of both parties to employ the individual in a way that brings credit to the DoD. Personnel are not entitled to pay and allowances while in excess leave status, nor are they entitled to receive disability retired pay if incurring a physical disability while in excess leave status. Officers must:

(A) Remain subject to recall to active duty.

(B) Be in good standing, to include meeting all physical fitness requirements and standards.

(C) Have secured an actual contract or binding commitment with a professional team or organization guaranteeing the opportunity to pursue an activity with potential recruiting benefits as described.

(D) Acknowledge that time served in excess leave will not be used to satisfy an existing ADSO.

(iii) *Early release.* Officers may request early release from their ADSO for the purpose of pursuing a professional sports activity with potential recruiting or public affairs benefits for the DoD. Any agreement between the individual and the professional sports team or organization must reflect the intent of both parties to employ the individual in a way that brings credit to the DoD. Military Departments will notify the ASD(M&RA) when an officer is released early from active duty under this program. In addition to any further requirements as determined appropriate by the Secretary of the Military Department concerned, applicants for early release must, at a minimum:

(A) Have served 24 months of the original ADSO.

(B) Be in good standing, to include meeting all physical fitness requirements and standards.

(C) Have secured an actual contract or binding commitment with a professional sports team or organization guaranteeing the opportunity to pursue an activity with potential recruiting benefits as described.

(D) Be assigned to a Selected Reserve unit and meet normal retention requirements based on minimum participation standards in accordance with 10 U.S.C. 10147 and 10148, and be subject to immediate involuntary recall for any reason to complete the period of active duty from which early release was granted.

(E) Acknowledge that the officer is subject to monetary repayment of educational benefits at a prorated share based on the period of unfulfilled ADSO, and that such recoupment is in addition to the two-for-one Selected Reserve obligation required in paragraph (g)(3)(iii)(F) of this section. Officers subject to recoupment under the provisions of 10 U.S.C. 2005 for receipt of advanced education assistance must reimburse the United States a pro-rata share of the cost of their advanced education assistance based on the period of unfulfilled active duty service.

(F) Agree that, in the event that the officer is no longer under a contract or binding agreement with a professional sports team or organization, the officer will either return to active duty to complete the remaining ADSO, or continue in the Selected Reserve for a period of not less than two times the length of their remaining ADSO, as determined by their Service.

(4) At the discretion of the Secretary of the Military Department concerned, first class cadets or midshipmen not medically qualified for commissioning may be placed on limited duty status, as defined by the Military Department concerned, for up to 1 year until medical commissioning requirements of this section and the Military Service are met. If all requirements are met, the cadet or midshipmen may be commissioned. If these requirements are not met, the cadet or midshipmen will be disenrolled subject to recoupment as discussed in paragraph (f)(6)(ii)(C) and (f)(6)(ix) of this section.

(h) *Academy preparatory schools.* (1) Academy preparatory schools provide an avenue for effective transition to the academy environment. The academy preparatory schools prepare selected candidates for admission who are judged to need additional preparation in academics, physical fitness, or character development.

(i) Each school's programs of instruction will focus on academic preparation and on those areas of personal and physical preparation that reflect the mission of both the academy and the Service concerned.

(ii) The core of the academy preparatory schools' mission statement will be ''To motivate, prepare, and evaluate selected candidates in an academic, military, moral, and physical environment, to perform successfully at the _____ Academy.''

(2) Faculty members will possess academic expertise and teaching prowess. They will exemplify high standards of conduct and performance. Faculty members will be expected to participate in the full spectrum of the school's programs, to include providing leadership, exemplary conduct and moral behavior for cadet candidates and midshipmen candidates to emulate, as well as involvement in the development of curricular and extracurricular activities. Curriculum design will recognize academic preparation as the priority; associated programs will capitalize on economies and efficiencies.

(3) Preparatory school programs will provide tailored individual instruction to strengthen candidate abilities and to correct deficiencies in academic areas emphasized by the academies. Additionally, preparatory school programs will provide supplementary instruction in military orientation, physical development, athletics, leadership, character development, and other specific areas of interest determined by the Secretary of the Military Department concerned.

(i) *Review and oversight.* (1) Service academies will establish quantified performance goals and measures, linked with their respective school's mission statement to annually evaluate the performance of the academies. Metrics will include graduation rate for enrolled candidates. The graduation rates of those entering the academies should be at least 75 percent.

(2) Preparatory schools will establish quantified performance goals and measures, linked with the schools' mission statements to annually evaluate the performance of the preparatory schools. At a minimum, the metrics will include:

(i) *Academy preparatory school to academy entrance ratio.* The ratio of the number of preparatory school students entering the academy to the number that entered prep school should be 70 percent or greater.

(ii) *Preparatory student and direct appointee graduation rate.* The preparatory school students' academy graduation rate should not drop more than 5 percent below the direct appointees' graduation rate.

(3) Boards of Visitors of the academies are established and procedures prescribed by 10 U.S.C. chapters 403, 603, and 903 to inquire into the efficiency and effectiveness of academy operations. The designated federal officer for each Board of Visitors will provide the ASD(M&RA) a copy of each report required by 10 U.S.C. chapter 47 within 60 days of the report's submission to the President.

(4) Oversight by the IG DoD will be provided in accordance with DoD Directive 5106.01 and the Inspector General Act of 1978. When required, the ASD(M&RA) recommends to the IG DoD any areas of academy operations that merit specific review during the subsequent fiscal year.

(5) Annual meetings of the superintendents will be hosted by the academies on a rotating basis and include the commandants, the deans, the directors of admissions and athletics, and others designated by the superintendents. Meeting attendees will discuss performance measures and other matters of collective interest. Meeting attendees will identify plans to address areas requiring corrective action. Following the meeting, the host superintendent will provide the ASD(M&RA) a summary of issues and actions discussed and each Service academy will provide an assessment of their respective service academy and preparatory school.

(j) *Inter-service commissioning.* (1) To be qualified for inter-Service appointment, applicants must meet all graduation requirements and all requirements for commissioning in the gaining Service; and both the gaining and losing Secretaries of the Military Departments concerned must concur in the appointment. In accordance with 10 U.S.C. chapter 33, not more than 12.5 percent of a graduating class from any academy may be commissioned in the Military Services not under the jurisdiction of the Military Department administering that academy.

(2) Once all requirements for inter-Service appointments have been met, endorsements from the losing academy will contain the applicants' current academic transcripts, order of merit standing, record of physical fitness and, if applicable, results of the gaining Service's testing for flight training or other qualification. Applications supported by the losing Military Department will be forwarded to the gaining Military Department no later than November of the calendar year before graduation. The gaining Secretary of the Military Department concerned will act on applications no later than the end of December of the year prior to commissioning and will immediately notify the losing Secretary of the Military Department concerned of decisions. Affected cadets or midshipmen will be quickly notified of the disposition of applications.

(3) Those selected for transfer will be integrated within active duty lists of the gaining Military Service. When seniority on that list relies on academy class standing, they will be initially integrated immediately following the cadet or midshipman holding equal numerical class standing at the academy of the gaining Military Department.

Appendix A to Part 217—Applicant Briefing Item on Separation Policy

(a) *Individual responsibility.* Service members represent the Military Services by word, actions, and appearance. Their unique position in society requires them to uphold the dignity and high standards of the Military Services at all times and in all places. In order to be ready at all times for worldwide deployment, military units and their members must possess high standards of integrity, cohesion, and good order and discipline. As a result, military laws, rules, customs, and traditions include restrictions on personal behavior that are different from civilian life. Service members may be involuntarily separated before their enlistment or term of service ends for various reasons established by law and military regulations. These are some of the circumstances that may be grounds for involuntary separation from the Academy:

(1) *Infractions.* The individual establishes a pattern of disciplinary infractions, discreditable involvement with civil or military authorities, causes dissent, or disrupts or degrades the mission of his or her unit. That may also include conduct of any nature that would bring discredit on the Military Services in the view of the civilian community.

(2) *Dependency.* Any person for whom an individual has a legally recognized obligation to provide support including but not limited to spouse and natural, adoptive, or stepchildren.

(3) *Physical fitness and body fat.* The individual fails to meet the physical fitness or body fat standards.

(b) *Hazing, harassment, or violence not tolerated.* The practice of hazing is prohibited by law (10 U.S.C. 4352, 6964, and 9352). A cadet or midshipman dismissed from an academy for hazing may not be reappointed as a cadet or midshipman at an academy. The Military Services do not tolerate harassment or violence against any Service member for any reason. Cadets and midshipmen must treat all Service members, at all times, with dignity and respect. Failure to do so may result in the individual being disciplined or involuntarily separated before his or her term of service ends.

Dated: December 28, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2015–32926 Filed 12–30–15; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 413

[CMS–1628–CN2]

RIN 0938–AS48

Medicare Program; End-Stage Renal Disease Prospective Payment System, and Quality Incentive Program; Correction

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

ACTION: Final rule, correction.

SUMMARY: This document corrects technical and typographical errors that appeared in the final rule published in the **Federal Register** on November 6, 2015, entitled ''Medicare Program; End-Stage Renal Disease Prospective Payment System, and Quality Incentive Program.''

DATES: This correction is effective on December 31, 2015.

FOR FURTHER INFORMATION CONTACT: CMS ESRD Payment mailbox at *ESRDPayment@cms.hhs.gov,* for issues related to the ESRD PPS payment provisions. Heidi Oumarou, (410) 786–7942, for issues related to the ESRD market basket. Tamyra Garcia, (410) 786–0856, for issues related to the ESRD QIP.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 2015–27928 of November 6, 2015 (80 FR 68967) (hereinafter referred to as the CY 2016 ESRD PPS final rule) there are technical and typographical errors that are discussed in the ''Summary of Errors,'' and further identified and corrected in the ''Correction of Errors'' section below. The provisions in this correction notice are effective as if they had been included in the CY 2016 ESRD PPS final rule published in the **Federal Register** on November 6, 2015.

II. Summary of Errors

On page 68968, in the **FOR FURTHER INFORMATION CONTACT** section we found

an error in the email address provided to contact us for ESRD PPS payment issues. The correct email address is *ESRDPayment@cms.hhs.gov.* In addition, the telephone number provided for questions related to the ESRD market basket was incorrect for Heidi Oumarou. The correct telephone number is 410–786–7942.

On page 68976, we made a typographic error by including the words ''case-mix'' in the beginning of sentence.'' On page 68986, under the heading ''Body Surface Area (BSA)'', we made a typographical error in the value 1.020. We inadvertently inserted the letter ''I'' instead of the number ''1'' in that value.

On page 69044, we made a technical error in the title of Table 17—''Estimated Numerical Values for the Performance Standards for the PY 2018 ESRD QIP Clinical Measures Using the Most Recently Available Data,'' by indicating that the values were estimates instead of finalized numerical values. In addition, there were errors in the achievement threshold, benchmark, and performance standard values presented in Table 17 ''for Payment Year 2018 of the End-Stage Renal Disease Quality Incentive Program. Specifically, the numerical values published for the Kt/V Adult Hemodialysis, Kt/V Pediatric Hemodialysis, Standardized Readmission Ratio clinical measures, and ICH CAHPS were incorrect because we inadvertently placed the numbers in the incorrect columns.

On page 69069, in footnote 15 regarding the responsibilities of various staff, we found an error in the hyperlink to a document posted by the Bureau of Labor & Statistics.

Finally, on page 69073, after ''e. Alternatives Considered,'' we inadvertenly did not include the subtitle ''1. CY 2016 End-Stage Renal Disease'' to delineate the analysis of alternatives policies considered for the ESRD PPS.

III. Waiver of Proposed Rulemaking, 60-Day Comment Period, and Delay of Effective Date

Under 5 U.S.C. 553(b) of the Administrative Procedure Act (APA), the agency is required to publish a notice of the proposed rule in the **Federal Register** before the provisions of a rule take effect. Similarly, section 1871(b)(1) of the Act requires the Secretary to provide notice of the proposed rule in the **Federal Register** and provide a period of not less than 60 days for public comment. In addition, section 553(d) of the APA, and section 1871(e)(1)(B)(i) of the Act mandate a 30-day delay in effective date after issuance or publication of a rule. Sections 553(b)(B) and 553(d)(3) of the APA provide for exceptions from the notice and comment and delay in effective date. APA requirements; in cases in which these exceptions apply, sections 1871(b)(2)(C) and 1871(e)(1)(B)(ii) of the Act provide exceptions from the notice and 60-day comment period and delay in effective date requirements as well. Section 553(b)(B) of the APA and section 1871(b)(2)(C) of the Act authorize an agency to dispense with normal rulemaking requirements for good cause if the agency makes a finding that the notice and comment process are impracticable, unnecessary, or contrary to the public interest. In addition, both section 553(d)(3) of the APA and section 1871(e)(1)(B)(ii) of the Act allow the agency to avoid the 30-day delay in effective date where such delay is contrary to the public interest and an agency includes a statement of support.

In our view, this correcting document does not constitute rulemaking that would be subject to these requirements. This correcting document is simply correcting technical and typographical errors in the preamble and does not make substantive changes to the policies or payment methodologies that were adopted in the final rule, and therefore, it is unnecessary to follow the notice and comment procedure in this instance.

Even if this were a rulemaking to which the notice and comment and delayed effective date requirements applied, we find that there is good cause to waive such requirements. Undertaking further notice and comment procedures to incorporate the corrections in this document into the CY 2016 ESRD PPS final rule or delaying the effective date would be contrary to the public interest because it is in the public's interest for dialysis facilities to receive appropriate payments in as timely a manner as possible, and to ensure that the CY 2016 ESRD PPS final rule accurately reflects our policies as of the date they take effect and are applicable. Further, such procedures would be unnecessary, because we are not altering the payment methodologies or policies, but rather, we are simply correctly implementing the policies that we previously proposed, received comment on, and subsequently finalized. This correcting document is intended solely to ensure that the CY 2016 ESRD PPS final rule accurately reflects these payment methodologies and policies. For these reasons, we believe we have good cause to waive the notice and comment and effective date requirements.

IV. Correction of Errors

In FR Doc. 2015–27928 of November 6, 2015 (80 FR 68968), make the following corrections:

1. On page 68968, first column, under section **FOR FURTHER INFORMATION CONTACT:**—

a. In line 1, the email address ''CMS ESRD PAYMENT@cms.hhs.gov'' is corrected to read ''ESRDPAYMENT@cms.hhs.gov''.

b. In lines 3 and 4, the telephone number ''410–786–7342'' is corrected to read ''410–786–7942''.

2. On page 68976, first column, first full paragraph, line 21, remove the word ''case-mix''.

3. On page 68986, second column, first paragraph under the heading ''Body Surface Area (BSA),'' line 5, the figure ''l.020'' is corrected to read ''1.020''.

4. On page 69044, Table 17 is corrected to read as follows:

TABLE 17—FINAL NUMERICAL VALUES FOR THE PERFORMANCE STANDARDS FOR THE PY 2018 ESRD QIP CLINICAL MEASURES USING THE MOST RECENTLY AVAILABLE DATA

Measure	Achievement threshold	Benchmark	Performance standard
Vascular Access Type:			
%Fistula	53.51%	79.60%	65.94%.
%Catheter	16.79%	2.59%	8.80%.
Kt/V:			
Adult Hemodialysis	92.88%	99.43%	97.24%.
Adult Peritoneal Dialysis	75.42%	97.06%	89.47%.
Pediatric Hemodialysis	81.25%	96.88%	93.94%.

TABLE 17—FINAL NUMERICAL VALUES FOR THE PERFORMANCE STANDARDS FOR THE PY 2018 ESRD QIP CLINICAL MEASURES USING THE MOST RECENTLY AVAILABLE DATA—Continued

Measure	Achievement threshold	Benchmark	Performance standard
Pediatric Peritoneal Dialysis	43.22%	88.39%	72.60%.
Hypercalcemia	3.92%	0.00%	1.19%.
NHSN Bloodstream Infection SIR	1.812	0	0.861.
Standardized Readmission Ratio	1.297	0.588	0.998.
Standardized Transfusion Ratio	1.470	0.431	0.923.
ICH CAHPS	15th percentile of eligible facilities' performance during CY 2015.	90th percentile of eligible facilities' performance during CY 2015.	50th percentile of eligible facilities' performance during CY 2015.

11. On page 69069, third column, bottom of the page, footnote 15, the reference to ''*http://www.bls/gov/ooh/healthcare/medical-records-and-health-information-technicians.htm*'' is corrected to read ''*http://www.bls.gov/ooh/healthcare/medical-records-and-health-information-technicians.htm*''.

12. On page 69073, second column under the heading ''e. Alternatives Considered'' add the sub-heading ''1. CY 2016 End-Stage Renal Disease''.

Dated: December 28, 2015.

Madhura Valverde,

Executive Secretary to the Department, Department of Health and Human Services.

[FR Doc. 2015–32967 Filed 12–30–15; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[GN Docket No. 12–268; FCC 14–50]

Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: In this document, the Commission announces that the Office of Management and Budget (OMB) approved, on an emergency basis, a revision to an approved information collection to implement new collection requirements contained in the *Broadcast Incentive Auction Report and Order,* Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, FCC 14–50. This document is consistent with the *Broadcast Incentive Auction Report and Order,* which stated that the Commission would publish a document in the **Federal Register** announcing OMB approval and the effective date of the rules and requirements.

DATES: The amendments adding 47 CFR 1.2205(c) and 1.2205(d), published at 79 FR 48442, August 15, 2014, are effective on December 31, 2015.

FOR FURTHER INFORMATION CONTACT: Contact Cathy Williams, *Cathy.Williams@fcc.gov,* (202) 418–2918.

SUPPLEMENTARY INFORMATION: This document announces that, on December 10, 2015, OMB approved, on an emergency basis, a revision to an approved information collection to implement new information collection requirements under 47 CFR 1.2205(c) and 1.2205(d), published at 79 FR 48442 on August 15, 2014. The OMB Control Number is 3060–0995. The Commission publishes this document as an announcement of the effective date of the rules and requirements. If you have any comments on the burden estimates listed below, or how the Commission can improve the collections and reduce any burdens caused thereby, please contact Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street SW., Washington, DC 20554. Please include the OMB Control Number, 3060–0995, in your correspondence. The Commission will also accept your comments via the Internet if you send them to *PRA@fcc.gov.*

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 and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the Commission is notifying the public that it received emergency approval from OMB on December 10, 2015 for the revised information collection requirements contained in the information collection 3060–0995, Section 1.2105(c), Bidding Application and Certification Procedures; Sections 1.2105(c) and Section 1.2205, Prohibition of Certain Communications.

Under 5 CFR 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number.

No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a current, valid OMB Control Number. The OMB Control Number is 3060–0995. The foregoing document is required by the Paperwork Reduction Act of 1995, Pub. L. 104–13, October 1, 1995, and 44 U.S.C. 3507.

The total annual reporting burdens and costs for the respondents are as follows:

OMB Control Number: 3060–0995.

OMB Approval Date: December 10, 2015.

OMB Expiration Date: June 30, 2016.

Title: Section 1.2105(c), Bidding Application and Certification Procedures; Sections 1.2105(c) and Section 1.2205, Prohibition of Certain Communications.

Form No.: N/A.

Respondents: Business or other for-profit entities; Not-for-profit institutions; State, local or Tribal government.

Number of Respondents and Responses: 10 respondents; 10 responses.

Estimated Time per Response: 1.5 hours to 2 hours.

Frequency of Response: On-occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in sections 154(i), 309(j), and 1452(a)(3) of the Communications Act of 1934, as amended, 47 U.S.C. 4(i), 309(j)(5), and 1452(a)(3), and sections 1.2205(c) and 1.2205(d) of the Commission's rules, 47 CFR 1.2205(c), (d).

Total Annual Burden: 50 hours.

Total Annual Cost: $9,000.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: The Commission will take all reasonable steps to protect the confidentiality of all Commission-held data of a reverse auction applicant consistent with the confidentiality requirements of the Spectrum Act and the Commission's rules. *See* 47 U.S.C. 1452(a)(3); 47 CFR 1.2206. In addition, to the extent necessary, a full power or Class A television broadcast licensee may request confidential treatment of any report of a prohibited communication submitted to the Commission that is not already being treated as confidential pursuant to section 0.459 of the Commission's rules. *See* 47 CFR 0.459. Forward auction applicants are entitled to request confidentiality in accordance with section 0.459 of the Commission's rules, 47 CFR 0.459.

Needs and Uses: In the *Broadcast Incentive Auction Report and Order,* the Commission adopted new requirements for parties that might participate in the reverse auction component of the television broadcast incentive auction (BIA) prohibiting certain communications and requiring a covered party that makes or receives a prohibited communication to file a report of such a communication with the Commission, along with procedures for reporting potentially prohibited communications. *See* 47 CFR 1.2205(b), (c), (d). The Commission's rules prohibiting certain communications in Commission auctions are designed to reinforce existing antitrust laws, facilitate detection of collusive conduct, and deter anticompetitive behavior, without being so strict as to discourage procompetitive arrangements between auction participants. They also help assure participants that the auction process will be fair and objective, and not subject to collusion. The revised information collection implements the new BIA-specific rules in sections 1.2205(c) and 1.2205(d) by making clear the responsibility of parties who receive information that potentially violates the rules to promptly submit a report notifying the Commission, thereby helping the Commission enforce the prohibition on covered parties in the BIA, and further assuring incentive auction participants that the auction process will be fair and competitive. The prohibited communication reporting requirement required of covered parties will enable the Commission to ensure that no bidder gains an unfair advantage over other bidders in its auctions and thus enhances the competitiveness and fairness of Commission's auctions. The information collected will be reviewed and, if warranted, referred to the Commission's Enforcement Bureau for possible investigation and administrative action. The Commission may also refer allegations of anticompetitive auction conduct to the Department of Justice for investigation.

Federal Communications Commission.

Gloria J. Miles,

Federal Register Liaison Officer. Office of the Secretary.

[FR Doc. 2015–32824 Filed 12–30–15; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 120627194–3657–02]

RIN 0648–XE295

Atlantic Highly Migratory Species; North Atlantic Swordfish Fishery

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

ACTION: Temporary rule; Swordfish General Commercial permit retention limit inseason adjustment for Northwest Atlantic, Gulf of Mexico, and U.S. Caribbean regions.

SUMMARY: NMFS is adjusting the Swordfish (SWO) General Commercial permit retention limits for the Northwest Atlantic, Gulf of Mexico, and U.S. Caribbean regions for January through June of the 2016 fishing year, unless otherwise noticed. The SWO General Commercial permit retention limits in each of these regions are increased from the default limits to six SWO per vessel per trip. The SWO General Commercial permit retention limit in the Florida SWO Management Area will remain unchanged at the default limit of zero SWO per vessel per trip. This adjustment applies to SWO General Commercial permitted vessels and Highly Migratory Species (HMS) Charter/Headboat permitted vessels when on a non for-hire trip. This action is based upon consideration of the applicable inseason regional retention limit adjustment criteria.

DATES: The adjusted SWO General Commercial permit retention limits in the Northwest Atlantic, Gulf of Mexico, and U.S. Caribbean regions are effective January 1, 2016, through June 30, 2016.

FOR FURTHER INFORMATION CONTACT: Rick Pearson or Randy Blankinship, 727–824–5399.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) governing the harvest of North Atlantic SWO by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. North Atlantic SWO quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) into two equal semi-annual directed fishery quotas, an annual incidental catch quota for fishermen targeting other species or taking SWO recreationally, and a reserve category, per the allocations established in the 2006 Consolidated Highly Migratory Species Fishery Management Plan (2006 Consolidated HMS FMP) (71 FR 58058, October 2, 2006), as amended, and in accordance with implementing regulations. NMFS is required under ATCA and the Magnuson-Stevens Act to provide U.S. fishing vessels with a reasonable opportunity to harvest the ICCAT-recommended quota.

The 2016 adjusted North Atlantic SWO quota is expected to be 3,359.4 mt dw (equivalent to the 2015 adjusted quota). From the adjusted quota, 50 mt dw would be allocated to the reserve category for inseason adjustments and research, and 300 mt dw would be allocated to the incidental category, which includes recreational landings and landings by incidental SWO permit holders, per § 635.27(c)(1)(i). This would result in an allocation of 3,009.4 mt dw for the directed fishery, which would be split equally (1,504.7 mt dw) between two seasons in 2016 (January through June, and July through December).

Adjustment of SWO General Commercial Permit Vessel Retention Limits

The 2016 North Atlantic SWO fishing year, which is managed on a calendar-year basis and divided into two equal semi-annual quotas, will begin on January 1, 2016. Landings attributable to the SWO General Commercial permit are counted against the applicable semi-annual directed fishery quota. Regional default retention limits for this permit have been established and are automatically effective from January 1 through December 31 each year, unless changed based on the inseason regional retention limit adjustment criteria at § 635.24(b)(4)(iv). The default retention limits established for the SWO General Commercial permit are: (1) Northwest

Atlantic region—three SWO per vessel per trip; (2) Gulf of Mexico region—three SWO per vessel per trip; (3) U.S. Caribbean region—2 SWO per vessel per trip; and, (4) Florida SWO Management Area—zero SWO per vessel per trip. The default retention limits apply to SWO General Commercial permitted vessels and to HMS Charter/Headboat permitted vessels when fishing on non for-hire trips. As a condition of these permits, vessels may not possess, retain, or land any more SWO than is specified for the region in which the vessel is located.

Under § 635.24(b)(4)(iii), NMFS may increase or decrease the SWO General Commercial permit vessel retention limit in any region within a range from zero to a maximum of six SWO per vessel per trip. Any adjustments to the retention limits must be based upon a consideration of the relevant criteria provided in § 635.24(b)(4)(iv), which include: The usefulness of information obtained from biological sampling and monitoring of the North Atlantic SWO stock; the estimated ability of vessels participating in the fishery to land the amount of SWO quota available before the end of the fishing year; the estimated amounts by which quotas for other categories of the fishery might be exceeded; effects of the adjustment on accomplishing the objectives of the fishery management plan and its amendments; variations in seasonal distribution, abundance, or migration patterns of SWO; effects of catch rates in one region precluding vessels in another region from having a reasonable opportunity to harvest a portion of the overall SWO quota; and, review of dealer reports, landing trends, and the availability of SWO on the fishing grounds.

NMFS has considered these criteria as discussed below and their applicability to the SWO General Commercial permit retention limit in all regions for January through June of the 2016 North Atlantic SWO fishing year. During 2014, with application of the default SWO General Commercial permit retention limits, total annual directed SWO fishery landings were approximately 1,303 mt dw (39 percent of the 3,303-mt dw total annual adjusted directed fishery quota). This year, through June 30, 2015, with application of the default retention limits, directed SWO landings were 493 mt dw (32.8 percent of the 1,505 mt dw Jan. to June semi-annual adjusted directed sub-quota). On July 28, 2015, NMFS adjusted SWO General Commercial permit retention limits in the Northwest Atlantic, Gulf of Mexico, and U.S. Caribbean regions from default levels to six SWO per vessel per trip (80 FR 44884). Through November 30, 2015, directed SWO landings for the July through December semi-annual period were approximately 541.5 mt dw (36.0 percent of the adjusted directed sub-quota). Total annual directed SWO landings, through November 30, 2015, were approximately 1,034.5 mt dw, or 34 percent of the 3,010 mt dw annual adjusted directed SWO quota.

Given that SWO directed landings fell well below the available 2014 annual quota, and that 2015 landings continue to be below the available 2015 directed SWO quota, and considering the regulatory criteria, NMFS has determined that the SWO General Commercial permit vessel retention limit in the Northwest Atlantic, Gulf of Mexico, and U.S. Caribbean regions applicable to persons issued a SWO General Commercial permit or HMS Charter/Headboat permit (when on a non for-hire trip) should be increased from the default levels that would otherwise automatically become effective on January 1, 2016.

A principal consideration is the objective of providing opportunities to harvest the full North Atlantic directed SWO quota without exceeding it based upon the 2006 Consolidated HMS FMP goal: ''Consistent with other objectives of this FMP, to manage Atlantic HMS fisheries for continuing optimum yield so as to provide the greatest overall benefit to the Nation, particularly with respect to food production, providing recreational opportunities, preserving traditional fisheries, and taking into account the protection of marine ecosystems.'' At the same time, it is also important for NMFS to continue to provide protection to important SWO juvenile areas and migratory corridors.

After considering all of the relevant criteria, NMFS has determined that increases from the default limits are warranted. With respect to the regulatory criteria, NMFS has examined dealer reports and landing trends, and determined that the information obtained from biological sampling and monitoring of the North Atlantic SWO stock is useful. Recently implemented electronic dealer reporting provides accurate and timely monitoring of landings. This information indicates that sufficient directed SWO quota will be available during 2016 if recent SWO landing trends continue. Regarding the regulatory criterion that NMFS consider ''the estimated ability of vessels participating in the fishery to land the amount of SWO quota available before the end of the fishing year,'' the directed SWO quota has not been harvested for several years and, based upon these landing trends, is not likely to be harvested or exceeded in 2016. Based upon recent landings rates from dealer reports, an increase in the vessel retention limit for SWO General Commercial permit holders is not likely to cause quotas for other categories of the fishery to be exceeded. Similarly, regarding the criteria that NMFS consider the estimated amounts by which quotas for other categories of the fishery might be exceeded and the effects of catch rates in one region precluding vessels in another region from having a reasonable opportunity to harvest a portion of the overall SWO quota, NMFS expects there to be sufficient SWO quota for 2016, and thus increased catch rates in these three regions are not expected to preclude vessels in any of the other regions from having a reasonable opportunity to harvest a portion of the overall SWO quota. Landings by vessels issued this permit (and Charter/Headboat permitted vessels on a non for-hire trip) are counted against the adjusted directed SWO quota. As indicated above, this quota has not been exceeded for several years and, based upon recent landing trends, is not likely to be exceeded in 2016.

With regard to SWO abundance, the 2015 report by ICCAT's Standing Committee on Research and Statistics indicated that the North Atlantic SWO stock is not overfished (B_{2011}/B_{msy} = 1.14), and overfishing is not occurring (F_{2011}/F_{msy} = 0.82). Increasing the retention limit for this U.S. handgear fishery is not expected to affect the SWO stock status determination because any additional landings would be in compliance with the ICCAT recommended U.S. North Atlantic SWO quota allocation.

Based upon landings over the last several years, it is highly unlikely that either of the two semi-annual directed SWO subquotas will be filled with the default retention limits of three SWO per vessel per trip (Northwest Atlantic and Gulf of Mexico), and two SWO per vessel per trip (U.S. Caribbean). For the entire 2014 fishing year, 39 percent of the total adjusted directed SWO quota was filled. Landings of SWO in 2015 are expected to be lower than in 2014.

Increasing the SWO General Commercial permit retention limit to six fish per vessel per trip will increase the likelihood that directed SWO landings will approach, but not exceed, the total annual directed SWO quota. Increasing opportunity beginning on January 1, 2016, is also important because of the migratory nature and seasonal distribution of SWO, one of the regulatory criteria to be considered when changing the retention limit inseason (variations in seasonal

distribution, abundance, or migration patterns of SWO). In a particular geographic region, or waters accessible from a particular port, the amount of fishing opportunity for SWO may be constrained by the short amount of time the SWO are present as they migrate. Dealer reports for Swordfish General Commercial permitted vessels indicate that swordfish are available from January through June in both the Northwest Atlantic and Gulf of Mexico regions and are likely to be available in the U.S. Caribbean region during January.

Based upon these considerations, NMFS has determined that a six-fish per vessel per trip SWO General Commercial permit retention limit is warranted in the Northwest Atlantic, Gulf of Mexico, and U.S. Caribbean regions from January 1, 2016 through June 30, 2016, for SWO General Commercial permitted vessels and HMS Charter/Headboat permitted vessels when on a non for-hire trip. This will provide a reasonable opportunity to harvest the U.S. quota of SWO without exceeding it, while maintaining an equitable distribution of fishing opportunities; help achieve optimum yield in the SWO fishery; allow for the collection of data for stock monitoring purposes; and be consistent with the objectives of the 2006 Consolidated HMS FMP, as amended. With regard to the objectives of the FMP, this adjustment provides the greatest overall benefit to the Nation, particularly with respect to food production, by increasing commercial SWO fishing opportunities without exceeding the available quota. It helps to preserve a very traditional SWO handgear fishery (rod and reel, handline, harpoon, bandit gear, and greenstick) which, in New England, dates back to the 1880's. Although this action does not specifically provide recreational fishing opportunities, it will have a minimal impact on this sector because recreational landings are counted against a separate incidental SWO quota. Finally, as discussed in the next paragraph, this action takes into account the protection of marine ecosystems by maintaining a zero-fish retention limit in the Florida Swordfish Management Area. Therefore, NMFS increases the SWO General Commercial permit retention limits from the default levels to six SWO per vessel per trip in these three regions, effective from January 1, 2016 through June 30, 2016, unless otherwise noticed.

NMFS has determined that the retention limit will remain at zero SWO per vessel per trip in the Florida SWO Management Area at this time. As described in Amendment 8 to the 2006 Consolidated HMS FMP, the area off the southeastern coast of Florida, particularly the Florida Straits, contains oceanographic features that make the area biologically unique. It provides important juvenile SWO habitat, and is essentially a narrow migratory corridor containing high concentrations of SWO located in close proximity to high concentrations of people who may fish for them. Public comment on Amendment 8, including from the Florida Fish and Wildlife Conservation Commission, indicated concern about the resultant high potential for the improper rapid growth of a commercial fishery, increased catches of undersized SWO, the potential for larger numbers of fishermen in the area, and the potential for crowding of fishermen, which could lead to gear and user conflicts. These concerns remain valid. NMFS will continue to collect information to evaluate the appropriateness of the retention limit in the Florida SWO Management Area and other regional retention limits.

These adjustments are consistent with the 2006 Consolidated HMS FMP as amended, ATCA, and the Magnuson-Stevens Act, and are not expected to negatively impact stock health.

Monitoring and Reporting

NMFS will continue to monitor the SWO fishery closely in 2016 through mandatory landings and catch reports. Dealers are required to submit landing reports and negative reports (if no SWO were purchased) on a weekly basis.

Depending upon the level of fishing effort and catch rates of SWO, NMFS may determine that additional retention limit adjustments or closures are necessary to ensure that available quota is not exceeded or to enhance fishing opportunities. Subsequent actions, if any, will be published in the **Federal Register**. In addition, fishermen may access *http://www.nmfs.noaa.gov/sfa/hms/species/swordfish/landings/index.html* for updates on quota monitoring.

Classification

The Assistant Administrator for NMFS (AA) finds that it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action for the following reasons:

The regulations implementing the 2006 Consolidated HMS FMP, as amended, provide for inseason retention limit adjustments to respond to changes in SWO landings, the availability of SWO on the fishing grounds, the migratory nature of this species, and regional variations in the fishery. Based on available SWO quota, stock abundance, fishery performance in recent years, and the availability of SWO on the fishing grounds, among other considerations, adjustment to the SWO General Commercial permit retention limits from the default levels is warranted. Analysis of available data shows that adjustment to the SWO daily retention limit from the default level would result in minimal risks of exceeding the ICCAT-allocated quota. NMFS provides notification of retention limit adjustments by publishing the notice in the **Federal Register**, emailing individuals who have subscribed to the Atlantic HMS News electronic newsletter, and updating the information posted on the ''Atlantic HMS Breaking News'' Web site at *http://www.nmfs.noaa.gov/sfa/hms/news/breaking_news.html*. Delays in temporarily increasing these retention limits caused by the time required to publish a proposed rule and accept public comment would adversely affect those SWO General Commercial permit holders and HMS Charter/Headboat permit holders that would otherwise have an opportunity to harvest more than the default retention limits of three SWO per vessel per trip in the Northwest Atlantic and Gulf of Mexico regions, and two SWO per vessel per trip in the U.S. Caribbean region. Further, any delay beyond January 1, 2016, could exacerbate the problem of low SWO landings and subsequent quota rollovers. Limited opportunities to harvest the directed SWO quota may have negative social and economic impacts for U.S. fishermen. Adjustment of the retention limits needs to be effective on January 1, 2016, to allow the impacted sectors to benefit from the adjustment during the relevant time period, which could pass by for some fishermen if the action is delayed for notice and public comment, and to not preclude fishing opportunities for fishermen who have access to the fishery during a short time period. Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. For all of the above reasons, there is also good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness.

This action is being taken under 50 CFR 635.24(b)(4) and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: December 23, 2015.

Alan D. Risenhoover,

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

[FR Doc. 2015–32826 Filed 12–30–15; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 140904754–5188–02]

RIN 0648–BF63

Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; 2015–2016 Biennial Specifications and Management Measures; Inseason Adjustments

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

ACTION: Final rule; inseason adjustments to biennial groundfish management measures.

SUMMARY: This final rule announces inseason changes to management measures in the Pacific Coast groundfish fisheries. This action, which is authorized by the Pacific Coast Groundfish Fishery Management Plan (PCGFMP), is intended to allow fisheries to access more abundant groundfish stocks while protecting overfished and depleted stocks. This document also announces a prohibition on the use of midwater trawl gear in the Shorebased Individual Fishing Quota (IFQ) Program shoreward of the boundary line approximating the 150 fm (274 m) depth contour via automatic action, with actual notice (by phone and email) to participants, at noon local time, November 26, 2015 in order to reduce the risk of exceeding the canary rockfish annual catch limit (ACL).

DATES: This final rule is effective January 1, 2016. The depth restrictions for midwater trawl gear were made through automatic action, and are published in the **Federal Register** as soon as practicable after they are issued. The depth restriction for vessels using midwater trawl gear, which was announced by actual notice (by phone and email) prior to implementation, is applicable from noon local time, November 26, 2015 through midnight local time, December 31, 2015.

FOR FURTHER INFORMATION CONTACT: Gretchen Hanshew, phone: 206–526–6147, fax: 206–526–6736, or email: *gretchen.hanshew@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Access

This rule is accessible via the Internet at the Office of the Federal Register Web site at *https://www.federalregister.gov.* Background information and documents are available at the Pacific Fishery Management Council's Web site at *http://www.pcouncil.org/.* Copies of the final environmental impact statement (FEIS) for the Groundfish Specifications and Management Measures for 2015–2016 and Biennial Periods Thereafter are available from Donald McIsaac, Executive Director, Pacific Fishery Management Council (Council), 7700 NE Ambassador Place, Portland, OR 97220, phone: 503–820–2280.

Background

The Pacific Fishery Management Council (Council)—in coordination with Pacific Coast Treaty Indian Tribes and the States of Washington, Oregon, and California—recommended changes to groundfish management measures at its November 13–19, 2015, meeting. Specifically, the Council recommended a revised schedule of trip limits for big skate in the Shorebased IFQ Program for 2016. This rule revises big skate trip limits consistent with the Council's November recommendations.

Before 2015, big skate was managed as a component stock within the Other Fish complex. The big skate overfishing limit (OFL) estimate, along with the estimated OFLs for the other species in the complex, contributed to the OFL specified in regulation for the Other Fish complex. Species managed in complexes do not have OFLs specified in regulation. The Council recommended, and NMFS approved, the designation of big skate as an ecosystem component species, beginning in 2015 (80 FR 12567, March 10, 2015). As described in the inseason action that implemented trip limits for big skate in 2015 (80 FR 31858, June 4, 2015), new information available during 2015 indicated that harvest of big skate was much higher than anticipated and was approaching or exceeding the 2014 estimated OFL contribution. The Council recommended, and NMFS implemented, trip limits on June 1, 2015, to reduce impacts to big skate in the Shorebased IFQ Program. Trip limits for big skate were further adjusted on August 14, 2015, after review of updated fishery information and best available information regarding discard mortality of big skate (80 FR 50212, August 19, 2015). As part of the ongoing development of the 2017–2018 specifications, the Council is reconsidering whether big skate should be reclassified because the species may not be appropriate as an ecosystem component species.

At its November meeting, the Council considered updated fishery information and further refined big skate trip limits for the second year of the biennial cycle. The Council's Groundfish Management Team (GMT) continued analysis of available fishery data to estimate and project catch of big skate in the Shorebased IFQ Program under different trip limit scenarios. The Council considered an apparent seasonal fluctuation in both frequency and magnitude of big skate landings, with higher catch in the summer and lower catch in the winter. The Council also considered feedback from individuals in the Shorebased IFQ Program regarding catch patterns and targeting practices.

The Council recommended, and NMFS is implementing, the following big skate trip limits in the Shorebased IFQ Program, beginning January 1, 2016: 5,000 lbs/2 months (2,268 kg/2 months) for Period 1; 25,000 pounds/2 months (11,340 kg/2 months) for Period 2; 30,000 pounds/2 months (13,608 kg/2 months) for Period 3; 35,000 pounds/2 months (15,876 kg/2 months) for Period 4; 10,000 pounds/2 months (4,536 kg/2 months) for Period 5; and 5,000 pounds/2 months (2,268 kg/2 months) for Period 6. Best estimates indicate that total mortality of big skate through the end of 2016 under this trip limit structure would be 450 mt, 91 mt lower than the estimated 2016 OFL of 541 mt and 44 mt lower than the estimated 2016 ABC of 494 mt.

Depth Restriction via Actual Notice in the Shorebased IFQ Program

Subsequent to the November Council meeting, higher than anticipated catch of canary rockfish occurred in the Shorebased IFQ Program. NMFS took automatic action to impose a depth restriction for vessels using midwater trawl gear in the Shorebased IFQ Program, applicable at noon local time, November 26, 2015. This rule serves as notification of the November 26, 2015 automatic action.

The Shorebased IFQ Program may be restricted or closed, as determined necessary by the Regional Administrator, as a result of projected overages within the Shorebased IFQ Program, the Mothership Coop Program, or the Catcher/Processor Coop Program. As of November 24, 2015, the Shorebased IFQ Program was projected to exceed the total quota pounds available to the sector (2015 allocation, plus surplus carryover from 2014) if

current harvest levels continued and without management action. At noon, on November 26, 2015 the National Marine Fisheries Service (NMFS) prohibited the use of midwater trawl gear in the Shorebased IFQ Program for the remainder of 2015, shoreward of the boundary line approximating the 150 fathom depth contour (150 fm line). This bycatch reduction measure was taken as an automatic action, per regulations at 50 CFR 660.140(a)(3), to reduce potential impacts on canary rockfish, an overfished species subject to rebuilding requirements under the Magnuson Stevens Fishery Conservation and Management Act. NMFS provided actual notice of the closure to participants by phone and email. In addition, NMFS posted on the West Coast Region's internet site to provide notice to the affected fishers. Implementation of the prohibition on using midwater trawl gear (cease fishing) shoreward of the 150 fm line was effective 22 hours after the Public Notice, to allow for additional time for the public to become aware of the change in depth restrictions.

The Shorebased IFQ Program has a 2015 allocation of 43.26 mt of canary rockfish (with surplus carryover pounds from 2014: 47.28 mt). Higher than anticipated catch of canary rockfish occurred in the Shorebased IFQ Program by vessels using midwater trawl gear, exceeding the 2015 Shorebased IFQ Program allocation. Midwater trawl gear has been responsible for an increasing proportion of the annual canary rockfish landings in the Shorebased IFQ Program and data from the Northwest Fisheries Science Center shelf-slope bottom trawl survey indicates that canary rockfish are distributed overwhelmingly shoreward of the boundary line approximating the 150 fm depth contour.

Therefore, NMFS implemented a depth restriction for vessels using midwater trawl gear in the Shorebased IFQ Program to reduce the risk of exceeding the total amount of canary rockfish available the Shorebased IFQ Program, total trawl allocation, and the canary rockfish ACL, through the end of the year.

Technical Edits

LEFG and OA Sablefish Trip Limits

Regulatory changes published in this rule also clarify, but do not revise, sablefish trip limits in the limited entry fixed gear and open access fisheries north of 36° N. lat. The 2016 sablefish ACL is higher than in 2015 and the Council recommended and NMFS implemented a schedule of slightly higher trip limits for the second year of the biennial period, as described in the January 6, 2015 proposed rule (80 FR 687) and implemented in Tables 2 North and 2 South, Subpart E and Tables 3 North and 3 South, Subparts F (80 FR 12567, March 10, 2015). Because of the format of these tables, the higher 2016 trip limits were published in the footnotes, anticipating that an inseason for January 1, 2016 would incorporate movement of those trip limits from the footnote to the body of the table. This formatting change does not revise the 2016 sablefish trip limits for non-IFQ fisheries north of 36° N. lat. that were described and implemented through notice and comment rulemaking. Accordingly, this rule modifies Tables 2 North and 2 South, Subpart E and Tables 3 North and 3 South, Subparts F by moving the schedule of 2016 trip limits, unchanged, from footnotes into the body of the tables.

Classification

This final rule makes routine inseason adjustments to groundfish fishery management measures, based on the best available information. This document also serves as notice of an automatic action, based on the best available information. Both are consistent with the PCGFMP and its implementing regulations.

This action is taken under the authority of 50 CFR 660.60(c) and (d), and 660.140(a)(3) and is exempt from review under Executive Order 12866.

The aggregate data upon which these actions are based are available for public inspection at the Office of the Administrator, West Coast Region, NMFS, during business hours.

NMFS finds good cause to waive prior public notice and comment on the revisions to groundfish management measures under 5 U.S.C. 553(b) because notice and comment would be impracticable and contrary to the public interest. Also, for the same reasons, NMFS finds good cause to waive the 30-day delay in effectiveness pursuant to 5 U.S.C. 553(d)(3), so that the regulatory changes in this final rule may become effective January 1, 2016.

New analysis regarding projected catch of big skate was presented to the Council at its November 2015 meeting. At that meeting, the Council recommended that these changes to big skate trip limits be implemented January 1, 2016, which is the start of the second year of the biennial cycle and the beginning of a cumulative limit period in the commercial groundfish fishery off the West Coast. These restrictions to the amount of landings must be implemented at the start of a cumulative limit period to allow fishermen in the Shorebased IFQ Program an opportunity to continue harvesting big skate, but at a level that will not exceed the new, lower trip limit that will be imposed in January 2016. The trip limits recommended by the Council and implemented by NMFS in this action are anticipated to keep catch of big skate below its estimated OFL, if implemented on January 1. If the recommended limits are not in place January 1, more restrictive measures may be necessary later in the year to keep catch of big skate below its estimated OFL. There was not sufficient time after the November meeting, when the new information was available, to undergo proposed and final rulemaking before January 1.

The depth restrictions in the Shorebased IFQ Program implemented by the Regional Administrator via actual notice are intended to reduce the risk of exceeding the trawl allocation and the 2015 ACL of canary rockfish. The closed area implemented by this rule needed to be in effect during the remainder of the 2015 fishery to shift midwater trawl effort in the Shorebased IFQ Program into deeper waters where they are less likely to catch canary rockfish. Prior notice and opportunity for public comment on this depth restriction was impracticable because NMFS had insufficient time to provide prior notice and the opportunity for public comment between the time the information about catch of canary rockfish became available and when restrictions were determined to be necessary to reduce the risk of further exceeding the 2015 Shorebased IFQ Program allocation, and also reduce the risk of exceeding the 2015 canary rockfish trawl allocation and the ACL. Failure to respond with a depth restriction in a timely manner to reduce the amount by which the 2015 Shorebased IFQ Program allocation for canary rockfish was exceeded would be contrary to the public interest, as it may have required more restrictive measures, perhaps even closure of the fishery, if higher than anticipated harvest of canary rockfish continued.

For the actions to be implemented in this final rule, affording the time necessary for prior notice and opportunity for public comment would prevent NMFS from managing fisheries using the best available science to prevent overfishing in accordance with the PCGFMP and applicable law.

Delaying these changes would also keep management measures in place that are not based on the best available information. Such delay would impair achievement of the PCGFMP goals and objectives of managing for appropriate harvest levels while providing for year-

round fishing and marketing opportunities.

Accordingly, for the reasons stated above, NMFS finds good cause to waive prior notice and comment and to waive the delay in effectiveness.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, and Indian Fisheries.

Dated: December 24, 2015.

Alan D. Risenhoover,

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

For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES

■ 1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.,* 16 U.S.C. 773 *et seq.,* and 16 U.S.C. 7001 *et seq.*

■ 2. Tables 1 North and 1 South to part 660, subpart D, are revised to read as follows:

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Table 1 (North) to Part 660, Subpart D -- Limited Entry Trawl Rockfish Conservation Areas and Landing Allowances for non-IFQ Species and Pacific Whiting North of 40°10' N. Lat.

This table describes Rockfish Conservation Areas for vessels using groundfish trawl gear. This table describes incidental landing allowances for vessels registered to a Federal limited entry trawl permit and using groundfish trawl or groundfish non-trawl gears to harvest individual fishing quota (IFQ) species.

Other Limits and Requirements Apply -- Read § 660.10 - § 660.399 before using this table

01012016

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
Rockfish Conservation Area (RCA)1/:							
1	North of 48°10' N. lat.	shore - modified[2/] 200 fm line[1/]	shore - 200 fm line[1/]	shore - 150 fm line[1/]		shore - 200 fm line[1/]	shore - modified[2/] 200 fm line[1/]
2	48°10' N. lat. - 45°46' N. lat.	100 fm line[1/] - 150 fm line[1/]					
3	45°46' N. lat. - 40°10' N. lat.	100 fm line[1/] - modified[2/] 200 fm line[1/]					

Selective flatfish trawl gear is required shoreward of the RCA; all bottom trawl gear (large footrope, selective flatfish trawl, and small footrope trawl gear) is permitted seaward of the RCA. Large footrope and small footrope trawl gears (except for selective flatfish trawl gear) are prohibited shoreward of the RCA. Midwater trawl gear is permitted only for vessels participating in the primary whiting season. **Vessels fishing groundfish trawl quota pounds with groundfish non-trawl gears, under gear switching provisions at § 660.140, are subject to the limited entry groundfish trawl fishery landing allowances in this table, regardless of the type of fishing gear used. Vessels fishing groundfish trawl quota pounds with groundfish non-trawl gears, under gear switching provisions at § 660.140, are subject to the limited entry fixed gear non-trawl RCA, as described in Tables 2 (North) and 2 (South) to Part 660, Subpart E.**

See § 660.60, § 660.130, and § 660.140 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.70-660.74 and §§ 660.76-660.79 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).

State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California.

4	**Minor Nearshore Rockfish & Black rockfish**	300 lb/ month					
5	**Whiting[3/]**						
6	midwater trawl	Before the primary whiting season: CLOSED. -- During the primary season: mid-water trawl permitted in the RCA. See §660.131 for season and trip limit details. -- After the primary whiting season: CLOSED.					
7	large & small footrope gear	Before the primary whiting season: 20,000 lb/trip. -- During the primary season: 10,000 lb/trip. -- After the primary whiting season: 10,000 lb/trip.					
8	**Cabezon[4/]**						
9	North of 46°16' N. lat.	Unlimited					
10	46°16' N. lat. - 40°10' N. lat.	50 lb/ month					
11	**Shortbelly**	Unlimited					
12	**Spiny dogfish**	60,000 lb/ month					
13	**Big skate**	5,000 lb/ 2 months	25,000 lb/ 2 months	30,000 lb/ 2 months	35,000 lb/ 2 months	10,000 lb/ 2 months	5,000 lb/ 2 months
14	**Longnose skate**	Unlimited					
15	**Other Fish [4/]**	Unlimited					

TABLE 1 (North)

1/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours, and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to the RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

2/ The "modified" fathom lines are modified to exclude certain petrale sole areas from the RCA.

3/ As specificed at §660.131(d), when fishing in the Eureka Area, no more than 10,000 lb of whiting may be taken and retained, possessed, or landed by a vessel that, at any time during the fishing trip, fished in the fishery management area shoreward of 100 fm contour.

4/ "Other Fish" are defined at § 660.11 and include kelp greenling, leopard shark, and cabezon in Washington

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 1 (South) to Part 660, Subpart D -- Limited Entry Trawl Rockfish Conservation Areas and Landing Allowances for non-IFQ Species and Pacific Whiting South of 40°10' N. Lat.

This table describes Rockfish Conservation Areas for vessels using groundfish trawl gear. This table describes incidental landing allowances for vessels registered to a Federal limited entry trawl permit and using groundfish trawl or groundfish non-trawl gears to harvest individual fishing quota (IFQ) species.

Other Limits and Requirements Apply -- Read § 660.10 - § 660.399 before using this table 01012016

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)1/:						
1	South of 40°10' N. lat.	100 fm line[1/] - 150 fm line [1/ 2/]					
	Small footrope trawl gear is required shoreward of the RCA; all trawl gear (large footrope, selective flatfish trawl, midwater trawl, and small footrope trawl gear) is permitted seaward of the RCA. Large footrope trawl gear and midwater trawl gear are prohibited shoreward of the RCA. **Vessels fishing groundfish trawl quota pounds with groundfish non-trawl gears, under gear switching provisions at § 660.140, are subject to the limited entry groundfish trawl fishery landing allowances in this table, regardless of the type of fishing gear used. Vessels fishing groundfish trawl quota pounds with groundfish non-trawl gears, under gear switching provisions at § 660.140, are subject to the limited entry fixed gear non-trawl RCA, as described in Tables 2 (North) and 2 (South) to Part 660, Subpart E.**						
	See § 660.60, § 660.130, and § 660.140 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.70-660.74 and §§ 660.76-660.79 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).						
	State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California.						
2	**Longspine thornyhead**						
3	South of 34°27' N. lat.	24,000 lb/ 2 months					
4	**Minor Nearshore Rockfish & Black rockfish**	300 lb/ month					
5	**Whiting**						
6	midwater trawl	Before the primary whiting season: CLOSED. -- During the primary season: mid-water trawl permitted in the RCA. See §660.131 for season and trip limit details. -- After the primary whiting season: CLOSED.					
7	large & small footrope gear	Before the primary whiting season: 20,000 lb/trip. -- During the primary season: 10,000 lb/trip. -- After the primary whiting season: 10,000 lb/trip.					
8	**Cabezon**	50 lb/ month					
9	**Shortbelly**	Unlimited					
10	**Spiny dogfish**	60,000 lb/ month					
11	**Big skate**	5,000 lb/ 2 months	25,000 lb/ 2 months	30,000 lb/ 2 months	35,000 lb/ 2 months	10,000 lb/ 2 months	5,000 lb/ 2 months
12	**Longnose skate**	Unlimited					
13	**California scorpionfish**	Unlimited					
14	**Other Fish** [3/]	Unlimited					

TABLE 1 (South)

1/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours, and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to the RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

2/ South of 34°27' N. lat., the RCA is 100 fm line - 150 fm line along the mainland coast; shoreline - 150 fm line around islands.

3/ "Other Fish" are defined at § 660.11 and include kelp greenling, leopard shark, and cabezon in Washington

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

■ 3. Tables 2 North and 2 South to part 660, subpart E, are revised to read as follows:

Table 2 (North) to Part 660, Subpart E -- Non-Trawl Rockfish Conservation Areas and Trip Limits for Limited Entry Fixed Gear North of 40°10' N. lat.

Other limits and requirements apply -- Read §§660.10 through 660.399 before using this table — 1012016

TABLE 2 (North)

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
Rockfish Conservation Area (RCA)[1/]:							
1	North of 46°16' N. lat.	shoreline - 100 fm line[1/]					
2	46°16' N. lat. - 42°00' N. lat.	30 fm line[1/] - 100 fm line[1/]					
3	42°00' N. lat. - 40°10' N. lat.	30 fm line[1/] - 100 fm line[1/]					
See §§660.60 and 660.230 for additional gear, trip limit and conservation area requirements and restrictions. See §§660.70-660.74 and §§660.76-660.79 for conservation area descriptions and coordinates (including RCAs, YRCAs, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).							
State trip limits and seasons may be more restrictive than Federal trip limits or seasons, particularly in waters off Oregon and California.							
4	**Minor Slope Rockfish[2/] & Darkblotched rockfish**	4,000 lb/ 2 months					
5	**Pacific ocean perch**	1,800 lb/ 2 months					
6	**Sablefish**	1,275 lb/week, not to exceed 3,375 lb/ 2 months					
7	**Longspine thornyhead**	10,000 lb/ 2 months					
8	**Shortspine thornyhead**	2,000 lb/ 2 months			2,500 lb/ 2 months		
9	**Dover sole, arrowtooth flounder, petrale sole, English sole, starry flounder, Other Flatfish[3/]**	5,000 lb/ month South of 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 0.44 in (11 mm) point to shank, and up to two 1 lb (0.45 kg) weights per line, are not subject to the RCAs.					
10							
11							
12							
13							
14							
15	**Whiting**	10,000 lb/ trip					
16	**Minor Shelf Rockfish[2/], Shortbelly, Widow & Yellowtail rockfish**	200 lb/ month					
17	**Canary rockfish**	CLOSED					
18	**Yelloweye rockfish**	CLOSED					
19	**Minor Nearshore Rockfish & Black rockfish**						
20	North of 42°00' N. lat.	5,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black rockfish or blue rockfish[4/]					
21	42°00' N. lat. - 40°10' N. lat.	8,500 lb/ 2 months, of which no more than 1,200 lb of which may be species other than black rockfish				6,000 lb/ 2 months, of which no more than 1,200 lb of which may be species other than black rockfish	
22	**Lingcod[5/]**	200 lb/2 months		1,200 lb/ 2 months		600 lb/ month	200 lb/ month
23	**Pacific cod**	1,000 lb/ 2 months					
24	**Spiny dogfish**	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months		
25	**Longnose skate**	Unlimited					
26	**Other Fish[6/]& Cabezon in Oregon and California**	Unlimited					

1/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

2/ Bocaccio, chilipepper and cowcod are included in the trip limits for Minor Shelf Rockfish and splitnose rockfish is included in the trip limits for Minor Slope Rockfish.

3/ "Other flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

4/ For black rockfish north of Cape Alava (48°09.50' N. lat.), and between Destruction Is. (47°40' N. lat.) and Leadbetter Pnt. (46°38.17' N. lat.), there is an additional limit of 100 lb or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.

5/ The minimum size limit for lingcod is 22 inches (56 cm) total length North of 42° N. lat. and 24 inches (61 cm) total length South of 42° N. lat.

6/ "Other Fish" are defined at § 660.11 and include kelp greenling, leopard shark, and cabezon in Washington.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 2 (South) to Part 660, Subpart E -- Non-Trawl Rockfish Conservation Areas and Trip Limits for Limited Entry Fixed Gear South of 40°10' N. lat.

	Other limits and requirements apply -- Read §§660.10 through 660.399 before using this table	JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC	1012016
	Rockfish Conservation Area (RCA)[1/]:							TABLE 2 (South)
1	40°10' N. lat. - 34°27' N. lat.	30 fm line[1/] - 150 fm line[1/]						
2	South of 34°27' N. lat.	60 fm line[1/] - 150 fm line[1/] (also applies around islands)						
	See §§660.60 and 660.230 for additional gear, trip limit and conservation area requirements and restrictions. See §§660.70-660.74 and §§660.76-660.79 for conservation area descriptions and coordinates (including RCAs, YRCAs, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).							
	State trip limits and seasons may be more restrictive than Federal trip limits or seasons, particularly in waters off Oregon and California.							
3	**Minor Slope rockfish[2/] & Darkblotched rockfish**	40,000 lb/ 2 months, of which no more than 1,375 lb may be blackgill rockfish			40,000 lb/ 2 months, of which no more than 1,600 lb may be blackgill rockfish			
4	**Splitnose rockfish**	40,000 lb/ 2 months						
5	**Sablefish**							
6	40°10' N. lat. - 36°00' N. lat.	1,275 lb/week, not to exceed 3,375 lb/ 2 months						
7	South of 36°00' N. lat.	2,000 lb/ week						
8	**Longspine thornyhead**	10,000 lb/ 2 months						
9	**Shortspine thornyhead**							
10	40°10' N. lat. - 34°27' N. lat.	2,000 lb/ 2 months			2,500 lb/ 2 months			
11	South of 34°27' N. lat.	3,000 lb/ 2 months						
12	**Dover sole, arrowtooth flounder, petrale sole, English sole, starry flounder, Other Flatfish[3/]**	5,000 lb/ month South of 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 0.44 in (11 mm) point to shank, and up to two 1 lb (0.45 kg) weights per line, are not subject to the RCAs.						
13								
14								
15								
16								
17								
18	**Whiting**	10,000 lb/ trip						
19	**Minor Shelf Rockfish[2/], Shortbelly, Widow rockfish (including Bocaccio and Chilipepper between 40°10' - 34°27' N. lat.)**							
20	40°10' N. lat. - 34°27' N. lat.	Minor shelf rockfish, shortbelly, widow rockfish, bocaccio & chilipepper: 2,500 lb/ 2 months, of which no more than 500 lb may be any species other than chilipepper.						
21	South of 34°27' N. lat.	4,000 lb/ 2 months	CLOSED		4,000 lb/ 2 months			
22	**Chilipepper**							
23	40°10' N. lat. - 34°27' N. lat.	Chilipepper included under minor shelf rockfish, shortbelly, widow rockfish and bocaccio limits - - See above						
24	South of 34°27' N. lat.	2,000 lb/ 2 months, this opportunity only available seaward of the non-trawl RCA						
25	**Canary rockfish**	CLOSED						
26	**Yelloweye rockfish**	CLOSED						
27	**Cowcod**	CLOSED						
28	**Bronzespotted rockfish**	CLOSED						
29	**Bocaccio**							
30	40°10' N. lat. - 34°27' N. lat.	Bocaccio included under Minor shelf rockfish, shortbelly, widow rockfish & chilipepper limits - - See above						
31	South of 34°27' N. lat.	750 lb/ 2 months	CLOSED		750 lb/ 2 months			

Table 2 (South). Continued

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC	
32	**Minor Nearshore Rockfish & Black rockfish**							**TABLE 2 (South)**
33	Shallow nearshore	600 lb/ 2 months	CLOSED	800 lb/ 2 months	900 lb/ 2 months	800 lb/ 2 months	1,000 lb/ 2 months	
34	Deeper nearshore							
35	40°10' N. lat. - 34°27' N. lat.	700 lb/ 2 months	CLOSED	700 lb/ 2 months	900 lb/ 2 months		1,000 lb/ 2 months	
36	South of 34°27' N. lat.	500 lb/ 2 months		600 lb/ 2 months				
37	California scorpionfish	1,200 lb/ 2 months	CLOSED	1,200 lb/ 2 months				
38	**Lingcod**[4/]	200 lb/ 2 months	CLOSED	800 lb/ 2 months			400 lb/ month	200 lb/ month
39	**Pacific cod**	1,000 lb/ 2 months						
40	**Spiny dogfish**	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months			
41	**Longnose skate**	Unlimited						
42	**Other Fish**[5/] **& Cabezon**	Unlimited						

1/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

2/ POP is included in the trip limits for Minor Slope Rockfish. Blackgill rockfish have a species specific trip sub-limit within the Minor Slope Rockfish cumulative limit. Yellowtail rockfish are included in the trip limits for Minor Shelf Rockfish. Bronzespotted rockfish have a species specific trip limit.

3/ "Other Flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

4/ The commercial mimimum size limit for lingcod is 24 inches (61 cm) total length South of 42° N. lat.

5/ "Other Fish" are defined at § 660.11 and include kelp greenling, leopard shark, and cabezon in Washington.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

■ 4. Tables 3 North and 3 South to part 660, subpart F, are revised to read as follows:

Table 3 (North) to Part 660, Subpart F -- Non-Trawl Rockfish Conservation Areas and Trip Limits for Open Access Gears North of 40°10' N. lat.

Other limits and requirements apply -- Read §§660.10 through 660.399 before using this table

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		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
Rockfish Conservation Area (RCA)[1/]:							
1	North of 46°16' N. lat.	shoreline - 100 fm line[1/]					
2	46°16' N. lat. - 42°00' N. lat.	30 fm line[1/] - 100 fm line[1/]					
3	42°00' N. lat. - 40°10' N. lat.	30 fm line[1/] - 100 fm line[1/]					
See §§660.60, 660.330 and 660.333 for additional gear, trip limit and conservation area requirements and restrictions. See §§660.70-660.74 and §§660.76-660.79 for conservation area descriptions and coordinates (including RCAs, YRCAs, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).							
State trip limits and seasons may be more restrictive than Federal trip limits or seasons, particularly in waters off Oregon and California.							
4	**Minor Slope Rockfish[2/] & Darkblotched rockfish**	Per trip, no more than 25% of weight of the sablefish landed					
5	**Pacific ocean perch**	100 lb/ month					
6	**Sablefish**	300 lb/ day, or 1 landing per week of up to 1,000 lb, not to exceed 2,000 lb/ 2 months					
7	**Shortpine thornyheads and longspine thornyheads**	CLOSED					
8	**Dover sole, arrowtooth flounder, petrale sole, English sole, starry flounder, Other Flatfish[3/]**	3,000 lb/ month, no more than 300 lb of which may be species other than Pacific sanddabs.					
9							
10		South of 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 0.44 in (11 mm) point to shank, and up to two 1 lb (0.45 kg) weights per line are not subject to the RCAs.					
11							
12							
13							
14	**Whiting**	300 lb/ month					
15	**Minor Shelf Rockfish[2/], Shortbelly, Widow & Yellowtail rockfish**	200 lb/ month					
16	**Canary rockfish**	CLOSED					
17	**Yelloweye rockfish**	CLOSED					
18	**Minor Nearshore Rockfish & Black rockfish**						
19	North of 42°00' N. lat.	5,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black rockfish					
20	42°00' N. lat. - 40°10' N. lat.	8,500 lb/ 2 months, of which no more than 1,200 lb of which may be species other than black rockfish				6,000 lb/ 2 months, of which no more than 1,200 lb of which may be species other than black rockfish	
21	**Lingcod[6/]**	100 lb/ month		600 lb/ month			100 lb/ month
22	**Pacific cod**	1,000 lb/ 2 months					
23	**Spiny dogfish**	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months		
24	**Longnose skate**	Unlimited					
25	**Other Fish[6/] & Cabezon in Oregon and California**	Unlimited					

TABLE 3 (North)

Table 3 (North). Continued

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
26	**SALMON TROLL** *(subject to RCAs when retaining all species of groundfish, except for yellowtail rockfish and lingcod, as described below)*						
27	North	Salmon trollers may retain and land up to 1 lb of yellowtail rockfish for every 2 lbs of salmon landed, with a cumulative limit of 200 lb/month, both within and outside of the RCA. This limit is within the 200 lb per month combined limit for minor shelf rockfish, widow rockfish and yellowtail rockfish, and not in addition to that limit. Salmon trollers may retain and land up to 1 lingcod per 15 Chinook per trip, plus 1 lingcod per trip, up to a trip limit of 10 lingcod, on a trip where any fishing occurs within the RCA. This limit only applies during times when lingcod retention is allowed, and is not "CLOSED." This limit is within the per month limit for lingcod described in the table above, and not in addition to that limit. All groundfish species are subject to the open access limits, seasons, size limits and RCA restrictions listed in the table above, unless otherwise stated here.					
28	**PINK SHRIMP NON-GROUNDFISH TRAWL** *(not subject to RCAs)*						
29	North	**Effective April 1 - October 31:** Groundfish: 500 lb/day, multiplied by the number of days of the trip, not to exceed 1,500 lb/trip. The following sublimits also apply and are counted toward the overall 500 lb/day and 1,500 lb/trip groundfish limits: lingcod 300 lb/month (minimum 24 inch size limit); sablefish 2,000 lb/month; canary, thornyheads and yelloweye rockfish are PROHIBITED. All other groundfish species taken are managed under the overall 500 lb/day and 1,500 lb/trip groundfish limits. Landings of these species count toward the per day and per trip groundfish limits and do not have species-specific limits. The amount of groundfish landed may not exceed the amount of pink shrimp landed.					

TABLE 3 (North) cont'd

1/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

2/ Bocaccio, chilipepper and cowcod rockfishes are included in the trip limits for Minor Shelf Rockfish. Splitnose rockfish is included in the trip limits for minor slope rockfish.

3/ "Other flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

4/ For black rockfish north of Cape Alava (48°09.50' N. lat.), and between Destruction Is. (47°40' N. lat.) and Leadbetter Pnt. (46°38.17' N. lat.), there is an additional limit of 100 lbs or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.

5/ The minimum size limit for lingcod is 22 inches (56 cm) total length North of 42° N. lat. and 24 inches (61 cm) total length South of 42° N. lat.

6/ "Other fish" are defined at § 660.11 and include kelp greenling, leopard shark, and cabezon in Washington.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 3 (South) to Part 660, Subpart F -- Non-Trawl Rockfish Conservation Areas and Trip Limits for Open Access Gears South of 40°10' N. lat.

Other limits and requirements apply -- Read §§660.10 through 660.399 before using this table

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		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
Rockfish Conservation Area (RCA)[1/]:							
1	40°10' N. lat. - 34°27' N. lat.	30 fm line[1/] - 150 fm line[1/]					
2	South of 34°27' N. lat.	60 fm line[1/] - 150 fm line[1/] (also applies around islands)					
See §§660.60 and 660.230 for additional gear, trip limit and conservation area requirements and restrictions. See §§660.70-660.74 and §§660.76-660.79 for conservation area descriptions and coordinates (including RCAs, YRCAs, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).							
State trip limits and seasons may be more restrictive than Federal trip limits or seasons, particularly in waters off Oregon and California.							
3	**Minor Slope Rockfish[2/] & Darkblotched rockfish**	10,000 lb/ 2 months, of which no more than 475 lb may be blackgill rockfish			10,000 lb/ 2 months, of which no more than 550 lb may be blackgill rockfish		
4	**Splitnose rockfish**	200 lb/ month					
5	**Sablefish**						
6	40°10' N. lat. - 36°00' N. lat.	300 lb/ day, or 1 landing per week of up to 1,000 lb, not to exceed 2,000 lb/ 2 months					
7	South of 36°00' N. lat.	300 lb/ day, or 1 landing per week of up to 1,600 lb, not to exceed 3,200 lb/ 2 months					
8	**Shortpine thornyheads and longspine thornyheads**						
9	40°10' N. lat. - 34°27' N. lat.	CLOSED					
10	South of 34°27' N. lat.	50 lb/ day, no more than 1,000 lb/ 2 months					
11	**Dover sole, arrowtooth flounder, petrale sole, English sole, starry flounder, Other Flatfish[3/]**	3,000 lb/ month, no more than 300 lb of which may be species other than Pacific sanddabs.					
12							
13		South of 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 0.44 in (11 mm) point to shank, and up to two 1 lb (0.45 kg) weights per line are not subject to the RCAs.					
14							
15							
16							
17	**Whiting**	300 lb/ month					
18	**Minor Shelf Rockfish[2/], Shortbelly, Widow rockfish and Chilipepper**						
19	40°10' N. lat. - 34°27' N. lat.	300 lb/ 2 months	CLOSED	200 lb/ 2 months		300 lb/ 2 months	
20	South of 34°27' N. lat.	1500 lb/ 2 months		1500 lb/ 2 months			
21	**Canary rockfish**	CLOSED					
22	**Yelloweye rockfish**	CLOSED					
23	**Cowcod**	CLOSED					
24	**Bronzespotted rockfish**	CLOSED					
25	**Bocaccio**						
26	40°10' N. lat. - 34°27' N. lat.	200 lb/ 2 months	CLOSED	100 lb/ 2 months		200 lb/ 2 months	
27	South of 34°27' N. lat.	250 lb/ 2 months		250 lb/ 2 months			

TABLE 3 (South)

Table 3 (South). Continued

			JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
28	**Minor Nearshore Rockfish & Black rockfish**							
29	Shallow nearshore		600 lb/ 2 months	CLOSED	800 lb/ 2 months	900 lb/ 2 months	800 lb/ 2 months	1,000 lb/ 2 months
30	Deeper nearshore							
31	40°10' N. lat. - 34°27' N. lat.		700 lb/ 2 months	CLOSED	700 lb/ 2 months	900 lb/ 2 months		1,000 lb/ 2 months
32	South of 34°27' N. lat.		500 lb/ 2 months		600 lb/ 2 months			
33	California scorpionfish		1,200 lb/ 2 months	CLOSED	1,200 lb/ 2 months			
34	**Lingcod**[4/]		100 lb/ month	CLOSED	400 lb/ month			100 lb/ month
35	**Pacific cod**		1,000 lb/ 2 months					
36	**Spiny dogfish**		200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months		
37	**Longnose skate**		Unlimited					
38	**Other Fish**[5/] **& Cabezon**		Unlimited					
39	**RIDGEBACK PRAWN AND, SOUTH OF 38°57.50' N. LAT., CA HALIBUT AND SEA CUCUMBER NON-GROUNDFISH TRAWL**							
40	**NON-GROUNDFISH TRAWL Rockfish Conservation Area (RCA) for CA Halibut, Sea Cucumber & Ridgeback Prawn:**							
41	*40° 10' N. lat. - 38° 00' N. lat.*		*100 fm line*[1/] *- 200 fm line*[1/]	*100 fm line*[1/] *- 150 fm line*[1/]				*100 fm line*[1/] *- 200 fm line*[1/]
42	*38° 00' N. lat. - 34° 27' N. lat.*		*100 fm line*[1/] *- 150 fm line*[1/]					
43	*South of 34° 27' N. lat.*		*100 fm line*[1/] *- 150 fm line*[1/] *along the mainland coast; shoreline - 150 fm line*[1/] *around islands*					
44			Groundfish: 300 lb/trip. Species-specific limits described in the table above also apply and are counted toward the 300 lb groundfish per trip limit. The amount of groundfish landed may not exceed the amount of the target species landed, except that the amount of spiny dogfish landed may exceed the amount of target species landed. Spiny dogfish are limited by the 300 lb/trip overall groundfish limit. The daily trip limits for sablefish coastwide and thornyheads south of Pt. Conception and the overall groundfish "per trip" limit may not be multiplied by the number of days of the trip. Vessels participating in the California halibut fishery south of 38°57.50' N. lat. are allowed to (1) land up to 100 lb/day of groundfish without the ratio requirement, provided that at least one California halibut is landed and (2) land up to 3,000 lb/month of flatfish, no more than 300 lb of which may be species other than Pacific sanddabs, sand sole, starry flounder, rock sole, curlfin sole, or California scorpionfish (California scorpionfish is also subject to the trip limits and closures in line 31).					
45	**PINK SHRIMP NON-GROUNDFISH TRAWL GEAR** *(not subject to RCAs)*							
46		South	Effective April 1 - October 31: Groundfish: 500 lb/day, multiplied by the number of days of the trip, not to exceed 1,500 lb/trip. The following sublimits also apply and are counted toward the overall 500 lb/day and 1,500 lb/trip groundfish limits: lingcod 300 lb/ month (minimum 24 inch size limit); sablefish 2,000 lb/ month; canary, thornyheads and yelloweye rockfish are PROHIBITED. All other groundfish species taken are managed under the overall 500 lb/day and 1,500 lb/trip groundfish limits. Landings of all groundfish species count toward the per day, per trip or other species-specific sublimits described here and the species-specific limits described in the table above do not apply. The amount of groundfish landed may not exceed the amount of pink shrimp landed.					

TABLE 3 (South) cont'd

1/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

2/ POP is included in the trip limits for minor slope rockfish. Blackgill rockfish have a species specific trip sub-limit within the minor slope rockfish cumulative limits. Yellowtail rockfish is included in the trip limits for minor shelf rockfish. Bronzespotted rockfish have a species specific trip limit.

3/ "Other flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

4/ The commercial mimimum size limit for lingcod is 24 inches (61 cm) total length South of 42° N. lat.

5/ "Other fish" are defined at § 660.11 and includes kelp greenling, leopard shark, and cabezon in Washington.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

[FR Doc. 2015–32884 Filed 12–30–15; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 80, No. 251
Thursday, December 31, 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 Part 430

[Docket Number EERE–2014–BT–STD–0048]

RIN 1904–AD37

Appliance Standards and Rulemaking Federal Advisory Committee: Notice of Open Meetings for the Central Air Conditioners and Heat Pumps Working Group To Negotiate a Notice of Proposed Rulemaking (NOPR) for Energy Conservation Standards

AGENCY: Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy.

ACTION: Notice of public meetings.

SUMMARY: The U.S. Department of Energy (DOE) announces public meetings and webinars for the Central Air Conditioners and Heat Pumps Working Group. The Federal Advisory Committee Act requires that agencies publish notice of an advisory committee meeting in the **Federal Register**.

DATES: DOE will host public meetings on the following dates:

- January 11, 2016 (9:30 a.m.–5:00 p.m.)
- January 12, 2016 (9:30 a.m.–3:00 p.m.)

The working group will meet on January 12, 2016 only if the term sheet is not completed on January 11, 2016.

ADDRESSES: The meetings will be held at U.S. Department of Energy, Forrestal Building, Room 8E–089, 1000 Independence Avenue SW., Washington, DC 20585 unless otherwise stated. Individuals will also have the opportunity to participate by webinar. To register for the webinar and receive call-in information, please register at *https://attendee.gotowebinar.com/register/5930616558028960258.*

Members of the public are welcome to observe the business of the meeting and, if time allows, may make oral statements during the specified period for public comment. To attend the meeting and/or to make oral statements regarding any of the items on the agenda, email *asrac@ee.doe.gov*. In the email, please indicate your name, organization (if appropriate), citizenship, and contact information. Please note that foreign nationals participating in the public meeting are subject to advance security 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 as soon as possible by contacting Ms. Regina Washington at (202) 586–1214 or by email: *Regina.Washington@ee.doe.gov* so that the necessary procedures can be completed. Anyone attending the meeting will be required to present a government photo identification, such as a passport, driver's license, or government identification. Due to the required security screening upon entry, individuals attending should arrive early to allow for the extra time needed.

FOR FURTHER INFORMATION CONTACT: Mr. Antonio Bouza, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies, EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–4563. Email: *asrac@ee.doe.gov.*

Ms. Johanna H. Jochum, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 287–6307. Email: *johanna.jochum@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: On Wednesday, June 17, 2015, the Appliance Standards and Rulemaking Federal Advisory Committee (ASRAC) met and unanimously passed the recommendation to form a central air conditioners and heat pumps working group to meet and discuss and, if possible, reach consensus on a proposed rule for energy efficiency standards and certain aspects of the test procedure. (Docket No. EERE–2013–BT–NOC–0005, June 17, 2015 Meeting Transcript). The ASRAC Charter required completion of a term sheet by December 31, 2015. 80 FR 40938 (July 14, 2015).

On December 18, 2015, the working group unanimously voted to request ASRAC to extend the term sheet deadline to January 22, 2016. (EERE–2014–BT–STD–0048, December 18, 2015 Public Meeting Transcript). Following that meeting, ASRAC granted the working group an extension until January 19, 2016 so the working group could provide a term sheet to ASRAC by ASRAC's meeting on January 20, 2016. (Docket No. EERE–2013–BT–NOC–0005, December 18, 2015 Meeting Transcript).

DOE will host public meetings and webinars at DOE's Forrestal Building, unless otherwise stated.

- January 11, 2016 (9:30 a.m.–5:00 p.m.)
- January 12, 2016 (9:30 a.m.–3:00 p.m.)—held at 955 L'Enfant Plaza, 8th Floor

The working group will meet on January 12, 2016 only if the term sheet is not completed on January 11, 2016.

Due to the REAL ID Act implemented by the Department of Homeland Security (DHS) recent changes have been made regarding ID requirements for individuals wishing to enter Federal buildings from specific states and U.S. territories. Driver's 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 driver's licenses (and ID cards) from the following jurisdictions are not acceptable for entry into DOE facilities: Alaska, Louisiana, New York, American Samoa, Maine, Oklahoma, Arizona, Massachusetts, Washington, and Minnesota.

Acceptable alternate forms of Photo-ID include: U.S. Passport or Passport Card; an Enhanced Driver's License or 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 Driver's License); A military ID or other Federal government issued Photo-ID card.

Docket: The docket is available for review at *www.regulations.gov,* including **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials. All documents in the docket are listed in the *www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

Issued in Washington, DC, on December 22, 2015.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

[FR Doc. 2015–32893 Filed 12–30–15; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–8134; Directorate Identifier 2014–NM–256–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all Airbus Model A300 series airplanes; and Airbus Model A300 B4–600, B4–600R, and F4–600R series airplanes; and Model A300 C4–605R Variant F airplanes (collectively called Model A300–600 series airplanes). This proposed AD was prompted by a report of cracking of the lower tension bolt area at the rib one junction (both sides) of the lower wing. This proposed AD would require repetitive inspections for cracking of the fasteners and of the fitting around the fastener holes at the Frame (FR) 40 lower wing location, and corrective actions if necessary. We are proposing this AD to detect and correct crack initiation of the fittings of the FR40 lower wing locations, which could result in reduced structural integrity of the airplane.

DATES: We must receive comments on this proposed AD by February 16, 2016.

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

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

For service information identified in this proposed AD, contact Airbus SAS, Airworthiness Office—EAW, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com*. You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–8134; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–2125; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2015–8134; Directorate Identifier 2014–NM–256–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2014–0272, dated December 12, 2014 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Airbus Model A300 series airplanes; and Airbus Model A300 B4–600, B4–600R, and F4–600R series airplanes; and Model A300 C4–605R Variant F airplanes (collectively called Model A300–600 series airplanes). The MCAI states:

> Following the A300–600 Extended Service Goal (ESG2) exercise, specific inspections for cracks were performed in fittings of frame (FR) 40, in areas not covered by any existing task.
>
> Findings were identified on an A300–600 aeroplane withdrawn from service in the lower tension bolt area at rib one junction (both sides).
>
> This condition, if not detected and corrected, could lead to crack initiation, affecting the structural integrity of the aeroplane.
>
> To address this potential unsafe condition, an inspection programme was developed for the fitting around the fastener holes located at FR40 lower wing junction, left-hand (LH) and right-hand (RH) sides.
>
> For the reasons described above, this [EASA] AD requires repetitive High Frequency Eddy Current (HFEC) inspections and rototest inspections of the fitting around the fastener holes located at FR40 lower wing junction and, depending on findings, accomplishment of a repair.

The corrective actions include a repair using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA).

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–8134.

Related Service Information Under 1 CFR Part 51

We reviewed Airbus Service Bulletins A300–57–0257 and A300–57–6115, both dated April 4, 2014. The service information describes procedures for repetitive inspections for cracking of the fasteners and of the fitting around the fastener holes at the FR40 lower wing location. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section of this NPRM.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation

in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Explanation of ''RC'' Procedures and Tests in Service Information

The FAA worked in conjunction with industry, under the Airworthiness Directive Implementation Aviation Rulemaking Committee (ARC), to enhance the AD system. One enhancement was a new process for annotating which procedures and tests in the service information are required for compliance with an AD. Differentiating these procedures and tests from other tasks in the service information is expected to improve an owner's/operator's understanding of crucial AD requirements and help provide consistent judgment in AD compliance. The procedures and tests identified as Required for Compliance (RC) in any service information have a direct effect on detecting, preventing, resolving, or eliminating an identified unsafe condition.

As specified in a NOTE under the Accomplishment Instructions of the specified service information, procedures and tests that are identified as RC in any service information must be done to comply with the proposed AD. However, procedures and tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an alternative method of compliance (AMOC), provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC will require approval of an AMOC.

Costs of Compliance

We estimate that this proposed AD affects 166 airplanes of U.S. registry.

We also estimate that it would take about 12 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $169,320, or $1,020 per product.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

3. Will not affect intrastate aviation in Alaska; and

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus: Docket No. FAA–2015–8134; Directorate Identifier 2014–NM–256–AD.

(a) Comments Due Date

We must receive comments by February 16, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Airbus airplanes identified in paragraphs (c)(1) and (c)(2) of this AD, certificated in any category.

(1) Airbus Model A300 B2–1A, B2–1C, B2K–3C, B2–203, B4–2C, B4–103, and B4–203 airplanes.

(2) Airbus Model A300 B4–601, B4–603, B4–620, B4–622, B4–605R, B4–622R, F4–605R, F4–622R, and C4–605R Variant F airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 57, Wings.

(e) Reason

This AD was prompted by a report of cracking of the lower tension bolt area at rib one junction (both sides) of the lower wing. We are issuing this AD to detect and correct crack initiation of the fittings of the Frame (FR) 40 lower wing locations, which could result in reduced structural integrity of the airplane.

(f) Compliance

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

(g) Repetitive High Frequency Eddy Current Inspections

Within 1,000 flight hours after the effective date of this AD: Do a high frequency eddy current (HFEC) inspection for cracking of fasteners 1 through 3 at the left-hand and right-hand sides of the FR40 lower junction, and of the fitting around the fastener holes, in accordance with the Accomplishment Instructions of Airbus Service Bulletins A300–57–0257 (for Model A300 B2–1A, B2–1C, B2K–3C, B2–203, B4–2C, B4–103, and B4–203 airplanes) or A300–57–6115 (for Model A300 B4–601, B4–603, B4–620, B4–622, B4–605R, B4–622R, F4–605R, F4–622R, and C4–605R Variant F airplanes), both dated April 4, 2014, as applicable. If no cracking is found, repeat the HFEC inspection at intervals not to exceed 1,000 flight hours until a rototest inspection required by paragraph (h)(2) of this AD has been done.

(h) Repetitive Rototest Inspections

Within 36 months after the effective date of this AD: Remove the fasteners and measure the diameter of the fastener holes; and, before further flight, do the applicable actions required by paragraph (h)(1) or (h)(2) of this AD, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–57–0257 (for Model A300 B2–1A, B2–1C, B2K–3C, B2–203, B4–2C, B4–103, and B4–203 airplanes) or A300–57–6115 (for Model A300 B4–601, B4–603, B4–620, B4–622, B4–605R, B4–622R, F4–605R, F4–622R, and C4–605R Variant F airplanes), as applicable.

(1) If one or more of the hole diameters is outside the tolerance of the nominal diameter, and outside the tolerance of the first and second oversize: Do the applicable corrective actions required by paragraph (i) of this AD.

(2) If all of the hole diameters are within the tolerance of the nominal diameter or the first or second oversize: Do detailed and rototest inspections for cracking of the fastener holes at the left-hand and right-hand sides of the FR40 lower junction, in accordance with the Accomplishment Instructions of Airbus Service Bulletins A300–57–0257 (for Model A300 B2–1A, B2–1C, B2K–3C, B2–203, B4–2C, B4–103, and B4–203 airplanes) or A300–57–6115 (for Model A300 B4–601, B4–603, B4–620, B4–622, B4–605R, B4–622R, F4–605R, F4–622R, and C4–605R Variant F airplanes), both dated April 4, 2014, as applicable. If no cracking is found, before further flight, install new fasteners of the same diameter in special clearance fit for fasteners 1 through 3 of the FR40 lower junction, in accordance with the Accomplishment Instructions of Airbus Service Bulletins A300–57–0257 or A300–57–6115, both dated April 4, 2014, as applicable. Repeat the rototest inspection thereafter at intervals not to exceed 7,000 flight cycles. Accomplishment of a rototest inspection required by this paragraph terminates the repetitive HFEC inspections required by paragraph (g) of this AD.

(i) Corrective Actions

If, during any inspection required by this AD, any crack is found, or one or more of the hole diameters are outside the tolerance of the nominal diameter: Repair before further flight using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA).

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–2125; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) Contacting the Manufacturer: For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) Required for Compliance (RC): Except as required by paragraph (i) of this AD: If any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(k) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) European Aviation Safety Agency (EASA) Airworthiness Directive 2014–0272, dated December 12, 2014, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2015–8134.

(2) For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAW, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.* You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on December 21, 2015.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–32848 Filed 12–30–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–8130; Directorate Identifier 2014–NM–175–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain The Boeing Company Model 777–200 and –300 series airplanes equipped with Pratt and Whitney engines. This proposed AD was prompted by reports of blocked drain lines at the engine forward strut that caused flammable fluid to accumulate in a flammable leakage zone. This proposed AD would require doing the following actions on the left strut and right strut: A one-time cleaning of certain forward strut drain lines; installing new forward strut drain lines and insulation blankets; a leak check of the forward strut drain lines; and repair if any leak is found. This proposed AD would also require revising the maintenance or inspection program, as applicable, to incorporate a certain airworthiness limitation. We are proposing this AD to prevent blockage of forward strut drain lines, which could cause flammable fluids to collect in the forward strut area and potentially cause an uncontrolled fire or cause failure of engine attachment structure and consequent airplane loss.

DATES: We must receive comments on this proposed AD by February 16, 2016.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

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

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707,

MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–8130.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–8130; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Kevin Nguyen, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6501; fax: 425–917–6590; email: *kevin.nguyen@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2015–8130; Directorate Identifier 2014–NM–175–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

We received multiple reports of the forward drain lines of the engine struts being blocked with coked particles. Coked particles form when hydraulic fluid is exposed to, and degraded by, the high temperatures of the hot core zone of the engine and the hot pneumatic bleed ducts. In two events, fluids backed up into the electrical (left) side of the disconnect box assembly of the strut system, causing an electrical fault that resulted in a false engine indicating and crew-alerting system (EICAS) message for overheat detection. Flammable fluids collecting in the electrical side of the disconnect box assembly of the strut system can cause an electrical fault for electrical components, and create a potential ignition source for trapped flammable fluids that can lead to a fire.

In three other events, flammable fluids backed up and pooled in the fluid (right) side of the disconnect box assembly of the strut system. Flammable fluids collecting in the disconnect box assembly of the strut system are a fire hazard because that area has no fire detection, containment, or extinguishing capability, and with an ignition source can result in an uncontrolled fire in the strut. Also, flammable fluids pooling in the disconnect box assembly of the strut system can spill over onto the engine and initiate an engine fire in the engine core cavity compartment.

Hydraulic fluid collecting in the disconnect box assembly of the strut system can cause contamination and hydrogen embrittlement of the titanium structure resulting in cracks that can compromise the engine firewall by allowing a fire in the engine area to enter the strut; or by allowing flammable fluids to leak down and initiate an engine fire in the engine core cavity compartment, and also compromise the engine fire extinguishing system. Hydraulic fluid contamination, including contamination caused by hydraulic fluid in its liquid, vapor, and/or solid (*i.e.,* coked) form, in the strut forward dry bay can lead to hydrogen embrittlement of the titanium fittings of the forward engine mount bulkhead and also the consequent inability of the fittings to carry engine loads, resulting in the loss or separation of an engine. Hydrogen embrittlement could also cause a through-crack formation across the fittings through which an engine fire could breach into the strut, resulting in an uncontained strut fire. We are proposing this AD to prevent blockage of forward strut drain lines, which could cause flammable fluids to collect in the forward strut area and potentially cause an uncontrolled fire or cause failure of engine attachment structure and consequent airplane loss.

Related Service Information Under 1 CFR Part 51

We reviewed the following service information:

- Boeing Special Attention Service Bulletin 777–71–0055, Revision 1, dated April 15, 2015. The service information describes procedures for installing new forward strut drain lines and insulation blankets on the left and right engines.
- Boeing Special Attention Service Bulletin 777–54–0028, Revision 1, dated December 10, 2013. This service information describes procedures for a general visual inspection for hydraulic fluid contamination of the interior of the strut forward dry bay and corrective actions.
- Airworthiness Limitation 54–AWL–01, ''Forward Strut Drain Line'' as specified in Section D.4, Pratt and Whitney Forward Strut Drain Line, dated March 2014, of the Boeing 777 Maintenance Planning Data (MPD) Document Section 9, Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), D622W001–9, dated October 2014. This service information describes an airworthiness limitation task for the functional check of the forward strut drain line.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section of this NPRM.

FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in the service information described previously. For information on the procedures and compliance times specified in Boeing Special Attention Service Bulletin 777–71–0055, Revision 1, dated April 15, 2015; and Boeing Special Attention Service Bulletin 777–54–0028, Revision 1, dated December 10, 2013: See this service information at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–8130.

The phrase ''corrective actions'' is used in this proposed AD. ''Corrective actions'' are actions that correct or address any condition found. Corrective actions in an AD could include, for example, repairs.

This proposed AD would require revisions to certain operator maintenance documents to include a new airworthiness limitation containing repetitive functional checks of the forward engine strut drain line. Compliance with these actions is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance in accordance with the procedures specified in paragraph (k) of this AD. The request should include a description of changes to the required inspections that will ensure the continued operational safety of the airplane.

Other Relevant Rulemaking

On September 23, 2014, we issued AD 2014–20–10, Amendment 39–17983 (79 FR 60331, October 7, 2014), for certain The Boeing Company Model 777–200 and –300 series airplanes equipped with Pratt & Whitney engines. AD 2014–20–10 currently requires repetitive general visual inspections of the strut forward dry bay for the presence of hydraulic fluid, and related investigative and corrective actions (including checking drain lines for blockage due to hydraulic fluid coking; cleaning or replacing drain lines to allow drainage) if necessary; and adds airplanes to the applicability. AD 2014–20–10 was prompted by reports of hydraulic fluid contamination (including contamination caused by hydraulic fluid in its liquid, vapor, and/or solid (coked) form) found in the strut forward dry bay.

The actions required by AD 2014–20–10, Amendment 39–17983 (79 FR 60331, October 7, 2014), are intended to detect and correct hydraulic fluid contamination of the strut forward dry bay, which could result in hydrogen embrittlement of the titanium forward engine mount bulkhead fittings, and consequent inability of the fittings to carry engine loads and resulting in engine separation. Hydrogen embrittlement could also cause a through-crack formation across the fittings through which an engine fire could breach into the strut, resulting in an uncontained strut fire.

Accomplishment of the actions specified below terminates the inspections required by paragraph (g) of AD 2014–20–10, Amendment 39–17983 (79 FR 60331, October 7, 2014), at the modified area only; provided the actions are accomplished concurrently, or the actions specified below for Boeing Special Attention Service Bulletin 777–54–0028, Revision 1, dated December 10, 2013, are done after accomplishing the actions specified in paragraphs (g)(1) through (g)(5) of this proposed AD.

- The actions specified in paragraphs (g)(1) through (g)(4) of this proposed AD on the left and right struts, done in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–71–0055, Revision 1, dated April 15, 2015; and the revision done as specified in paragraph (g)(5) of this proposed AD.
- A one-time general visual inspection for hydraulic fluid contamination of the interior of the strut forward dry bay, and all applicable related investigative and corrective actions, done in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–54–0028, Revision 1, dated December 10, 2013.

On August 14, 2015, we issued AD 2015–17–13, Amendment 39–18246 (80 FR 52948, September 2, 2015) for certain The Boeing Company Model 777–200 and –300 series airplanes equipped with Pratt and Whitney engines. AD 2015–17–13 currently requires repetitive functional checks for blockage of the forward strut drain line, and doing corrective actions (including cleaning or replacing any blocked drain lines) if necessary; and a one-time cleaning of certain forward strut drain lines. AD 2015–17–13 also includes an optional terminating action, which specifies accomplishing the actions in Boeing Special Attention Service Bulletin 777–71–0055, Revision 1, dated April 15, 2015 and incorporating Airworthiness Limitation 54–AWL–01, ''Forward Strut Drain Line'' into the maintenance or inspection program, as applicable. AD 2015–17–13 was prompted by reports of blocked drain lines at the engine forward strut that caused flammable fluid to accumulate in a flammable leakage zone. The actions required by AD 2015–17–13 are intended to detect and correct blockage of forward strut drain lines, which could cause flammable fluids to collect in the forward strut area and potentially cause an uncontrolled fire or cause failure of engine attachment structure and consequent airplane loss.

Accomplishment of the actions required by paragraph (g) of this proposed AD (doing the actions specified Boeing Special Attention Service Bulletin 777–71–0055, Revision 1, dated April 15, 2015; and incorporating Airworthiness Limitation 54–AWL–01, ''Forward Strut Drain Line'' as specified in Section D.4, Pratt and Whitney Forward Strut Drain Line, dated March 2014, of the Boeing 777 Maintenance Planning Data (MPD) Document Section 9, Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), D622W001–9, dated October 2014, into the maintenance or inspection program, as applicable) would terminate the actions required by paragraph (g) of AD 2015–17–13, Amendment 39–18246 (80 FR 52948, September 2, 2015), at the modified area only.

Explanation of ''RC'' Steps in Service Information

The FAA worked in conjunction with industry, under the Airworthiness Directive Implementation Aviation Rulemaking Committee (ARC), to enhance the AD system. One enhancement was a new process for annotating which steps in the service information are required for compliance with an AD. Differentiating these steps from other tasks in the service information is expected to improve an owner's/operator's understanding of crucial AD requirements and help provide consistent judgment in AD compliance. The steps identified as Required for Compliance (RC) in any service information identified previously have a direct effect on detecting, preventing, resolving, or eliminating an identified unsafe condition.

For service information that contains steps that are labeled as RC, the following provisions apply: (1) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD, and an AMOC is required for any deviations to RC steps, including substeps and identified figures; and (2) steps not labeled as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

Costs of Compliance

We estimate that this proposed AD affects 54 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Installing new drain lines and insulation blankets, doing a leak check, and revising the maintenance or inspection program.	16 work-hours × $85 per hour = $1,360.	$17,080	$18,440	$995,760

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

According to the manufacturer, some of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all costs in our cost estimate.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2015–8130; Directorate Identifier 2014–NM–175–AD.

(a) Comments Due Date

We must receive comments by February 16, 2016.

(b) Affected ADs

This AD affects the ADs specified in paragraphs (b)(1) and (b)(2) of this AD.

(1) AD 2014–20–10, Amendment 39–17983 (79 FR 60331, October 7, 2014).

(2) AD 2015–17–13, Amendment 39–18246 (80 FR 52948, September 2, 2015).

(c) Applicability

This AD applies to The Boeing Company Model 777–200 and –300 series airplanes, certificated in any category, equipped with Pratt & Whitney engines, as identified in Boeing Special Attention Service Bulletin 777–71–0055, Revision 1, dated April 15, 2015.

(d) Subject

Air Transport Association (ATA) of America Code 71, Powerplant.

(e) Unsafe Condition

This AD was prompted by reports of blocked drain lines at the engine forward strut that caused flammable fluid to accumulate in a flammable leakage zone. We are issuing this AD to prevent blockage of forward strut drain lines, which could cause flammable fluids to collect in the forward strut area and potentially cause an uncontrolled fire or cause failure of engine attachment structure and consequent airplane loss.

(f) Compliance

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

(g) Actions

Within 4,000 flight cycles or 750 days after the effective date of this AD, whichever occurs later: Accomplish the actions specified in paragraphs (g)(1) through (g)(4) of this AD on the left and right struts, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–71–0055, Revision 1, dated April 15, 2015; and accomplish the revision specified in paragraph (g)(5) of this AD.

(1) Disconnect and remove the forward strut drain lines.

(2) Clean the left system disconnect, the strut forward lower spar, and the forward fireseal pan drain lines.

(3) Install new forward strut drain lines and insulation blankets.

(4) Do a leak check of the forward strut drain lines, for any leak, and repair if any leak is found.

(5) Revise the maintenance or inspection program, as applicable, to incorporate Airworthiness Limitation 54–AWL–01, ''Forward Strut Drain Line'' as specified in Section D.4, Pratt and Whitney Forward Strut Drain Line, dated March 2014, of the Boeing 777 Maintenance Planning Data (MPD) Document Section 9, Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), D622W001–9, dated October 2014. The initial compliance time for Airworthiness Limitation 54–AWL–01 is within 2,000 flight cycles or 1,500 days, whichever occurs first, after doing the actions specified in paragraphs (g)(1) through (g)(4) of this AD.

(h) No Alternative Actions or Intervals

After accomplishing the revision required by paragraph (g)(5) of this AD, no alternative actions (*e.g.,* inspections) or intervals may be used unless the actions or intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (k) of this AD.

(i) Terminating Action for Other ADs

(1) Accomplishing the actions required by paragraph (g) of this AD terminates the actions required by paragraph (g) of AD 2015–17–13, Amendment 39–18246 (80 FR

52948, September 2, 2015, at the modified area only.

(2) Accomplishing the actions specified in paragraphs (i)(2)(i) and (i)(2)(ii) of this AD terminates the inspections required by paragraph (g) of AD 2014–20–10, Amendment 39–17983 (79 FR 60331, October 7, 2014), at the modified area only, provided the actions are accomplished concurrently, or the actions specified in paragraph (i)(2)(ii) of this AD are done after accomplishing the actions specified in paragraph (i)(2)(i) of this AD.

(i) The actions specified in paragraphs (g)(1) through (g)(4) of this AD on the left and right struts are done in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–71–0055, Revision 1, dated April 15, 2015; and the revision specified in paragraph (g)(5) of this AD is done.

(ii) A one-time general visual inspection for hydraulic fluid contamination (including contamination caused by hydraulic fluid in its liquid, vapor, and/or solid (coked) form) of the interior of the strut forward dry bay, and all applicable related investigative and corrective actions (including checking drain lines for blockage due to hydraulic fluid coking, and cleaning or replacing drain lines to allow drainage) are done in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–54–0028, Revision 1, dated December 10, 2013, except where Boeing Special Attention Service Bulletin 777–54–0028, Revision 1, dated December 10, 2013, specifies to contact Boeing for repair, the repair must be done using a method approved in accordance with the procedures specified in paragraph (k) of this AD.

(j) Credit for Previous Actions

This paragraph provides credit for actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Boeing Special Attention Service Bulletin 777–71–0055, dated June 12, 2014, which is not incorporated by reference in this AD.

(k) Alternative Methods of Compliance (AMOCs)

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

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

(3) For service information that contains steps that are labeled as Required for Compliance (RC), the provisions of paragraphs (k)(3)(i) and (k)(3)(ii) apply.

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

(ii) Steps not labeled as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

(l) Related Information

(1) For more information about this AD, contact Kevin Nguyen, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6501; fax: 425–917–6590; email: *kevin.nguyen@faa.gov.*

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

Issued in Renton, Washington, on December 21, 2015.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–32852 Filed 12–30–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–8132; Directorate Identifier 2015–NM–127–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Airbus Model A318, A319, A320, and A321 series airplanes. This proposed AD was prompted by a report of cracks found during maintenance inspections on certain lugs of the 10VU rack side fittings in the cockpit. This proposed AD would require repetitive inspections for cracking of the lugs on the 10VU rack side fittings, and repair of any cracking. We are proposing this AD to prevent loss of flight-critical information displayed to the flightcrew during a critical phase of flight, such as an approach or takeoff, which could result in loss of airplane control at an altitude insufficient for recovery.

DATES: We must receive comments on this proposed AD by February 16, 2016.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

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

For service information identified in this proposed AD, contact Airbus, Airworthiness Office—EIAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.*

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–8132; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1405; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2015–8132; Directorate Identifier 2015–NM–127–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2015–0170, dated August 18, 2015 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Airbus Model A318, A319, A320, and A321 series airplanes. The MCAI states:

> During an unscheduled maintenance operation on an A330 aeroplane, the 10VU rack was removed for access and cracks were discovered on 10VU rack side fittings on lugs 1, 3, and 4. As a similar design is installed on A320 family aeroplanes, a sampling review was done to determine the possible fleet impact. The result showed that several aeroplanes had cracked or broken 10VU rack side fittings.
>
> This condition, if not detected and corrected, could lead to a high vibration level on the primary flight- and navigation displays during critical flight phases (takeoff and landing), possibly creating reading difficulties for the crew.
>
> Prompted by these findings, Airbus developed mod 35869 to reinforce the affected rack fitting lugs. For in-service aeroplanes, Airbus published Service Bulletin (SB) A320–92–1087 to provide inspection and repair instructions.
>
> For the reasons described above, this [EASA] AD requires repetitive detailed inspections (DET) of the affected 10VU rack fitting lugs and, depending on findings, accomplishment of a repair.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–8132.

Related Service Information Under 1 CFR Part 51

Airbus has issued Service Bulletin A320–92–1087, Revision 02, dated November 25, 2014. The service information describes procedures for repetitive inspections for cracking of the lugs on the 10VU rack side fittings, and repair of any cracking. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section of this AD.

FAA's Determination and Requirements of This Proposed AD

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

Explanation of ''RC'' Procedures and Tests in Service Information

The FAA worked in conjunction with industry, under the Airworthiness Directive Implementation Aviation Rulemaking Committee (ARC), to enhance the AD system. One enhancement was a new process for annotating which procedures and tests in the service information are required for compliance with an AD. Differentiating these procedures and tests from other tasks in the service information is expected to improve an owner's/operator's understanding of crucial AD requirements and help provide consistent judgment in AD compliance. The procedures and tests identified as RC (required for compliance) in any service information have a direct effect on detecting, preventing, resolving, or eliminating an identified unsafe condition.

As specified in a Note under the Accomplishment Instructions of the specified service information, procedures and tests that are identified as RC in any service information must be done to comply with the proposed AD. However, procedures and tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an alternative method of compliance (AMOC), provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC will require approval of an AMOC.

Costs of Compliance

We estimate that this proposed AD affects 959 airplanes of U.S. registry.

We also estimate that it would take about 2 work-hours per product to comply with the basic requirements of this proposed AD, and 1 work-hour per product to report inspection findings. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $244,545, or $255 per product.

In addition, we estimate that any necessary repair would take about 84 work-hours, for a cost of $7,140 per product. We have received no definitive data that would enable us to provide part cost estimates for the on-condition actions specified in this proposed AD. We have no way of determining the number of aircraft that might need these actions.

Paperwork Reduction Act

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

Authority for This Rulemaking

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

detail the scope of the Agency's authority.

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

3. Will not affect intrastate aviation in Alaska; and

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus: Docket No. FAA–2015–8132; Directorate Identifier 2015–NM–127–AD.

(a) Comments Due Date

We must receive comments by February 16, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the Airbus airplanes identified in paragraphs (c)(1) through (c)(4) of this AD, certificated in any category; except airplanes on which Airbus Modification 35869 has been embodied in production.

(1) Airbus Model A318–111, –112, –121, and –122 airplanes.

(2) Airbus Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes.

(3) Airbus Model A320–211, –212, –214, –231, –232, and –233 airplanes.

(4) Airbus Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 25, Equipment/Furnishings.

(e) Reason

This AD was prompted by a report of cracks found during maintenance inspections on certain lugs of the 10VU rack side fittings in the cockpit. We are issuing this AD to prevent loss of flight-critical information displayed to the flightcrew during a critical phase of flight, such as an approach or takeoff, which could result in loss of airplane control at an altitude insufficient for recovery.

(f) Compliance

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

(g) Repetitive Inspections and Repair

At the later of the times specified in paragraphs (g)(1) and (g)(2) of this AD: Do a detailed inspection for cracking of the lugs on the 10VU rack side fittings in the cockpit, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–92–1087, Revision 02, dated November 25, 2014. If any crack is found, before further flight, repair in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–92–1087, Revision 02, dated November 25, 2014. Repeat the inspection thereafter at intervals not to exceed 20,000 flight cycles or 40,000 flight hours, whichever occurs first. Repair of the 10VU rack lugs does not terminate the repetitive inspections required by this paragraph.

(1) Before the accumulation of 30,000 total flight cycles or 60,000 total flight hours, whichever occurs first since the airplane's first flight.

(2) Within 24 months after the effective date of this AD.

(h) Reporting Requirement

Submit a report of any findings (positive and negative) of any inspection required by paragraph (g) of this AD to Airbus at the address specified in paragraph (j)(2) of this AD, at the applicable time specified in paragraph (h)(1) or (h)(2) of this AD.

(1) If the inspection was done on or after the effective date of this AD: Submit the report within 90 days after the inspection.

(2) If the inspection was done before the effective date of this AD: Submit the report within 90 days after the effective date of this AD.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1405; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov*. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) Contacting the Manufacturer: For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

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

(4) Required for Compliance (RC): If any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified

as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(j) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) European Aviation Safety Agency (EASA) Airworthiness Directive 2015–0170, dated August 18, 2015, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–8132.

(2) For service information identified in this AD, contact Airbus, Airworthiness Office—EIAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.* You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on December 18, 2015.

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–32885 Filed 12–30–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–8133; Directorate Identifier 2015–NM–101–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain The Boeing Company Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes. This proposed AD was prompted by reports of heavy corrosion and chrome damage on the forward and aft trunnion pin assemblies of the right and left main landing gears (MLGs). This proposed AD would require repetitive lubrication of the forward and aft trunnion pin assemblies of the right and left MLGs; repetitive inspections of these assemblies for corrosion and chrome damage, and related investigative and corrective actions if necessary; and the installation of new or modified trunnion pin assembly components, which would terminate the repetitive lubrication and repetitive inspections. We are proposing this AD to detect and correct heavy corrosion and chrome damage on the forward and aft trunnion pin assemblies of the right and left MLGs, which could result in cracking of these assemblies and collapse of the MLGs.

DATES: We must receive comments on this proposed AD by February 16, 2016.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

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

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–8133.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–8133; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Alan Pohl, Aerospace Engineer, Airframe Branch, ANM–120S, FAA Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6450; fax: 425–917–6590; email: *alan.pohl@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2015–8133; Directorate Identifier 2015–NM–101–AD at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

We received reports of heavy corrosion and chrome damage of the forward and aft trunnion pin assemblies of the right and left main MLGs on Boeing Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes. Investigation revealed that the lubrication between the forward and aft trunnion pin assemblies and the outer cylinder assembly bushings and the lubrication of the aft trunnion bearing ball was not sufficient to prevent wear and corrosion. It was also determined that the clearances between the forward and aft trunnion pin cross bolt bushings and the cross bolts could affect the rate of wear and corrosion of the MLG trunnion pin assemblies. Corrosion and chrome damage of the forward and aft trunnion pin assemblies of the right and left main MLGs, if not corrected, could result in cracking of these assemblies and collapse of the MLGs.

Related Service Information Under 1 CFR Part 51

We reviewed Boeing Special Attention Service Bulletin 737–32–1448, Revision 1, dated May 29, 2015. The service information describes procedures for lubricating the forward and aft trunnion pin assemblies on the left and right MLGs, inspecting the forward and aft trunnion pin assemblies

for corrosion or damage, and performing corrective actions. In addition, the service information describes procedures for installing a new forward trunnion pin housing assembly, seal, and retainer configuration. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section of this NPRM.

FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in the service information described previously, except as discussed under ''Differences Between this Proposed AD and the Service Information.'' For information on the procedures and compliance times, see this service information at *http://regulations.gov* by searching for and locating Docket No. FAA–2015–8133.

The phrase ''related investigative actions'' is used in this proposed AD. ''Related investigative actions'' are follow-on actions that (1) are related to the primary actions, and (2) further investigate the nature of any condition found. Related investigative actions in an AD could include, for example, inspections.

The phrase ''corrective actions'' is used in this proposed AD. ''Corrective actions'' are actions that correct or address any condition found. Corrective actions in an AD could include, for example, repairs.

Costs of Compliance

We estimate that this proposed AD affects 1,023 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Lubrication	2 work-hours × $85 per hour = $170, per lubrication cycle.	$0	$170	$173,190, per lubrication cycle (1,023 airplanes).
Inspection (Groups 1 and 2, Configuration 1 airplanes).	51 work-hours × $85 per hour = $4,335, per inspection cycle.	0	4,335	$4,282,980, per inspection cycle (988 airplanes).
Inspection (Group 3 airplanes)	93 work-hours × $85 per hour = $7,905, per inspection cycle.	0	7,905	$276,675, per inspection cycle (35 airplanes).
Replacement/overhaul (Groups 1 and 2).	84 work-hours × $85 per hour = $7,140	0	7,140	7,054,320 (988 airplanes).
Replacement/overhaul (Group 3 airplanes).	86 work-hours × $85 per hour = $7,310	0	7,310	$255,850 (35 airplanes).

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2015–8133; Directorate Identifier 2015–NM–101–AD.

(a) Comments Due Date

We must receive comments by February 16, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to certain The Boeing Company Model 737–600, –700, –700C, –800, –900, and -900ER series airplanes, certificated in any category, as identified in Boeing Special Attention Service Bulletin 737–32–1448, Revision 1, dated May 29, 2015.

(d) Subject

Air Transport Association (ATA) of America Code 32, Landing Gear.

(e) Unsafe Condition

This AD was prompted by reports of heavy corrosion and chrome damage of the forward and aft trunnion pin assemblies of the right and left main landing gears (MLG). We are issuing this AD to detect and correct heavy corrosion and chrome damage of the forward and aft trunnion pin assemblies of the right and left MLGs, which could result in cracking of these assemblies and collapse of the MLGs.

(f) Compliance

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

(g) Repetitive Lubrication of MLG Trunnion Pin Assemblies

For airplanes in Groups 1 and 2, Configuration 1, and airplanes in Group 3, as identified in Boeing Special Attention Service Bulletin 737–32–1448, Revision 1, dated May 29, 2015: Except as required by paragraph (k) of this AD, at the applicable time specified in Table 1 or Table 2 of paragraph 1.E., ''Compliance,'' of Boeing Special Attention Service Bulletin 737–32–1448, Revision 1, dated May 29, 2015, lubricate the forward and aft trunnion pin assemblies of the left and right MLGs, in accordance with Work Package 1 of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–32–1448, Revision 1, dated May 29, 2015. Repeat the lubrication thereafter at intervals not to exceed those specified in paragraph 1.E., ''Compliance,'' of Boeing Special Attention Service Bulletin 737–32–1448, Revision 1, dated May 29, 2015. Accomplishment of paragraph (i) of this AD terminates the repetitive lubrication required by this paragraph.

(h) Repetitive Inspections, Corrective Actions, and Lubrication

For airplanes in Groups 1 and 2, Configuration 1, and airplanes in Group 3, as identified in Boeing Special Attention Service Bulletin 737–32–1448, Revision 1, dated May 29, 2015: Except as required by paragraph (k) of this AD, at the applicable time specified in Table 1 or Table 2 of paragraph 1.E., ''Compliance,'' of Boeing Special Attention Service Bulletin 737–32–1448, Revision 1, dated May 29, 2015, do a general visual inspection of the left and right MLGs at the forward and aft trunnion pin locations and the visible surfaces of the forward and aft trunnion pin assemblies for signs of corrosion or chrome plating damage and lubricate the forward and aft trunnion pin assemblies, in accordance with Work Package 2 of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–32–1448, Revision 1, dated May 29, 2015. Repeat the general visual inspections thereafter at intervals not to exceed those specified in paragraph 1.E., ''Compliance,'' of Boeing Special Attention Service Bulletin 737–32–1448, Revision 1, dated May 29, 2015. If any discrepancy is found during any inspection required by this paragraph, before further flight, do all applicable related investigative and corrective actions in accordance with Work Package 2 of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737 32–1448, Revision 1, dated May 29, 2015. Accomplishment of the actions required by paragraph (i) of this AD terminates the repetitive inspections required by this paragraph.

(i) Modification of MLG Trunnion Pin Assemblies

For airplanes in Groups 1 and 2, Configuration 1, and airplanes in Group 3, as identified in Boeing Special Attention Service Bulletin 737–32–1448, Revision 1, dated May 29, 2015: Except as required by paragraph (k) of this AD, at the applicable time specified in Table 1 or Table 2 of paragraph 1.E., ''Compliance,'' of Boeing Special Attention Service Bulletin 737–32–1448, Revision 1, dated May 29, 2015, modify and lubricate the left and right MLG trunnion pin assemblies, and do all applicable related investigative and corrective actions, in accordance with Work Package 3 of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–32–1448, Revision 1, dated May 29, 2015. Accomplishment of the actions in Work Package 3 of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–32–1448, Revision 1, dated May 29, 2015, terminates the repetitive lubrication required by paragraph (g) of this AD and the repetitive inspections required by paragraph (h) of this AD.

(j) Replacement of MLG Forward Trunnion Pin Housing Assembly Seal and Retainer

For airplanes in Groups 1 and 2, Configuration 2, as identified in Boeing Special Attention Service Bulletin 737–32–1448, Revision 1, dated May 29, 2015: At the applicable time specified in Table 3, paragraph 1.E., ''Compliance,'' of Boeing Special Attention Service Bulletin 737–32–1448, Revision 1, dated May 29, 2015, replace the seal, retainer, and support ring assembly with a new seal and retainer configuration, install the forward trunnion pin assembly into the housing assembly, and lubricate the forward and aft trunnion pin assemblies for the left and right MLGs, in accordance with Work Package 4 of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–32–1448, Revision 1, dated May 29, 2015.

(k) Exception to Service Information Specification

Where paragraph 1.E., ''Compliance,'' of Boeing Special Attention Service Bulletin 737–32–1448, Revision 1, dated May 29, 2015, specifies a compliance time ''from the original issue date on this service bulletin,'' this AD requires compliance within the specified compliance time ''after the effective date of this AD.''

(l) Credit for Previous Actions

This paragraph provides credit for the requirements of paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Boeing Special Attention Service Bulletin 737–32–1448, dated May 19, 2011, which is not incorporated by reference in this AD.

(m) Alternative Methods of Compliance (AMOCs)

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

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

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

(n) Related Information

(1) For more information about this AD, contact Alan Pohl, Aerospace Engineer, Airframe Branch, ANM–120S, FAA Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6450; fax: 425–917–6590; email: *alan.pohl@faa.gov*.

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

Issued in Renton, Washington, on December 21, 2015.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–32850 Filed 12–30–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 679 and 680

[Docket No. 150904826–5826–01]

RIN 0648–BF35

Fisheries of the Exclusive Economic Zone off Alaska; Fixed-Gear Commercial Halibut and Sablefish Fisheries; Bering Sea and Aleutian Islands Crab Rationalization Program; Cost Recovery Authorized Payment Methods

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues a proposed rule to revise the authorized methods for payment of cost recovery fees for the Halibut and Sablefish Individual Fishing Quota Program and the Bering Sea and Aleutian Islands Crab Rationalization Program. This proposed rule is necessary to improve data security procedures and to reduce administrative costs of processing cost recovery fee payments. The proposed rule is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the Northern Pacific Halibut Act of 1982, the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands, the Fishery Management Plan for Groundfish of the Gulf of Alaska, the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs, and other applicable laws.

DATES: Submit comments on or before February 1, 2016.

ADDRESSES: You may submit comments, identified by NOAA–NMFS–2015–0113, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal eRulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2015-0113,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.

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), 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).

Electronic copies of the following documents are available from *http://www.regulations.gov* or from the NMFS Alaska Region Web site at *http://alaskafisheries.noaa.gov:*

- The Regulatory Impact Review/Initial Regulatory Flexibility Analysis (RIR/IRFA) (collectively referred to as the ''Analysis'') and the Categorical Exclusion prepared for this action.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this action may be submitted by mail to NMFS at the above address; by email to *OIRA_Submission@omb.eop.gov;* or by fax to 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Keeley Kent, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Authority for Action

NMFS manages the groundfish fisheries in the Federal exclusive economic zone (EEZ) off Alaska under the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands and under the Fishery Management Plan for Groundfish of the Gulf of Alaska. The North Pacific Fishery Management Council (Council) prepared the fishery management plans (FMPs) under the authority of the Magnuson Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.* Regulations governing U.S. fisheries and implementing the FMPs appear at 50 CFR parts 600 and 679.

The International Pacific Halibut Commission (IPHC) and NMFS manage fishing for Pacific halibut through regulations established under the authority of the Northern Pacific Halibut Act of 1982 (Halibut Act). The IPHC promulgates regulations governing the halibut fishery under the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (Convention). The IPHC's regulations are subject to approval by the Secretary of State with the concurrence of the Secretary of Commerce (Secretary). NMFS publishes the IPHC's regulations as annual management measures pursuant to 50 CFR 300.62. The Halibut Act, at sections 773c(a) and (b), provides the Secretary with general responsibility to carry out the Convention and the Halibut Act. The Halibut Act, at section 773c(c), also provides the Council with authority to develop regulations, including limited access regulations, that are in addition to, and not in conflict with, approved IPHC regulations. Regulations developed by the Council may be implemented by NMFS only after approval by the Secretary. The Council developed the Individual Fishing Quota Program (IFQ Program) for the commercial halibut and sablefish fisheries, codified at 50 CFR part 679, under the authority of section 773 of the Halibut Act and section 303(b) of the Magnuson-Stevens Act.

The king and Tanner crab fisheries in the EEZ of the Bering Sea and Aleutian Islands are managed under the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs (Crab FMP). The Crab FMP was prepared by the Council under the Magnuson-Stevens Act as amended by the Consolidated Appropriations Act of 2004 (Public Law 108–199, section 801). Regulations implementing the Crab FMP, including the Bering Sea and Aleutian Islands Crab Rationalization Program (CR Program), are located at 50 CFR part 680.

Background

This proposed rule would revise authorized payment methods in the cost recovery fee programs for the IFQ Program and the CR Program. The proposed rule would improve data security procedures for protecting financial information submitted to NMFS for payment of cost recovery fees by eliminating manual processing of credit card payments by NMFS and requiring use of the Federal Government's online payment system, pay.gov, for all credit card payments. This proposed rule would also reduce administrative costs for the cost recovery programs by eliminating manual processing of paper check and money order payments and requiring electronic payment of all cost recovery fee payments to NMFS using pay.gov or Fedwire Funds Service (Fedwire) beginning with the cost recovery fee payment due in 2020. Reduced administrative costs to NMFS would result in lower expenses subject to cost recovery fees. Therefore, this action would be expected to reduce fees for

participants in the IFQ Program and CR Program subject to a cost recovery fee relative to the status quo.

The following sections describe authorities for and operation of cost recovery programs, the cost recovery program for the IFQ Program, the cost recovery program for the CR Program, the current authorized cost recovery fee payment methods, the need for this proposed rule, and the proposed rule to improve administration of the cost recovery programs.

Cost Recovery—General

Section 304(d) of the Magnuson-Stevens Act specifies that the Secretary is authorized, and shall collect a fee, to recover the actual costs directly related to the management, data collection, and enforcement of any limited access privilege program (LAPP) and community development quota program (CDQ) that allocates a percentage of the total allowable catch of a fishery to such program. Section 304(d) also specifies that such fee shall not exceed three percent of the ex-vessel value of fish harvested under any such program.

The IFQ Program is a LAPP as defined in section 304(d) of the Magnuson-Stevens Act. NMFS implemented a cost recovery fee program for the IFQ Program in 2000 (65 FR 14919, March 20, 2000). Regulations implementing the IFQ Program cost recovery program are located at § 679.45. The CR Program is also a LAPP as defined in section 304(d) of the Magnuson-Stevens Act. Section 313(j) of the Magnuson-Stevens Act provided supplementary authority to section 304(d) and additional detail for cost recovery provisions specific to the CR Program. NMFS implemented a cost recovery fee program with the final rule to implement the CR Program in 2005 (70 FR 10174, March 2, 2005). Regulations implementing the CR Program cost recovery program are located at § 680.44.

NMFS recovers the incremental costs of managing and enforcing the IFQ Program and CR Program annually through a fee paid by persons who hold a permit granting an exclusive access privilege to a portion of the total allowable catches in IFQ Program and CR Program fisheries. NMFS calculates cost recovery fees for fish that are landed and deducted from the total allowable catch in the fisheries subject to cost recovery.

To calculate the annual cost recovery fee for each permit holder in the IFQ Program and the CR Program, NMFS (1) calculates the ex-vessel value for each landing of a fishery species allocated under the program; (2) calculates the total ex-vessel value of all fish landed under the program by adding together the ex-vessel values of each fishery species under the program; (3) calculates the total program cost by adding together the incremental costs of management, data collection, and enforcement for each fishery under the program that would not have been incurred but for the implementation of the program; (4) calculates a fee percentage (not to exceed three percent of the ex-vessel value of fish harvested under any such program) for the program by dividing total program costs by the total ex-vessel value for all fishery species under the program; and (5) calculates the fee amount that will be assessed for each permit holder by multiplying the fee percentage by the permit holder's total ex-vessel value of landings under the program. The final figure is the annual cost recovery fee owed by each permit holder. The amount of cost recovery fees collected varies annually because total ex-vessel value and total program costs fluctuate from year to year.

Cost Recovery for the IFQ Program

The Council recommended the IFQ Program in 1992, and NMFS published a final rule to implement the IFQ Program on November 9, 1993 (58 FR 59375). Fishing under the program began on March 15, 1995. The IFQ Program limits access to the halibut and sablefish fisheries to those persons holding quota shares (QS) in specific regulatory areas. QS equate to individual harvesting privileges that are given effect annually through the issuance of IFQ permits. An annual IFQ permit authorizes the permit holder to harvest a specified amount of IFQ halibut or sablefish in a regulatory area.

The final rule to implement the cost recovery program for the IFQ fishery was published in March 2000 (65 FR 14919, March 20, 2000). Section 679.45 specifies the process that NMFS uses to determine, assess, and collect cost recovery fees for the IFQ Program. As described above in the ''Cost Recovery—General'' section, NMFS annually calculates the cost recovery fee percentage for halibut and sablefish IFQ permit holders by dividing total program costs for the IFQ Program by the total ex-vessel value of the catch subject to the IFQ cost recovery fee for the current year. The IFQ Program fishing year takes place within a calendar year, generally beginning in March and ending in November. The method used by NMFS to calculate the IFQ cost recovery fee percentage is described at § 679.45(d)(2)(ii). Regulations at § 679.45(d)(1) and (d)(3)(i) require NMFS to publish the IFQ cost recovery fee percentage and the IFQ standard prices used to calculate the total ex-vessel value of IFQ halibut and sablefish landed in the **Federal Register** during the last quarter of each calendar year. NMFS published the 2014 IFQ cost recovery fee percentage and IFQ standard prices on December 9, 2014 (79 FR 73045).

Each December, NMFS sends IFQ permit holders a bill for the cost recovery fee liability with an itemization of their IFQ halibut and sablefish landings for the year. The IFQ permit holder is responsible for submitting this payment to NMFS on or before the due date of January 31 following the year in which the IFQ halibut and sablefish landings were made.

If an IFQ permit holder who owes a fee fails to submit payment in full by January 31 following the year in which the landings were made, NMFS sends the permit holder an Initial Administrative Determination (IAD) with the amount of fee liability owed. If a permit holder fails to make payment after receiving the IAD, NMFS may disapprove any transfer of IFQ or QS to or from the permit holder until the fee liability is reconciled. If further action is necessary, NMFS may invalidate any IFQ fishing permits held by the permit holder. Additional information on the administration of the IFQ Program cost recovery program is provided in Section 3.5.1.2 of the Analysis.

Cost Recovery for the CR Program

NMFS published the final rule to implement the CR Program in 2005 (70 FR 10174, March 2, 2005). The CR Program allocates QS for nine crab fisheries under the Crab FMP: Bristol Bay red king crab, Bering Sea *C. opilio* (snow crab), Eastern Bering Sea *C. bairdi* (Tanner crab), Western Bering Sea *C. bairdi* (Tanner crab), Pribilof Islands blue and red king crab, St. Matthew Island blue king crab, Western Aleutian Islands (Adak) golden king crab, Eastern Aleutian Islands (Dutch Harbor) golden king crab, and Western Aleutian Islands (Adak) red king crab.

NMFS originally issued QS to eligible harvesters as determined by eligibility criteria and participation in the CR Program fisheries during qualifying years. Additionally, NMFS issued processor quota shares (PQS) to eligible processing entities that met the criteria based on crab processing activities during the qualifying years. Each year, individual QS holders are issued IFQ to harvest a portion of the annual total allowable catch in a CR Program fishery. PQS holders are similarly issued annual individual processing quota (IPQ) that

allow entities to receive deliveries of CR Program crab.

NMFS issues three classes of IFQ: A shares, B shares, and C shares. Three percent of the total IFQ pool for each fishery is issued as C shares for captains and crew. The remaining IFQ pool is split with 90 percent issued as A shares and 10 percent issued as B shares. Class A shares carry the requirement of matching, on a one-to-one basis, with IPQ. Both Class B and Class C shares do not have a matching requirement and may be delivered to any registered crab receiver (RCR). RCRs include shoreside processors, catcher/processors, entities holding PQS with custom processing agreements with other shoreside processors, and communities holding PQS.

The cost recovery regulations for the CR Program were published in the final rule to implement the CR Program on March 2, 2005 (70 FR 10174). Section 680.44 specifies the process that NMFS uses to determine, assess, and collect cost recovery fees for the CR Program. As described above in the ''Cost Recovery—General'' section, NMFS annually calculates the cost recovery fee percentage for the CR Program by dividing total program costs for the CR Program by the total ex-vessel value of the catch subject to the CR Program cost recovery fee for the current year. The CR Program cost recovery billing cycle matches that of the crab fishing year—July 1 to June 30. The method used by NMFS to calculate the CR Program cost recovery fee percentage is described at § 680.44(c)(2). As specified in the final rule to implement the CR Program, the CR Program processing sector, specifically RCRs, are responsible for collecting cost recovery fee payments from the harvesters and submitting this payment and their own self-collected fee payments to NMFS by the specified deadline. Catcher/processors, vessels that harvest and process crab, pay the full CR Program cost recovery fee for every pound of crab harvested and processed.

Regulations at § 680.44(c)(1) require NMFS to publish the CR Program cost recovery fee percentage in the **Federal Register** during the first quarter of the crab fishing year, which is used by CR Program permit holders and RCRs to collect cost recovery fees throughout the crab fishing year. This is different from the IFQ Program, which applies the fee percentage to the landings that occurred during the most recent fishing year. NMFS published the 2015/2016 CR Program cost recovery fee percentage in July 2015 (80 FR 42792, July 20, 2015). NMFS provides an itemized bill of cost recovery fee liabilities to all RCRs during the last quarter of the crab fishing year. The RCR is responsible for submitting payment to NMFS on or before the due date of July 31, following the crab fishing year in which payment for the crab is made.

If an RCR owes fees and fails to submit full payment for the previous crab fishing year by July 31, the Regional Administrator may disapprove any transfer of IFQ, IPQ, QS, or PQS to or from the RCR and may withhold issuance of any new CR crab permits, including IFQ, IPQ, or RCR permits for the subsequent crab fishing year. Additional information on the administration of the CR Program cost recovery program is provided in Section 3.5.2.2 of the Analysis.

Authorized Cost Recovery Payment Methods

Cost recovery regulations for the IFQ Program and CR Program (§ 679.45(a)(4)(iv) and § 680.44(a)(4)(iv), respectively) currently allow permit holders to pay their fee in U.S. dollars by personal check drawn on a U.S. bank account, money order, bank-certified check, or credit card. NMFS has established specific procedures for processing payments. IFQ Program and CR Program permit holders may submit cost recovery fee payments either electronically or non-electronically. Electronic payments can be made using credit card or electronic check via the pay.gov web-based system, or by wiring payment directly from the permit holder's financial institution via the Fedwire funds transfer system. Non-electronic payments can be made by submitting a paper form to NMFS with credit card information via mail or facsimile, or by submitting a paper check or money order via mail. This section provides additional detail on each authorized payment method regarding the security of permit holders' financial information and the administrative costs incurred by NMFS to process the payments.

Electronic Payments

Electronic payments via the pay.gov system and the Fedwire system are the most secure methods of transmitting financial information and result in the lowest administrative costs for NMFS. Permit holders may make electronic cost recovery payments directly through pay.gov. Pay.gov is operated by the U.S. Department of the Treasury (Treasury) and offers the highest level of security for the personal and financial information submitted to pay fees to NMFS. Pay.gov uses the latest industry-standard methods and encryption to safely collect, store, and transmit information that is submitted.

IFQ Program and CR Program permit holders can access pay.gov through the NMFS Alaska Region online system called eFISH. The eFISH system is a web-based application that provides permit holders with access to their NMFS permit accounts (*https://alaskafisheries.noaa.gov/webapps/efish/login*). When an IFQ Program or CR Program permit holder logs on to eFISH to pay a cost recovery fee liability, the system automatically loads the amount owed by that permit holder into pay.gov.

Through pay.gov, permit holders can make cost recovery payments using a credit card, debit card, or direct debit (electronic check). Due to the transaction fee incurred by the Treasury, there is a payment limit of $24,999.99 on credit card transactions through pay.gov (see notice online at: *http://tfm.fiscal.treasury.gov/v1/announc/a-14-04.html*). There is currently no payment limit on debit card or direct debit payments. Payments made through pay.gov automatically update the NMFS internal cost recovery payment tracking system to reflect the payment.

Under the current regulations, permit holders may also make cost recovery fee payments through Fedwire. Fedwire is a real-time transfer system that allows financial institutions to electronically transfer funds. Fedwire allows wire transfers of fee payments from any bank or wire transfer service to NMFS to fulfill cost recovery fee obligations. To make a Fedwire payment, a permit holder must provide his or her financial institution the routing number and account information for the Treasury, the beneficiary name and account number for NMFS, and the amount owed. The permit holder's financial institution then initiates the transaction. Payments are made directly to the Federal Reserve Bank, which then notifies NMFS of the payment. Payments are processed individually through Fedwire, which uses a highly secure electronic network. NMFS must log Fedwire payments in the internal cost recovery payment tracking system.

Non-Electronic Payments

Non-electronic submission of payment information to NMFS via mail or facsimile is less secure and results in higher administrative costs than electronic payments because it results in transmission of permit holders' financial information over the NMFS information network and requires NMFS to manually process payments. Under current regulations, permit

holders may pay a cost recovery fee with a credit card by submitting a form via mail or facsimile with their credit card information to NMFS. Manual credit card processing results in the possession and transmission of IFQ Program and CR Program permit holders' credit card information over the NMFS information network. Manual credit card processing is a less secure method of payment than the permit holder directly entering their credit card information into pay.gov, and results in higher administrative costs for NMFS. Administrative costs to collect fees are subject to cost recovery. Therefore, the higher administrative costs to process credit cards manually results in an increased fee liability for the IFQ and CR Programs relative to electronic payments.

Permit holders may also pay a cost recovery fee with a paper check, money order, or bank-certified check. NMFS processes these payments using a Treasury web-based application (*https://www.fiscal.treasury.gov/fsservices/gov/rvnColl/otcnet/rvnColl_otcnet.htm*). The checks are scanned into the internal cost recovery payment tracking system and batched for deposit the following day. NMFS must then check the system to ensure that each check has cleared. NMFS manually updates the internal cost recovery payment tracking system to reflect the payment. Discrepancies or errors between the cost recovery amount owed and the amount paid by check must be addressed by NMFS. Payment with paper check, money order, or bank-certified check results in higher administrative costs for NMFS, and those additional costs increase the fee liability for the IFQ and CR Programs relative to electronic payments.

In 2014 for the IFQ Program, NMFS received 2,038 total cost recovery fee payments from IFQ permit holders, with an average payment size of $2,440 (Table 4 of the Analysis). Of the total payments made, 528 cost recovery fee payments required manual credit card processing (Table 2 of the Analysis), which represented 26 percent of the total cost recovery payments made that year. The number of payments requiring manual credit card processing increased slightly from 2013 to 2014. In 2014, there were 986 payments made by paper check (48 percent of payments) and 19 made by money order (0.9 percent of payments). Overall, manual processing for credit card, paper check, and money order payments was required for 75 percent of cost recovery fee payments made under the IFQ Program for 2014 (1,533 payments); the remaining 25 percent of payments were made electronically primarily via pay.gov (Table 4 of Analysis).

In 2014 for the CR Program, NMFS received 20 total cost recovery fee payments from CR Program permit holders, with an average payment size of $78,310 (Table 5 of the Analysis). There were no cost recovery payments made from 2012 through 2014 by CR Program RCRs that required manual credit card processing (Table 3 of the Analysis). This may be because the CR Program payments are considerably larger than the IFQ Program payments due to the payment liability structure that requires RCRs to submit cost recovery fee payments on behalf of the CR Program harvesting and processing sectors. In 2014, 50 percent of payments (10 payments) were made with paper checks and required manual processing (Table 3 of the Analysis), and the remaining 50 percent of payments (10 payments) were made electronically using pay.gov and Fedwire.

Need for This Proposed Rule

The purpose of this proposed rule is to improve security procedures for protecting financial information and to reduce costs associated with administering the cost recovery programs. The current regulations for the IFQ Program and the CR Program cost recovery programs allow permit holders to submit credit card information for manual credit card processing by NMFS. This results in the possession and electronic transmission of financial information on the NMFS information network, which is a security vulnerability and an administrative cost to both the permit holder and to NMFS. As a result of this security vulnerability, the NMFS Alaska Region has been directed by the NOAA Office of the Chief Information Officer to cease manual processing of credit card payments for cost recovery fees.

This proposed rule would also reduce administrative costs for the IFQ Program and CR Program by eliminating other non-electronic payment methods that require manual processing. As described in the previous section, all manual processing of cost recovery fee payments made by check and money order generates significant costs for the administration of these programs. Eliminating these non-electronic payment methods from authorized payment method options would reduce the staffing burden for processing cost recovery fee payments and further reduce the costs of administering the cost recovery programs. Reduced administrative costs would result in lower overall fee liabilities for the IFQ and CR Programs.

Proposed Rule

NMFS proposes to revise the authorized cost recovery fee payment methods for the IFQ and CR Programs by revising regulations at § 679.45(a)(4)(ii) through (iv) and § 680.44(a)(4)(iii) and (iv). This proposed rule would eliminate the option for IFQ permit holders and CR Program RCRs to submit credit card payment information by mail or facsimile upon the effective date of the final rule, if approved. NMFS anticipates the final rule, if approved, would be effective prior to the date cost recovery fee payments are due for the 2015/2016 CR Program crab fishing year and the 2016 IFQ Program fishing year. The cost recovery fee payment for the CR Program 2015/2016 crab fishing year would be due on July 31, 2016. The cost recovery fee payment for the 2016 IFQ Program fishing year would be due on January 31, 2017.

This proposed rule would also revise the cost recovery regulations to eliminate paper checks, money orders, and bank-certified checks as authorized payment methods beginning with the cost recovery fee payment that would be due by January 31, 2020 for the IFQ Program and July 31, 2020 for the CR Program. If approved, the final rule would require all permit holders to submit payments through pay.gov or Fedwire beginning with the cost recovery fee payment due for the 2019 fishing year for IFQ Program permit holders and for the 2019/2020 CR Program crab fishing year for CR Program RCRs. To implement this provision, NMFS proposes that all cost recovery fee payments must be made electronically for any payment made on or after the first day of the billing cycle for IFQ Program and CR Program cost recovery fee payments that would be due in 2020. The billing cycle is considered the time period that begins when NMFS calculates cost recovery fees and mails out cost recovery payment notices and ends when the cost recovery fee payment is due. The first day of the 2020 IFQ Program cost recovery billing cycle would be December 1, 2019. The first day of the 2019/2020 CR Program cost recovery billing cycle would be June 1, 2020. NMFS is proposing allowing non-electronic payments via paper check or money order until the 2020 cost recovery fee cycle to provide a transition period for those permit holders who do not make electronic payments to become familiar with, and begin transitioning to, electronic payment methods.

Table 1 contains the anticipated implementation schedule for the proposed rule to revise authorized cost recovery fee payment methods.

TABLE 1—IMPLEMENTATION SCHEDULE FOR PROPOSED CHANGES TO AUTHORIZED COST RECOVERY FEE PAYMENT METHODS

Payment type	Current authorized options	2016–2019 fee payment cycle authorized options	2020 and future year fee payment cycle authorized options
Non-electronic	Credit card form.	.	
	Paper check	Paper check.	
	Money order	Money order.	
Electronic	Pay.gov	Pay.gov	Pay.gov.
	Fedwire	Fedwire	Fedwire.

NMFS anticipates that this proposed rule would affect 1,533 IFQ Program permit holders and 10 CR Program RCRs who would need to change their payment method. This proposed rule would require the 528 IFQ permit holders who made non-electronic credit card payments in 2014 to change to an alternative payment method upon the effective date of the final rule, if approved. Beginning with the 2020 cost recovery billing cycle, the 1,005 IFQ permit holders and 10 CR Program RCRs who paid by paper check or money order in 2014 would be required to use an alternative payment method.

Under this proposed rule, permit holders paying cost recovery fees would benefit from the increased security of their financial information and a reduction in the total amount of cost recovery fees collected due to the reduced administrative costs of processing fee payments. The actual administrative cost savings of this proposed rule are difficult to predict due to the unknown staff costs required to help permit holders transition to new payment methods and how quickly permit holders may change payment methods prior to the 2020 fee collection cycle. After 2020, NMFS expects the administrative costs of processing payments to decrease as compared to the current costs. The costs to permit holders of changing payment methods are difficult to assess. However, both IFQ Program permit holders and CR Program RCRs are currently required to submit fishery landings information to NMFS using electronic reporting methods; so it is expected that requiring electronic cost recovery fee payments would be a manageable cost for most participants.

NMFS anticipates that this proposed rule would have minimal impacts on net benefits to the Nation. Overall, this action would likely result in a small net benefit from the reduction in the total amount of cost recovery fees collected due to the reduced administrative costs of processing cost recovery fee payments.

Classification

Pursuant to section 305(d) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined this proposed rule is consistent with the FMPs, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration of comments received during the public comment period.

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

Initial Regulatory Flexibility Analysis

An IRFA was prepared, as required by section 603 of the Regulatory Flexibility Act. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. Copies of the IRFA prepared for this proposed rule are available from NMFS (see **ADDRESSES**).

The IRFA describes the action, why this action is being proposed, the objectives and legal basis for this proposed rule, the type and number of small entities to which this proposed rule would apply, and the projected reporting, recordkeeping, and other compliance requirements of this proposed rule. It also identifies any overlapping, duplicative, or conflicting Federal rules and describes any significant alternatives to this proposed rule that would accomplish the stated objectives of the Magnuson-Stevens Act and other applicable statues and that would minimize any significant adverse economic impact of this proposed rule on small entities. The description of this proposed rule, its purpose, and its legal basis are described in the preamble and are not repeated here.

Number and Description of Small Entities Directly Regulated by the Proposed Rule

The entities directly regulated by this proposed rule are permit holders who make halibut and sablefish landings in the IFQ Program fisheries and RCRs who receive landings of crab in the CR Program fisheries. The universe of entities was defined based on who is directly billed by NMFS for cost recovery fees, and therefore who would be directly impacted by a change in the authorized payment methods. The Small Business Administration defines a small commercial finfish fishing entity as one that has annual gross receipts, from all activities of all affiliates, of less than $20.5 million (79 FR 33647, June 12, 2014). Based upon available data, and more general information concerning the probable economic activity of vessels in the IFQ Program fisheries, no entity could have landed more than $20.5 million in combined gross receipts in 2014. Therefore, all 2,038 IFQ permit holders are classified as small entities. Under the CR Program, 11 RCRs are classified as small entities. Section 4.6 of the IRFA prepared for this proposed rule provides more information on these entities.

Recordkeeping and Reporting Requirements

This proposed rule would require modifications to the current recordkeeping and reporting requirements for the IFQ Program and CR Program cost recovery programs in the Alaska Cost Recovery and Observer Fee collection (OMB Control Number 0648–0711). Specifically, this proposed rule would eliminate the option for payment by credit card using the paper fee submission form submitted to NMFS by mail or facsimile. Beginning with the 2020 cost recovery fee billing cycle, the paper fee submission form will be eliminated completely for the CR Program as permit holders will be required to submit all cost recovery fee payments electronically through the pay.gov or Fedwire systems. For the IFQ Program, beginning in 2020, the paper fee submission form would be revised to specify that all fee payments must be

made electronically through pay.gov or the Fedwire systems.

Federal Rules That May Duplicate, Overlap, or Conflict With This Proposed Rule

The Analysis did not reveal any Federal rules that duplicate, overlap, or conflict with this proposed rule.

Description of Significant Alternatives to This Proposed Rule That Minimize Economic Impacts on Small Entities

The Magnuson-Stevens Act requires that participants in LAPP and CDQ programs pay up to three percent of the ex-vessel value of the fish they are allocated to cover specific costs that are incurred by the management agencies as a direct result of implementing the programs. NMFS has identified this proposed rule as necessary to improve data security procedures for permit holders' financial information and to reduce administrative costs of processing cost recovery payments. There are no alternatives outside those evaluated in the Analysis that, consistent with applicable law, will accomplish the objectives of this rule, and result in lower adverse economic impacts on directly regulated small entities.

NMFS considered eliminating the submission of credit card payment information by phone, in person, facsimile, and mail and retaining the use of paper checks and money orders as authorized payment methods under Alternative 2 in the Analysis. However, Alternative 2 failed to meet the objective of reducing administrative costs associated with administering the cost recovery programs because processing these payments results in a greater staff burden than processing payments made by the pay.gov or Fedwire systems (see Section 3.7 of the Analysis). NMFS also considered Alternative 3, which would have simultaneously implemented both the elimination of credit card payment by phone, in person, facsimile, and mail, and the elimination of paper check and money order payment (see Section 3.8 of the Analysis). However, NMFS rejected Alternative 3 in favor of Alternative 3 Option 1 which accommodated for the transition costs to permit holders in complying with the proposed rule by delaying full implementation of the proposed changes until the applicable cost recovery fee payment due date in 2020. NMFS determined that Alternative 3 Option 1 would provide an opportunity for the permit holders to become familiar with either pay.gov or Fedwire and change to a new payment method. Additionally, Alternative 3 Option 1 would spread out any transition costs for NMFS staff in providing customer service to help permit holders affected by the change (see Section 3.8.1 of the Analysis).

Collection-of-Information Requirements

This proposed rule contains collection-of-information requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). NMFS has submitted these requirements to OMB for approval under Control Number 0648–0711. Public reporting burden per response is estimated to average one minute for electronic fee submission and 30 minutes for non-electronic fee submission. Estimates for public reporting burden include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding whether these proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; 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, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS at the **ADDRESSES** above and by email to *OIRA_Submission@omb.eop.gov,* or fax to (202) 395–5806.

Notwithstanding any other provision of the 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 of information displays a currently valid OMB Control Number. All currently approved NOAA collections of information may be viewed at: *http://www.cio.noaa.gov/services_programs/prasubs.html.*

List of Subjects

50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

50 CFR Part 680

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: December 22, 2015

Eileen Sobeck,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 679 and 50 CFR part 680 as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.;* 1801 *et seq.;* 3631 *et seq.;* Pub. L. 108–447; Pub. L. 111–281.

■ 2. In § 679.45, revise paragraphs (a)(4)(ii) through (iv) to read as follows:

§ 679.45 IFQ cost recovery program.

(a) * * *

(4) * * *

(ii) *Payment recipient.* Make payment payable to NMFS.

(iii) *Payment address.* Submit payment and related documents as instructed on the fee submission form. Payments may be made electronically through the NMFS Alaska Region Web site at *http://alaskafisheries.noaa.gov.* Instructions for electronic payment will be made available on both the payment Web site and a fee liability summary letter mailed to the IFQ permit holder.

(iv) *Payment method*—(A) Prior to December 1, 2019, payment must be made in U.S. dollars by personal check drawn on a U.S. bank account, money order, bank-certified check, or electronically by credit card.

(B) On or after December 1, 2019, payment must be made electronically in U.S. dollars by automated clearing house, credit card, or electronic check drawn on a U.S. bank account.

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PART 680—SHELLFISH FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 3. The authority citation for 50 CFR part 680 continues to read as follows:

Authority: 16 U.S.C. 1862; Pub. L. 109–241; Pub. L. 109–479.

■ 4. In § 680.44, revise paragraphs (a)(4)(iii) and (iv) to read as follows:

§ 680.44 Cost recovery.

(a) * * *

(4) * * *

(iii) *Payment address.* Submit payment and related documents as instructed on the fee submission form. Payments may be made electronically through the NMFS Alaska Region Web

site at *http://alaskafisheries.noaa.gov.* Instructions for electronic payment will be made available on both the payment Web site and a fee liability summary letter mailed to the RCR permit holder.

(iv) *Payment method*—(A) Prior to June 1, 2020, payment must be made in U.S. dollars by personal check drawn on a U.S. bank account, money order, bank-certified check, or electronically by credit card.

(B) On or after June 1, 2020, payment must be made electronically in U.S. dollars by automated clearing house, credit card, or electronic check drawn on a U.S. bank account.

* * * * *

[FR Doc. 2015–32966 Filed 12–30–15; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 80, No. 251
Thursday, December 31, 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.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2015–0043]

RIN 0583–AD40

2016 Rate Changes for the Basetime, Overtime, Holiday, and Laboratory Services Rates

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The Food Safety and Inspection Service (FSIS) is announcing the 2016 rates that it will charge meat and poultry establishments, egg products plants, and importers and exporters for providing voluntary, overtime, and holiday inspection and identification, certification, and laboratory services. The 2016 basetime, overtime, holiday, and laboratory services rates will be applied beginning the first FSIS pay period approximately 30 days after the publication of this notice. This pay period begins on February 7, 2016.

DATES: FSIS will charge the rates announced in this notice beginning February 7, 2016.

FOR FURTHER INFORMATION CONTACT: For further information contact Michael Toner, Director, Budget Division, Office of Management, FSIS, U.S. Department of Agriculture, Room 2159, South Building, 1400 Independence Avenue SW., Washington, DC 20250–3700; Telephone: (202) 690–8398, Fax: (202) 690–4155.

SUPPLEMENTARY INFORMATION:

Background

On April 12, 2011, FSIS published a final rule amending its regulations to establish formulas for calculating the rates it charges meat and poultry establishments, egg products plants, and importers and exporters for providing voluntary, overtime, and holiday inspection and identification, certification, and laboratory services (76 FR 20220).

In the final rule, FSIS stated that it would use the formulas to calculate the annual rates, publish the rates in a **Federal Register** notice before the start of each calendar year, and apply the rates on the first FSIS pay period at the beginning of the calendar year.

This notice announces the 2016 rates, which will be applied starting on February 7, 2016.

2016 Rates and Calculations

The following table lists the 2016 Rates per hour, per employee, by type of service:

Service	2016 Rate (estimates rounded to reflect billable quarters)
Basetime	$54.56
Overtime	69.20
Holiday	83.84
Laboratory	69.96

The regulations state that FSIS will calculate the rates using formulas that include the Office of Field Operations (OFO) and Office of International Affairs (OIA) inspection program personnel's previous fiscal year's regular direct pay and regular hours (9 CFR 391.2, 391.3, 391.4, 590.126, 590.128, 592.510, 592.520, and 592.530). In 2013, an Agency reorganization eliminated the OIA program office and transferred all of its inspection program personnel to OFO. Therefore, pay and hours of inspection program personnel are identified in the calculations as ''OFO inspection program personnel's'' pay and hours.

FSIS determined the 2016 rates using the following calculations:

Basetime Rate = The quotient of dividing the OFO inspection program personnel's previous fiscal year's regular direct pay by the previous fiscal year's regular hours, plus that quotient multiplied by the calendar year's percentage cost-of-living increase, plus the benefits rate, plus the travel and operating rate, plus the overhead rate, plus the allowance-for-bad-debt rate.

The calculation for the 2016 basetime rate per hour per program employee is:

[FY 2015 OFO Regular Direct Pay divided by the previous fiscal year's Regular Hours ($463,753,574/15,838,653)] = $29.28 + ($29.28 * 0.00% (calendar year 2016 Cost-of-Living Increase)) = $29.28 + $9.42 (benefits rate) + $0.90 (travel and operating rate) + $14.95 (overhead rate) + $0.01 (bad-debt-allowance rate) = $54.56.

Overtime Rate = The quotient of dividing OFO inspection program personnel's previous fiscal year's regular direct pay by the previous fiscal year's regular hours, plus that quotient multiplied by the calendar year's percentage cost-of-living increase, multiplied by 1.5 (for overtime), plus the benefits rate, plus the travel and operating rate, plus the overhead rate, plus the allowance-for-bad-debt rate.

The calculation for the 2016 overtime rate per hour per program employee is:

[FY 2015 OFO Regular Direct Pay divided by previous fiscal year's Regular Hours ($463,753,574/15,838,653)] = $29.28 + ($29.28 * 0.00% (calendar year 2016 Cost-of-Living Increase)) = $29.28 * 1.5 = $43.92 + $9.42 (benefits rate) + $0.90 (travel and operating rate) + $14.95 (overhead rate) + $.01 (bad-debt-allowance rate) = $69.20.

Holiday Rate = The quotient of dividing the OFO inspection program personnel's previous fiscal year's regular direct pay by the previous fiscal year's regular hours, plus that quotient multiplied by the calendar year's percentage cost-of-living increase, multiplied by 2 (for holiday pay), plus the benefits rate, plus the travel and operating rate, plus the overhead rate, plus the allowance for bad debt rate.

The calculation for the 2016 holiday rate per hour per program employee calculation is:

[FY 2015 OFO Regular Direct Pay divided by Regular Hours ($463,753,574/15,838,653)] = $29.28 + ($29.28 * 0.00% (calendar year 2016 Cost-of-Living Increase)) = $29.28 * 2 = $58.56 + $9.42 (benefits rate) + $0.90 (travel and operating rate) + $14.95 (overhead rate) + $.01 (bad-debt-allowance rate) = $69.20.

Laboratory Services Rate = The quotient of dividing the Office of Public Health Science (OPHS) previous fiscal year's regular direct pay by the OPHS previous fiscal year's regular hours, plus the quotient multiplied by the calendar

year's percentage cost-of-living increase, plus the benefits rate, plus the travel and operating rate, plus the overhead rate, plus the allowance-for-bad-debt rate.

The calculation for the 2016 laboratory services rate per hour per program employee is:

[FY 2015 OPHS Regular Direct Pay/OPHS Regular hours ($25,098,630/561,724)] = $44.68 + ($44.68 * 0.00% (calendar year 2016 Cost-of-Living Increase)) = $44.68 + $9.42 (benefits rate) + $0.90 (travel and operating rate) + $14.95 (overhead rate) + $.01 (bad-debt-allowance rate) = $69.96.

Calculations for the Benefits, Travel and Operating, Overhead, and Allowance for Bad Debt Rates

These rates are components of the basetime, overtime, holiday, and laboratory services rates formulas.

Benefits Rate: The quotient of dividing the previous fiscal year's direct benefits costs by the previous fiscal year's total hours (regular, overtime, and holiday), plus that quotient multiplied by the calendar year's percentage cost-of-living increase. Some examples of direct benefits are health insurance, retirement, life insurance, and Thrift Savings Plan basic and matching contributions.

The calculation for the 2016 benefits rate per hour per program employee is:

[FY 2015 Direct Benefits/(Total Regular hours + Total Overtime hours + Total Holiday hours) ($174,514,989/18,525,441)] = $9.42 + ($9.42 * 0.00% (calendar year 2016 Cost-of-Living Increase) = $9.42.

Travel and Operating Rate: The quotient of dividing the previous fiscal year's total direct travel and operating costs by the previous fiscal year's total hours (regular, overtime, and holiday), plus that quotient multiplied by the calendar year's percentage of inflation.

The calculation for the 2016 travel and operating rate per hour per program employee is:

[FY 2015 Total Direct Travel and Operating Costs/(Total Regular hours + Total Overtime hours + Total Holiday hours) ($16,376,630/18,525,441)] = $0.88 + ($0.88 * 1.8% (2016 Inflation) = $0.90.

Overhead Rate: The quotient of dividing the previous fiscal year's indirect costs, plus the previous fiscal year's information technology (IT) costs in the Public Health Data Communication Infrastructure System Fund, plus the previous fiscal year's Office of Management Program cost in the Reimbursable and Voluntary Funds, plus the provision for the operating balance less any Greenbook costs (*i.e.,* costs of USDA support services prorated to the service component for which fees are charged) that are not related to food inspection by the previous fiscal year's total hours (regular, overtime, and holiday) worked across all funds, plus the quotient multiplied by the calendar year's percentage of inflation.

The calculation for the 2016 overhead rate per hour per program employee is:

[FY 2015 Total Overhead/(Total Regular hours + Total Overtime hours + Total Holiday hours) ($272,078,819/18,525,441)] = $14.69 + ($14.69 * 1.8% (2016 Inflation) = $14.95.

Allowance-for-Bad-Debt Rate = Previous fiscal year's total allowance for bad debt (for example, debt owed that is not paid in full by plants and establishments that declare bankruptcy) divided by previous fiscal year's total hours (regular, overtime, and holiday) worked.

The 2016 calculation for bad-debt rate per hour per program employee is:

[FY 2015 Total Bad Debt/(Total Regular hours + Total Overtime hours + Total Holiday hours) = ($133,215/18,525,441)] = $.01.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, FSIS will announce this **Federal Register** publication on-line through the FSIS Web page located at: *http://www.fsis.usda.gov/federal-register*.

FSIS also will make copies of this publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The Update is available on the FSIS Web page. Through the Web page, FSIS is able to provide information to a much broader, more diverse audience. In addition, FSIS offers an email subscription service which provides automatic and customized access to selected food safety news and information. This service is available at: *http://www.fsis.usda.gov/subscribe*. Options range from recalls to export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

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To file a complaint of discrimination, complete the USDA Program Discrimination Complaint Form, which may be accessed online at *http://www.ocio.usda.gov/sites/default/files/docs/2012/Complain_combined_6_8_12.pdf,* or write a letter signed by you or your authorized representative.

Send your completed complaint form or letter to USDA by mail, fax, or email:

Mail

U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW., Washington, DC 20250–9410.

Fax

(202) 690–7442.

Email

program.intake@usda.gov.

Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.), should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

Done, at Washington, DC on: December 22, 2015.

Alfred V. Almanza,

Acting Administrator.

[FR Doc. 2015–32944 Filed 12–30–15; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE361

Pacific Fishery Management Council; Public Meetings and Hearings

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

ACTION: Notice of availability of reports; public meetings, and hearings.

SUMMARY: The Pacific Fishery Management Council (Pacific Council) has begun its annual preseason management process for the 2016 ocean

salmon fisheries. This document announces the availability of Pacific Council documents as well as the dates and locations of Pacific Council meetings and public hearings comprising the Pacific Council's complete schedule of events for determining the annual proposed and final modifications to ocean salmon fishery management measures. The agendas for the March and April 2016 Pacific Council meetings will be published in subsequent **Federal Register** documents prior to the actual meetings.

DATES: Written comments on the salmon management alternatives must be received by 11:59 p.m. Pacific Time, April 3, 2016.

ADDRESSES: Documents will be available from, and written comments should be sent to Ms. Dorothy Lowman, Chair, Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384, telephone: (503) 820–2280 (voice) or (503) 820–2299 (fax). Comments can also be submitted via email at *PFMC.comments@noaa.gov* or through the Internet at the Federal Rulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments, and include the I.D. number in the subject line of the message. For specific meeting and hearing locations, see **SUPPLEMENTARY INFORMATION.**

Council Address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Burner, telephone: (503) 820–2414.

SUPPLEMENTARY INFORMATION:

Tentative Schedule for Document Completion and Availability

February 19, 2016: ''Review of 2015 Ocean Salmon Fisheries, Stock Assessment and Fishery Evaluation Document for the Pacific Coast Salmon Fishery Management Plan'' is scheduled to be posted on the Pacific Council Web site at *http://www.pcouncil.org.*

February 26, 2016: ''Preseason Report I—Stock Abundance Analysis and Environmental Assessment Part 1 for 2016 Ocean Salmon Fishery Regulations'' is scheduled to be posted on the Pacific Council Web site at *http://www.pcouncil.org.*

March 23, 2016: ''Preseason Report II—Proposed Alternatives and Environmental Assessment Part 2 for 2016 Ocean Salmon Fishery Regulations'' and public hearing schedule is scheduled to be posted on the Pacific Council Web site at *http://www.pcouncil.org.* The report will include a description of the adopted salmon management alternatives and a summary of their biological and economic impacts.

April 20, 2016: ''Preseason Report III—Council-Adopted Management Measures and Environmental Assessment Part 3 for 2016 Ocean Salmon Fishery Regulations'' scheduled to be posted on the Pacific Council Web site at *http://www.pcouncil.org.*

May 1, 2016: Federal regulations for 2016 ocean salmon regulations will be published in the **Federal Register** and implemented.

Meetings and Hearings

January 19–22, 2016: The Salmon Technical Team (STT) will meet at the Pacific Council office in a public work session to draft ''Review of 2015 Ocean Salmon Fisheries'' and to consider any other estimation or methodology issues pertinent to the 2016 ocean salmon fisheries.

February 16–19, 2016: The STT will meet at the Pacific Council office in a public work session to draft ''Preseason Report I—Stock Abundance Analysis and Environmental Assessment Part 1 for 2016 Ocean Salmon Fishery Regulations'' and to consider any other estimation or methodology issues pertinent to the 2016 ocean salmon fisheries.

March 28–29, 2016: Public hearings will be held to receive comments on the proposed ocean salmon fishery management alternatives adopted by the Pacific Council. Written comments received at the public hearings and a summary of oral comments at the hearings will be provided to the Pacific Council at its April meeting.

All public hearings begin at 7 p.m. at the following locations:

March 28, 2016: Chateau Westport, Beach Room, 710 West Hancock, Westport, WA 98595, telephone: (360) 268–9101.

March 28, 2016: Red Lion Hotel, South Umpqua Room, 1313 North Bayshore Drive, Coos Bay, OR 97420, telephone: (541) 267–4141.

March 29, 2016: Motel 6, Convention Room, 400 South Main St, Fort Bragg, CA 95437, telephone: (707) 964–4761.

Although nonemergency issues not contained in the STT meeting agendas may come before the STT for discussion, those issues may not be the subject of formal STT action during these meetings. STT action will be restricted to those issues specifically listed in this document and to any issues arising after publication of this document requiring emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the STT's intent to take final action to address the emergency.

Special Accommodations

These public meetings and hearings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt at (503) 820–2280 (voice), or (503) 820–2299 (fax) at least 5 days prior to the meeting date.

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

Dated: December 28, 2015.

Tracey L. Thompson,

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

[FR Doc. 2015–32927 Filed 12–30–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Estuarine Research Reserve System

AGENCY: Stewardship Division, Office for Coastal Management, National Ocean Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

ACTION: Notice of Approval for the Mission-Aransas, Texas National Estuarine Research Reserve Management Plan revision.

SUMMARY: Under 15 CFR 921.33(d), notice is hereby given that the Stewardship Division, Office for Coastal Management, National Ocean Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce approves the Mission-Aransas, Texas National Estuarine Research Reserve Management Plan revision. The Mission-Aransas Reserve revised plan will replace the plan approved in 2006.

The revised management plan outlines the administrative structure; the research/monitoring, stewardship, education, and training programs of the reserve; and the plans for future land acquisition and facility development to support reserve operations.

The Mission-Aransas Reserve takes an integrated approach to management, linking research, education, coastal training, and stewardship functions. The Reserve has outlined how it will manage administration and its core program providing detailed actions that will enable it to accomplish specific

goals and objectives. Since the last management plan, the Reserve has built out its core programs and monitoring infrastructure; constructed several facilities including a L.E.E.D. certified Estuarine Research Center that serves as the reserve headquarters and includes laboratories, offices, classrooms, interpretative areas and dormitories; and built new partnerships with organizations along the Coastal Bend of Texas.

On October 1, 2015, NOAA issued a notice of a thirty day public comment period for the Mission-Aransas Reserve revised plan (80 FR 59138). Responses to the written and oral comments received, and an explanation of how comments were incorporated into the final revised plan, are available in Appendix K to the revised plan (*http://missionaransas.org/sites/default/files/manerr/files/final_2015-2020_manerr_management_plan_appendices_dec_2015.pdf*).

With the approval of this management plan, the Mission-Aransas Reserve will increase their total acreage from 185,708 acres to 186,189. The change is attributable to the recent acquisitions of several parcels by Reserve partners, totaling 481 acres. All of the proposed additions are owned by existing Reserve partners and will be managed for long-term protection and conservation value. These parcels have high ecological value and will enhance the Reserve's ability to provide increased opportunities for research, education, and stewardship. The revised management plan will serve as the guiding document for the expanded 186,189 acre Mission-Aransas Reserve for the next five years. The 2015–2020 Mission-Aransas, Texas Reserve Management Plan, which contains a more detailed description of the boundary change and acquired parcels, is available at (*https://sites.cns.utexas.edu/manerr/about/management-plan*).

The impacts of the revised management plan have not changed and the initial Environmental Impact Statement (EIS) prepared at the time of designation is still valid. NOAA has made the determination that the revision of the management plan will not have a significant effect on the human environment and therefore qualifies for a categorical exclusion under NOAA Administrative Order 216–6. An environmental assessment will not be prepared.

FOR FURTHER INFORMATION CONTACT: Matt Chasse at (301) 563–1198 or Erica Seiden at (301) 563–1172 of NOAA's National Ocean Service, Stewardship Division, Office for Coastal Management, 1305 East-West Highway, N/ORM5, 10th floor, Silver Spring, MD 20910.

Dated: October 22, 2015.

John King,

Deputy Director, Office for Coastal Management, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2015–32942 Filed 12–30–15; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE380

Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; Trawl Rationalization Program; 2016 Cost Recovery

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

ACTION: Notice; 2016 cost recovery fee percentages and mothership (MS) pricing.

SUMMARY: This action provides participants in the Pacific coast groundfish trawl rationalization program with the 2016 fee percentages and ''MS pricing'' needed to calculate the required payments for trawl rationalization program cost recovery fees due in 2016. For calendar year 2016, NMFS announces the following fee percentages by sector: 3.0 percent for the Shorebased Individual Fishing Quota (IFQ) Program; 2.5 percent for the MS Coop Program; and 0.7 percent for the Catcher/Processer (C/P) Coop Program. For 2016, the MS pricing to be used as a proxy by the C/P Coop Program is: $0.11/lb for Pacific whiting.

DATES: Effective January 1, 2016.

FOR FURTHER INFORMATION CONTACT: Christopher Biegel, Cost Recovery Program Coordinator, (503) 231–6291, fax (503) 872–2737, email *Christopher.Biegel@NOAA.gov*.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (MSA) requires NMFS to collect fees to recover the costs directly related to the management, data collection, and enforcement of a limited access privilege program (LAPP) (16 U.S.C. 1854(d)(2)), also called ''cost recovery.'' The Pacific coast groundfish trawl rationalization program is a LAPP, implemented in 2011, and consists of three sectors: The Shorebased IFQ Program, the MS Coop Program, and the C/P Coop Program. In accordance with the MSA, and based on a recommended structure and methodology developed in coordination with the Pacific Fishery Management Council, NMFS began collecting mandatory fees of up to three percent of the ex-vessel value of groundfish from each sector (Shorebased IFQ Program, MS Coop Program, and C/P Coop Program) in 2014. NMFS collects the fees to recover the incremental costs of management, data collection, and enforcement of the trawl rationalization program. Additional background can be found in the cost recovery proposed and final rules, 78 FR 7371 (February 1, 2013) and 78 FR 75268 (December 11, 2013), respectively. The details of cost recovery for the groundfish trawl rationalization program are in regulation at 50 CFR 660.115 (trawl fishery cost recovery program), § 660.140 (Shorebased IFQ Program), § 660.150 (MS Coop Program), and § 660.160 (C/P Coop Program).

By December 31 of each year, NMFS must announce the next year's fee percentages, and the applicable MS pricing for the C/P Coop Program. NMFS calculated the 2016 fee percentages by sector using the best available information. For 2016, the fee percentages by sector, which must not exceed three percent of the ex-vessel value of fish harvested, are:

- 3.0 percent for the Shorebased IFQ Program,
- 2.5 percent for the MS Coop Program
- 0.7 percent for the C/P Coop Program.

To calculate the fee percentages, NMFS used the formula specified in regulation at § 660.115(b)(1), where the fee percentage by sector equals the lower of three percent or direct program costs (DPC) for that sector divided by total ex-vessel value (V) for that sector multiplied by 100 (Fee percentage = the lower of 3% or (DPC/V) × 100).

''DPC,'' as defined in the regulations at § 660.115(b)(1)(i), are the actual incremental costs for the previous fiscal year directly related to the management, data collection, and enforcement of each sector (Shorebased IFQ Program, MS Coop Program, and C/P Coop Program). Actual incremental costs means those net costs that would not have been incurred but for the implementation of the trawl rationalization program, including both increased costs for new requirements of the program and reduced costs resulting from any program efficiencies. Similar to

previous years, NMFS only included the cost of employees' time (salary and benefits) spent working on the program in calculating DPC rather than all incremental costs of management, data collection, and enforcement. NMFS is still evaluating how to incorporate additional costs and may, in coordination with the Pacific Fishery Management Council, do so in the future.

''V'', as specified at § 660.115(b)(1)(ii), is the total ex-vessel value, as defined at § 660.111, for each sector from the previous calendar year. To calculate ''V'' for use in determining 2016 fee percentages, electronic fish ticket data in the Pacific Fisheries Information Network (PacFIN) are used for the Shorebased IFQ Program. The MS Coop Program and the C/P Coop Program values are calculated using the average price of whiting derived from those reported on the MS Coop Program cost recovery form from calendar year 2014. This average price ($0.11) and the retained catch estimates (weight) from the observer data (as reported in PacFIN from NORPAC) were used to calculate the ''V'' for the MS and C/P Coop Programs.

Ex-vessel values and amounts landed each year fluctuate, and the amount NMFS collects each year in cost recovery fees also fluctuate accordingly. When the cost recovery fees collected by NMFS are greater or less than the actual net incremental costs incurred for a given year, the fee percentage for the following year will be adjusted accordingly (as specified § 660.115(b)(1)(i)).

It is expected that, in 2015, the Shorebased IFQ Program will have paid $292,051.99 less than the 2014 DPC used to calculate its 2015 fee percentage. As the Shorebased IFQ Program fee percentage for 2016 has already been capped at the maximum 3.0 percent, there will be no fee adjustment for that sector.

It is expected that, in 2015, the MS Coop Program will have paid $82,642.35 less than the 2014 DPC used to calculate its 2015 fee percentage. Therefore, the MS Coop Program DPC used to calculate the 2016 fee percentage will be adjusted upward by $82,642.35.

The adjustment to the C/P Coop program costs used to determine the 2015 fee percentage showed that NMFS anticipated collecting $15,295.71 more than the costs used to determine the 2015 fee, resulting in a fee percentage of negative 0.1. However, because a fee percentage cannot be negative, NMFS set the 2015 C/P Coop program cost recovery fee at 0.0 percent (79 FR 78400) and is now deducting $15,295.71 from the DPC used to calculate the 2016 fee percentage.

	FY 2014 DPC used for 2015 calculation	2015 Fees expected	Adjustment for 2016
Shorebased IFQ Program	$1,546,740.00	$1,254,688.01	N/A
MS Coop Program	$177,110.00	$94,467.65	$82,642.35
C/P Coop Program	N/A	$0.00	($15,295.71)

The adjustments for the MS Coop and C/P Coop programs are included, and increase or reduce their DPC values which are shown below in the fee percentage calculations for that sector.

Shorebased IFQ Program—3.0% = the lower of 3% or ($2,310,729.95/$52,052,455) × 100

MS Coop Program—2.5% = the lower of 3% or ($372,976.40/$15,189,237) × 100

C/P Coop Program—0.7% = the lower of 3% or ($168,971.09/$25,219,201) × 100.

MS pricing is the average price per pound that the C/P Coop Program will use to determine their fee amount due (MS pricing multiplied by the value of the aggregate pounds of all groundfish species harvested by the vessel registered to a C/P-endorsed limited entry trawl permit, multiplied by the C/P fee percentage, equals the fee amount due). In past years, MS pricing was based on the average price per pound of Pacific whiting as reported in PacFIN from the Shorebased IFQ Program. In other words, data from the IFQ fishery was used as a proxy for the MS average price per pound to determine the ''MS pricing'' used in the calculation for the C/P sector's fee amount due. For 2016 MS pricing, NMFS used values derived from those reported on the MS Coop Program cost recovery form from calendar year 2014 as this was determined to be the best information available. NMFS has calculated the 2016 MS pricing to be used as a proxy by the C/P Coop Program as: $0.11/lb for Pacific whiting.

Cost recovery fees are submitted to NMFS by Fish buyers via Pay.gov (*https://www.pay.gov/paygov/*). Fish buyers registered with Pay.gov can login in the upper left-hand corner of the screen. Fish buyers not registered with Pay.gov can go to the cost recovery forms directly from the Web site below. Click on the link to Pacific Coast Groundfish Cost Recovery for your sector (IFQ, MS, or C/P): *https://www.pay.gov/public/search/global?searchString=pacific+cost+recovery&formToken=4e5bc6b4-6ba8-4db4-9850-e73756a06775*.

As stated in the preamble to the cost recovery proposed and final rules, in the spring of each year, NMFS will release an annual report documenting the details and data used for the above calculations. The report will include information such as the fee percentage calculation, program costs, and ex-vessel value by sector. The annual report for fishing year 2013 and calculation for 2014 is available at: *http://www.westcoast.fisheries.noaa.gov/publications/fishery_management/trawl_program/analytical%20docs/cost_recovery_annual_report_01.pdf.*

The annual report for fishing year 2015 and calculation for 2016 will be made available to the public electronically via the NMFS West Coast Region Groundfish Web site *http://www.westcoast.fisheries.noaa.gov/fisheries/groundfish_catch_shares/index.html.*

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

Dated: December 28, 2015.

Alan D. Risenhoover,

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

[FR Doc. 2015–32946 Filed 12–30–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Highly Migratory Species Tournament Registration and Reporting.

OMB Control Number: 0648–0323.

Form Number(s): None.

Type of Request: Regular (extension of a currently approved information collection).

Number of Respondents: 300.

Average Hours per Response: Tournament registration, 2 minutes; tournament reporting, 20 minutes.

Burden Hours: 600.

Needs and Uses: This request is for extension of a currently approved information collection.

Under the provisions of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), National Oceanic and Atmospheric Administration's (NOAA) National Marine Fisheries Service (NMFS) is responsible for management of the nation's marine fisheries. Existing regulations require operators of tournaments involving Atlantic highly migratory species (HMS: Atlantic swordfish, sharks, billfish, and tunas) to register four weeks in advance of the Atlantic Highly Migratory Species Tournament. Operators must provide contact information and the tournament's date(s), location(s), and target species. If selected by NMFS, operators are required to submit an HMS tournament summary report within seven days after tournament fishing has ended. Most of the catch data in the summary report is routinely collected in the course of regular tournament operations. NMFS uses the data to estimate the total annual catch of HMS and the impact of tournament operations in relation to other types of fishing activities. In addition, HMS tournament registration provides a method for tournament operators to request educational and regulatory outreach materials from NMFS.

Affected Public: Business or other for-profit organizations; not for profit institutions.

Frequency: Annually and on occasion.

Respondent's Obligation: Mandatory.

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 and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Dated: December 28, 2015.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2015–32915 Filed 12–30–15; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Addition to the Procurement List.

SUMMARY: This action adds a product to the Procurement List that will be furnished by nonprofit agency employing persons who are blind or have other severe disabilities.

DATES: *Effective Date:* 1/30/2016

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 715, Arlington, Virginia 22202–4149.

FOR FURTHER INFORMATION CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Addition

On 11/20/2015 (80 FR 72710–72711), the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed addition to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agency to furnish the product and impact of the addition on the current or most recent contractors, the Committee has determined that the product listed below is suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organization that will furnish the product to the Government.

2. The action will result in authorizing small entities to furnish the product to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the product proposed for addition to the Procurement List.

End of Certification

Accordingly, the following product is added to the Procurement List:

Product

NSN—Product Name: 6135–01–446–8310—1.5V Alkaline Non-rechargeable Battery
Mandatory Source(s) of Supply: Eastern Carolina Vocational Center, Inc., Greenville, NC
Contracting Activity: Defense Logistics Agency Land and Maritime, Columbus, OH
Mandatory Purchase for: Total Government Requirement
Distribution: A-List

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2015–32949 Filed 12–30–15; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Deletions From the Procurement List.

SUMMARY: The Committee is proposing to delete products from the Procurement List that was previously furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

Comments Must Be Received on or Before: 1/30/2016.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 715, Arlington, Virginia 22202–4149.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Deletions

The following products are proposed for deletion from the Procurement List:

Products

NSN(s)—Product Name(s): 7530–01–047–3738—Paper, Writing
Mandatory Source(s) of Supply: Louisiana Association for the Blind, Shreveport, LA

Contracting Activity: General Services Administration, New York, NY
NSN(s)—Product Name(s): 7520–00–240–5498—Clipboard, Arch
Mandatory Source(s) of Supply: Industries of the Blind, Inc., Greensboro, NC
Contracting Activity: General Services Administration, New York, NY
NSN(s)—Product Name(s): 7210–01–035–3342—Pillow, Bed
Mandatory Source(s) of Supply: Ed Lindsey Industries for the Blind, Inc., Nashville, TN
Contracting Activity: General Services Administration, Fort Worth, TX
NSN(s)—Product Name(s): 6545–00–NSH–2000—Module, Medical System, FRSS
Mandatory Source(s) of Supply: Louise W. Eggleston Center, Inc., Norfolk, VA
Contracting Activity: Dept of the Navy, Commander, Quantico, VA
NSN(s)—Product Name(s): 7920–00–NIB–0373—Shovel, Ergo Snow
Mandatory Source(s) of Supply: Industries for the Blind, Inc., West Allis, WI
Contracting Activity(ies): General Services Administration, Fort Worth, TX
Department of Veterans Affairs, NAC, Hines, IL
NSN(s)—Product Name(s): 7210–00–082–2081—Cover, Mattress
Mandatory Source(s) of Supply: Lions Services, Inc., Charlotte, NC
Contracting Activity: General Services Administration, Fort Worth, TX
NSN(s)—Product Name(s): 7210–00–935–6619—Cover, Mattress, Natural, 36″ × 82″
Mandatory Source(s) of Supply: Lions Services, Inc., Charlotte, NC
Contracting Activity: Defense Logistics Agency Troop Support, Philadelphia, PA
NSN(s)—Product Name(s): 7920–00–926–5492—Mophead, Wet
Mandatory Source(s) of Supply: Lighthouse for the Blind and Visually Impaired, San Francisco, CA
Mississippi Industries for the Blind, Jackson, MS
Contracting Activity: General Services Administration, Fort Worth, TX
NSN(s)—Product Name(s): 7920–00–240–2559—Sponge, Cellulose
Mandatory Source(s) of Supply: Mississippi Industries for the Blind, Jackson, MS
Contracting Activity: General Services Administration, Fort Worth, TX
NSN(s)—Product Name(s): 7920–00–NIB–0301—Handle, Wood
Mandatory Source(s) of Supply: LC Industries, Inc., Durham, NC
Contracting Activity: General Services Administration, Fort Worth, TX
Product Name(s)—NSN(s): Flatware, Plastic, Totally Degradable
7340–01–486–1858
7340–01–486–1859
7340–01–486–2767
7340–01–486–3657
Mandatory Source(s) of Supply: LC Industries, Inc., Durham, NC
Contracting Activity: General Services Administration, Fort Worth, TX
Product Name(s)—NSN(s): Pen, Essential LVX Translucent and refills
7510–01–454–1172
7510–01–454–1175
Mandatory Source(s) of Supply: Industries for the Blind, Inc., West Allis, WI
Contracting Activity: General Services Administration, New York, NY
NSN(s)—Product Name(s): 6840–00–NIB–0044—Prof Lysol Brand II Aerosol Disinfectant Spray
Mandatory Source(s) of Supply: LC Industries, Inc., Durham, NC
Contracting Activity: General Services Administration, New York, NY
NSN(s)—Product Name(s): 6840–01–383–0739—Disinfectant, Detergent—CPAL Item
7930–01–398–0947—Glass Cleaner—CPAL Item
7930–01–398–0948—Glass Cleaner—CPAL Item
7930–01–398–0949—Detergent, General Purpose—CPAL Item
7930–01–463–5064—Floor Care Products
Mandatory Source(s) of Supply: Lighthouse for the Blind of Houston, Houston, TX
Contracting Activity: General Services Administration, Fort Worth, TX
Product Name(s)—NSN(s): Bedspread
7210–00–728–0177
7210–00–728–0178
7210–00–728–0179
7210–00–728–0190—Cream, 63″ × 103″
7210–00–728–0191—Dark Green, 63″ × 103″
Mandatory Source(s) of Supply: Alabama Industries for the Blind, Talladega, AL
Contracting Activity: General Services Administration, Fort Worth, TX
Product Name(s)—NSN(s): Cover, Mattress
7210–00–205–3082—Pre-Shrunk, White, 85″ × 40″ × 6⅛″
7210–00–205–3083—Bleached, White, 36″ × 81″ × 6⅛″
7210–00–230–1041—Bleached, Pre-Shrunk, White, Twin, 77½″ × 31″
7210–00–291–8419—White, 36″ × 77″ × 6⅛″
7210–00–883–8492—White, 43½″ × 82½″
Mandatory Source(s) of Supply: Lions Services, Inc., Charlotte, NC
LC Industries, Inc., Durham, NC
The Arkansas Lighthouse for the Blind, Little Rock, AR
Contracting Activity: General Services Administration, Fort Worth, TX

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2015–32948 Filed 12–30–15; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2015–HQ–0050]

Proposed Collection: Comment Request

AGENCY: Warrior Transition Command, U.S. Army, DoD.

ACTION: Notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Office of Warrior Transition Command announces a proposed public information collection and seeks public comment on the provision thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have the practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by February 29, 2016.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

• *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate of Oversight and Compliance, Regulatory and Audit Matters Office, 9010 Defense Pentagon, Washington, DC 20301–9010.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions

from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

Any associated form(s) for this collection may be located within this same electronic docket and downloaded for review/testing. Follow the instructions at *http://www.regulations.gov* for submitting comments. Please submit comments on any given form identified by docket number, form number, and title.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to: LTC Luis A. Fregoso, Warrior Transition Command, 200 Stovall Street, Suite 7S37, Alexandria VA 22332–5000 or *luis.a.fregoso3.mil@mail.mil.*

SUPPLEMENTARY INFORMATION:

The following information collection requirement is necessary to plan and execute the 2016 Warrior Games. Created in 2010, the Warrior Games showcases the resilient spirit of today's wounded, ill or injured service members from all branches of the military. Wounded, ill and/or injured athletes from the Army, Marine Corps, Navy, Coast Guard, Air Force and Special Operations Command compete in eight sports (archery, cycling, shooting, swimming, track, field, sitting volleyball and wheelchair basketball) in a display of courage and resilience. The 2016 Warrior Games (WG16), to be held June 15 through June 21, 2016 at the U.S. Military Academy (USMA) in West Point, New York, is being organized by the Warrior Transition Command (WTC) of the U.S. Army.

Title; Associated Form; and OMB Number: Warrior Games Registration Forms; OMB Control Number 0702–XXXX.

Needs and Uses: The information collected is necessary in order to plan and manage the 2016 Warrior Games.

Affected Public: Individuals.

Annual Burden Hours: 25.38 hours.

Number of Respondents: 245.

Responses per Respondent: 1.

Annual Responses: 245.

Average Burden per Response: 7 minutes.

Frequency: On Occasion.

Respondents are individuals that will be participating in the 2016 Warrior Games as: Athletes, non-medical assistants, coaches, volunteers, family members, distinguished visitors and members of the media. All registration forms will be accessed, completed and submitted online.

Dated: December 28, 2015.

Aaron Siegel,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 2015–32952 Filed 12–30–15; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[Docket No. DARS–2015–0071]

Negotiation of a Reciprocal Defense Procurement Memorandum of Understanding With the Ministry of Defense of Japan

AGENCY: Department of Defense (DoD).

ACTION: Request for public comments.

SUMMARY: On behalf of the U.S. Government, DoD is contemplating negotiating and concluding a Reciprocal Defense Procurement Memorandum of Understanding with the Ministry of Defense of Japan. DoD is requesting industry feedback regarding its experience in public defense procurements conducted by or on behalf of the Japanese Ministry of Defense or Armed Forces.

DATES: Submit written comments to the address shown below on or February 1, 2016.

ADDRESSES: Submit comments to Defense Procurement and Acquisition Policy, Attn: Ms. Patricia Foley, 3060 Defense Pentagon, Room 5E621, Washington, DC 20301–3060; or by email to *patricia.g.foley.civ@mail.mil.*

FOR FURTHER INFORMATION CONTACT: Ms. Patricia Foley, Senior Analyst, Office of the Under Secretary of Defense for Acquisition, Technology and Logistics (OUSD(AT&L)), Defense Procurement and Acquisition Policy, Contract Policy and International Contracting; Room 5E621, 3060 Defense Pentagon, Washington, DC 20301–3060; telephone (703) 693–1145.

SUPPLEMENTARY INFORMATION: DoD has concluded Reciprocal Defense Procurement (RDP) Memorandums of Understanding (MOUs) with 23 ''qualifying countries'' at the level of the Secretary of Defense and his counterpart. The purpose of RDP MOUs is to promote rationalization, standardization, and interoperability of conventional defense equipment with allies and other friendly governments. These MOUs provide a framework for ongoing communication regarding market access and procurement matters that enhance effective defense cooperation.

RDP MOUs generally include language by which the Parties agree that their defense procurements will be conducted in accordance with certain implementing procedures. These procedures relate to—

- Publication of notices of proposed purchases;
- The content and availability of solicitations for proposed purchases;
- Notification to each unsuccessful offeror;
- Feedback, upon request, to unsuccessful offerors concerning the reasons they were not allowed to participate in a procurement or were not awarded a contract; and
- Provision for the hearing and review of complaints arising in connection with any phase of the procurement process to ensure that, to the extent possible, complaints are equitably and expeditiously resolved.

Based on the MOU, each country affords the other country certain benefits on a reciprocal basis consistent with national laws and regulations. The benefits that the United States accords to the products of qualifying countries include—

- Offers of qualifying country end products are evaluated without applying the price differentials otherwise required by the Buy American statute and the Balance of Payments Program;
- The chemical warfare protection clothing restrictions in 10 U.S.C. 2533a and the specialty metals restriction in 10 U.S.C. 2533b(a)(1) do not apply to products manufactured in a qualifying country; and
- Customs, taxes, and duties are waived for qualifying country end products and components of defense procurements.

If DoD (for the U.S. Government) concludes an RDP MOU with the Ministry of Defense of Japan, then Japan would be listed as one of the ''qualifying countries'' in the definition of ''qualifying country'' at DFARS 225.003, and offers of products of Japan or that contain components from Japan would be afforded the benefits available to all qualifying countries. This also means that U.S. products would be exempt from any analogous ''Buy Japan'' laws or policies applicable to procurements by the Japan Ministry of Defense or Armed Forces.

While DoD is evaluating Japan's laws and regulations in this area, DoD would benefit from U.S. industry's experience in participating in Japan's public defense procurements. DoD is, therefore, asking U.S. firms that have participated

or attempted to participate in procurements by or on behalf of Japan's Ministry of Defense or Armed Forces to let us know if the procurements were conducted with transparency, integrity, fairness, and due process in accordance with published procedures, and if not, the nature of the problems encountered.

DoD is also interested in comments relating to the degree of reciprocity that exists between the United States and Japan when it comes to the openness of defense procurements to offers of products from the other country.

Jennifer L. Hawes,

Editor, Defense Acquisition Regulations System.

[FR Doc. 2015–32945 Filed 12–30–15; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Judicial Proceedings Since Fiscal Year 2012 Amendments Panel (Judicial Proceedings Panel); Notice of Federal Advisory Committee Meeting

AGENCY: Department of Defense.

ACTION: Notice of meeting.

SUMMARY: The Department of Defense is publishing this notice to announce the following Federal Advisory Committee meeting of the Judicial Proceedings since Fiscal Year 2012 Amendments Panel (''the Judicial Proceedings Panel'' or ''the Panel''). The meeting is open to the public.

DATES: A meeting of the Judicial Proceedings Panel will be held on Friday, January 15, 2016. The Public Session will begin at 9:00 a.m. and end at 4:45 p.m.

ADDRESSES: The Holiday Inn Arlington at Ballston, 4610 N. Fairfax Drive, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Ms. Julie Carson, Judicial Proceedings Panel, One Liberty Center, 875 N. Randolph Street, Suite 150, Arlington, VA 22203. Email: *whs.pentagon.em.mbx.judicial-panel@mail.mil.* Phone: (703) 693–3849. Web site: *http://jpp.whs.mil.*

SUPPLEMENTARY INFORMATION: This public 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.

Purpose of the Meeting: In Section 576(a)(2) of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112–239), as amended, Congress tasked the Judicial Proceedings Panel to conduct an independent review and assessment of judicial proceedings conducted under the Uniform Code of Military Justice (UCMJ) involving adult sexual assault and related offenses since the amendments made to the UCMJ by section 541 of the National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112–81; 125 Stat. 1404), for the purpose of developing recommendations for improvements to such proceedings. At this meeting, the Panel will deliberate on its analysis, conclusions and recommendations regarding Article 120 of the UCMJ. The Panel will also continue deliberations on issues relating to retaliation against individuals who report incidents of sexual assault within the military. The Panel is interested in written and oral comments from the public, including non-governmental organizations, relevant to these issues or any of the Panel's tasks.

Agenda:

—9:00 a.m.–12:00 p.m. Deliberations: Article 120 of the UCMJ

—12:00 p.m.–1:00 p.m. Lunch

—1:00 p.m.–4:30 p.m. Deliberations and Review of Draft Report: Retaliation against Victims of Sexual Assault Crimes

—4:30 p.m.–4:45 p.m. Public Comment

Availability of Materials for the Meeting: A copy of the January 15, 2016 public meeting agenda or any updates or changes to the agenda, to include individual speakers not identified at the time of this notice, as well as other materials provided to Panel members for use at the public meeting, may be obtained at the meeting or from the Panel's Web site at *http://jpp.whs.mil.*

Public's Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. Seating is limited and is on a first-come basis.

Special Accommodations: Individuals requiring special accommodations to access the public meeting should contact the Judicial Proceedings Panel at *whs.pentagon.em.mbx.judicial-panel@mail.mil* at least five (5) business days prior to the meeting so that appropriate arrangements can be made.

Procedures for Providing Public Comments: Pursuant to 41 CFR 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act of 1972, the public or interested organizations may submit written comments to the Panel about its mission and topics pertaining to this public session. Written comments must be received by the JPP at least five (5) business days prior to the meeting date so that they may be made available to the Judicial Proceedings Panel for their consideration prior to the meeting. Written comments should be submitted via email to the Judicial Proceedings Panel at *whs.pentagon.em.mbx.judicial-panel@mail.mil* in the following formats: Adobe Acrobat or Microsoft Word. Please note that since the Judicial Proceedings Panel operates under the provisions of the Federal Advisory Committee Act, as amended, all written comments will be treated as public documents and will be made available for public inspection. If members of the public are interested in making an oral statement, a written statement must be submitted along with a request to provide an oral statement. Oral presentations by members of the public will be permitted from 4:30 p.m. to 4:45 p.m. on January 15, 2016 in front of the Panel members. The number of oral presentations to be made will depend on the number of requests received from members of the public on a first-come basis. After reviewing the requests for oral presentation, the Chairperson and the Designated Federal Officer will, if they determine the statement to be relevant to the Panel's mission, allot five minutes to persons desiring to make an oral presentation.

Committee's Designated Federal Officer: The Panel's Designated Federal Officer is Ms. Maria Fried, Department of Defense, Office of the General Counsel, 1600 Defense Pentagon, Room 3B747, Washington, DC 20301–1600.

Dated: December 28, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2015–32934 Filed 12–30–15; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2015–OS–0143]

Agency Information Collection Activities: Proposed Collection; Comment Request; Fast Track Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Notice and request for comments.

SUMMARY: As part of a Federal Government-wide effort to streamline the process to seek feedback from the

public on service delivery, we are seeking comment on the development of the following proposed Generic Information Collection Request (Generic ICR): ''Fast Track Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery'' for approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et. seq.*). This notice announces our intent to submit this collection to OMB for approval and solicits comments on specific aspects for the proposed information collection.

A copy of the draft supporting statement is available at *www.regulations.gov* (see Docket ID: DoD–2015–OS–0143).

DATES: Consideration will be given to all comments received by February 29, 2016.

ADDRESSES: Submit comments by one of the following methods:

- Web site: *www.regulations.gov.* Direct comments to Docket ID: DoD–2015–OS–0143.
- Mail: Department of Defense, Office of the Deputy Chief Management Officer, Directorate of Oversight and Compliance, Regulatory and Audit Matters Office, 9010 Defense Pentagon, Washington, DC 20301–9010.

Comments submitted in response to this notice may be made available to the public through *www.regulations.gov.* For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. Please note that responses to this public comment request containing any routine notice about the confidentiality of the communication will be treated as public comments that may be made available to the public notwithstanding the inclusion of the routine notice.

FOR FURTHER INFORMATION CONTACT: Information Collections Branch, Directives Division, Attn: Mr. Frederick Licari, 4800 Mark Center Drive, Suite 02G09, Alexandria, VA 22350–3100, Phone: 571–372–0493.

SUPPLEMENTARY INFORMATION:

Title and OMB Number: Fast Track Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery; 0704–TBD.

Needs and Uses: The proposed information collection activity provides a means to garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

The solicitation of feedback will target areas such as: Timeliness, appropriateness, accuracy of information, courtesy, efficiency of service delivery, and resolution of issues with service delivery. Responses will be assessed to plan and inform efforts to improve or maintain the quality of service offered to the public. If this information is not collected, vital feedback from customers and stakeholders on the Agency's services will be unavailable.

The Agency will only submit a collection for approval under this generic clearance if it meets the following conditions:

- The collections are voluntary;
- The collections are low-burden for respondents (based on considerations of total burden hours, total number of respondents, or burden-hours per respondent) and are low-cost for both the respondents and the Federal Government;
- The collections are non-controversial and do not raise issues of concern to other Federal agencies;
- Any collection is targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program in the near future;
- Personally identifiable information (PII) is collected only to the extent necessary and is not retained;
- Information gathered will be used only internally for general service improvement and program management purposes and is not intended for release outside of the agency;
- Information gathered will not be used for the purpose of substantially informing influential policy decisions; and
- Information gathered will yield qualitative information; the collections will not be designed or expected to yield statistically reliable results or used as though the results are generalizable to the population of study.

Feedback collected under this generic clearance provides useful information, but it does not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: The target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential non-response bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior to fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

As a general matter, information collections will not result in any new system of records containing privacy information and will not ask questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

Current Actions: Processing Information Collection as Fast Track Generic.

Type of Review: New.

Affected Public: Individuals or Households; Business or Other For-Profit; Not-For-Profit Institutions; Farms; Federal Government; State, Local, or Tribal Government.

Estimated Annual Number of Respondents: 100,000.

Below we provide projected *average* burden estimates for the next three years:

Average Expected Annual Number of Activities: 100.

Average Number of Respondents per Activity: 1,000.

Responses per Respondent: 1.

Annual Responses: 100,000.

Average Minutes per Response: 10 minutes.

Annual Burden Hours: 16,667 hours.

Frequency: On occasion.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including

whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

All written comments will be available for public inspection on regulations.gov.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget Control Number.

Dated: December 28, 2015.

Aaron Siegel,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 2015–32947 Filed 12–30–15; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

National Advisory Committee on Institutional Quality and Integrity

AGENCY: U.S. Department of Education National Advisory Committee on Institutional Quality and Integrity, Education.

ACTION: Notice of Membership.

SUMMARY: This notice lists 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 of 1965, as amended (HEA).

SUPPLEMENTARY INFORMATION:

NACIQI's Statutory Authority and Function

The NACIQI is established under Section 114 of the HEA and is composed of 18 members appointed—

(A) On the basis of the individual's experience, integrity, impartiality, and good judgment;

(B) From amongst 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 individual's 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: Jennifer Hong, Executive Director/Designated Federal Official, NACIQI, U.S. Department of Education, 1990 K Street, NW., Room 8073, Washington, DC 20006–8129, telephone: (202) 502–7696, fax: (202) 502–7874, or email *Jennifer.Hong@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/SUNY, Albany, New York.
- Simon J. Boehme (Student Member), Mitchell Scholar, Maynooth University, Kennedy Institute for Conflict Intervention, Kalamazoo, Michigan.
- Roberta L. Derlin, Ph.D., Associate Provost Emeritus, New Mexico State University, Albuquerque, 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 Law, San Francisco, California.
- Federico Zaragoza, Ph.D., Vice Chancellor for Economic and Workforce Development, Alamo Colleges, San Antonio, Texas.

Members Appointed by the Speaker of the House of Representatives With Terms Expiring September 30, 2020

- Kathleen Sullivan Alioto, Ed.D., Strategic Advisor, Fundraiser, and Consultant, New York, New York, San Francisco, California, and Boston, Massachusetts.
- George T. French, Jr., Ph.D., President, Miles College, Fairfield, Alabama.
- Arthur E. Keiser, Ph.D., NACIQI Vice Chair, Chancellor, Keiser University, Fort Lauderdale, Florida.
- William Pepicello, Ph.D., President Emeritus, University of Phoenix, Scottsdale, Arizona.
- Arthur J. Rothkopf, J.D., President Emeritus, Lafayette College, Washington, DC.
- Ralph Wolff, J.D., Independent Consultant, Oakland, California.

Members Appointed by the President Pro Tempore of the Senate With Terms Expiring September 30, 2016

- George ''Hank'' Brown, President Emeritus, University of Colorado, Denver, Colorado.
- Jill Derby, Ph.D., Senior Consultant, Association of Governing Boards of Universities and Colleges, Gardnerville, Nevada.
- Paul J. LeBlanc, Ph.D., President, Southern New Hampshire University, Manchester, New Hampshire.

• Anne D. Neal, J.D., President, American Council of Trustees and Alumni, Washington, DC.

• Richard F. O'Donnell, Founder and CEO, Skills Fund, Austin, Texas.

• Cameron C. Staples, J.D., President and CEO, New England Association of Schools and Colleges, Burlington, 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. 2015–32933 Filed 12–30–15; 8:45 am]

BILLING CODE P

ELECTION ASSISTANCE COMMISSION

Sunshine Act Meetings

AGENCY: Election Assistance Commission.

DATE & TIME: Wednesday, January 6, 2016 at 10 a.m.

PLACE: Ritz-Carlton Pentagon City, 1250 S. Hayes Street, Arlington, VA 22202, Phone: (703) 415–5000.

STATUS: This meeting will be open to the public.

ITEMS FOR DISCUSSION AND CONSIDERATION:

- Recommendation and Discussion on VVSG1.1 Transition Date
- Recommendation of Policy Regarding Employee Participation with Outside Organizations

AGENDA: The Commission will receive a presentation on a recommendation for a Voluntary Voting System Guidelines (VVSG 1.1) transition date and consider the proposal for adoption. The Commission will receive a presentation for discussion on a draft Recommendation of Policy Regarding Employee Participation with Outside Organizations. The Commission may consider other administrative matters.

PERSON TO CONTACT FOR INFORMATION: Bryan Whitener, Telephone: (301) 563–3961.

Dated: December 29, 2015.

Bryan Whitener,

Director of Communications & Clearinghouse.

[FR Doc. 2015–33082 Filed 12–29–15; 4:15 pm]

BILLING CODE 6820–KF–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR16–9–000]

Enbridge Energy, Limited Partnership; Notice of Filing of Supplement to Facilities Surcharge Settlement

Take notice that on December 15, 2015, Enbridge Energy, Limited Partnership (Enbridge Energy),with the support of the Canadian Association of Petroleum Producers (CAPP), submitted a Supplement to the Facilities Surcharge Settlement approved by the Commission on June 30, 2004, in Docket No. OR04–2–000, at 107 FERC ¶ 61, 336 (2004).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214 (2014)) on or before 5:00 p.m. Eastern time on the specified comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on Enbridge Energy.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern time on January 7, 2016.

Dated: December 24, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–32918 Filed 12–30–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TX16–2–000]

Arkansas River Power Authority; Notice of Filing

Take notice that on December 23, 2015, Arkansas River Power Authority submitted its Application for Interconnection and Transmission Service and Request for Expedited Consideration.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed

docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on January 14, 2016.

Dated: December 24, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–32919 Filed 12–30–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP15–23–010
Applicants: Transwestern Pipeline Company, LLC
Description: Compliance filing per 154.203: RP15–23–009 Settlement Compliance Filing Correction to be effective 12/1/2015
Filed Date: 12/23/15
Accession Number: 20151223–5166
Comments Due: 5 p.m. ET 12/30/15

Docket Numbers: RP16–319–000
Applicants: Alliance Pipeline L.P.
Description: § 4(d) rate filing per 154.204: Bantry Waiver Amendment to be effective 1/1/2016
Filed Date: 12/23/15
Accession Number: 20151223–5154
Comments Due: 5 p.m. ET 1/4/16

Docket Numbers: RP16–320–000
Applicants: Alliance Pipeline L.P.
Description: § 4(d) rate filing per 154.204: Seasonal Service Jan 1–Mar 31 2016 to be effective 1/1/2016
Filed Date: 12/23/15
Accession Number: 20151223–5155
Comments Due: 5 p.m. ET 1/4/16

Docket Numbers: RP16–321–000
Applicants: Questar Pipeline Company
Description: § 4(d) rate filing per 154.204: Updated CHDP Zone map and related provisions, and certain balancing provisions to be effective 1/25/2016
Filed Date: 12/24/15
Accession Number: 20151224–5028
Comments Due: 5 p.m. ET 1/5/16

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and § 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 24, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary

[FR Doc. 2015–32921 Filed 12–30–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC16–55–000
Applicants: Central Antelope Dry Ranch C LLC
Description: Application for Authorization Under Section 203 of the Federal Power Act for the Disposition of Jurisdictional Facilities, Request for Expedited Consideration and Confidential Treatment of Central Antelope Dry Ranch C LLC.
Filed Date: 12/23/15
Accession Number: 20151223–5244
Comments Due: 5 p.m. ET 1/13/16

Docket Numbers: EC16–56–000
Applicants: Entergy Louisiana, LLC
Description: Application of Entergy Louisiana, LLC, for transaction approval under FPA Section 203.
Filed Date: 12/23/15
Accession Number: 20151223–5253
Comments Due: 5 p.m. ET 1/13/16

Docket Numbers: EC16–57–000
Applicants: PacifiCorp
Description: Application under Section 203 for Approval of Acquisition of Jurisdictional Assets of PacifiCorp.
Filed Date: 12/23/15
Accession Number: 20151223–5254
Comments Due: 5 p.m. ET 1/13/16

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG16–30–000
Applicants: Goal Line L.P.
Description: Notice of Material Change of Facts and Self-Recertification of Exempt Wholesale Generator Status of Goal Line L.P.
Filed Date: 12/23/15
Accession Number: 20151223–5231
Comments Due: 5 p.m. ET 1/13/16

Docket Numbers: EG16–31–000
Applicants: Voyager Wind I, LLC
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Voyager Wind I, LLC.
Filed Date: 12/23/15
Accession Number: 20151223–5233
Comments Due: 5 p.m. ET 1/13/16

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER15–861–007
Applicants: California Independent System Operator Corporation
Description: Compliance filing: Limited Tariff Waiver Petition: Modify ABC Effective Date & Short Comment Period to be effective N/A.
Filed Date: 12/23/15
Accession Number: 20151223–5237
Comments Due: 5 p.m. ET 12/30/15

Docket Numbers: ER16–634–000
Applicants: AltaGas Pomona Energy Inc.
Description: Baseline eTariff Filing: AltaGas Pomona Energy Inc. MBR Tariff to be effective 1/1/2016.
Filed Date: 12/24/15
Accession Number: 20151224–5000
Comments Due: 5 p.m. ET 1/14/16

Docket Numbers: ER16–635–000
Applicants: Entergy Louisiana, LLC
Description: § 205(d) Rate Filing: ELL–SRMPA 6th Extension of Interim Agreement to be effective 1/1/2016.
Filed Date: 12/24/15
Accession Number: 20151224–5034
Comments Due: 5 p.m. ET 1/14/16

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES16–16–000
Applicants: PJM Settlement, Inc.
Description: Application of PJM Settlement, Inc. under Section 204 of the Federal Power Act for an Order Authorizing Issuances of Securities and Approving Guaranty.
Filed Date: 12/23/15
Accession Number: 20151223–5242
Comments Due: 5 p.m. ET 1/13/16

Docket Numbers: ES16–17–000
Applicants: PJM Interconnection, L.L.C.
Description: Application of PJM Interconnection, L.L.C. Under Section 204 of the Federal Power Act for an Order Authorizing the Issuance of Securities.
Filed Date: 12/23/15
Accession Number: 20151223–5243

Comments Due: 5 p.m. ET 1/13/16

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 24, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–32916 Filed 12–30–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL11–66–000]

Martha Coakley, Massachusetts Attorney General; Connecticut Public Utilities Regulatory Authority; Massachusetts Department of Public Utilities; New Hampshire Public Utilities Commission; Connecticut Office of Consumer Counsel; Maine Office of the Public Advocate; George Jepsen, Connecticut Attorney General; New Hampshire Office of Consumer Advocate; Rhode Island Division of Public Utilities and Carriers; Vermont Department of Public Service; Massachusetts Municipal Wholesale Electric Company; Associated Industries of Massachusetts; The Energy Consortium; Power Options, Inc.; and the Industrial Energy Consumer Group, v. Bangor Hydro-Electric Company; Central Maine Power Company; New England Power Company d/b/a National Grid; New Hampshire Transmission LLC d/b/a NextEra; NSTAR Electric and Gas Corporation; Northeast Utilities Service Company; The United Illuminating Company; Unitil Energy Systems, Inc. and Fitchburg Gas and Electric Light Company; Vermont Transco, LLC;

Notice of Filing

Take notice that on December 23, 2015, the New England Transmission Owners (NETOs) submitted tariff filing per: Refund Report to be effective N/A, pursuant to the Commission's Opinion No. 531–A, issued on October 16, 2014.[1]

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on January 13, 2016.

Dated: December 24, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–32917 Filed 12–30–15; 8:45 am]

BILLING CODE 6717–01–P

[1] *Martha Coakley, Mass. Attorney Gen., et al.* v. *Bangor Hydro-Elec. Co., et al.*, Opinion No. 531, 147 FERC ¶ 61,234 (2014) (Opinion No. 531), *order on paper hearing*, Opinion No. 531–A, 149 FERC ¶ 61,032 (2014) (Opinion No. 531–A).

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9024–7]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7146 or *http://www2.epa.gov/nepa*

Weekly receipt of Environmental Impact Statements (EISs)

Filed 12/21/2015 Through 12/24/2015 Pursuant to 40 CFR 1506.9.

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *http://cdxnodengn.epa.gov/cdx-nepa-public/action/eis/search*.

EIS No. 20150363, Draft, USFS, MT, Center Horse Landscape Restoration Project, Comment Period Ends: 02/16/2016, Contact: Tami Paulsen 406–329–3731.

EIS No. 20150364, Second Draft Supplemental, NRC, NY, Generic—License Renewal of Nuclear Plants, Supplement 38, Volume 5, Regarding Indian Point Nuclear Generating Unit Nos. 2 and 3, Comment Period Ends: 03/04/2016, Contact: Michael Wentzel 301–415–6459.

EIS No. 20150365, Final, USACE, CA, Panoche Valley Solar Project, Review Period Ends: 02/01/2016, Contact: Lisa Gibson 916–557–5288.

EIS No. 20150366, Draft, USFS, MT, Lower Yaak, O'Brien, Sheep Project, Comment Period Ends: 02/16/2016, Contact: Miles Friend 406–295–4693.

EIS No. 20150367, Draft, USACE, CA, Upper Llagas Creek Flood Project, Comment Period Ends: 02/16/2016, Contact: Jim Mazza 415–503–6775.

Dated: December 28, 2015.

Dawn Roberts,

Management Analyst, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2015–32971 Filed 12–30–15; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors

that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 15, 2016.

A. Federal Reserve Bank of New York (Ivan Hurwitz, Vice President) 33 Liberty Street, New York, New York 10045–0001:

1. *Pathfinder Bank Employee Stock Ownership Plan Trust*, Oswego, New York; to acquire additional voting shares of Pathfinder Bancorp Inc., Oswego, New York.

B. Federal Reserve Bank of Cleveland (Nadine Wallman, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101–2566:

1. *The McComb Family, as a group, consisting of Gregory Scott McComb, Blacklick, Ohio, Camilla Lorraine McComb, Ypsilanti, Michigan, and Debra L. McComb*, New Albany, Ohio; to retain voting shares of Heartland BancCorp, and thereby indirectly retain voting shares of Heartland Bank, both in Gahanna, Ohio.

Board of Governors of the Federal Reserve System, December 28, 2015.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2015–32956 Filed 12–30–15; 8:45 am]

BILLING CODE 6210–01–P

GULF COAST ECOSYSTEM RESTORATION COUNCIL

[Document ID: 112312015–1111–11]

Request for Applications for Funding for the 12/09/2015 Funded Priorities List

AGENCY: Federal Agency Name: Gulf Coast Ecosystem Restoration Council.

SUMMARY: This announcement provides guidance to members of the Gulf Coast Ecosystem Restoration Council (Council) to apply for funding under the Council-Selected Restoration Component of the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012 (RESTORE Act) (33 U.S.C. 1321(t)(2)) to implement projects and programs approved on the 12/09/2015 Funded Priorities List (FPL) Addendum to the Initial Comprehensive Plan.

RFA Name: Council-Selected Restoration Component 12/09/2015 Funded Priorities List Grant and Interagency Agreement Application Requirements.

Announcement Type: Supplemental announcement to *Council Member Summary Notice of Application Process for Council-Selected Restoration Component Projects and Programs,* published on May 4, 2015 (80 FR 25294).

Funding Opportunity Number: GCC–FPL–16–001.

Fiscal Year: FY 2016 and 2017.

Catalog of Federal Domestic Assistance (CFDA) Number: 87.051 Gulf Coast Ecosystem Restoration Council Comprehensive Plan Component Program.

Funding Instrument: Grant or Interagency Agreement.

Funding Amount: $156,553,618.

Closing Date for Submissions: Applications are due by December 31, 2016. Eligible applicants may submit their applications for Council-Selected Restoration Component projects and programs beginning upon publication of the 12/09/2015 Funded Priorities List (FPL) Addendum to the Initial Comprehensive Plan and continuing through and including December 31, 2016.

Funding Opportunity Description: Through this announcement, members of the Gulf Coast Ecosystem Restoration Council (Council) may submit applications to fund projects and programs under the Council-Selected Restoration Component of the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012 (RESTORE Act) (33 U.S.C. 1321(t)(2)). Council members include the Secretaries of the Departments of Agriculture, the Army, Commerce, the Interior, and Homeland Security, the Administrator of the U.S. Environmental Protection Agency, and the governors of the Gulf Coast States of Alabama, Florida, Louisiana, Mississippi, and Texas. The submission process is composed of two phases: (1) The submission of proposals to the Council for inclusion in a Funded Priorities List (FPL) (proposal phase), and (2) once a project or program has been approved by the Council for inclusion in an FPL, the submission of a grant or interagency agreement (IAA) application in order to receive funding (application phase).

The first phase of the process (proposal phase) is complete for the 12/09/2015 FPL. This announcement provides guidance to eligible entities on the necessary steps to complete the second phase of submitting their grant application if a proposal was selected for funding in the 12/09/2015 FPL (available at: *https://www.restorethegulf.gov/sites/default/files/FPL_FINAL_Dec9Vote_EC_Library_Links.pdf*).

Council members are the only entities eligible to submit applications under this funding announcement and are the only entities eligible to receive Council-Selected Restoration Component funds under grant awards or IAAs.

Full Announcement Text

Funding Opportunity Description

A. Program Description

Through this announcement, member agencies and States of the Gulf Coast Ecosystem Restoration Council (Council) may submit applications to fund projects and programs under the Council-Selected Restoration Component of the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012 (RESTORE Act) (33 U.S.C. 1321(t)(2)). Council members include the Secretaries of the Departments of Agriculture, the Army, Commerce, the Interior, and Homeland Security, the Administrator of the U.S. Environmental Protection Agency, and the governors of the Gulf Coast States of Alabama, Florida, Louisiana, Mississippi, and Texas. The submission process is composed of two phases: (1) The submission of proposals to the Council for inclusion in a Funded Priorities List (FPL), (proposal phase) and (2) once a project or program has been approved by the Council for inclusion in an FPL, the submission of a grant application in order to receive grant funding (application phase). The first phase (proposal phase) was completed with the approval of an FPL by the Council on December 9, 2015 and publication of the FPL in the **Federal Register** on December 15, 2015. 80 FR 77585. This announcement provides guidance to eligible entities on the necessary steps to complete the second phase of submitting their grant application if a proposal was selected for funding in the 12/09/2015 FPL (available at: *https://www.restorethegulf.gov/sites/default/files/FPL_FINAL_Dec9Vote_EC_Library_Links.pdf*).

1. Background

Passed in July 2012, the RESTORE Act dedicates 80 percent of certain Clean Water Act administrative and civil penalties paid by responsible parties in connection with the

DEEPWATER HORIZON oil spill to the Gulf Coast Restoration Trust Fund (Trust Fund). The RESTORE Act also outlines a structure by which the funds can be utilized to restore and protect the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, coastal wetlands, and economy of the Gulf Coast region.

In order to carry out certain functions of the RESTORE Act, Congress established the Council, which is comprised of governors from the five affected Gulf Coast States (Alabama, Florida, Louisiana, Mississippi, and Texas); the Secretaries from the U.S. Departments of Agriculture, the Army, Commerce, the Interior, and Homeland Security; and the Administrator of the U.S. Environmental Protection Agency. The Gulf States recommended, and President Obama appointed, the Secretary of Commerce as the Council's initial Chairperson. The Council was tasked with publishing a Comprehensive Plan under which the Council will fund and implement projects and programs to restore and protect the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, and coastal wetlands of the Gulf Coast region (known as the Council-Selected Restoration Component of the RESTORE Act). 33 U.S.C. 1321(t)(2).

The Council approved the Initial Comprehensive Plan in August of 2013 (available at: *https://restorethegulf.gov/sites/default/files/Final%20Initial%20Comprehensive%20Plan.pdf).* The Initial Comprehensive Plan guides decision-making related to the evaluation, approval, funding, and implementation of projects and programs under the Council-Selected Restoration Component of the RESTORE Act in the form of an FPL. On August 21, 2014, the Council published on its Web site, the *Council Member Proposal Submission Guidelines for Comprehensive Plan Funded Priorities List of Projects and Programs* (''Submission Guidelines'', available at *https://www.restorethegulf.gov/sites/default/files/Submission_Guidelines_Final%20Aug%202014_0.pdf).* These Guidelines outlined the process for the first phase of the submission process for the grants and interagency agreements (IAAs) that are the subject of this announcement. On May 4, 2015, the Council published the *Council Member Summary Notice of Application Process for Council-Selected Restoration Component Projects and Programs* which outlined the entire two-phase process for the Council-Selected Restoration Component. 80 FR 25294. Council members submitted proposals detailing projects and programs for possible inclusion in the first FPL. Submitted proposals were independently reviewed against a set of specific criteria; the results of this review are available online (*https://www.restorethegulf.gov/council-selected-restoration-component/draft-initial-funded-priorities-list*). Based on this independent review, the Council developed and approved a draft FPL and solicited public comment. After taking into account public comments, the initial FPL was approved by Council vote on December 9, 2015. The number and type of projects and programs contained in the initial 12/09/2015 FPL was based, in part, on the amount and timing of funds currently available in the Trust Fund.

As additional funds become available in the future, the Council will periodically request proposals from its eleven State and federal members in order to develop additional FPLs. The Council may also carry forward proposals submitted under prior requests for proposals when formulating future FPLs. Council members are the only entities eligible to submit proposals or receive Council-Selected Restoration Component funds under grant awards or IAAs.

Now that the Council has published the initial 12/09/2015 FPL, the Council will accept applications for grant awards from its five Gulf Coast State members or IAAs from its six federal agency members in order to fund each project and program included in the FPL.

The remainder of this Notice of Funding Opportunity details the requirements for grant and IAA applications to carry out the projects and programs in the FPL. Funding to State Council members will be provided through grants. Funding to federal Council members will be provided through IAAs.

2. Program Authority

33 U.S.C. 1321(t)(2).

B. Federal Award Information

The application phase is not competitive. Rather, once a proposal for a project or program has been selected under phase 1 (see section A(1) of this announcement for discussion of the proposal phase) the grants to be awarded (to State Council members) or IAAs are entered into (with federal agency Council members) through the administrative process detailed in this announcement.

All State Council member proposals selected for funding under phase 1 of this announcement must apply for a grant through the Restoration Assistance and Awards Management System (RAAMS) to implement the project or program described in the approved project proposal. All federal agency Council member proposals selected for funding under phase 1 of this announcement must submit an application through RAAMS prior to entering into an IAA to implement a project or program described in the approved project proposal.

1. Funding Availability

Up to $156,553,618 is available to fund grants and IAAs under this announcement. These funds are expected to fund 45 projects and programs. The exact number of grants and IAAs required to fund these 45 projects and programs depends on the State or federal member applicant. The Council may request an applicant split an application into more than one application for administrative efficiency. The amount of each grant or IAA will depend on the exact project(s) or program(s) contained therein. The amount is not to exceed the amount approved in the 12/09/2015 FPL.

2. Project/Award Period

The duration of projects and programs under this announcement is anticipated to be three to ten years; however, subject to Council approval projects may have a longer duration. Award start dates will depend on when the applicant submits a complete application.

3. Type of Funding Instrument

The funding instrument for awards to Council member States will be a grant. The funding mechanism for Council member federal agencies will be an IAA. Funding for contractual arrangements for services and products for delivery to the Council is not available under this announcement.

C. Eligibility Information

1. Eligible Applicants

Eligible applicants are limited to members of the Council, or their administrative agents, that have had a proposal selected for funding pursuant to phase 1, found in section (A)(1) of this announcement. Council members include: The States of Alabama, Florida, Louisiana, Mississippi, and Texas; the Departments of Agriculture, the Army, Commerce, Homeland Security and the Interior; and the Environmental Protection Agency. No other entity is eligible to apply under this announcement.

2. Cost Sharing or Matching Requirement

None.

3. Other Criteria That Affect Eligibility

Applications are limited to the category 1 restoration activities included in the 12/09/2015 FPL.

D. Application and Submission Information

1. Address To Request Application Package

Eligible entities can access the link to RAAMS and download application forms and other materials necessary to apply for funding through the RESTORE Council Web site at *https://restorethegulf.gov/gcerc-grants-office.*

2. Content and Form of Application for Awards and Agreements

Please refer to the *Gulf Coast Ecosystem Restoration Council Recipient Proposal and Award Guide (RPAG)* (available at: *https://restorethegulf.gov/gcerc-grants-office*) for comprehensive guidance on all phases of the submission, application, and award implementation process.

The following application requirements are for grants to Gulf Coast States and IAAs with federal Servicing Agencies. A complete application will include all of the below information, which is entered directly into RAAMS or uploaded as an attachment(s). Application material will include all data from required federal standard forms and may include Council-specific supporting information and schedules.

a. Data from OMB Standard Form (SF) SF–424A ''Application for Federal Assistance'' and associated forms.

b. Certifications:

i. RESTORE Council Applicant Certifications; and

ii. Appropriate SF–424 Assurances:

(1) For applications involving construction or real property/land acquisition, complete the SF–424D ''Assurances—Construction Programs''.

(2) For non-construction applications, complete the SF–424B ''Assurances—Non-Construction Programs''.

c. A copy of the applicant's Indirect Cost Rate Agreement (IDCRA), if applicable.

d. Executive Summary.

e. Project/Program Narrative:

i. Description of how the project/program meets statutory requirements and commitments the Council made in the Initial Comprehensive Plan including identification of objectives and goals as well as focus and emphasis areas.

ii. Metrics for gauging the success of the project or program.

iii. Milestones, including activity-based costs and any deliverables for each milestone.

iv. Description of leveraged resources.

f. Observational Data Plan.

g. Preliminary Data Management Plan.

h. Location information and map(s).

i. Budget documentation:

i. This documentation is more detailed than the budget required to be submitted in phase 1.

ii. SF–424 budget information:

(1) For all projects/programs, data equivalent to that provided on the SF–424A ''Budget Information—Non-Construction Programs'' is required.

(2) For construction projects or real property/land acquisition, data equivalent to that provided on the SF–424C ''Budget Information—Construction Programs'' is required in addition to the SF–424A data.

(3) Budget data must also be provided by SF–424A and/or SF–424C object classes for leveraged funding that is required to complete the objectives of the project/program (*i.e.,* ''co-funding'').

(4) Where the applicant will ''pass through'' or otherwise provide funds to one or more subrecipients, a separate detailed budget using object categories from the SF–424A and/or SF–424C, as appropriate, must be provided for each proposed subaward that is known at the time the application is submitted.

(5) Any program income anticipated during the award period should be included in the budget.

iii. Budget Narrative/Justification:

(1) A detailed description of the expenses listed on the budget forms and how they address the proposed work is required.

(2) Item descriptions and justifications must be provided for each applicable object class from the SF–424A and/or C, including salaries, fringe benefits, equipment, supplies, travel, construction, etc.

(3) Applicants who will not be requesting funds for salaries for contributing personnel, must still list those personnel, indicating their estimated time of commitment.

(4) Purchases of equipment greater than $5,000 must include a purchase versus lease justification.

(5) Where the applicant plans to procure goods and services through a contractual or subrecipient relationship, information is required on the proposed method of selection, period of performance scope of work, and method(s) of accountability.

(6) A description of any leveraged funding that is required to complete the objectives of the project/program must be provided, including the source(s), amount of funding and work to be accomplished.

(7) Detailed information must be provided regarding any pre-award costs requested including a justification for each item. Such costs are allowable only to the extent that they would have been allowable if incurred after the grant award date and only with the written approval of the Grants Officer. All costs incurred before the Council awards the grant are at the recipient's risk. Requests for pre-award costs should be kept to a minimum. Generally, the period for such costs should not exceed 90 days prior to the start of the award period.

j. Cash Forecasting. The applicant must forecast cash requirements/draws throughout the life of the award in semi-annual increments.

k. Current and pending support. Applicants must submit a list of all current and pending federal support that includes project title, supporting agency with grant number, dollar value, and duration. Requested values should be listed for pending support.

l. DUNS Number. All applications must have a DUNS (Dun and Bradstreet Data Universal Numbering System) number when applying for federal grants. No application is deemed complete without the DUNS number, and only the Office of Management and Budget (OMB) may grant exceptions.

m. Environmental Compliance Documentation. The Council must comply with the National Environmental Policy Act, Endangered Species Act, National Historic Preservation Act, Magnuson-Stevens Fishery Conservation and Management Act and the Fish and Wildlife Coordination Act, as applicable, before approving funding under the Council-Selected Restoration Component. In addition, the Council must address, as applicable, Executive Order 11988 (''Floodplain Management''), Executive Order 11990 (''Protection of Wetlands''), Executive Order 12898 (''Environmental Justice in Minority Populations and Low Income Populations'') and Executive Order 13653 (''Preparing the United States for the Impacts of Climate Change''). These laws and Executive Orders requirements have been addressed, where applicable, for all activities listed in Category 1 of the FPL. Documentation regarding compliance with the foregoing requirements for each FPL Category 1 activity can be found on the Council Web site (available at *https://www.restorethegulf.gov/funded-priorities-list*). Prior to awarding a grant or entering into an IAA under the Council-Selected Restoration Component, the Council must also comply with the Coastal Zone Management Act, Coastal Barrier Resources Act and Farmland Protection

Policy Act, as applicable. Applicants should submit information indicating whether the above requirements have been met, and if not, the status of any efforts to meet the requirements. Applicants are also responsible for complying with all other applicable federal environmental laws prior to full disbursement of grant or IAA funding. Specifically, applicants are responsible for identifying other applicable federal environmental laws and providing the Council with information regarding compliance with such laws.

i. Applicants may be required to provide detailed information on the activities to be conducted, locations, sites, species, and habitat to be affected, possible construction activities, and any environmental concerns that may exist (*e.g.,* the use and disposal of hazardous or toxic chemicals, introduction of non-indigenous species, impacts to endangered and threatened species, aquaculture projects, and impacts to coral reef systems).

ii. Applicants may also be required to cooperate with the Council in identifying feasible measures to reduce or avoid any identified adverse environmental impacts of their application. Any failure to do so shall be grounds for deeming an application incomplete. In some cases if additional information is required after an application is submitted, funds may be withheld by the Grants Officer pursuant to a special award condition requiring the recipient to submit additional environmental compliance information sufficient to enable the Council to make an assessment of any impacts that a project may have on the environment.

iii. Applicants also must submit documentation to the Council demonstrating that all applicable permits or authorizations from other state, federal or local agencies have been secured. Funds may be withheld by the Grants Officer pursuant to a special award condition requiring the recipient to submit all required permits and authorizations prior to implementation.

Additional requirement for State applications for grant funding:

Organizational Self-Assessment (OSA). Each non-federal applicant must certify and submit the Council's Organizational Self-Assessment form. The form must be received by the Council no later than the application submission date of the entity's first grant application to the Council. The OSA will be updated annually.

Additional requirements for IAAs with Federal Servicing Agencies:

A completed and approved application will be followed by an IAA. The IAA will contain information indicating whether the above requirements have been met, and if not, the status of any efforts to meet the requirements. Servicing Agencies are also responsible for all applicable federal environmental laws and requirements prior to full disbursement of grant or interagency agreement funding.

All applicants are required to: (i) Be registered in the System for Award Management (SAM) before submitting its application; (ii) provide a valid unique entity identifier in its application; and (iii) continue to maintain an active SAM registration with current information at all times during which it has an active federal award or an application or plan under consideration by a federal awarding agency. The Council will not make an award to an applicant until the applicant has complied with all applicable unique entity-identifier and SAM requirements and, if an applicant has not fully complied with the requirements by the time the Council is ready to make a Federal award, the Council may determine that the applicant is not qualified to receive an award.

4. Submission Dates and Times

Subject to Section D.7 below, applications may be submitted at any time after publication of the initial FPL but no later than December 31, 2016. Applications will be accepted on a rolling basis and are to be submitted through RAAMS.

5. Intergovernmental Review

Applications under this program are not subject to Executive Order 12372, Intergovernmental Review of Federal Programs.

6. Funding Restrictions

Of the amounts received by an eligible entity in a grant or IAA under this announcement, not more than three percent (3%) may be used for administrative costs. The three percent limit is applied to the total amount of funds received by a recipient under each grant or IAA. The three percent limit does not apply to the administrative costs of subrecipients. All subrecipient costs are subject to the cost principles in federal law and policies on grants. Administrative costs means those indirect costs for administration incurred by the eligible entity that are allocable to activities authorized under the Act. Administrative costs do not include indirect costs that are identified specifically with, or readily assignable to, facilities as defined in 2 CFR 200.414. See the *https://restorethegulf.gov/gcerc-grants-office/gcerc-grants-resources* Web page for an example of administrative cost calculations.

Fees and profit are disallowed.

7. Other Submission Requirements

Applications will be completed and submitted electronically by way of the Council's Restoration Assistance and Award Management System (RAAMS) (*https://raams.restorethegulf.gov*). Applicants will not be eligible to submit an application until they have completed RAAMS training. There will be multiple training opportunities available starting in January 2016.

E. Application Review Information

1. Criteria

At the organizational level, the Council will conduct risk assessments of first-time non-federal recipients in order to effectively implement the statutory, regulatory, administrative, and program requirements of a potential federal award. Once an initial assessment has been made, it will be reviewed on an annual basis. As the Council-Selected Restoration Component of the RESTORE Act is a new federal program, all non-federal recipients will be treated as first-time recipients for the initial Council awards.

Upon receipt of an application through RAAMS, the Council will review the application for completeness. Once it has been determined that the application is complete, the staff will review this funding opportunity announcement, the application and supporting documentation, the System for Award Management, and any other information available to determine the following:

- Whether the recipient and any subrecipients are eligible for funding;
- Whether the project or program as described in the application is compliant with the proposal contained in the FPL or the Full SEP, whichever is applicable;
- Whether award activities are eligible and attainable;
- Whether staff time is appropriate to perform proposed tasks;
- Whether best available science is applied;
- Whether the recipient has established a suitable monitoring plan;
- Whether milestones and metrics are feasible, measurable and achievable;
- Whether observational data and management plans are adequate (if applicable);
- Whether environmental compliance requirements have been met;

• Whether budget line items are allowable, allocable, and reasonable;

• Whether any proposed procurement complies with applicable laws and policies;

• Whether budget line items are accurately calculated;

• Whether pre-award costs are requested, and if so, is the documentation sufficient;

• Whether the period of performance requires an adjustment; and

• Whether any special award conditions are needed.

2. Review and Selection Process

The review and selection process was completed with the approval of an FPL on 12/09/2015 and publication of the FPL in the **Federal Register** on December 15, 2015. 80 FR 77585. However, the detailed project or program narrative description of activities will be closely reviewed and compared to the project narrative description submitted in the initial proposal to verify the scope of the activities in the application.

3. Agency Review of Information Concerning Recipient Integrity and Performance

The Council is required to review and consider any information about the applicant that is in the designated integrity and performance system accessible through SAM (currently FAPIIS) (see 41 U.S.C. 2313). The applicant may, at its option, review information in the designated integrity and performance systems accessible through SAM and comment on any information about itself that a federal awarding agency previously entered and is currently in the designated integrity and performance system accessible through SAM. Furthermore, the Council consider any comments by the applicant, in addition to the other information in the designated integrity and performance system, in making a judgment about the applicant's integrity, business ethics, and record of performance under federal awards when completing the review of risk posed by applicants as described in 2 CFR 200.205, ''Federal awarding agency review of risk posed by applicants.''

4. Anticipated Announcement and Award Dates

Applications will be received on a rolling basis. It is anticipated that awards will be made within 90 days of submission of a complete grant application.

F. Award Administration Information

1. Federal Award Notices

a. For State Council members, official notification of grant funding, signed by the Council Executive Director, is the authorizing document that allows the project or program to begin. Notifications will be issued to the Authorizing Official designated by the Council member for the project or program.

b. For federal Council members, an IAA is the mechanism for transferring funds from the Council to the member agency. IAAs will be executed and finalized in accordance with applicable federal requirements. All federal Council members having proposals selected for funding under phase 1 of this announcement must work with the Council to establish an IAA. Pursuant to 31 CFR 34.803(d), any federal Council member (''Servicing Agency'') must use funds only for the purposes identified in the IAA. All activities under the IAA must meet the eligibility requirements for the Council-Selected Restoration Component as defined in 31 CFR 34.202.

c. The Servicing Agency, and all non-federal entity recipients and subrecipients, must comply and require each of its contractors and subcontractors employed in the completion of the project to comply with all applicable statutes, regulations, Executive Orders (E.O.s), Office of Management and Budget (OMB) circulars, terms and conditions, agreements and approved applications. Any inconsistency or conflict in terms and conditions specified in the IAA will be resolved according to the following order of precedence: Public laws, regulations, applicable notices published in the **Federal Register**, E.O.s, OMB circulars, and the IAA's terms and conditions. The Servicing Agency shall also administer the project in compliance with the Servicing Agency's existing statutes, regulations, and grant policies.

2. Administrative and National Policy Requirements

The *Council Pre-Award Notification Requirements for Grants and Cooperative Agreements* contained in the **Federal Register** notice of November 24, 2014 (*https://federalregister.gov/a/2014-27719*) is applicable to this announcement.

The Council's *Financial Assistance Standard Terms and Conditions (STCs)* contained in the **Federal Register** notice of August 31, 2015 (*https://federalregister.gov/a/2015-21417*) are applicable to grants awarded under this announcement. The Council's *IAA Standard Terms and Conditions* (IAA STCs) are applicable to IAAs executed under this announcement. Both the STCs and the IAA STCs may be found at *https://restorethegulf.gov/resources/council-documents-foia-library*.

3. Reporting

Award recipients are required to submit financial, technical progress, performance and outcome reports. These reports are to be submitted electronically via RAAMS.

Reporting Periods: Semi-annual reporting periods will be specified in the award for either the periods ending:

• March 31 and September 30, or any portion thereof; or

• June 30 and December 31, or any portion thereof.

Due Dates: Semi-annual performance reports are due no later than 30 days following the end of each reporting period. A final performance report is due within 90 days after the expiration of the project period.

As part of the required Data Management Plan (DMP), the recipient will develop a data/information management plan and submit appropriate data and information with progress reports on a yearly basis. Due dates will be included in the award agreement.

Applicants must also comply with the *Federal Funding Accountability and Transparency Act of 2006*. This Act includes a requirement for awardees of applicable federal grants to report information about first-tier sub-awards and executive compensation under federal assistance awards issued in FY 2011 or later. All awardees of applicable grants and cooperative agreements are required to report to the Federal Sub-award Reporting System (FSRS) available at *www.FSRS.gov* on all sub-awards over $25,000.

If the award will include more than $500,000 over the period of performance, applicants must also comply with the post award reporting requirements reflected in 2 CFR part 200 Appendix XII—Award Term and Condition for Recipient Integrity and Performance Matters.

G. Agency Contacts

Kristin Smith, Senior Grants Management Officer, *kristin.smith@restorethegulf.gov,* 504–444–3558.

H. Other Information

Please refer to the Gulf Coast Ecosystem Restoration Council Recipient Proposal and Award Guide (RPAG), available at *https://restorethegulf.gov/gcerc-grants-office,*

for comprehensive guidance on all phases of the submission, application, and award implementation process.

Will D. Spoon,

Program Analyst, Gulf Coast Ecosystem, Restoration Council.

[FR Doc. 2015–32924 Filed 12–30–15; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Patient Safety Organizations: Voluntary Relinquishment from the Texas Patient Safety Organization, Inc.

AGENCY: Agency for Healthcare Research and Quality (AHRQ), Department of Health and Human Services (HHS).

ACTION: Notice of Delisting.

SUMMARY: The Patient Safety and Quality Improvement Act of 2005, 42 U.S.C. 299b–21 to b–26, (Patient Safety Act) and the related Patient Safety and Quality Improvement Final Rule, 42 CFR part 3 (Patient Safety Rule), published in the **Federal Register** on November 21, 2008, 73 FR 70732–70814, provide for the formation of Patient Safety Organizations (PSOs), which collect, aggregate, and analyze confidential information regarding the quality and safety of health care delivery. The Patient Safety Rule authorizes AHRQ, on behalf of the Secretary of HHS, to list as a PSO an entity that attests that it meets the statutory and regulatory requirements for listing. A PSO can be ''delisted'' by the Secretary if it is found to no longer meet the requirements of the Patient Safety Act and Patient Safety Rule, when a PSO chooses to voluntarily relinquish its status as a PSO for any reason, or when a PSO's listing expires. AHRQ has accepted a notification of voluntary relinquishment from the Texas Patient Safety Organization, Inc. of its status as a PSO, and has delisted the PSO accordingly. The Texas Patient Safety Organization, Inc. submitted this request for voluntary relinquishment during expedited revocation proceedings for cause.

DATES: The directories for both listed and delisted PSOs are ongoing and reviewed weekly by AHRQ. The delisting was effective at 12:00 Midnight ET (2400) on December 15, 2015.

ADDRESSES: Both directories can be accessed electronically at the following HHS Web site: *http://www.pso.ahrq.gov/listed.*

FOR FURTHER INFORMATION CONTACT: Eileen Hogan, Center for Quality Improvement and Patient Safety, AHRQ, 5600 Fishers Lane, Room 06N94B, Rockville, MD 20857; Telephone (toll free): (866) 403–3697; Telephone (local): (301) 427–1111; TTY (toll free): (866) 438–7231; TTY (local): (301) 427–1130; Email: *pso@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Patient Safety Act authorizes the listing of PSOs, which are entities or component organizations whose mission and primary activity are to conduct activities to improve patient safety and the quality of health care delivery.

HHS issued the Patient Safety Rule to implement the Patient Safety Act. AHRQ administers the provisions of the Patient Safety Act and Patient Safety Rule relating to the listing and operation of PSOs. The Patient Safety Rule authorizes AHRQ to list as a PSO an entity that attests that it meets the statutory and regulatory requirements for listing. A PSO can be ''delisted'' if it is found to no longer meet the requirements of the Patient Safety Act and Patient Safety Rule, when a PSO chooses to voluntarily relinquish its status as a PSO for any reason, or when a PSO's listing expires. Section 3.108(d) of the Patient Safety Rule requires AHRQ to provide public notice when it removes an organization from the list of federally approved PSOs.

AHRQ has accepted a notification from the Texas Patient Safety Organization, Inc., PSO number P0012, to voluntarily relinquish its status as a PSO. Accordingly, the Texas Patient Safety Organization, Inc. was delisted effective at 12:00 Midnight ET (2400) on December 15, 2015. The Texas Patient Safety Organization, Inc. submitted this request for voluntary relinquishment during expedited revocation proceedings for cause.

The Texas Patient Safety Organization, Inc. has patient safety work product (PSWP) in its possession. The PSO has met the requirements of section 3.108(c)(2)(i) of the Patient Safety Rule regarding notification to providers that have reported to the PSO. In addition, according to sections 3.108(c)(2)(ii) and 3.108(b)(3) of the Patient Safety Rule regarding disposition of PSWP, the PSO has 90 days from the effective date of delisting and revocation to complete the disposition of PSWP that is currently in the PSO's possession.

More information on PSOs can be obtained through AHRQ's PSO Web site at *http://www.pso.AHRQ.gov/index.html.*

Sharon B. Arnold,

AHRQ Deputy Director.

[FR Doc. 2015–32914 Filed 12–30–15; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–3323–NC]

Request for Information: Certification Frequency and Requirements for the Reporting of Quality Measures Under CMS Programs

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

ACTION: Request for information.

SUMMARY: This request for information seeks public comment regarding several items related to the certification of health information technology (IT), including electronic health records (EHR) products used for reporting to certain CMS quality reporting programs such as, but not limited to, the Hospital Inpatient Quality Reporting (IQR) Program and the Physician Quality Reporting System (PQRS). In addition, we are requesting feedback on how often to require recertification, the number of clinical quality measures (CQMs) a certified Health IT Module should be required to certify to, and testing of certified Health IT Module(s).

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on February 1, 2016.

ADDRESSES: In commenting, refer to file code CMS–3323–NC. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

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

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

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–3323–NC, P.O. Box 8013, Baltimore, MD 21244–8013.

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

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–3323–NC, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

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

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

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

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

If you intend to deliver your comments to the Baltimore address, call telephone number (410) 786–9994 in advance to schedule your arrival with one of our staff members.

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

FOR FURTHER INFORMATION CONTACT: Lisa Marie Gomez, 410–786–1175.

SUPPLEMENTARY INFORMATION:

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

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

I. Background

The Health Information Technology for Economic and Clinical Health Act (Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (ARRA) and Title XIII of Division A of the ARRA) authorizes incentive payments under Medicare and Medicaid for the adoption of and meaningful use of certified EHR technology (CEHRT) and downward payment adjustments under Medicare for failure to demonstrate meaningful use. Eligible professionals (EPs), eligible hospitals, and critical access hospitals (CAHs) that seek to qualify for incentive payments or avoid negative payment adjustments under the Medicare and Medicaid EHR Incentive Programs are required to use CEHRT. Some CMS quality reporting programs, such as the Hospital Inpatient Quality Reporting (IQR) Program and Physician Quality Reporting System (PQRS), either require or provide the option to use certified EHR technology, as defined under the EHR Incentive Program, for reporting quality data.

The Office of the National Coordinator for Health Information Technology's (ONC's) ''2015 Edition Health Information Technology (Health IT) Certification Criteria, 2015 Edition Base Electronic Health Record (EHR) Definition, and ONC Health IT Certification Program Modifications Final Rule'' (80 FR 62601) (2015 Edition final rule), establishes the capabilities and specifies the related standards and implementation specifications that CEHRT needs to include to support the achievement of meaningful use by EPs, eligible hospitals, and CAHs. ONC's Health IT Certification Program provides a process by which Health IT Module(s) can be certified so that they meet the standards, implementation specifications, and certification criteria that have been adopted by the Secretary. CEHRT is defined for the Medicare and Medicaid EHR Incentive Programs in 42 CFR 495.4. The definition establishes the requirements for EHR technology that must be used by providers to meet the MU objectives and measures or to qualify for an incentive payment under Medicaid for adopting, implementing, or upgrading CEHRT. For example, a Health IT Module is presented for certification to a criterion with a percentage-based measure and the Health IT Module can meet the ''automated numerator recording'' criterion or ''automated measure calculation'' criterion. The CQM data reported to us must originate from EHR technology that is certified in accordance with the ONC Health IT Certification Program's requirements (77 FR 54053).

As stated in the Medicare and Medicaid Programs; Electronic Health Record Incentive Program—Stage 3 and Modifications to Meaningful Use in 2015 through 2017 final rule (80 FR 62894), in 2017, all EPs, eligible hospitals, and CAHs have two options to report CQM data, either through attestation or use of established methods for electronic reporting where feasible. However, starting in 2018, EPs, eligible hospitals, and CAHs participating in the Medicare EHR Incentive Program must electronically report CQMs using CEHRT where feasible; and attestation to CQMs will no longer be an option except in certain circumstances where electronic reporting is not feasible.

II. Solicitation of Comments

We are soliciting public input on the following areas of certification and testing of health IT, particularly relating to how often to require recertification, the number of CQMs a certified Health IT Module should be required to certify to, and the testing of certified Health IT Module(s) in order to reduce the burden and further streamline the process for providers and health IT developers while ensuring such products are certified and tested appropriately for effectiveness. The feedback will inform CMS and ONC of elements that may need to be considered for future rules relating to the reporting of quality measures under CMS programs. This request for information is part of the effort of CMS to streamline/reduce EP, eligible hospital, CAH, and health IT developer burden.

A. Frequency of Certification

We conduct an annual analysis of CQM specifications in order to ensure measure efficacy, accuracy, and clinical relevance. Any updates to the calculation of a CQM through this process are released with the annual updates to the electronic specifications for EHR submission published by CMS (*https://www.cms.gov/Regulations-and-Guidance/Legislation/EHRIncentivePrograms/eCQM_Library.html*). Because we require the most recent version of the CQM specifications to be used for electronic reporting methods (79 FR 67906 and 80 FR 49760), we understand that health IT developers must make CQM updates annually and providers must regularly implement those updates to stay current with the most recent CQM version. To

ensure accuracy of the implementation of these updates, we have considered requiring recertification of already certified EHR products with these annual updates. We understand that standards for electronically representing CQMs continue to evolve, and believe there may be value in retesting certified Health IT Modules (including CEHRT) periodically to ensure that CQMs are being accurately calculated and represented, and that they can be reported as required. However, we have not required this recertification to date. With the continuing evolution of technology and clinical standards, as well as the need for a predictable cycle from measure development to provider data submission, we indicated, in the Fiscal Year (FY) 2016 Hospital Inpatient Prospective Payment Systems (IPPS) and Long-term Care Hospital (LTCH) Prospective Payment System (PPS) final rule (80 FR 49760) (hereinafter referred to as the FY 2016 IPPS/LTCH PPS final rule), that we would be issuing a request for information on the establishment of an ongoing cycle for the introduction and certification of new measures, the testing of updated measures, and the testing and certification of submission capabilities.

While we believe that health IT developers should test and certify their products to the most recent version of the electronic specifications for the CQMs when feasible, we understand the burdens associated with this requirement and therefore, have not historically required re-certification of previously certified products when updates are made to CQM electronic specifications or to the standards required for reporting. During the FY 2016 IPPS/LTCH PPS rulemaking process, we received comments and requests from stakeholders to change this policy. We acknowledge that the certification process can be burdensome to health IT developers and believe that annual certification could compress the timeline for CQM and standard updates. We also acknowledge that stakeholders and providers reporting electronic CQMs have an interest in ensuring that their Health IT Module is tested and certified to the most recent version of electronic CQM specifications. We are soliciting feedback regarding testing and recertification, particularly relating to: The requirement for CEHRT products to be recertified when a new version of the CEHRT is available in order to ensure the accuracy of implementation; and the requirement for Health IT Modules to undergo annual CQM testing through CMS approved testing tools and the ONC Health IT Certification Program. We are also seeking comment on the following.

- What is the burden (both time and money) of additional testing and recertification?
- What are the benefits of requiring additional testing and recertification?
- How will it affect the timeline for CQM and standard updates?
- What are the benefits and challenges of establishing a predictable cycle from measure development to provider data submission?

B. Changes to Minimum CQM Certification Requirements

The Medicare and Medicaid Programs; Electronic Health Record Incentive Program—Stage 3 and Modifications to Meaningful Use in 2015 through 2017 final rule (80 FR 62761) specifies the meaningful use criteria that EPs, eligible hospitals, and CAHs must meet in order to qualify for Medicare and Medicaid EHR incentive payments and avoid downward payment adjustments under Medicare. We believe EHRs should be certified to more than the minimum number of CQMs as required by the ONC 2014 Edition Base EHR definition of a minimum of 9 CQMs for EPs or 16 for eligible hospitals and CAHs (80 FR 16771, see also 45 CFR 170.102). With health IT developers having EHRs certified to the minimum number of CQMs, EPs, eligible hospitals, and CAHs may have limited CQMs available to them and may not be able to report on CQMs that are applicable to their patient population or scope of practice. As stated in the preamble of the final rule (80 FR 62895), we believe EPs, eligible hospitals, and CAHs should have a choice of which CQMs to report so that they can report on those CQMs most applicable to their patient population or scope of practice. Accordingly, we are soliciting comment on the following policy options that could provide greater choice for EPs, eligible hospitals, and CAHs. Specifically, we are soliciting comment on: The feasibility of health IT developers complying with the requirements of each option in the first year in which the requirements would become effective; the impact of each option on EPs, eligible hospitals/CAHs, and health IT developers; and what we would need to consider when assessing each of these options.

- *Option 1:* Require EP health IT developers to certify Health IT Modules to all CQMs in the EP selection list; and require eligible hospital/CAH health IT developers to certify to all CQMs in the selection list for eligible hospitals and CAHs.
- *Option 2:* Incrementally increase the number of CQMs required to be certified each year until Health IT Modules are certified for all CQMs available for reporting by EPs, eligible hospitals, and CAHs to meet their CQM reporting requirements. For Option 2, we invite input on the advantages and disadvantages of an incremental increase in the number of CQMs required to be certified each year.
- *Option 3:* Require EP health IT developers to certify health IT products to more than the current minimum number of CQMs required for reporting, but not to all available CQMs.

For Option 3, we invite stakeholders' input regarding the following approaches that are specific examples of implementation of the policy goal:

- *Option A:* An approach that would set a minimum number of measures health IT developers must certify to for EP settings or eligible hospital/CAH settings that is greater than the minimum number required for provider reporting. For example, EP health IT developers could be required to certify to a minimum of 15 measures, and eligible hospital/CAH health IT developers could be required to certify to a minimum number of 25 measures. We note that these numbers are provided as examples only, and we solicit comment on the appropriate number health IT developers could be required to certify to. Under this approach, health IT developers could choose from any measures in the list of available CQMs.
- *Option B:* An EP-specific approach that would require an EP health IT developer to certify to all the measures in a core/required set and all the measures in at least one specialty measure set relevant to the scope of practice for which the product is intended. We are looking for feedback on the general concept of requiring health IT developers to ensure that they are certified to the types of measures that are most relevant to their client base. For example, if a product serves multiple specialties, then it needs to be certified to the measures that are most likely needed by all of the specialties it serves. On the other hand, if the product is a niche product, such as a dental product, then it only needs to be certified to the measures that are relevant for that particular section of the market. As another example, we have provided a pediatric recommended core set [1] and an adult recommended core

[1] *http://www.cms.gov/Regulations-and-Guidance/Legislation/EHRIncentivePrograms/Downloads/2014_CQM_PrediatricRecommended_CoreSetTable.pdf.*

set [2] of measures. Note that none of the measures in the core sets are currently required for health IT developer certification, but only recommended. We solicit comment on whether we should require health IT developers to certify to all the measures in a core set depending on whether the product is intended to serve pediatric or adult settings. We are considering a structure for providing specialty measure sets similar to those recommended under the PQRS [3] which have been developed by CMS together with specialty societies. These specialty measure sets have been developed to ensure that measures represented within Specialty Measure Sets accurately illustrate measures that are relevant within a particular clinical area. While soliciting general comment on this proposed alternate approach, we recognize that there may not be a specialty measure set for every specialty type eligible to participate in the EHR Incentive Programs. We are working on increasing the number of specialties for which there is a Specialty Measure Set in PQRS, but solicit comment on what additional specialties would benefit from a Specialty Measure Set and whether there are efforts underway to establish a list we could consider for our programs. We also acknowledge that there may not be e-specified CQMs available for every Specialty Measure Set and solicit comments on whether this approach would achieve the desired goal for all specialty types to have certified measures relevant to their scope of practice available in their certified Health IT Module.

• *Option C:* Another approach with 3 options from which a health IT developer must choose one:

++ Multispecialty health IT developer—certifies all CQMs.

++ Primary care health IT developer—certifies a set of primary care CQMs.

++ Specialty provider health IT developer—certifies a minimum number of CQMs on an ''a la carte'' basis.

For this approach, we solicit comment on the number of measures that would be reasonable to require for certification under the ''primary care health IT developer'' option as well as the ''specialty provider health IT developer'' option. We invite general comment on this overall approach.

We are soliciting public input on other ways of grouping or classifying measures to ensure applicability and selection for providers. For example, one method of grouping measures could be by those that are invasive (for example, surgical), non-invasive, and cognitive. Another method could be by setting of care/venue.

As stated in the Medicare and Medicaid Programs; Electronic Health Record Incentive Program—Stage 3 and Modifications to Meaningful Use in 2015 through 2017 final rule (80 FR 62895), any specific proposals for the number of measures vendors would be required to certified to would be outlined in separate notice and comment rulemaking such as the Physician Fee Schedule or Inpatient Prospective Payment Systems rules.

C. CQM Testing and Certification

ONC offers health IT certification for CQMs to record and export, import and calculate, and electronically report CQMs through its ONC Health IT Certification Program. This year, ONC has adopted a new edition of certification criteria in the 2015 Edition final rule (80 FR 62601). One objective of testing for the 2015 Edition CQM criteria (80 FR 62651) is to increase testing robustness (for example, increasing number of test records, robustly testing pathways by which a patient can enter the numerator or denominator of a measure), thereby ensuring that all certified products have capabilities commensurate to the increased requirements enumerated in the 2015 Edition final rule.

In the 2011 and 2014 Editions of certification criteria, the certification program sought to test basic capabilities and minimum requirements. Our expectation is that as time progresses and technology improves, EHR systems will have to demonstrate they are able to perform to increasing levels of complexity, including requirements to identify errors, consume larger numbers of test cases, and demonstrate stricter adherence to standards. This is to ensure that investments into certified products yield the functionality expected to improve health care. Certification criteria also includes optional and required elements that allow end users and quality improvement leaders to view, filter, and export quality measure data. These data enable point-of-care, iterative quality improvement efforts to identify patients whose care and conditions are not compliant with evidence-based guidelines, take action to improve their engagement with care processes, and achieve better outcomes.

CMS and ONC's Health IT Certification Program test CQM functionality (for example, by testing a health IT system's ability to import, export, capture, calculate, and report CQM data according to certain standards) through the Cypress Testing and Certification Tool by enabling repeatable and rigorous testing of a product's capability to accurately calculate CQMs.[4] There are potential areas of improvement to increase the robustness of that testing. Therefore, we are requesting information on the following:

• What changes to testing are recommended (or are not recommended) to increase testing robustness?

• How could CMS and ONC determine how many test cases are needed for adequate test coverage?

• Are there recommendations for the format of test cases that could be entered both manually and electronically?

• What kind of errors should constitute warnings rather than test failures?

• Are there recommendations for or against single measure testing?

• How could the test procedures and certification companion guides published by ONC be improved to help you be more successful in preparing for and passing certification testing?

CMS and ONC believe that increased testing robustness adds value to the process of certification, but acknowledge that it would increase health IT developer burden in certifying their products. Therefore, we welcome comments on the following:

• How can the CQM certification process be made more efficient and how can the certification tools and resources be augmented or made more useable?

• What, if any, adverse implications could the increased certification standards have on providers?

• What levels of testing will ensure that providers and other product purchasers will have enough information on the usability and effectiveness of the tool without unduly burdening health IT developers?

• Would flexibility on the vocabulary codes allowed for test files reduce burden on health IT developers?

• What are other ways in which the Cypress testing tool could be improved?

• When 45 CFR 170.315(c)(1) requires users to export quality measure data on demand, how would you want that to be accessed by users and what characteristics are minimally required to make this feature useful to end users?

• ONC finalized a 2015 Edition certification criterion for filtering of CQMs (45 CFR 170.315(c)(4)) to the following filters:

[2] *http://www.cms.gov/Regulations-and-Guidance/Legislation/EHRIncentivePrograms/Downloads/2014_CQM_AdultRecommend_CoreSetTable.pdf.*

[3] *http://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/PQRS/MeasuresCodes.html.*

[4] *http://projectcypress.org/.*

++ Taxpayer Identification Number (TIN).
++ National Provider Identifier (NPI).
++ Provider type.
++ Practice site address.
++ Patient insurance.
++ Patient age.
++ Patient sex.
++ Patient race and ethnicity.
++ Patient problem list data.

How useful are the ''filtering'' criteria to end users of systems for the purpose of safety and quality improvement? To quality improvement staff and organizations?

- Are there additional filters/data would be helpful to stratify CQM-Filters (45 CFR 170.315(c)(4)) data by?
- What, if anything additional, regarding this testing/certification should be published via the Certified Health IT Product List?

III. Collection of Information Requirements

This document does not impose information collection requirements, that is, reporting, recordkeeping or third-party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

IV. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

Dated: December 3, 2015.

Andrew M. Slavitt,

Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2015–32931 Filed 12–30–15; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–R–284]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by February 29, 2016.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address:

CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number __ Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995.*

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: Reports Clearance Office at (410) 786–1326.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–R–284 Medicaid Statistical Information System (MSIS) and Transformed—Medicaid Statistical Information System (T–MSIS)

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. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

1. *Type of Information Collection Request:* Revision of a currently approved collection. *Title of Information Collection:* Medicaid Statistical Information System (MSIS) and Transformed—Medicaid Statistical Information System (T–MSIS); *Use:* The data reported in MSIS/T–MSIS are used by federal, state, and local officials, as well as by private researchers and corporations to monitor past and projected future trends in the Medicaid program. These data provide the only national level information available on enrollees, beneficiaries, and expenditures. They also provide the only national level information available on Medicaid utilization. This information is the basis for analyses and for cost savings estimates for the Department's cost sharing legislative initiatives to Congress. The collected data are also crucial to our actuarial forecasts. *Form Number:* CMS–R–284 (OMB control number: 0938–0345); *Frequency:* Quarterly and monthly;

Affected Public: State, Local, or Tribal Governments; *Number of Respondents:* 51; *Total Annual Responses:* 804; *Total Annual Hours:* 8,040. (For policy questions regarding this collection contact Camiel Rowe at 410–786–0069.)

Dated: December 24, 2015.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2015–32880 Filed 12–30–15; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–D–4803]

Public Notification of Emerging Postmarket Medical Device Signals (''Emerging Signals''); 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 or Agency) is announcing the availability of the draft guidance entitled ''Public Notification of Emerging Postmarket Medical Device Signals ('Emerging Signals').'' This guidance describes the Agency's policy for notifying the public about medical device ''emerging signals.'' Historically, FDA has communicated important medical device postmarket information after having completed an analysis of available data and, in most cases, after having reached a decision about relevant recommendations for the device user community and about whether further regulatory action is warranted. However, in addition to these types of public communications, we believe there also is a need to notify the public about emerging signals that the Agency is monitoring or analyzing, even when the information has not been fully analyzed, validated, or confirmed, and for which the Agency does not yet have specific recommendations. 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 February 29, 2016.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2015–D–4803 for ''Public Notification of Emerging Postmarket Medical Device Signals ('Emerging Signals').'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- *Confidential Submissions*—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

An electronic copy of the draft 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 ''Public Notification of Emerging Postmarket Medical Device Signals ('Emerging Signals')'' 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.

FOR FURTHER INFORMATION CONTACT: Rebecca Nipper, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1540, Silver Spring, MD 20993–0002, 301–796–6527.

SUPPLEMENTARY INFORMATION:

I. Background

All medical devices have benefits and risks. Health care providers, patients, and consumers must weigh these benefits and risks when making health care decisions. FDA weighs probable benefit to health from the use of the device against any probable risk of injury or illness from such use in determining the safety and effectiveness of a device. However, not all information regarding benefits and risks for a given device may be fully known or characterized prior to the device reaching the market. New information about the safety and/or effectiveness of the device often becomes available once the device is more widely distributed and used under real-world conditions of actual clinical practice.

FDA is issuing this draft guidance to describe the Agency's policy for notifying the public about medical device ''emerging signals.'' For the purposes of this guidance, an emerging signal is new information about a medical device used in clinical practice: (1) That the Agency is monitoring or analyzing, (2) that has the potential to impact patient management decisions and/or alter the known benefit-risk profile of the device, (3) that has not yet been fully validated or confirmed, and (4) for which the Agency does not yet have specific recommendations.

We believe there is a need to notify the public about emerging signals that the Agency is monitoring or analyzing, even when the information has not been fully analyzed, validated, or confirmed, and for which the Agency does not yet have specific recommendations. Timely communication about emerging signals is intended to provide health care providers, patients, and consumers with access to the most current information concerning the potential benefits and risks of marketed devices, so that they can make informed treatment choices bases on all available information. Therefore, because of the evolving nature of this information, FDA would be sharing it with the public at an early stage of the Agency's assessment and evaluation of the signal.

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 current thinking of FDA on ''Public Notification of Emerging Postmarket Medical Device Signals ('Emerging Signals').'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes 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 ''Public Notification of Emerging Postmarket Medical Device Signals ('Emerging Signals')'' may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number 1500027 to identify the guidance you are requesting.

IV. Paperwork Reduction Act of 1995

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). The collections of information in 21 CFR parts 801 and 808, regarding labelling, have been approved under OMB control number 0910–0485 and the collections of information in 21 CFR part 803, regarding medical device reporting, have been approved under OMB control numbers 0910–0291, 0910–0437, and 0910–0471.

Dated: December 28, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–32920 Filed 12–30–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; 60 Day Comment Request; The Framingham Heart Study (NHLBI)

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

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.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project, contact: Paul Sorlie, 6701 Rockledge Drive, MSC 7936, Bethesda, MD 20892, or call non-toll-free number (301) 435–0456, or Email your request to: *sorliep@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: The Framingham Heart Study, Revision, 0925–0216 Expiration Date: 10/31/2016, National Heart, Lung, and Blood Institute (NHLBI), the National Institutes of Health (NIH).

Need and Use of Information Collection: This proposal is to extend the Framingham Study to examine the Generation Three Cohort, New Offspring Spouses and Omni Group 2 Cohort, as well as to continue to monitor the morbidity and mortality which occurs in all Framingham Cohorts. The contractor, with the collaborative assistance of NHLBI Intramural staff, will invite study participants, schedule appointments, administer examinations and testing, enter information into computer databases for editing, and prepare scientific reports of the information for publication in appropriate scientific journals. All

participants have been examined previously and thus the study deals with a stable, carefully described group. Data are collected in the form of an observational health examination involving such components as blood pressure measurements, venipuncture, electrocardiography and a health interview, including questions about lifestyles and daily living situations. The National Heart, Lung, and Blood Institute uses the results of the Framingham Study to: (1) Characterize risk factors for cardiovascular and lung diseases so that national prevention programs can be designed and implemented; (2) evaluate trends in cardiovascular diseases and risk factors over time to measure the impact of overall preventive measures; and (3) understand the etiology of cardiovascular and lung diseases so that effective treatment and preventive modalities can be developed and tested. Most of the reports of study results have been published in peer reviewed medical journals and books.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 8,382.

Estimated Annualized Burden Hours

TABLE A.12–1.1—ESTIMATE OF RESPONDENT BURDEN, ORIGINAL COHORT

[Annualized]

Type of respondent	Number of respondents	Number of responses per respondent	Average time per response (in hours)	Total annual burden hour
I. PARTICIPANT COMPONENTS				
ANNUAL FOLLOW-UP				
a. Records Request	30	1	15/60	8
b. Health Status Update	30	1	15/60	8
SUB–TOTAL: PARTICIPANT COMPONENTS	*30			15
II. NON-PARTICIPANT COMPONENTS				
A. Informant Contact (Pre-exam and Annual Follow-up)	15	1	10/60	3
B. Records Request (Annual follow-up)	30	1	15/60	8
SUB-TOTAL: NON-PARTICIPANT COMPONENTS	45			10
TOTAL: PARTICIPANT AND NON-PARTICIPANT COMPONENTS	75			25

*Number of participants as reflected in Row I.b. above.

TABLE A.12–1.2—ESTIMATE OF RESPONDENT BURDEN, OFFSPRING COHORT AND OMNI GROUP 1 COHORT

[Annualized]

Type of respondent	Number of respondents	Number of responses per respondent	Average time per response (in hours)	Total annual burden hour
I. PARTICIPANT COMPONENTS				
ANNUAL FOLLOW-UP				
a. Records Request	1,500	1	15/60	375
b. Health Status Update	1,700	1	15/60	425
SUB-TOTAL: PARTICIPANT COMPONENTS	*1,700			800
II. NON-PARTICIPANT COMPONENTS				
A. Informant contact (Pre-exam and Annual Follow-up)	150	1	10/60	25
B. Records Request (Annual follow-up)	1,500	1	15/60	375
SUB-TOTAL: NON-PARTICIPANT COMPONENTS	1,650			400
TOTAL: PARTICIPANT AND NON-PARTICIPANT COMPONENTS	3,350			1,200

*Number of participants as reflected in Row I.b. above.

TABLE A.12–1.3—ESTIMATE OF RESPONDENT BURDEN, GENERATION 3 COHORT, NOS AND OMNI GROUP 2 COHORT

[Annualized]

Type of respondent	Number of respondents	Number of responses per respondent	Average time per response (hours per year)	Total annual burden hour
I. PARTICIPANT COMPONENTS				
A. PRE-EXAM:				
1.Telephone contact for appointment	1,450	1	10/60	242
2. Exam appointment, scheduling, reminder and instructions	1,270	1	35/60	741
B. EXAM CYCLE 3:				
1. Exam at study center	1,200	1	110/60	2,200

TABLE A.12–1.3—ESTIMATE OF RESPONDENT BURDEN, GENERATION 3 COHORT, NOS AND OMNI GROUP 2 COHORT—Continued

[Annualized]

Type of respondent	Number of respondents	Number of responses per respondent	Average time per response (hours per year)	Total annual burden hour
2. Home or nursing home visit	35	1	60/60	35
C. POST-EXAM:				
eFHS Mobile Technology for Collection of CVD Risks	1,100	18	9/60	2,970
D. ANNUAL FOLLOW-UP:				
1. Records Request	1,200	1	15/60	300
2. Health Status Update	1,400	1	15/60	350
Sub-Total: Participant Components	*2,850			6,830
II. NON-PARTICIPANT COMPONENTS—ANNUAL FOLLOW-UP				
A. INFORMANT CONTACTS	180	1	10/60	30
B. RECORD REQUEST	1,155	1	15/60	289
Sub-Total: Non-Participant Components	1,335			319
Total: Participant And Non-Participant Components	4,185			7,157

*Number of participants as reflected in Rows I.A.1 and I.D.2 above.

Dated: December 22, 2015.

Valery Gheen,

NHLBI Project Clearance Liaison, National Institutes of Health.

[FR Doc. 2015–32940 Filed 12–30–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Board of Scientific Counselors, NIDA.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute on Drug Abuse, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIDA.

Date: February 1–2, 2016.

Closed: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Intramural Research Program, National Institute on Drug Abuse, NIH, Johns Hopkins Bayview Campus, Baltimore, MD 21223.

Contact Person: Joshua Kysiak, Program Specialist, Biomedical Research Center, Intramural Research Program, National Institute on Drug Abuse, NIH, DHHS, 251 Bayview Boulevard, Baltimore, MD 21224, 443–740–2465, *kysiakjo@nida.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos.: 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: December 28, 2015.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–32939 Filed 12–30–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; 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 Drug Abuse Special Emphasis Panel; Tools for Monitoring and Manipulating RNA Modifications (R41, R42, R43, R44).

Date: February 18, 2016.

Time: 9:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Garden Inn Bethesda, 7301 Waverly Street, Bethesda, MD 20814.

Contact Person: Jagadeesh S. Rao, Ph.D., Scientific Review Officer, Office of Extramural Policy and Review, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 4234, MSC 9550, Bethesda, MD 02892, 301–443–9511, *jrao@nida.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos.: 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: December 28, 2015.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–32937 Filed 12–30–15; 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; Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as

amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Partnerships for the Development of Novel Assays to Predict Vaccine Efficacy.

Date: February 3–4, 2016.

Time: 12:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Room 3G61, 5601 Fishers Lane, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Brenda Lange-Gustafson, Ph.D., Scientific Review Officer, NIAID/NIH/DHHS, Scientific Review Program, 5601 Fishers Lane, Room 3G13, Rockville, MD 20852, 240–669–5047, *bgustafson@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: December 23, 2015.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–32911 Filed 12–30–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Integrative Health; 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 Center for Complementary and Integrative Health Special Emphasis Panel; Clinical Research on Mind-Body Interventions.

Date: March 25, 2016.

Time: 8:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott, 5701 Marinelli Road, Bethesda, MD 20817.

Contact Person: Hungyi Shau, Ph.D., Scientific Review Officer, National Center for Complementary and Integrative Health, National Institutes of Health, 6707 Democracy Boulevard, Suite 401, Bethesda, MD 20892, 301–480–9504, *Hungyi.Shau@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.213, Research and Training in Complementary and Alternative Medicine, National Institutes of Health, HHS)

Dated: December 24, 2015.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–32909 Filed 12–30–15; 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 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 meetings of the National Advisory Council on Alcohol Abuse and Alcoholism.

The meetings 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 open sessions will be videocast and can be accessed from the NIH Videocasting and Podcasting Web site (*http://videocast.nih.gov*).

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 Advisory Council on Alcohol Abuse and Alcoholism, National Cancer Advisory Board, and National Advisory Council on Drug Abuse

Open: February 11, 2016.

Time: 9:00 a.m. to 1:30 p.m.

Agenda: Presentation of NIAAA, NCI, and NIDA Director's Update, Scientific Reports, and other topics within the scope of the Collaborative Research on Addiction at NIH (CRAN).

Place: National Institutes of Health, Terrace Conference Rooms, 5635 Fishers Lane, Rockville, MD 20892.

Contact: Abraham P. Bautista, Ph.D., Director, Office of Extramural Activities, National Institute on Alcohol Abuse & Alcoholism, National Institutes of Health, 5635 Fishers Lane, Room 2085, Rockville, MD 20852, 301–443–9737, *bautista@mail.nih.gov.*

Paulette S. Gray, Ph.D., Director, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 9609 Medical Center Drive, Room 7W444, Bethesda, MD 20892, 240–276–6340, *grayp@dea.nci.nih.gov*

Susan Weiss, Ph.D., Director, Division of Extramural Research, National Institute on Drug Abuse, National Institutes of Health, 6001 Executive Boulevard, NSC, Room 5274, 301–443–6487, *sweiss@nida.nih.gov.*

Name of Committee: National Advisory Council on Alcohol Abuse and Alcoholism.

Closed: February 11, 2016.

Time: 2:15 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Terrace Conference Rooms, 5635 Fishers Lane, Rockville, MD 20892.

Open: February 12, 2016.

Time: 9:00 a.m. to 2:00 p.m.

Agenda: Presentations and other business of the Council.

Place: National Institutes of Health, Terrace Conference Rooms, 5635 Fishers Lane, Rockville, MD 20892.

Contact Person: Abraham P. Bautista, Ph.D., Executive Secretary, National Institute on Alcohol Abuse & Alcoholism, National Institutes of Health, 5635 Fishers Lane, Room 2085, Rockville, MD 20852, 301–443–9737, *bautista@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *http://www.niaaa.nih.gov/AboutNIAAA/AdvisoryCouncil/Pages/default.aspx,* where an agenda and any additional information for the meeting will be posted when available.

(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; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; 93.701, ARRA Related Biomedical Research

and Research Support Awards., National Institutes of Health, HHS)

Dated: December 28, 2015.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–32941 Filed 12–30–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer 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 and contract 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 and contract applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI SBIR Targeted Radiation Therapy.

Date: January 27, 2016.

Time: 10:30 a.m. to 6:30 p.m.

Agenda: To review and evaluate contract applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W538, Rockville, MD 20850, (Telephone Conference Call).

Contact Person: Ivan Ding, MD, Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W412, Bethesda, MD 20892–9750, 240–276–6444, *dingi@mail.nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; Physical Sciences-Oncology Projects.

Date: February 9–10, 2016.

Time: 6:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree by Hilton Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Gerald G. Lovinger, Ph.D., Scientific Review Officer, Research and Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W266, Bethesda, MD 20892, 240–276–6385, *lovingeg@mail.nih.gov*.

Name of Committee: National Cancer Institute Initial Review Group; Subcommittee I-Transition to Independence.

Date: February 23–24, 2016.

Time: 8:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Tushar Baran Deb, Ph.D., Scientific Review Officer, Research and Training Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W624, Rockville, MD 20850, 240–276–6132 *tushar.deb@nih.gov.*

Name of Committee: National Cancer Institute Initial Review Group; Subcommittee J—Career Development.

Date: March 2–3, 2016.

Time: 6:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, Suites 6711, Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Robert E. Bird, Ph.D., Scientific Review Officer, Research and Training Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W110, Bethesda, MD 20892, 240–276–6344, *birdr@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI Omnibus R03 & R21 SEP–1.

Date: March 3–4, 2016.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree by Hilton Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Zhiqiang Zou, MD, Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W242, Bethesda, MD 20892, 240–276–6372, *zouzhiq@mail.nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; Cancer Diagnosis.

Date: April 4–5, 2016.

Time: 8:30 a.m. to 12:00 p.m.

Agenda: To review and evaluate contract applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Bratin K. Saha, Ph.D., Program Coordination & Referral Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W556, Rockville, MD 20850, 240–276–6411, *sahab@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI Provocative Questions Review—PQ 12.

Date: April 6, 2016.

Time: 10:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute, Shady Grove, 9609 Medical Center Drive, Room 7W126, Rockville, MD 20850, (Telephone Conference Call).

Contact Person: Caron A. Lyman, Ph.D., Chief, Scientific Review Officer, Research Program Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W126, Bethesda, MD 20892–9750, 240–276–6348, *lymanc@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: December 28, 2015.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–32935 Filed 12–30–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; 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 Drug Abuse.

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 Drug Abuse.

Date: February 10, 2016.

Closed: 8:30 a.m. to 10:00 a.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852.

Open: 10:30 a.m. to 4:00 p.m.

Agenda: This portion of the meeting will be open to the public for announcements and reports of administrative, legislative, and program developments in the drug abuse field.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852.

Contact Person: Susan R.B. Weiss, Ph.D., Director, Division of Extramural Research, Office of the Director, National Institute on Drug Abuse, NIH, DHHS, 6001 Executive Boulevard, NSC, Room 5274, MSC 9591, Rockville, MD 20892, 301–443–6487, *sweiss@nida.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.

Information is also available on the Institute's/Center's home page: *www.drugabuse.gov/NACDA/NACDAHome.html*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos.: 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: December 28, 2015.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–32938 Filed 12–30–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed 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 Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, T1D Risk Assessment and Early Intervention Technologies (SBIR).

Date: January 25, 2016.

Time: 11:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Thomas A. Tatham, Ph.D., Scientific Review Officer, Review Branch, Dea, Niddk, National Institutes of Health, Room 760, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–3993, *tathamt@mail.nih.gov*.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Closed Loop Diabetes Technology (SBIR).

Date: January 28, 2016.

Time: 2:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Thomas A. Tatham, Ph.D., Scientific Review Officer, Review Branch, Dea, Niddk, National Institutes of Health, Room 760, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–3993, *tathamt@mail.nih.gov*.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, NIDDK DEM Fellowship Grant Review.

Date: January 31–February 2, 2016.

Time: 6:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Ave. NW., Washington, DC 20037.

Contact Person: Carol J. Goter-Robinson, Ph.D., Scientific Review Officer, Review Branch, Dea, Niddk, National Institutes of Health, Room 748, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7791, *goterrobinsonc@extra.niddk.nih.gov*.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, NEW NIDDK PARs on Pragmatic Research and Natural Experiments.

Date: February 8, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Michele L. Barnard, Ph.D., Scientific Review Officer, Review Branch, Dea, Niddk, National Institutes of Health, Room 753, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, (301) 594–8898, *barnardm@extra.niddk.nih.gov*.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel—PAR–15–067: NIDDK Multi-Center Clinical Study (U01).

Date: February 8, 2016.

Time: 12:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Dianne Camp, Ph.D., Scientific Review Officer, Review Branch, Dea, Niddk, National Institutes of Health, Room 756, 6707 Democracy Boulevard, Bethesda, Md 20892–2542, 301–5947682, *campd@extra.niddk.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: December 24, 2015.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–32910 Filed 12–30–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Cancer Institute Special Emphasis Panel, February 2–3, 2016 08:00 a.m. to 05:00 p.m., Hilton Washington DC/Rockville, Rockville, MD 20852 which was published in the **Federal Register** on December 7, 2015 80 FR 76026.

The meeting notice is amended to change the title from ''NCI P01 Meeting II'' to ''NCI Program Project Meeting III''. The meeting is closed to the public.

Dated: December 28, 2015.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–32936 Filed 12–30–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice To Announce Commission of a Surgeon General's Report on Substance Use, Addiction, and Health

AGENCY: Office of the Surgeon General (OSG) and Substance Abuse and Mental Health Services Administration (SAMHSA), Department of Health and Human Services (DHHS).

ACTION: Notice.

SUMMARY: On behalf of the United States Department of Health and Human Services, the Substance Abuse and Mental Health Services Administration and the Office of the Surgeon General announce the commission of the first-ever Surgeon General's Report presenting the state of the science on substance use, addiction, and health. The report will examine the health effects of drug and alcohol misuse from the perspectives of prevention, treatment, recovery, neurobiology, and delivery of care.

FOR FURTHER INFORMATION CONTACT: Jinhee Lee, Pharm.D., Public Health Advisor, SAMHSA/Center for Substance Abuse Treatment, 5600 Fishers Lane, Rockville, MD 20857, Email: *sgrcomments@samhsa.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Scope of Problem: Substance use/misuse and addiction represent a significant and substantial public health challenge. Data from the 2014 National Survey on Drug Use and Health (NSDUH) reveal that an estimated 27.0 million Americans aged 12 or older were currently illicit drug users (defined as using any of the following in the past 30 days: Marijuana/hashish, cocaine/crack, heroin, hallucinogens, inhalants, or non-medical use of prescription-type psychotherapeutics such as pain relievers, tranquilizers, stimulants, and sedatives) and 16.3 million were heavy drinkers (defined as drinking five or more drinks on the same occasion on five or more days in the past 30 days). Approximately 6.5 million people aged 12 and older reported currently using psychotherapeutics non-medically.

According to the 2014 NSDUH, 21.5 million Americans aged 12 or older had a substance use disorder in the past year. Among them, 14.4 million Americans had dependence or abuse of alcohol but not illicit drugs, while another 4.5 million had dependence or abuse of illicit drugs but not alcohol, and 2.6 million had dependence or abuse of both alcohol and illicit drugs. People with alcohol or illicit drug dependence or abuse were defined in the 2014 NSDUH as meeting the diagnostic criteria specified in the *Diagnostic and Statistical Manual of Mental Disorders, Fourth edition* (DSM–IV).

The Affordable Care Act and new mental health parity protections are expanding mental health and substance abuse treatment benefits to 60 million Americans. Despite this historic expansion of health insurance coverage and other advances, too many Americans are not benefiting from treatment services. Based on the 2014 NSDUH data, although 21.5 million people aged 12 or older met the DSM–IV criteria for alcohol or illicit drug dependence or abuse, only an estimated 2.3 million received substance use treatment in the past year.

Drug poisoning (overdose) was responsible for about 47,000 deaths in the U.S. in 2014 (now the latest year for which national data are available). Furthermore, substance misuse (to include excessive alcohol use) and related disorders contribute to injury and chronic illness, lost productivity, family disruptions, and increased transmission of sexually and injection-related infectious diseases; are associated with higher rates of domestic violence and child abuse; and prevent many individuals from realizing their full potential.

Approach: The report's scope is intended to be broad and comprehensive, with the goal of capturing the current landscape of the impact of alcohol and drug issues on health, referencing data sources such as NSDUH, the Monitoring the Future Survey, the National Epidemiologic Survey on Alcohol and Related Conditions, and the National Comorbidity Survey. These sources highlight trends over time as well as underscore the critical nature of this public health issue. The report is intended to: (1) Provide a comprehensive review of the research literature on substance use, addiction, and health, summarizing the science on substance misuse prevention, treatment, and recovery; (2) outline potential future direction; and (3) educate, encourage, and call upon all Americans to take action.

Potential Areas of Focus: Areas of focus in the report may include the history of the prevention, treatment, and recovery fields; components of the substance use continuum (*i.e.*, prevention, treatment, and recovery); epidemiology of substance use, misuse, and substance use disorders; etiology of substance misuse and related disorders; neurobiological base of substance misuse and related disorders; risk and protective factors; application of scientific research in the field, including methods, challenges, and current and future directions; social, economic, and health consequences of substance misuse; co-occurrence of substance use disorders and other diseases and disorders; the state of health care access and coverage as it relates to substance use prevention, treatment, and recovery; integration of substance use disorders, mental health, and physical health care in clinical settings; national, state, and local initiatives to assess and improve the quality of care for substance misuse and related disorders; organization and financing of prevention, treatment, and recovery services within the health care system; ethical, legal, and policy issues; and potential future directions.

Summer King,

Statistician.

[FR Doc. 2015–32929 Filed 12–30–15; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Mental Health Services; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given that the Substance Abuse and Mental Health Services Administration's (SAMHSA) Center for Mental Health Services (CMHS) National Advisory Council will meet February 24, 2016, 9:00 a.m. to 5:00 p.m.

The meeting is open to the public and will include discussion of the Center's policy issues, and current administrative, legislative, and program developments. The meeting will be held at the SAMHSA building, Conference Room 5E29, 5600 Fishers Lane, Rockville, MD 20857. Attendance by the public will be limited to space available. Interested persons may present data, information, or views, orally or in writing, on issues pending before the Committee. Written submissions should be forwarded to the contact person on or before February 14, 2016. Oral presentations from the public will be scheduled at the conclusion of the meeting. Individuals interested in making oral presentations are encouraged to notify the contact on or before February 14, 2016. Five minutes will be allotted for each presentation.

The meeting may be accessed via telephone and web conferencing might be available. To attend on site, obtain the call-in number, access code, and/or web access link; submit written or brief

oral comments, or request special accommodations for persons with disabilities, please register on-line at: *http://nac.samhsa.gov/Registration/meetingsRegistration.aspx,* or communicate by contacting the CMHS National Advisory Council Designated Federal Official, Ms. Deborah DeMasse-Snell (see contact information below).

Committee Name: SAMHSA's Center for Mental Health Services National Advisory Council.

Date/Time/Type: February 24, 2016; 9:00 a.m.–5:00 p.m., OPEN.

Place: SAMHSA Building, 5600 Fishers Lane, Conference Room 5E29, Rockville, Maryland 20857.

Contact: Deborah DeMasse-Snell, M.A. (Than), Designated Federal Official, SAMHSA CMHS National Advisory Council, 5600 Fishers Lane, Room 14E53C, Rockville, Maryland 20857, Telephone: (240) 276–1861, Fax: (240) 276–1850, Email: *Deborah.DeMasse-Snell@samhsa.hhs.gov.*

Summer King,

Statistician, SAMHSA.

[FR Doc. 2015–32922 Filed 12–30–15; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5843–N–11]

Privacy Act of 1974; Systems of Records—Republication of HUD's Routine Use Inventory Notice

AGENCY: Office of Administration, HUD.

ACTION: Routine Use Inventory republication.

SUMMARY: Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), notice is hereby given that the Department of Housing and Urban Development proposes to update and combine into one notice its Routine Use Inventory notice published in the **Federal Register** on July 17, 2012 at 72 FR 52572. The subsequent revisions will: (1) Implement substantive revisions for ''two'' of the original routine use statements, to provide greater clarity of what is to be expected by the disclosure requirements; (2) encompass editorial updates to the original formatted routine use statements to ensure that these statements are up-to-date and constructed in a format that is easier to understand and use; and (3) assign a specific ''category'' to each routine use condition to allow each condition to be sorted and referenced by a specific heading relevant to its disclosure purpose. This notice proposal supersedes and retires the Department's Routine Use Inventory published in the **Federal Register** on July 17, 2012, and supplements prior instances translated by former systems of records.

DATES: *Effective date:* The substantive changes being made to this proposal shall become effective February 1, 2016, unless comments are received on or before that date that would result in a contrary determination.

All other changes shall be effective immediately without further notice, upon publication of this notice in the **Federal Register**.

Comments Due Date: February 1, 2016.

ADDRESSES: Interested persons are invited to submit comments regarding the amended routine use statements or notice update to the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street SW., Room 10276, Washington, DC 20410–0500. Communications should refer to the above docket number and title. Faxed comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Frieda B. Edwards, Acting Chief Privacy Officer, 451 Seventh Street SW., Room 10139, Washington, DC 20410, telephone number 202–402–4254 (this is not a toll-free number). Individuals who are hearing- and speech-impaired may access this number via TTY by calling the Federal Relay Service telephone number at 800–877–8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION: The Department's Routine Use Inventory describes disclosure requirements commonly used by more than one of the Department's systems of records. This amendment modifies routine uses (10) and (14), under the original notice. Routine use (10) stated that records could be disclosed ''To other Federal agencies or non-Federal entities, including but not limited to, state and local government entities with whom HUD has a contract, service agreement, grant, cooperative agreement, or computer matching agreement to assist such agencies with preventing and detecting improper payments, or fraud, or abuse in major programs administered by the Federal Government, or abuse by individuals in their operations and programs, but only to the extent that the information is necessary and relevant to preventing improper payments for services rendered under a particular Federal or non-federal benefits programs of HUD or any of their components to verify pre-award and pre-payment requirements prior to the release of Federal funds.'' Routine use (14) stated that records could be disclosed ''To a court, magistrate, administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, mediation, or settlement negotiations or in connection with criminal law proceedings or in response to a subpoena or to a prosecution request when such records to be released are specifically approved by a court provided order.'' Subsequently, these routine use conditions precisely specified that records could only be disclosed for purposes relevant to a HUD specific program, or to a specific set of individuals or entities, limiting the Department's ability to respond to and share its records as warranted. Accordingly, this notice corrects these misrepresentations and amends the routine use conditions under the original publication. The amended routine use conditions appear under this revised notice proposal at heading (6) entitled ''Prevention of Fraud, Waste, and Abuse Disclosure Routine Use'' and heading (11) entitled, ''Disclosures for Law Enforcement Investigations Routine Uses.'' Further, the Department implements minor editorial changes to simplify and implement administrative changes needed to keep published information in an up-to-date format that is easier to understand and use.

Title 5 U.S.C. 552a, as amended (e)(r) and (11) requires that the public be afforded a 30-day period in which to comment on any use of information by this notice and requires published notice of the existence and characters of the systems of records impacted by this change. The new system report, as required by 5 U.S.C. 552a(r) of the Privacy Act, was submitted to the United States Senate Committee on Homeland Security and Governmental Affairs, the House Committee on Oversight and Government Reform of the House of Representatives, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, Federal Agency Responsibilities for Maintaining Records about Individuals, dated June 25, 1993 (58 FR 36075, July 2, 1993). The Department permits disclosure(s) from its systems of records to be made from its systems of records to such agencies, entities, and persons in the following instances, when authorized by statute, to assist in

connection with its mission. The existence and characters of the HUD's Privacy Act systems of records are available for review on the Department's privacy Web site at *http://www.hud.gov/offices/cio/privacy/pia/fednotice.cfm* and are listed below by title.

HUD Systems of Records, by Title, That Contain Personally Identifiable Information (PII)

- Government National Mortgage Association Registry of Foreclosure Attorneys
- Mortgage-Backed Securities Unclaimed Funds System
- Master Subservicer System
- Enterprise-Wide Operational Data Store
- HUD Central Accounting and Program System
- Personal Services Cost Reporting Subsystem
- Financial Data Mart
- Line of Credit Control System
- moveLINQS
- Home Equity Reverse Mortgage Information Technology
- HUD Integrated Acquisition Management System
- Equal Employment Management Information System
- Relocation Files
- Office of General Counsel Electronic Discovery Management System
- HUD Enforcement Management System
- Property Improvement and Manufactured [Mobile] Home Loan-Default
- Real Estate Management/Integrated Real Estate Management System
- Single Family Construction Complaints Files
- Architects and Engineers
- Property Disposition Files
- Consumer Complaint Handling System
- Telephone Numbers of HUD Officials
- Claims Collection Records
- Housing Compliance Files
- Single Family Computerized Homes Underwriting Management System
- Single Family Section 518 Files [Constructed complaints]
- Tenant Housing Assistance and Contract Verification Data
- Property Management Records
- Congregate Housing Services Program Data Files
- Single Family Insurance System
- Application Submission and Processing System
- Single Family Acquired Asset Management System
- Single Family Neighborhood Watch Early Warning System
- Identity Management System
- Asset Disposition and Management System
- Lender Electronic Assessment Portal (LEAP)
- Single Family Housing Enterprise Data Warehouse
- Fee Inspectors and Appraisers and Mortgage Credit Examiners
- Loan Application Management System
- OIG Giglio Information Files
- Independent Auditor Monitoring Files
- Auto Audit
- Hotline Information Subsystem
- Investigative Files Subsystem
- Training Information System (TRAI)
- Personnel Travel System
- Auto Investigation and Case Management Information Subsystem
- Accidents, Employees and/or Government Vehicles
- Veterans Homelessness Preventive Demonstration Evaluation Data Files System
- Real Estate Settlement Cost Research Files
- Section 8 Program Research Data Files
- Housing Counseling Research Data Files
- Training Announcement, Nomination, and Confirmation System
- Personal Security Files
- Grievance Records
- Pay and Leave Records of Employees
- Previous Participation Review System and Active Partners Performance System Previous Participation Files
- Single Family Insurance CLAIMS Subsystem
- Single Family Mortgage Notes Recovery Technology System
- Housing Counseling System/Client Activity Reporting System
- Debt Collection Asset Management
- Distributive Shares and Refund System
- Ideas Program Case Files
- Intergovernmental Personnel Act Assignment Records
- Single Family Mortgage Notes Recovery Technology System
- Nonprofit Data Management System (NPDMS)
- Grants Interface Management System
- Development Application Processing System
- Single Family Default Monitoring System
- Pay and Leave Records of Employees
- Relocation Assistance Files
- Parking Permit Application Files
- Telephone Numbers of HUD Officials
- Computerized Homes Underwriting Management System
- Employee Counseling and Occupational Health Records
- HUD Government Motor Vehicle Operators Records
- HUD Employee Locator Files
- Government Property on Personal Charge Files
- Executive Emergency Cascade Alerting System
- Priority Consideration/Special Reassignment Files
- Long Distance Telephone Call Detail System
- Security Clearance Information System
- Correspondence Tracking System

Accordingly, the Department's Routine Use Inventory includes routine use statements implemented at the Department level for instances that may be utilized by more than one of the Department's systems of records referenced in the aforementioned list. In addition, the text of many of these routine uses model best practices that have already been adopted by several agencies, including the Department of Justice.

In addition to the disclosures generally permitted under 5 U.S.C. 552a(b), and the routine uses specifically described in each system of records notice, information in the systems of records maintained by the Department may be disclosed pursuant to 5 U.S.C. 552a(b)(3) as described below under Appendix I, provided that no routine use specified herein shall be construed to limit or waive any other routine use or exemption specified in the text of the individual system of records notice.

Further, pursuant to 5 U.S.C. 552a(k)(2), records in the systems of records, referenced by the above titles, and any others that reflect records designated as exempt from the requirements of subsections (c)(3); (d); (e)(1); (e)(4)(G), (H), and (I); and/or (f) of 5 U.S.C. 552a under a promulgated rule, or those that are restricted from release by statutory or regulatory requirements, are prohibited from disclosure (which shall apply only if those exemptions have been established in the records system notice for the particular system).

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

Dated: December 15, 2015.

Patricia A. Hoban-Moore,

Senior Agency Official for Privacy.

Appendix I—Notice No.: ADMIN/AHFDC.01

HUD's Routine Use Inventory Notice

Identifies authorized disclosures applicable to one or more of the Department's Privacy Act system of records notices. The Privacy Act allows HUD to disclose records from its systems of records, from the following headings (1)–(13), to appropriate agencies, entities, and persons, when the records being disclosed are compatible with the purpose for which the system was developed. The routine use statements specified in this notice shall not be used to construe, limit, or waive any other routine

use condition or exemption specified in the text of an individual system of records, and may overlap in some cases. The routine use statements and their conditions for disclosure are categorized below.

(1) General Service Administration Information Disclosure Routine Use:

To the National Archives and Records Administration (NARA) and the General Services Administration (GSA) for records having sufficient historical or other value to warrant its continued preservation by the United States Government, or for inspection under authority of Title 44, Chapter 29, of the United States Code.

(2) Congressional Inquiries Disclosure Routine Use:

To a congressional office from the record of an individual, in response to an inquiry from the congressional office made at the request of that individual.

(3) Health and Safety Prevention Disclosure Routine Use:

To appropriate Federal, State, and local governments, or persons, pursuant to a showing of compelling circumstances affecting the health or safety or vital interest of an individual or data subject, including assisting such agencies or organizations in preventing the exposure to or transmission of a communicable or quarantinable disease, or to combat other significant public health threats, if upon such disclosure appropriate notice was transmitted to the last known address of such individual to identify the health threat or risk.

(4) Consumer Reporting Agency Disclosure Routine Use:

To a consumer reporting agency, when trying to collect a claim owed on behalf of the Government, in accordance with 31 U.S.C. 3711(e).

(5) Computer Matching Program Disclosure Routine Use:

To Federal, State, and local agencies, their employees, and agents for the purpose of conducting computer matching programs as regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a).

(6) Prevention of Fraud, Waste, and Abuse Disclosure Routine Use:

To Federal agencies, non-Federal entities, their employees, and agents (including contractors, their agents or employees; employees or contractors of the agents or designated agents); or contractors, their employees or agents with whom HUD has a contract, service agreement, grant, cooperative agreement, or computer matching agreement for the purpose of: (1) Detection, prevention, and recovery of improper payments; (2) detection and prevention of fraud, waste, and abuse in major Federal programs administered by a Federal agency or non-Federal entity; (3) detection of fraud, waste, and abuse by individuals in their operations and programs, but only to the extent that the information shared is necessary and relevant to verify pre-award and prepayment requirements prior to the release of Federal funds, prevent and recover improper payments for services rendered under programs of HUD or of those Federal agencies and non-Federal entities to which HUD provides information under this routine use.

(7) Research and Statistical Analysis Disclosure Routine Uses:

(a) To contractors, grantees, experts, consultants, Federal agencies, and non-Federal entities, including, but not limited to, State and local governments and other research institutions or their parties, and entities and their agents with whom HUD has a contract, service agreement, grant, or cooperative agreement, when necessary to accomplish an agency function, related to a system of records, for the purposes of statistical analysis and research in support of program operations, management, performance monitoring, evaluation, risk management, and policy development, or to otherwise support the Department's mission. Records under this routine use may not be used in whole or in part to make decisions that affect the rights, benefits, or privileges of specific individuals. The results of the matched information may not be disclosed in identifiable form.

(b) To a recipient who has provided the agency with advance, adequate written assurance that the record provided from the system of records will be used solely for statistical research or reporting purposes. Records under this condition will be disclosed or transferred in a form that does not identify an individual.

(8) Information Sharing Environment Disclosure Routine Uses:

To contractors, grantees, experts, consultants and their agents, or others performing or working under a contract, service, grant, or cooperative agreement with HUD, when necessary to accomplish an agency function related to a system of records. Disclosure requirements are limited to only those data elements considered relevant to accomplishing an agency function. Individuals provided information under these routine use conditions are subject to Privacy Act requirements and disclosure limitations imposed on the Department.

(9) Data Testing for Technology Implementation Disclosure Routine Use:

To contractors, experts and consultants with whom HUD has a contract, service agreement, or other assignment of the Department, when necessary to utilize relevant data for the purpose of testing new technology and systems designed to enhance program operations and performance.

(10) Data Breach Remediation Purposes Routine Use:

To appropriate agencies, entities, and persons when:

(a) HUD suspects or has confirmed that the security or confidentiality of information in a system of records has been compromised;

(b) HUD has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft, or fraud, or harm to the security or integrity of systems or programs (whether maintained by HUD or another agency or entity) that rely upon the compromised information; and

(c) The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with HUD's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm for purposes of facilitating responses and remediation efforts in the event of a data breach.

When appropriate, HUD may disclose records compatible to one of its system of records notices during case specific circumstances, as follows: information relating to, but not in and of itself constituting, law enforcement information, as defined below, may only be disclosed upon a showing by the requester that the information is pertinent to the conduct of investigation.

(11) Disclosures for Law Enforcement Investigations Routine Uses:

(a) To appropriate Federal, State, local, tribal, or governmental agencies or multilateral governmental organizations responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where HUD determines that the information would assist in the enforcement of civil or criminal laws.

(b) To third parties during the course of a law enforcement investigation, to the extent necessary to obtain information pertinent to the investigation, provided the disclosure of such information is appropriate to the proper performance of the official duties of the officer making the disclosure.

(12) Court or Law Enforcement Proceedings Disclosure Routine Uses:

(a) To a court, magistrate, administrative tribunal, or arbitrator in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, mediation, or settlement negotiations; or in connection with criminal law proceedings; or in response to a subpoena or to a prosecution request when such records to be released are specifically approved by a court provided order.

(b) To appropriate Federal, State, local, tribal, or governmental agencies or multilateral governmental organizations responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where HUD determines that the information would assist in the enforcement of civil or criminal laws.

(c) To third parties during the course of a law enforcement investigation to the extent necessary to obtain information pertinent to the investigation, provided disclosure is appropriate to the proper performance of the official duties of the officer making the disclosure.

(d) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the agency that maintains the record, specifying the particular portion desired and the law enforcement activity for which the record is sought.

(13) Department of Justice for Litigation Disclosure Routine Use:

To the Department of Justice (DOJ) when seeking legal advice for a HUD initiative or in response to DOJ's request for the

information, after either HUD or DOJ determine that such information is relevant to DOJ's representatives of the United States or any other components in legal proceedings before a court or adjudicative body, provided that, in each case, the agency also determines prior to disclosure that disclosure of the records to DOJ is a use of the information contained in the records that is compatible with the purpose for which HUD collected the records. HUD on its own may disclose records in this system of records in legal proceedings before a court or administrative body after determining that the disclosure of the records to the court or administrative body is a use of the information contained in the records that is compatible with the purpose for which HUD collected the records.

[FR Doc. 2015–32964 Filed 12–30–15; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5173–N–07]

Affirmatively Furthering Fair Housing Assessment Tool: Announcement of Final Approved Document

AGENCY: Office of the Assistance Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice.

SUMMARY: This notice announces the Assessment Tool developed by HUD for use by local governments that receive Community Development Block Grants (CDBG), HOME Investment Partnerships Program (HOME), Emergency Solutions Grants (ESG), or Housing for Persons with AIDS (HOPWA) formula funding from HUD when conducting and submitting their own Assessment of Fair Housing (AFH). The Assessment Tool will also be used for AFHs conducted by joint and regional collaborations between: (1) Such local governments; (2) one or more such local governments with one or more public housing agency (PHA) partners; and (3) other collaborations in which such a local government is designed as the lead for the collaboration. For purposes of this Assessment Tool, no AFH will be due before October 4, 2016. Please see HUD's Web page at *https://www.hudexchange.info/programs/affh/* for the schedule of submission dates of AFHs.

The requirement to conduct and submit an AFH is set forth in HUD's Affirmatively Furthering Fair Housing (AFFH) regulations, and this Assessment Tool has completed the notice and comment process required by the Paperwork Reduction Act (PRA), been reviewed by the Office of Management and Budget (OMB) and approved. The Assessment Tool announced in this notice, and the guidance accompanying this Assessment Tool (the Guidebook) can be found at *https://www.hudexchange.info/programs/affh/.*

This **Federal Register** notice also highlights changes made by HUD to the Assessment Tool based on comments submitted in response to HUD's July 16, 2015, notice, which solicited comment on the Assessment Tool for a period of 30 days. HUD will issue separate Assessment Tools for use by States and Insular areas and PHAs that will also be used for: (1) Joint and regional collaborations where the State or Insular Area is designated as the lead entity; and (2) joint collaborations with only PHA partners.

FOR FURTHER INFORMATION CONTACT: George D. Williams, Sr., Deputy Assistant Secretary for Policy, Legislative Initiatives and Outreach, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 7th Street SW., Room 5246, Washington, DC 20410; telephone number 866–234–2689 (toll-free) or 202–402–1432 (local). Individuals who are deaf or hard of hearing and individuals with speech impediments may access this number via TTY by calling the toll-free Federal Relay Service during working hours at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

The AFFH Proposed Rule

On July 19, 2013, at 78 FR 43710, HUD published for public comment its AFFH proposed rule. The July 19, 2013, AFFH rule proposed a new approach that would enable program participants to more fully incorporate fair housing considerations into their existing planning processes and assist them in complying with their duty to affirmatively further fair housing as required by the Fair Housing Act (Title VIII of the Civil Rights Act) and other authorities. The new process, the Assessment of Fair Housing (AFH), builds upon and refines the prior fair housing planning process, called the analysis of impediments to fair housing choice (AI). As part of the new AFH process HUD advised that it would issue an ''Assessment Tool'' for use by program participants in completing and submitting their AFHs. The Assessment Tool, which includes instructions and nationally-uniform data provided by HUD, consists of a series of questions designed to help program participants identify, among other things, areas of racially and ethnically concentrated areas of poverty, patterns of integration and segregation, disparities in access to opportunity, and disproportionate housing needs.

At the time of publication of the July 19, 2013, AFFH proposed rule, HUD also posted and sought public comment on a draft ''Data Documentation'' paper online at *http://www.huduser.gov/portal/affht_pt.html* and at *https://www.hudexchange.info/programs/affh/* (under the heading Data Methodology). HUD requested public comments on the categories, sources, and format of data that would be provided by HUD to program participants to assist them in completing their AFH, and many program participants responded with comments on the Data Documentation.

The 60-Day Notice on the Assessment Tool (Initial Assessment Tool)

On September 26, 2014, at 79 FR 57949, HUD issued a notice for public comment on the Assessment Tool found at *http://www.huduser.gov/portal/affht_pt.html.* As noted in the Summary, the Assessment Tool was designed for use by local governments that receive CDBG, HOME, ESG, or HOPWA formula funding from HUD when conducting and submitting their own AFH; that is the Assessment Tool was designed for use by local governments and consortia required to submit consolidated plans under HUD's Consolidated Plan regulations, codified in 24 CFR part 91, specifically subparts C and E, which pertain to local governments and consortia.[1] In this notice, HUD uses the term ''local governments'' to refer to those consolidated plan program participants for which this tool is primarily designed. The Assessment Tool is also designed for joint and regional AFHs conducted by joint and regional collaborations between: (1) Such local governments; (2) one or more such local governments with one or more PHA partners; and (3) other collaborations in which such a local government is designed as the lead for the collaboration. While the Assessment Tool was designed for local governments and for joint or regional submissions by local governments and PHAs, HUD invited comments by all types of program participants, as it, ''present[ed] the basic structure of the Assessment Tool to be used by all program participants, and is illustrative

[1] In HUD's AFFH proposed rule published on July 19, 2013, at 78 FR 43710, HUD noted that a consortium participating in HUD's HOME Investment Partnerships program (HOME program), and which term (consortium) is defined 24 CFR 91.5, must submit an AFH. HUD stated that a HOME consortium is considered a single unit of general local government (see 78 FR at 43731).

of the questions that will be asked of all program participants.''

In developing the Assessment Tool, HUD had four key objectives in mind. First, the Assessment Tool must ask questions that would be sufficient to enable program participants to perform a meaningful assessment of key fair housing issues and contributing factors [2] and set meaningful fair housing goals and priorities. Second, the Assessment Tool must clearly convey the analysis of fair housing issues and contributing factors that program participants must undertake in order for an AFH to be accepted by HUD. Third, the Assessment Tool must be designed so program participants would be able to use it to prepare an AFH that would be accepted by HUD without unnecessary burden. Fourth, the Assessment Tool must facilitate HUD's review of the AFHs submitted by program participants, since the AFFH rule requires HUD to determine, within a certain period of time, whether to accept or not accept each AFH or revised AFH submitted to HUD.

With these objectives in mind, HUD issued a first version of the Assessment Tool (Initial Assessment Tool) for public comment for a period of 60 days. The 60-day notice provided a detailed description of the five main sections of the Assessment Tool: Section I—Cover Sheet and Certification; Section II—Executive Summary; Section III—Community Participation Process; Section IV—Analysis; and Section V—Fair Housing Goals and Priorities.

By the close of the comment period on November 25, 2014, HUD received 281 public comments. Commenters included PHAs, grantees of Community Development Block Grants (CDBG), including States and local governments, advocacy groups, nonprofit organizations, and various individuals. All public comments received in response to the 60-day notice can be found at: *http://www.regulations.gov/#!documentDetail;D=HUD-2014-0080-0001.*

The January 15, 2015 Notice on AFH Staggered Submission Deadlines

On January 15, 2015, at 80 FR 2062, HUD published a notice that solicited public comment on a staggered submission deadline for AFHs to be submitted for specific types of program participants. In the January 2015 notice, HUD advised that it was considering providing certain HUD program participants—States, Insular Areas, qualified PHAs,[3] and jurisdictions receiving a CDBG grant under $500,000 with the option of submitting their first AFH at a date later than would otherwise be required of entitlement jurisdictions. In addition to proposing a staggered submission deadline, HUD had previously announced that it would be developing separate assessment tools for certain types of program participants, including for States and Insular Areas, and for PHAs not submitting an AFH in a joint or regional collaboration with a local government.

The AFFH Final Rule

On July 16, 2015, at 80 FR 42272, HUD published the AFFH final rule. The AFFH final rule provides, at § 5.160, for staggered submission deadlines for program participants, an aspect of the final rule for which HUD first solicited public comment on January 15, 2015. The final rule provides that each category of program participants listed in § 5.160 their first AFH shall be submitted no later than 270 days prior to the start of (1) their program year or fiscal year for which a new consolidated plan is due, or for which, in the case of PHAs, except qualified PHAs, a new 5-year plan is due. The action that commences the count of 270 days is issuance of an approved Final Assessment Tool for the specific category of program participants. The final rule also provides that if the first AFH submission date results in a preparation period for the AFH that is less than 9 months after the date of publication of the Assessment Tool that is applicable to the program participant or the lead entity if the submission is to be a regional AFH, then the submission deadline will be extended to a date that is not less than 9 months from the date of publication of the applicable Assessment Tool.

Under the AFFH final rule, program participants that received less than a $500,000 CDBG grant in Fiscal Year (FY) 2015 and qualified PHAs, as such term is defined in the rule, will have additional time to conduct and submit their first AFH.

The 30-Day Notice on the Revised Assessment Tool

On July 16, 2015, at 80 FR 42108, HUD published, in accordance with the PRA, its notice soliciting public comment for a period of 30 days, on a revised Assessment Tool (Revised Assessment Tool) in response to comments submitted on the 60-day notice. The July 2015 notice responded to significant issues public commenters on HUD's 60-day notice raised and requested comments on specific questions, at 80 FR 42116 and 42117. The changes that HUD made to the Revised Assessment Tool in response to comments received on the 60-day notice are described in the July 16, 2015, notice, at 80 FR 42111 through 42114.

By the close of the comment period on August 17, 2015, HUD received 40 public comments. All public comments received in response to the 30-day notice can be found at: *http://www.regulations.gov/#!docketBrowser;rpp=25;so=ASC;sb=docId;po=0;dct=PS;D=HUD-2015-0063.*

Solicitation of Comment on Specific Questions. Many of the commenters directly responded to questions on which HUD specifically solicited comment, and these questions were as follows.

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;

3. Ways to enhance the quality, utility, and clarity of the information to be collected;

4. Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses;

5. Whether Option A or Option B of the Revised Assessment Tool would be the most effective and efficient way of conducting the analysis with respect to the selection of contributing factors.[4] If one option is preferred over the other, please state the reasons for the preference;

6. While the Revised Assessment Tool was designed to set minimum AFH requirements as well as providing a straightforward process for HUD to review the AFH, how might program participants use the template to conduct broader collaborations including more comprehensive cross-sector collaborations? How could the Revised Assessment Tool provide greater flexibility for participants to collaborate and expand upon the framework HUD has set in the Revised Assessment Tool?

[2] The term ''fair housing determinants'' was changed to ''fair housing contributing factors'' in the AFFH final rule. This notice therefore uses the term ''fair housing contributing factors.''

[3] Section 2702 of title II of the Housing and Economic Recovery Act (HERA) defined ''qualified PHAs'' as PHAs that have fewer than 550 units, including public housing and section 8 vouchers.

[4] As discussed in the following section of this preamble, HUD submitted for public comment, two formats on how to structure the Assessment Tool.

How could the Revised Assessment Tool allow program participants to incorporate better or additional data, alternative mapping tools, or other data presentations; and

7. Whether additional changes to the Revised Assessment Tool would better facilitate regional collaboration among program participants.

Response to the 30-Day Notice-Overview. Many of the commenters expressed support for the Revised Assessment Tool, stating that HUD adopted several of the changes recommended by the commenters in response to the 60-day notice. Revisions to the Assessment Tool for which commenters expressed appreciation included: The listing of local knowledge received from the community participation process and reasons for not using certain local knowledge obtained; inclusion of language regarding ''displacement of residents due to economic pressures''; the inclusion of ''school enrollment policies'' and their impact on students' abilities to attend proficient schools; increased discussion of language barriers and identification of limited English proficiency (LEP) populations; and descriptions of contributing factors and the detailed instructions for how to complete the template section-by-section.

Other commenters, however, stated that the Revised Assessment Tool reflected that HUD did not consider important changes recommended by the commenters, that the analysis was still highly burdensome, was largely incomprehensible, and showed little understanding of the dynamics of successful housing integration, and some commenters requested that HUD withdraw the Assessment Tool and commence the PRA process anew with a new version.

For those commenters recommending changes and identifying areas in need of improvement, the majority of commenters focused on the following: (1) That, in their view, the Assessment Tool does not account for the resource limitations of program participants and actions that program participants can reasonably take; (2) the data HUD is providing and the Data Tool; (3) the contributing factors—both with respect to the lists included and specific revisions to the explanations provided in Appendix C; (4) the process for setting goals; and (5) how HUD will evaluate submitted AFHs.

With respect to the two formats for structuring the Assessment Tool, Option A and Option B, offered in the 30-day notice, commenters expressed their preference for Option B, but those expressing preference for Option B recommended revisions that they thought would improve the utility of Option B. Overall, commenters on the 30-day notice provided detailed suggestions on how they believed the Assessment Tool could be structured to reduce burden, provide greater clarity, and improve the fair housing assessment process. Other commenters stated that, regardless of format, this Assessment Tool was not appropriate for certain program participants, such as States.

Certain commenters submitted comments on the AFFH rule, raising comments previously submitted and addressed by HUD in the rulemaking process, such as HUD has no authority to issue this rule, the rule is an unfunded mandate, HUD lacks the capacity to administer this rule, and HUD needs to establish safe harbors. Since the rulemaking process has been completed and the 30-day notice (and the 60-day notice) sought comment on the Assessment Tool, HUD is not responding to these comments in this notice.

Development of Assessment Tools for Specific Program Participants

HUD will be issuing separate Assessment Tools for States and Insular Areas, and for PHAs that are not submitting an AFH as part of a joint submission or regional collaboration. While HUD will take into consideration the issues raised by commenters about States in developing the State Assessment Tool, HUD will not respond to those comments in this notice. The State and Insular Areas Assessment Tool, and the PHA Assessment Tool, will all undergo the full PRA process that provides the public with two opportunities for comment.

HUD is also considering how burden may be reduced for small entities and qualified PHAs. HUD will soon be publishing a notice that seeks advance comment on how the Assessment Tool can best be used by small entities without jeopardizing the ability to undertake a meaningful assessment of fair housing.

HUD appreciates all comments on the Assessment Tool received in response to the 30-day notice, and, in developing this final version of the Assessment Tool all comments were carefully considered. The significant issues commenters raised and HUD's responses to these issues are addressed in Section II.B. of this notice. Additionally, HUD has posted on its Web site at *http://www.huduser.gov/portal/affht_pt.html* and *https://www.hudexchange.info/programs/affh/*, a comparison of the Final Assessment Tool compared to the Option B version of the Revised Assessment Tool (Compare Assessment Tool) so that program participants and the public can see all changes made.

II. The Final Assessment Tool

A. Highlights of the Final Assessment Tool

This section highlights the key features of the final Assessment Tool, and those that differ from the Revised Assessment Tool.

Format of Final Assessment Tool. This final Assessment Tool is based on the ''Option B'' format presented in the 30-day notice. As provided in the 30-day notice, the two formats did not differ in content or analysis, but differed with respect to where the analysis of contributing factors was placed. For the commenters who responded to HUD's question as to which format was preferred, the majority favored Option B, but offered suggestions on how Option B could be improved.

Content of the Assessment—Highlight of Changes to Option B. The Final Assessment Tool now contains additional questions in the Community Participation Process section; asks questions on homeownership in certain sections; clarifies questions commenters advised were unclear; augments the Fair Housing Enforcement, Outreach Capacity, and Resources section; provides direction to program participants on questions where they may describe relevant ongoing activities relating to, among other things, housing preservation, community revitalization, and mobility; clarifies instructions on how to identifying and prioritizing contributing factors and setting goals; includes additional information in the descriptions of certain contributing factors, located in Appendix C; and provides additional examples of possible sources of information program participants may use, in addition to the HUD-provided data, in completing the assessment.

B. Public Comments Received in Response to the 30-Day Notice and HUD's Responses

This section provides a summary of the most significant issues raised by commenters and HUD's responses.

Issues on Overall View of the Assessment Tool

Issue: The Assessment Tool has little utility. Several comments stated that the Assessment Tool is unreasonably detailed such that it is a technocratic study of the conditions at play in a

program participant's jurisdiction and region. Commenters stated that many of these conditions lay outside the control of the program participant and therefore the Assessment Tool is nothing more than an academic exercise with little ability to advance the goals of the Fair Housing Act. Commenters stated that the Assessment Tool does not align the required analysis with the programmatic tools available to each program participant, or account for resource limitations with respect to the setting of goals that can be realistically achieved. In terms of resource limitations, commenters raised concerns about both: (1) The resources available to program participants, including but not limited to small entities, to conduct and complete the assessment itself; and (2) whether the Assessment Tool and HUD's review and acceptance or non-acceptance of the AFH adequately recognize resource limitations of program participants in setting and achieving goals and their ability to influence any contributing factors as having a significant impact. Other commenters stated that because program participants do not have control or are unable to directly influence issues relating to disparities in access to opportunity the analysis will have no utility. Certain commenters stated that the collection of information will have more relevance and value for larger program participants that administer a wide range of housing and community development activities, but not for smaller program participants. For smaller program participants, they stated that the information collection will be a significant burden with little value added.

HUD Response: HUD believes that the Assessment Tool will be helpful and will have utility for program participants in assessing fair housing issues, identifying contributing factors, formulating realistic goals, and ultimately meeting their obligation to affirmatively further fair housing. One of the primary purposes of the Assessment Tool is to consider a wide range of policies, practices, and activities underway in a program participant's jurisdiction and region and to consider how its policies, practices, or activities may facilitate or present barriers to fair housing choice and access to opportunity, and to further consider actions that a program participant may take to overcome such barriers.

In terms of resource limitations, HUD reiterates here what HUD has stated previously, and that is that HUD is aware that program participants may be limited in the actions that they can take to overcome barriers to fair housing choice and that the AFH process does not mandate specific outcomes. However, that does not mean that no actions can be taken, or that program participants should not strive to overcome barriers to fair housing choice or disparities in access to opportunity. With respect to small program participants, HUD continues to consider ways to better enable small entities in complying with their obligation to affirmatively further fair housing while recognizing their resource limitations. In this regard and, as further discussed below, HUD will be issuing an advance notice for comment on how the Assessment Tool can best be used by small entities while providing for meaningful assessment of fair housing issues, contributing factors, and goal setting. As HUD explained in the preamble to the final rule, ''HUD recognizes that smaller program participants do not have the same capacity as larger participants and therefore burdens can be greater. HUD has strived in this final rule to reduce costs and burden involved in implementation of the new AFH as much as possible, especially for smaller program participants. The guidance that HUD intends to provide will further refine the application of the rule's requirements to specific types of program participants, especially smaller PHAs and local government agencies with limited staff and resources.''

Issue: Ways to enhance the utility of the Assessment Tool. Commenters suggested ways that would enhance the utility of the Assessment Tool. These suggestions included the following: When using tables to compare groups, provide guidance on what HUD considers significant differences; acknowledge that while historical data has significance, if more recent data is not provided to program participants, the data will have limited relevance for the fair housing assessment; and provide technical assistance through national capacity builders.

HUD Response: HUD appreciates these suggestions, and has incorporated some examples in the Guidebook. With respect to the data contained in the maps and tables, HUD has strived, and will continue to strive, to make these more user friendly, and, as new data becomes available or updated, HUD will make that data available to program participants.

Issue: Ways to reduce burden. Several commenters stated that the completion of the Assessment Tool will require tremendous expenditure of time and resources on the part of program participants, and that HUD underestimated the time and resources that would be needed to complete the Assessment Tool. Commenters offered suggestions on ways that burden could be reduced. These suggestions included the following: HUD providing for batch exports of maps and data tables, rather than exporting only one map or table at a time; allowing for electronic submission of AFHs; HUD providing Home Mortgage Disclosure Act (HMDA) data at the census tract level; allowing program participants to identify actions they can realistically take and then prioritize those actions based on potential impacts; HUD should not only reference that data is available at the census tract level but should identify the census tracts to allow larger program participants to match them against community areas within an urban county; and having tables show data at both the city-wide and census tract level. Commenters suggested that HUD should identify where there is an absence of valid, appropriate data to reduce any time that may be spent searching for such data. Finally, commenters suggested that HUD allow each collaborating participant in a joint or regional AFH to conduct their own, separate local analysis.

HUD Response: HUD appreciates the comments regarding improved functionality for the HUD-provided data and HUD is taking all comments into account in its continuing design and improvements of the online tools that will be made available to program participants. These online tools include the Data Tool (which will also be publicly available) that contains the maps and tables, as well as the online web-based portal (''user interface'') that HUD is creating to allow program participants to conduct and submit their AFHs while incorporating the tables and maps form the Data Tool.

While HMDA data is currently available from public sources, HUD did not require its use at this time. HUD is continuing to work to provide for batch exports of maps and data tables. With respect to identifying where there is an absence of data, the Final Assessment Tool identifies where local data and knowledge may be particularly helpful. Community participation is also expected to provide supplemental local data.

With respect to program participants setting goals that they can realistically be expected to achieve, as noted in response to an earlier comment, although program participants are required to affirmatively further fair housing, HUD has repeatedly stated that the AFH process does not dictate specific actions, goals, or outcomes,

which will depend on local fair housing issues, contributing factors, and the program participants' designation of goals to address them. The AFH process provides basic parameters to help guide program participants in their public sector housing and community development planning and investment decisions by being better informed about fair housing concerns.

With respect to the comment that collaborating participants should be allowed to conduct their own separate local analysis, the AFFH final regulations state that while program participants may divide work as they choose, all collaborating program participants are accountable for the analysis and any joint goals and priorities to be included in the collaborative AFH, and they are also accountable for their individual analysis, goals, and priorities to be included in the collaborative AFH.

Issue: Ways to enhance community participation. Several commenters offered suggestions on how community participation could be enhanced. These suggestions included: HUD providing lists of organizations that program participants may wish to consult, such as transportation advocacy groups, transportation planners, public health advocates, and community based organizations; requiring program participants to engage in partnerships with fair housing and other civil rights organizations; requiring program participants to identify and consult with any subrecipient of HUD funds to which program participants or others provide HUD funding, along with any other partners, that will provide for a more collaborative effort in achieving fair housing goals.

HUD Response: The community participation requirements for the AFH process are largely based on the existing citizen participation requirements in HUD's Consolidated Plan regulations in 24 CFR part 91 and the comparable requirements in HUD's Public Housing regulations in 24 CFR part 903. It was HUD's view at the time of development of the AFFH rule that these requirements, longstanding and familiar to consolidated plan participants and PHAs were appropriate for the AFH, and this continues to be HUD's view. However, these are the minimum requirements, and program participants are always permitted and in fact encouraged to exceed the minimum requirements. Through the Guidebook, HUD offers ways in which community participation may be enhanced. In response to public comment, the Final Assessment Tool, however, does include additional questions in the Community Participation Process section included to help program participants better evaluate the success of the community participation process they undertook.

Issue: Ways to enhance joint and regional collaboration. Commenters commended HUD for encouraging program participants to collaborate by allowing program participants to align their program years. Commenters offered the following suggestions to further promote regional collaboration: HUD should offer deadline extensions or offer other incentives that would encourage program participants to continue collaboration in succeeding AFH submission years; establishing an optional regional section of the template to facilitate jurisdictions and PHAs collaborating and informing each of their analyses; encouraging a consortium structure, which a commenter stated could help establish equity advocates and disadvantaged communities' leaders' decisionmaking roles, contribute to meaningful understanding of regional housing markets and patterns of segregation and isolation of opportunity, and enhance the ability to address these issues; allowing collaborating jurisdictions to decide about what types of data are available and most relevant; and promoting advisory councils with cross-sector representatives to help overcome any lack of local political interest or will in collaborating.

HUD Response: HUD appreciates these suggestions on how to promote joint and regional collaboration. Many of the steps suggested by commenters are beyond the scope of this Assessment Tool and would require additional regulatory and programmatic changes. HUD will continue to consider the options available to it with respect to promoting these sorts of collaborations. While the Final Assessment Tool does not incorporate these suggestions, HUD will give consideration to these recommendations for future changes to the Assessment Tool. Several of the suggestions may also be addressed not in this Assessment Tool, but in the Guidebook and additional guidance documents.

HUD encourages both regional and joint submissions of AFHs. Both types of submissions have the potential to greatly increase the positive impact of fair housing planning as well as potentially reducing the burden of completing the AFH for many entities. All program participants are encouraged to consider options for either a joint or regional submission. In such consideration, program participants should consult the AFFH final rule for all requirements on joint or regional collaboration, including submission deadlines.

Issue: Format of the Assessment Tool. Some commenters stated that the two options presented differences without distinctions. Most commenters stated that Option B was preferable because it presents a list of contributing factors after the analysis of each fair housing issue and it was more straightforward. The commenters stated that since the nature of contributing factors can vary depending on the type of fair housing issue, a list of factors tailored to a given issue would elicit more complete and appropriate responses. However, other commenters stated that Option A is preferable because the contributing factors are more specifically outlined, and they thought Option B was less clear for program participants than Option A. Other commenters suggested that both Options A and B have strengths, but that HUD should allow program participants to decide which option best suits their needs.

HUD Response: As noted earlier, the Final Assessment Tool is based on Option B. HUD appreciates those commenters who responded to HUD's request for comment on the structure of the Assessment Tool. Neither of the formats was unanimously endorsed by commenters as a format that should be adopted without change, and HUD has made several changes to the Option B format in response to public comment. At this time, HUD cannot offer program participants the ongoing option to choose which format works best for them but will evaluate whether it is feasible to do so at some future time. HUD notes that program participants, however, may complete the Final Assessment Tool in any order they choose, which may provide some additional flexibility or avoid unnecessary duplication of effort, so long as all elements of the AFH are completed. For example, program participants may choose to complete all questions in the template and then identify significant contributing factors.

The Final Assessment Tool still retains the streamlined consideration of contributing factors that was adopted following the first round of public comments. As stated in HUD's 30-day notice on the Revised Assessment Tool, ''The Initial Assessment Tool would have required contributing factors to be identified twice, once separately and again in answering specific questions. The Revised Assessment Tool only requires that contributing factors be identified once. The contributing factors analysis has also been revised by removing the previous requirements to

list all contributing factors and then rate their degree of significance. In the Revised Assessment Tool, program participants are required to identify those contributing factors that significantly impact specific fair housing issues, and for the purposes of setting goals prioritize them, giving the highest priority to those factors that limit or deny fair housing choice or access to opportunity, or negatively impact compliance with fair housing or civil rights law.'' In addition, the Guidebook provides guidance to assist program participants in identifying and prioritizing contributing factors.

Issue: Preservation of Affordable Housing. A number of commenters requested clarification of the continuing importance of affordable housing preservation and rehabilitation and how these vital program activities can be addressed in different parts of the Assessment Tool.

A commenter requested that specific housing preservation strategies should be included in the analysis questions and/or instructions, and suggested mentioning strategies such as, ''preventing Project-based Section 8 contract opt outs, providing rehab assistance for existing subsidized projects, and recapitalizing and extending affordability for projects with maturing mortgages or expiring use restrictions.''

One commenter stated the explanation of the potential contributing factor on Lack of Community Revitalization should have explicitly mentioned housing preservation as, ''an important tool within comprehensive community revitalization strategies and should be included.''

One specific suggestion made by commenters was to clarify the description of the contributing factor on ''Siting selection policies'' to remove the reference to housing rehabilitation in two places in the description, including in the sentence, ''[t]he term 'siting selection' refers here to the placement of new or rehabilitated publicly supported housing developments.''

A commenter requested that questions should be added to the analysis, ''asking jurisdictions to identify affordable housing developments in areas of opportunity that are threatened with loss.''

HUD Response. HUD appreciates these comments and made a number of clarifications to the Final Assessment Tool to respond to the concerns within the overall fair housing planning context of the AFH.

First, the additional information questions in the analysis section of the Assessment Tool were clarified to indicate that they provide an opportunity for program participants to include information on the role of affordable housing as it relates to the analysis of the fair housing issues in each relevant section.

Regarding the comment suggesting the list of specific preservation activities, HUD has clarified in the instructions to the additional information questions that housing preservation activities that are related to fair housing issues may be discussed there. Also a change was made to the contributing factor on ''displacement due to economic pressures'' to clarify that economic pressures can include the loss of affordability restrictions, which can include items mentioned in the commenter's list.

Regarding the comment on the description of the Lack of Community Revitalization contributing factor, HUD amended the contributing factor description to include, ''When a community is being revitalized, the preservation of affordable housing units can be a strategy to promote integration.'' Moreover, fair housing considerations relating to housing preservation are also already covered in a number of other contributing factors, including displacement of persons due to economic pressures; and location and type of affordable housing. In addition, throughout the Assessment Tool, program participants also must identify ''other'' contributing factors that are not included in the HUD provided list.

The ''Siting selection policies'' contributing factor was clarified by deleting two references to rehabilitated housing where they originally appeared and adding this more precise description: ''Placement of new housing refers to new construction or acquisition with rehabilitation of previously unsubsidized housing. State and local policies, practices, and decisions can significantly affect the location of new publicly supported housing.'' This change was made to distinguish between rehabilitation activities relating to the preservation of subsidized housing and the siting of new subsidized housing that sometimes can involve acquisition of a previously unsubsidized building. Fair housing issues relating to the location of existing publicly supported housing would be addressed under the Location and Type of Publicly Supported Housing contributing factor. HUD notes that program participants still have the ability to consider other relevant factors when comparing the very different program activities of new construction and rehabilitation, such cost-effectiveness and trends in the overall market availability of units affordable to those with the lowest incomes.

HUD declined to adopt the commenters' suggestion that new questions be added to the analysis to identify specific affordable housing developments at risk of loss or conversion because HUD believes that the Assessment Tool provides adequate opportunities to discuss such concerns in several sections of the analysis and through the contributing factors analysis. HUD did respond, however, by amending the contributing factor, ''displacement of residents due to economic pressures'' to clarify that it can be applied to individual buildings at risk of loss of affordability as well as to neighborhoods undergoing rapid economic change and where preservation may be an appropriate fair housing related goal.

There were additional clarifications that were made in response to the general concerns raised, as reflected in the Compare Assessment Tool.

Issue: Loss of Affordable Housing. One commenter requested that the contributing factors identified in the Tool for the ''Fair Housing Issues Analysis'' section should explicitly acknowledge that the loss of affordable housing—whether it be in the form of the failure to preserve existing affordable housing, or the failure to produce more affordable housing units—impacts fair housing choice for many families.

HUD Response. HUD declined to add the new suggested contributing factor, but did clarify the instructions to the Demographics section by adding the following language: ''Program participants may also describe trends in the availability of affordable housing in the jurisdiction and region for that time period.'' HUD also believes that the ''Additional Information'' question in the Disproportionate Housing Needs section would be an appropriate place to include such local data and local knowledge and, for purposes of assessing fair housing concerns, any resulting disparities that may be experienced by certain protected class groups. In addition, HUD amended the language on the potential contributing factor, ''Displacement of Residents Due to Economic Pressures'' to clarify this factor can include the loss of affordability restrictions at individual buildings as well as in particular geographic areas.

Issue: Community Assets, Organizations and Characteristics. Commenters requested that questions be included in the Assessment Tool to allow program participants to include information beyond the HUD-provided

data related to a wide variety of local and regional issues, assets and socio-economic conditions and trends. Many commenters provided often extensive lists of specific issues that HUD should include or call out for analysis or contributing factors sections or in the instructions. The comments covered a wide variety of issues, assets, organizations, strategies and activities related to their region, jurisdiction and neighborhoods. For example, one commenter requested questions on, ''responsive community-based organizations, community development corporations that have worked for years to help revitalize the neighborhood, active tenant organizations, and other important social network and cultural support infrastructures.''

Several commenters also requested a question or other space to provide information on immigrant communities including, ''cultural and religious organizations and social networks in local neighborhoods and communities.''

HUD Response. In reviewing commenters' suggestions, HUD was mindful of the information collection burden that would be involved in adding mandatory questions on a wide variety of issues that may be relevant in some jurisdictions and regions but not in others. For this reason, HUD declined to adopt the suggested addition of new questions in the analysis section. HUD has clarified the ''additional information'' questions in each section of the analysis to provide program participants the opportunity to supplement with information they determine relevant to an assessment of fair housing in their jurisdiction and region. These questions provide a space for discussion of issues that are relevant to the assessment of fair housing issues without creating additional mandatory questions.

While HUD declined to add specific questions or instructions on immigrant communities and their various characteristics, program participants may address fair housing issues relating to immigrant communities in several sections of the Assessment Tool, including the additional information questions as well as the descriptive narrative and analysis in the Demographics section. HUD is familiar with the research on immigrant communities and recognizes that there are complex issues associated with them, as noted in the preamble to the AFFH final rule (see 80 FR. 42279–42280).

Issue: Colonias. One commenter recommended that issues related to the Colonias be added to the contributing factor on ''access to financial services'' by adding a reference to ''contract for sale'' arrangements.

HUD Response. HUD declined to make this revision because such financing mechanisms can already be considered under the contributing factor, ''access to financial services'' and the new contributing factor on lending discrimination. Fair housing concerns related to Colonias can also be considered under the ''other'' category which allows program participants to add contributing factors not identified on the HUD-provided list.

Issue: The Data Tool has promise but needs adjustment. Several commenters commended the Data Tool, advising that it has the potential to provide data that could not be previously accessed, and that it provides important opportunity metrics. Commenters however, requested improvements to the Data Tool in ways they stated would be more useful. Commenters requested that HUD enlarge the contrast and size of the dots because as currently presented, the contrast and size of dots is not large enough to allow for differentiation between the dots, and that some dots appear to be located where no one lives. Commenters also requested that the Data Tool provide information to communities where multiple program participants choose to collaborate, stating that the current Data Tool does not have this functionality and it is not possible for program participants to generate maps and tables for each of the entities that are collaborating and combine them without getting inaccurate results. Another commenter added that if the data, information, and analysis of various program participants in the region were shared with others, collaboration could be better facilitated. Another commenter stated that it was unable to generate or download tables over a two-week period, and therefore was unable to assess them. Commenters stated that it is not clear from the Data Tool whether the lack of identified racially and ethnically concentrated areas of poverty (R/ECAPs) in non-metropolitan communities is an artifact of the tool or whether these communities really do not include R/ECAPs. A commenter stated that the Data Tool identifies far fewer R/ECAPs due to the 40 percent threshold set. Another commenter stated that certain data elements in the Data Tool are incompatible with the Fair Housing Act, specifically with respect to foreign-born populations. The commenter stated that the foreign-born data from the census questionnaire does not track exactly with the definition of national origin under the Fair Housing Act.

Additional suggestions on how the Data Tool could be improved included the following: Make the User Guide for the Data Tool easier to find without having to click through several screens before finding it; make both maps and tables exportable; divide the User Guide into two parts, one on maps and one on tables, and better define the terminology used in the Data Tool; add shape files (a data format for geographic information) for R/ECAPs that are available for download as well as different color options for shading census tracts to improve the readability of the maps; clarify that dot density maps defining R/ECAPs does provide a complete picture of segregation; better address family cluster indicators because they are not precisely geocoded, which may misrepresent the location of families away from community assets and away from opportunities and closer to hazards; if HUD is using sophisticated mapping software there is no reason why the maps provided by HUD cannot contain more layers, more symbols and more contrasting colors; clarify whether the data on the maps represents the distribution of publicly supported housing units within a census tract based on actual unit counts in the buildings located within the tract or if the count assumes that all units in a project are in a single building; include an ''identify'' tool that can provide existing information on the population in assisted developments; and allow program participants to overlay their own maps and data.

HUD Response: HUD appreciates the detailed comments received about the Data Tool. HUD continues to make adjustments, refinements, and improvements to the Data Tool, many of which will address the concerns raised by commenters regarding its utility and functionality. HUD hopes to be able to provide the public with raw data, which may be used by program participants in their analyses, so long as any manipulated data is submitted along with the AFH submitted to HUD for review. HUD has also added an instruction in the Final Assessment Tool to address the concern about the location of publicly supported housing units, since HUD allows PHAs to group buildings under asset management projects (AMPs), which results in a single project displayed on a the map for a given asset management project.

Issue: Application of HUD-provided data to jurisdictions. Many commenters expressed concern that various individual components of the HUD-provided data, including indices, R/ECAP measures, and maps were not always useful or applicable to their

jurisdiction's own characteristics or demographic composition. For instance, some commenters noted that R/ECAPs were not always applicable to their local demographics (*e.g.,* majority-minority cities).

HUD Response. The HUD-provided data are intentionally based on nationally available uniform data sources. The indices and measures adopted by HUD are intended to provide a baseline to facilitate the analysis for the jurisdiction and region. Program participants are required to use additional local data and local knowledge to provide a more complete fair housing analysis. This may include consideration of additional data sources, alternate measures, and qualitative analysis. As stated in the preamble to the AFFH final rule, ''HUD has worked to identify a comprehensive set of data that allows a multisector assessment. Moreover, because research on measuring access to community assets is continually evolving, HUD is committed to reviewing the data on an ongoing basis for potential improvements. As with all data metrics, the measures in each category have strengths as well as limitations, and no criteria should be assessed in isolation from the other measures or required assessments.'' The preamble addressed other known strengths and limitations of specific components of the HUD-provided data, as well as provided a discussion of their applicability to individual program participant's unique local conditions.

Issue: The indices in the Data Tool are unwieldy, difficult to understand, and several are not well-conceived. Commenters stated that the use of complex social science indices is largely unintelligible to most users and the general public. Another commenter stated that the use of opportunity indices may be related either directly or indirectly, and the meaning of differences between them may be unclear to program participants. A commenter stated that the data should be able to be used by the broadest possible audience, but in its current form it is too cryptic and too oriented toward the use of technical terms rather than plain language. A commenter stated that the dissimilarity index has several shortfalls and it should either be removed all together or HUD should explain its weaknesses in detail. Another commenter made a similar suggestion, stating that HUD needs to clarify how the dissimilarity index is being calculated to clarify for jurisdictions and how to interpret it for program participants that lack the knowledge or expertise to analyze the dissimilarity index. A commenter stated that instead of providing the various opportunity indices, HUD should require collection and analysis of data with respect to these issues. In contrast to these commenters, other commenters suggested that HUD provide the ''exposure index'' and the ''race and income index'' in addition to the ''dissimilarity index.''

Other commenters offered recommendations on specific indices. Commenters offered the following comments: With respect to the Poverty Index, instead of using a poverty rate, HUD should construct a poverty index that is the average of the family poverty rate and the percentage of households receiving public assistance; the Neighborhood School Proficiency Index captures the percentage of elementary school students who pass state tests in math and reading in the schools in a given neighborhood, but the commenters stated that this is measure of school quality, and there is no attempt to measure value added or even quality-adjust schools based upon the characteristics of its students; the Job Access Model measures the distance to job centers but does not make much of an attempt to match jobs to the skills of workers; explain the advantage of aggregating the factors considered by the labor market engagement index and the poverty index—that it would seem more practical to report the difference between the census tract and the national or regional rate and conduct a test for statistical significance.

HUD Response: HUD appreciates the suggestions made by commenters, as with the comments on enhancing the availability of data, HUD has strived and will continue to strive to have the indices provide greater aid in the assessment of disparities. The HUD-provided indices of common indicators of opportunity—poverty, education, employment, transportation, and environmental health—were selected because existing research suggests that from a fair housing perspective, they have a bearing on a range of important outcomes. As with all of the HUD-provided data, these indices are based on nationally available data sources and one or more may have limited application for some jurisdictions, and may not include all protected classes required for analysis under the Fair Housing Act. As noted above in response to an earlier comment, HUD hopes to be able to provide the raw data from the Data Tool to the public. Regarding the comments on use of the ''exposure index'' and the ''race and income index,'' HUD notes that it is providing the dissimilarity index in conjunction with dot density maps that, taken together, can often present a fuller picture of the levels and patterns of segregation and integration in the jurisdiction and region. However, use of outside, additional measures is by no means prohibited in the Final Assessment Tool and program participants may use these additional measures of segregation as well as information obtained from the community participation process.

Issue: Concern with HUD's ability to implement web-based information collections. Commenters expressed concerns about HUD's ability to implement web-based information collections. The commenters stated that in the past HUD has often failed to keep existing systems and information up-to-date. Commenters stated that the concern is enhanced here because of the complexity of the Assessment Tool.

HUD Response: HUD appreciates these concerns, and takes them seriously. Many commenters also provided specific and helpful feedback on functionality, that HUD aims to incorporate into the user interface that HUD is developing. HUD has administered web-based systems for many years and anticipates the Assessment Tool and associated web-based applications, such as the Data Tool and Assessment Tool Interface, will assist program participants in completing AFHs. HUD is taking appropriate measure so that the systems function properly.

Issue: Enhance the ability to access Low-Income Housing Tax Credit (LIHTC) data. Commenters commended HUD for including LIHTC properties in the Assessment Tool, stating that the inclusion of these properties is important to a meaningful assessment of fair housing. While commenters appreciated the inclusion of LIHTC data, several recommended that HUD develop a plan to collect LIHTC data in a uniform way from State housing finance agencies, or in the alternative, HUD should acknowledge that the variation in State data may affect program participants' abilities to complete the AFH. Another commenter expressed concern that HUD does not have zip codes for 16 percent of the LIHTC inventory and that obtaining this information and making it available should be a straightforward process for HUD. Another commenter recommended inclusion of a table that identifies the numbers of units or any other characteristics of LIHTC developments since LIHTC is responsible for the majority of assisted housing in the nation. Commenter notes that the tables do not include the

address or census tract of each publicly supported and LIHTC property.

HUD Response: HUD acknowledges the limited availability of LIHTC data on tenant characteristics at the development level. HUD is continuing its efforts to collect and report on this data. However, commenters should also be aware that information at the development-level will often not be available due to federal privacy requirements and the small project sizes in a large portion of the LIHTC inventory.

HUD will include census tract information in the HUD-provided data through the online AFFH Data and Mapping Tool. The Data and Mapping Tool will include a query tool that will allow users to filter and sort demographic data for both developments and census tracts by common characteristics for public housing, project-based Section 8, and Other HUD Multifamily housing (including Section 202 and Section 811). The query tool will include census tract demographic characteristics for LIHTC developments. The Data and Mapping Tool will also allow users to export tables showing this data from the query tool or the resulting comparisons from a query. These changes are intended to reduce grantee burden, improve the accuracy of analyses and reduce the risk of incorrect results (for example from drawing incorrect correlations from potentially complex data), as well as to better inform the community participation process.

Issue: Clarify use of local data and local knowledge and efforts to obtain such information. Commenters stated that the Assessment Tool should provide examples of local knowledge such as: Efforts to preserve publicly-supported housing; community-based revitalization efforts; public housing Section 8 demolition or disposition application proposals; Rental Assistance Demonstration (RAD) conversion applications; transit-oriented development plans; major redevelopment plans; comprehensive planning or zoning updates; source of income ordinance campaigns; and inclusive housing provision campaigns. Other commenters requested that HUD include examples of available local data, such as neighborhood crime statistics; school demographic and school performance data, State and local health department data by neighborhood; lead paint hot spots; data about the institutionalization of persons with disabilities and the availability of community-based services from state and local Medicaid agencies and disability services departments; and reports and studies already completed by state and local research and advocacy groups.

Other commenters suggested that HUD require program participants to describe their efforts to identify supplemental data and local knowledge such as from universities, advocacy organizations, service providers, planning bodies, transportation departments, school districts, healthcare departments, employment services, unions, and business organizations. Other commenters went further, suggesting that HUD require program participants to conduct research for topics on which HUD is not providing data. Another commenter stated that local data should not be subject to a determination of statistical validity because such data is generally combined with local knowledge, which is not always statistical. Other commenters asked that HUD encourage all local data be made publicly available on Web sites prior to the community participation process, and that HUD-provided data must be publicly available as well. Another commenter requested that the Assessment Tool include a separate section on local knowledge or provide for local knowledge to be included in each question for each section in the Assessment.

HUD Response: HUD notes that the HUD-provided data will be made publicly available. HUD anticipates that in some cases the data and mapping tool will allow program participants to set thresholds when using the data, for instance by adjusting the display of some mapping features to better reflect their local demographics. Since thresholds may have a significant effect on the analysis conducted, any thresholds set by program participants in using these data must be disclosed in the AFH made public during the community participation process and in the AFH submitted to HUD.

While HUD has not adopted the commenter's suggestion to establish a separate section on local knowledge, HUD has added to the instructions many additional references to local knowledge and local data, to identify where HUD believes such knowledge and data would be particularly helpful in responding to questions. HUD believes these additional references provide the clarity that commenters sought. Additionally, HUD expects that local data and local knowledge will often be made available to program participants through the community participation process, and HUD will further addresses local data and local knowledge in the Guidebook to provide additional examples of local data and local knowledge and where such sources can be accessed.

HUD declines to impose additional requirements on program participants to searching for local data and to require program participants to describe their efforts to identify supplemental local data and local knowledge. HUD requires program participants to supplement HUD-provided data with local data and local knowledge because HUD acknowledges that it is not able to provide data on all areas relevant to a fair housing assessment from nationally uniform sources, and local data may be able to fill such gaps. For example, program participants may find valuable data through a variety of sources, including from other federal and state agencies Web sites. Some examples of federal online data sources include: The Department of Treasury's Community Development Financial Institution's Information Mapping System (*https://www.cdfifund.gov/Pages/mapping-system.aspx*), the EPA's Environmental Justice Screening and Mapping Tool (*http://www2.epa.gov/ejscreen*), the General Services Administration's Data.Gov Web site, and HUD's own resources (*e.g. https://www.huduser.gov/portal/datasets/gis.html*). Additionally, local data may be the more recent and relevant data to rely on compared to the HUD-provided data. However, HUD has repeatedly said that local data and local knowledge constitute information which can be found, through a reasonable amount of searching, are readily available at little or no cost, and are necessary for the completion of the AFH.

With respect to the requirement that local data is subject to a determination of statistical validity, HUD notes that this is a requirement of the Final Rule itself, but as stated in the Preamble to the Final Rule this provision is intended to, ''clarify that HUD may decline to accept local data that HUD has determined is not valid [and not] that HUD will apply a rigorous statistical validity test for all local data.''

Issue: HUD needs to provide certain data. Commenters offered suggestions on data that HUD should provide. These suggestions included the following: Data on voucher holders; project-level data for each separate housing program for each jurisdiction and region, or at least provide guidance on how program participants may collect project-level data; cross-tabulated data on disability, race, and poverty; 2008–2012 American Community Survey data (5-year data); data on persons with disabilities living in segregated settings; data on local crime; ratings from the Community Development Financial Institution

distress index; data on access to broadband infrastructure; and data for all categories of publicly supported housing, including those outside the control of PHAs. With respect to the last suggestion, commenters stated that if HUD cannot provide such data, PHAs should not be required to address this area. Commenters asked that HUD not provide any data that is not statistically significant or geographically appropriate. Commenters also stated that HUD establish a process for program participants to identify data discrepancies or missing data and hold program participants harmless from not using resources that are inconsistent for the covered entity's first round of submitting an AFH.

HUD Response: HUD appreciates the suggestions made by commenters. HUD has strived and will continue to strive to provide program participants with as much nationally uniform data as possible. HUD anticipates that it will be able to add to the data that it makes available over the years. With respect to areas where HUD has not provided data, as HUD stated in response to the preceding comment, program participants must use relevant local data that they can find through a reasonable amount of search, are available at little or no cost, and are necessary for the completion of the Assessment Tool. If such local data cannot be found, then local knowledge gained through the community participation process may be helpful in this regard. HUD staff in the applicable HUD program offices are available to provide technical assistance on the data and mapping tool and the user interface.

Issue: Do not relegate maps and tables to appendices and separate housing cost burdens. A commenter stated that the maps and tables should not be relegated to appendices and that separating the data from the parts of the document in which program participants will conduct their analysis increases the risk that some key data points or geographic patterns will not be addressed in the analysis. Other commenters stated that the maps and tables should allow for separation on the basis of housing cost burdens, crowding, and lack of facilities, and that the housing cost burdens need to further filter out higher income households where higher costs are not the actual measure of distress.

HUD Response: The listing of maps and tables in appendices is a convenient organizational structure to advise program participants of the maps and tables that HUD is providing as part of the Assessment Tool for the purposes of public comment. HUD anticipates that the user interface and the data and mapping tool will allow the program participant to incorporate maps and tables directly into the body of the template. HUD appreciates the suggestion to improve the provision of data on housing needs and these comments will be taken into account in further refinement of the HUD-provided data.

Issues on Specific Content of Assessment Tool

Issue: Additional guidance needed about the community participation process. Commenters stated that this section of the template needs to provide more guidance for program participants and should afford stakeholders a means of assessing the thoroughness of a program participant's efforts to encourage and provide community participation. Another commenter requested that HUD revise the community participation section in a way that ensures program participants are accountable for community engagement. A commenter requested that HUD add a question that requires program participants that are unsuccessful in eliciting community participation to assess possible reasons for low participation rates, stating that such an explanation is particularly important when historically underserved populations exhibit low participation rate.

Other commenters stated that the program participants should be required to list the organizations they consulted, and further to provide a detailed list of the specific participation activities and the comments received or delivered at public hearings so that advocates can assess if the groups that participated represented a balance of opinions. Some commenters stated that program participants should be required to report on the discussions with residents of public and assisted housing and residents of R/ECAPs in places where community revitalization efforts existed or are planned to be undertaken in order to determine if residents wish to remain in their homes and communities or to relocate to areas that may offer other opportunities. A commenter stated that community participation should be given as much weight, if not more, than the data analysis conducted by program participants.

HUD Response: HUD appreciates the many comments that it received on the community participation process. These comments and the earlier comments on community participation addressed in this preamble appear to underscore the importance of the community participation that program participants will obtain and consider in producing a meaningful assessment of fair housing. With respect to certain of the recommendations made by the commenters, the Final Assessment Tool does ask program participants to list the organizations with which they consulted, to describe the types of outreach activities undertaken and dates of public hearings or meetings held, and to explain how these outreach activities were designed to reach the broadest audience possible. In addition to these changes, HUD has provided additional instructions pertaining to the community participation process. The community participation process required for the AFH is largely based on longstanding community participation processes and outreach in the Consolidated Plan and Public Housing regulations. These are processes with which program participants are well familiar and have long undertaken. For these reasons, HUD does not find, at least at this time, which is the outset of the AFH process, that more requirements beyond the additional questions added in the Final Assessment Tool need to be imposed.

Issue: HUD must accurately address individuals covered by the AFH. Commenters stated that the Assessment Tool needs to better clarify who will be covered by the AFH, particularly populations that do not fall under current protected classes. They stated that the template could be improved by clearly delineating which groups are required to be focused on, as well as providing guidance on how to engage with each group. Commenters stated that the Assessment Tool inappropriately elevates persons on the basis of income to a protected class. Other commenters stated that HUD must be diligent in making sure that racial and ethnic groups are consistently identified in the Assessment Tool and all AFH materials. Other commenters stated that all groups need to be treated the same in the Assessment Tool, stating as an example that immigrants should not be treated differently from native born residents, and women should not be treated differently from men.

HUD Response: The AFH covers protected classes under the Fair Housing Act, and these classes are identified in the instructions accompanying the tool, and addressed in the Assessment Tool. HUD has added a question to the Fair Housing Enforcement, Outreach Capacity, and Resources section of the Final Assessment Tool, which asks program participants about any protected characteristics covered by State or local fair housing laws. HUD believes the revised instructions better guide

program participants in addressing questions pertaining to the various protected classes under the Fair Housing Act.

Issue: Information required by the Analysis Section is not reduced by fewer questions. Commenters stated that while it appears there are fewer questions, the consolidated questions require no less information than was previously being requested. Other commenters stated that compound questions make it difficult for stakeholders to extract the information they need from the AFH and increases the likelihood that certain questions may not be answered and may not allow for program participants to think critically about these issues and devise effective and creative strategies to advance true change. Another commenter stated that many of the questions are still very broad and complex, and consolidation only adds to the complexity.

HUD Response: HUD appreciates these comments and on further review, HUD could see that certain questions were too broad. HUD has restructured several questions to better clarify the information sought.

Issue: Provide more targeted questions, and seek specific information from program participants. Commenters stated that the Assessment Tool should contain more exact questions to allow program participants to better describe their selection and rationale for their fair housing strategy. Commenters stated that many questions are open-ended and will require program participants to make assumptions. Other commenters stated that HUD should provide more specific, guided questions with the appropriate guidance as to the types of data sets for each question.

Other commenters stated that ''additional information'' questions should require more specific information from program participants; that program participants should describe efforts that are planned, have been made, or that are underway to preserve project-based section 8 developments at risk of opting out of the program, or other HUD multifamily-assisted developments from leaving the affordable housing stock due to FHA mortgage maturity. Commenters also stated that program participants should be required to describe such efforts with respect to LIHTC developments, including at Year 15 and beyond Year 30.

HUD Response: HUD appreciates these comments. These commenters stated similar concerns expressed by commenters in the preceding issue. Again, HUD has strived to structure questions so that they are more targeted, and solicit more specific information from program participants. HUD has also revised the ''additional information'' questions in each section to allow program participants to include relevant information about ''activities such as place-based investments and mobility options for protected class groups.'' HUD has included these ''additional information'' questions to provide program participants with the discretion and latitude to include any other relevant information they wish to provide.

Issue: The Analysis Section does not reflect a balanced approach. Commenters stated that the choice of long-time low income residents, especially residents who are members of protected classes, to remain in their publicly supported affordable housing in communities where they have social, cultural, and language ties, even if those communities are racially or ethnically segregated, is not accounted for in the Assessment Tool. Commenters stated that the Assessment Tool should specify that ''displacement'' includes both direct displacement, resulting from acquisition and demolition as well as economic displacement caused by increased rents and evictions. Other commenters stated that because the analysis section only raises questions about racial and ethnic concentrations of poverty and disparities in access to opportunity the template could be contrary to the AFFH final rule by suggesting that there is a prohibition on the use of resources in neighborhoods that have such concentrations or that lack opportunities. Commenters stated that the Assessment Tool must provide guidance reflecting that the obligation to affirmatively further fair housing means preserving affordable housing or revitalizing areas of racial or ethnic concentrations of poverty, as well as enhancing access to opportunity. A commenter stated that the AFH and the final rule do not include safeguards ensuring that a balanced approach be taken. Another commenter stated that publicly supported housing and disparities in access to opportunity sections should foster a more balanced approach. A commenter stated that it is important to make a concerted effort to continue investing in R/ECAPs to ensure communities thrive and reap the benefits of urban change.

HUD Response: HUD appreciates these comments and made a number of key changes to the Assessment Tool to better reflect the balanced approach to fair housing planning as discussed in the preamble to the final AFFH rule. These changes and clarifications include additional references to housing preservation, community revitalization efforts, and mobility options to emphasize the importance of a balanced approach in overcoming fair housing contributing factors and related fair housing issues, in order to ensure fair housing choice and eliminate disparities in access to opportunity.

Issue: The Assessment Tool relies on a disparate impact analysis. Commenters stated that the Assessment Tool relies on a disparate impact analysis, requiring communities to review their policies and practices and assess their outcomes, even if these policies and practices are facially neutral. These commenters stated that based on the recent Supreme Court decision in *Texas Department of Housing and Community Affairs* v. *The Inclusive Communities Project, Inc.,* 576 U.S. ___ (2015), the AFH must be able to establish a causal connection between the policy or practice and disparate impact.

HUD Response: HUD disagrees with these commenters and notes that the analysis required to determine whether a policy or practice violates the Fair Housing Act because it has an unjustified disparate impact is not the same as an analysis of the fair housing issues and contributing factors that a program participant would address through a goal to affirmatively further fair housing pursuant to HUD's AFFH rule. In conducting an AFH, the program participant need not prove that a policy or practice has an unjustified disparate impact in order to identify fair housing issues, factors that contribute to those issues, and goals to affirmatively further fair housing. However, HUD notes that should a program participant find, as part of its assessment of fair housing, that a particular group is facing discrimination in violation of the Fair Housing Act because of the unjustified disparate impact of one of its policies or practice, HUD would certainly expect the program participant to take prompt steps to remedy such discrimination. If such discrimination did not involve a policy or practice of the program participant, but instead involved another individual or entity covered by the Fair Housing Act, the program participant should bring such discrimination to HUD's attention.

Issue: The Assessment Tool is challenging for rural areas. Commenters stated that the required analysis will be challenging for rural areas because of the limited availability of some basic opportunities. Commenters stated that in these areas there is little public transportation and personal transportation is a dominant variable in settlement patterns, creating or diffusing

population concentrations. The commenter explains that mobility affects the other opportunities, such as jobs or the choice of school system.

HUD Response: HUD appreciates that program participants in rural areas may be challenged because of the greater undeveloped area and generally lower population that may present challenges in assessing fair housing. HUD will continue to work to provide additional guidance for program participants with regard to rural data and analysis issues. HUD agrees that the issue of public transportation versus personal transportation is worth consideration and has added instructions addressing this issue in the Disparities in Access to Opportunity section of the Final Assessment Tool. HUD has also revised the transportation data it is providing to include two indices—the transit trips index and the transit cost index, to better reflect access to affordable transportation in a variety of settings.

Issue: The Disability and Access Section needs additional revisions. Commenters stated that in looking at the population profile of persons with disabilities, the analysis should include examples of sources of local data and local knowledge concerning the population of persons with disabilities to help guide program participants in accessing such information. Commenters stated that Question 2(a) in the Disability and Access section should read ''individuals with mobility disabilities,'' rather than ''individuals who use wheelchairs,'' and this section should include a description of efforts to ensure that new construction complies with the accessibility requirements of the Fair Housing Act and Section 504. A commenter stated that the analysis in this section would benefit from an assessment of the extent to which persons with disabilities are more likely than other groups to experience housing cost burden, overcrowding, and substandard housing, as well as what the greatest housing burden for persons with disabilities is in the jurisdiction and region. The commenter stated that the analysis should also include an assessment of the extent to which persons with disabilities experience disparities in access to environmentally healthy neighborhoods and to employment. Other commenters stated that even though there is a separate section on disability and access issues, including *Olmstead,* program participants should be required to analyze these issues throughout the AFH.

HUD Response: HUD has made revisions to the Assessment Tool and the instructions to address many of these comments, including identifying possible sources of local data and local knowledge program participants may use to conduct their assessments of fair housing. HUD declined to substantially modify the structure of the Final Assessment Tool by scattering questions related to disability and access issues in each section to allow program participants to complete a more focused assessment of the fair housing issues faced by persons with disabilities, but has included additional questions in response to commenters related to homeownership and disproportionate housing needs.

Issue: Important required analyses are missing from the Assessment Tool. Commenters identified certain analyses that they stated were not covered in the Assessment Tool, or not adequately covered and should be included in the Assessment Tool as required analyses. Commenters stated that the template does not contain a meaningful discussion of homeownership and mortgage lending, and requested that HUD provide data on the federal mortgage tax deduction to estimate the proportion of homeowners that qualify for the deduction. Commenters suggested that program participants be required to analyze the trends of homeownership for each protected class and how that has changed over the past five years, including an analysis of how homeownership may result in segregation among homeowners, the ability to access to homeowners insurance, disparate foreclosure patterns, and the comparative maintenance and management of foreclosed properties in communities of color.

Other commenters recommended that the transportation analysis be required to cross-reference to Title VI, environmental justice, and other civil rights obligations under federal transportation guidance, including but not limited to relevant Federal Transit Administration circulars. Commenters stated that an analysis of LIHTC properties should be required for all program participants so that patterns of the distribution of government assisted housing is placed in the proper context, stating that LIHTC properties are often concentrated in certain neighborhoods and that there is an unacceptably high level of segregation in and among LIHTC properties. Commenters stated that an analysis of patterns of location and segregation within each government assisted housing program is an important analysis that must be included in the AFH. Commenters added that this analysis should be required for all program participants on a regional level in each AFH so that the pattern of government assisted housing distribution is placed in context.

Commenters stated that the Assessment Tool does not properly recognize the changing factors of majority-minority localities that are experiencing an urban renewal renaissance where higher income and non-minority populations are migrating from the suburbs to urban centers of large cities. Commenters stated that the analysis of disparities in access to opportunity should include an analysis of rates of voter registration and participation, representation by different racial and ethnic groups on elected and appointed boards and commissions, and representation among staff in the school district, police force, and other municipal departments. These commenters also stated that exposure to adverse community factors should include a description of public health issues and health disparities among neighborhoods within the jurisdiction and between the jurisdiction and region, including disparities in low birth weight, infant mortality, sentinel health conditions, deaths due to fire, homicide, and gun violence, pedestrian auto fatalities, rates of premature death, and life expectancy. Commenters also advised that environmental factors should be included, such as water pollution, flooding caused by loss of wetlands, and mobile sources of air pollution.

HUD Response: HUD agrees with commenters that recommended inclusion of homeownership and mortgage lending and HUD has added questions on homeownership to certain sections of the Final Assessment Tool and included an additional contributing factor of ''lending discrimination.'' HUD has also enhanced instructions pertaining to transportation to help program participants better identify barriers to transportation opportunities. With respect to requiring an analysis of LIHTC properties of all program participants, LIHTC is the primary financing tool for affordable housing in the United States. The Final Assessment Tool retains the same analysis of LIHTC properties as the Revised Assessment Tool. HUD did not agree with the commenters that the questions in the publicly supported housing section should be changed. The questions were carefully worded to match the program categories (*e.g.,* public housing, LIHTC, etc.) for analysis, as well as the analysis of individual buildings and developments within program categories. With respect to the myriad of other factors recommended by the

commenters, HUD has not added the majority of factors, such as low birth weight, infant mortality, deaths due to fire, pedestrian auto fatalities, and rates of premature death. However, program participants are permitted and encouraged to include any information that they believe to be relevant to assessing fair housing issues and contributing factors in their jurisdiction and region.

Issue: Assessment Tool does not use or refer to geographic areas and geographic patterns appropriately. Commenters stated that HUD has overemphasized the geographic patterns analysis in the disproportionate housing needs section. Commenters stated that the emphasis of this section raises concerns, as it implies that small geographic areas with the greatest housing needs should be the primary recipients of additional low income housing assistance, while small geographic areas with the least need are ''off the hook.'' Commenters recommended eliminating this section or replacing it with a more meaningful regional fair share analysis. Other commenters stated that HUD should not conflate location with other factors that are unrelated to housing.

HUD Response: HUD disagrees with these commenters and believes that an analysis of disproportionate housing needs in the jurisdiction and region is a necessary component of the assessment of fair housing.

Issue: Restore the Mobility Section to the Assessment Tool. Several commenters requested that HUD add the section on mobility and Housing Choice Vouchers (HCV) back into the template. A commenter stated that omitting a discussion of aspects of the program that relate to mobility that PHAs are required to use for fair housing planning would be akin to not asking a local government to discuss its site selection policies with respect to the developments that receive HOME funds. Other commenters stated that even if an entitlement jurisdiction is not collaborating with a PHA, they still have a stake in HCV mobility issues and a policy toolkit they can use to help overcome barriers.

HUD Response: In the Revised Assessment Tool, HUD made the decision to address many issues related to mobility in the contributing factors including in an expanded contributing factor on ''Impediments to Mobility,'' rather than in the publicly supported housing analysis section. The term ''mobility'' can include mobility for Housing Choice Voucher recipients as well as unassisted persons and families. While HUD has not included a separate section on mobility in the Final Assessment Tool, the additional information question in several subsections of the analysis references mobility. The Compare Assessment Tool reflects the many additional places where HUD requires program participants to consider mobility options and other considerations for housing choice vouchers.

Issue: Include a reference to publicly supported housing in all sections of the Assessment Tool. Commenters stated that publicly supported housing should be consistently referred to throughout the template and that all categories of publicly supported housing should be included in each question.

HUD Response: HUD declines to include references to publicly supported housing in each section of the Final Assessment Tool. Similar to HUD's response to commenters' requests that disability and access issues be references throughout the template, HUD believes that a designated section on publicly supported housing will provide a more focused and in-depth analysis of the fair housing issues faced by residents of publicly supported housing. HUD notes, however, that some specific questions related to publicly supported housing are included outside of the designated section on publicly supported housing—including the disability and access and the disproportionate housing needs sections.

Issue: Require examination of fair housing compliance. Commenters stated that HUD should require program participants to examine various types of complaints and other evidence that point to trends or emerging issues in fair housing compliance. Commenters stated that additional questions should be added to the Fair Housing Enforcement, Outreach Capacity, and Resources section of the template, and that these questions should capture information about any protected class under State or local law. Other commenters suggested that jurisdiction should be required to identify fair housing or other civil rights organizations operating in their area so that these organizations can be involved in the process.

HUD Response: HUD agrees with some of the suggestions made by commenters and has added additional questions and instructions to the Fair Housing Enforcement, Outreach Capacity, and Resources section of the Final Assessment Tool.

Issue: The Demographic Summary should clearly indicate demographic patterns. Commenters stated that the demographic summary should more clearly indicate which demographic patterns and trends should be described, including increases and decreases in the number of census tracts with greater than 20 percent, 30 percent, and 40 percent poverty, and increases or decreases in the number of persons residing in such census tracts. Another commenter stated that it appears that neighborhood demographics can shift in relatively short periods of time, and asked about the risk that the lag in data availability, which appears to be 2–3 years at minimum, leads to outdated estimates.

HUD Response: HUD agrees with some of these commenters that additional clarity regarding the types of demographic trends that program participants are expected to analyze is necessary. Accordingly, HUD has provided additional instructions for this section to better explain what program participants must analyze in this portion of the Final Assessment Tool. With respect to the latter comment, HUD recognizes that the data being provided may not always be the most recent available or may not be as current as actual local conditions. HUD recognizes that a program participant's assessment of fair housing issues will reflect the data that HUD provided as well as any information revealed through local data and local knowledge, including information made available to the program participant in the community participation process.

Issue: Contributing factors are confusing and often contradictory. Certain commenters stated that the focus on contributing factors with respect to housing segregation, both community-wide and in specific government housing programs, is consistent with the history and purpose of the Fair Housing Act, and they stated that such focus is a crucial step forward and will help program participants engage in constructive analyses to comply with their Fair Housing Act obligations. However, other commenters stated that the template is confusing in how it describes factors that may contribute to fair housing issues. Other commenters stated that many of the factors are ambiguous and potentially contradictory.

While commenters stated that it is helpful that HUD has identified factors to be analyzed, the commenters stated that the list and descriptions of factors are characterized in ways that assume there is always a fair housing impact. Commenter stated that any potential bias should be removed. Commenters recommended that the list of contributing factors be referenced as ''Factors to be Considered.'' Other commenters stated that the term

''contributing factors'' continues to suffer from the same lack of underlying validity, resulting in the creation of policy on the basis of incomplete information and personal perceptions, casting doubt on the Assessment Tool's ability to truly increase fair housing choice.

Commenters stated that market driven forces should not be included in the list of contributing factors, because ''location of employers'' is an important issue driven by the free market, and that the factor of displacement of residents due to economic pressures is ill conceived. Commenters stated that there are inconsistencies between the lists of contributing factors in Options A and B and they must be reconciled in the final version. To add some clarity to contributing factors, a commenter recommended that HUD include a general statement that contributing factors may differ depending on local context.

HUD Response: HUD believes the Final Assessment Tool reflects (as highlighted by the Compare Assessment Tool) the many changes made in response to public comment, to enhance clarity of the contributing factors. Many of the changes were made in the descriptions of and the instructions for selecting the contributing factors. With respect to commenters' concern that the list and descriptions of factors are characterized in ways that assume a fair housing impact, that is in fact the purpose of HUD's identification of contributing factors—to assess their impact on related fair housing issues. The Assessment Tool is unambiguous that the contributing factors listed by HUD are factors to be considered by the program participant in conducting the assessment—not predetermined factors that program participants are required to select even when they are not applicable. However, HUD did change the title of Appendix C to ''Descriptions of Potential Contributing Factors.'' Additionally, HUD agrees with the comment stating that contributing factors are not contributing factors until selected by program participants as being significant. Therefore, HUD has revised the language in each section of the Final Assessment Tool to read, ''Consider the listed factors and any other factors affecting the jurisdiction and region. Identify factors that create, contribute to, perpetuate, or increase the severity of [segregation, R/ECAPs, disparities in access to opportunity, or disproportionate housing needs.]''

With respect to commenters' request that market driven forces be removed from the list of contributing factors, HUD disagrees and has not removed these factors. Such factors may have fair housing implications and are included for program participants to consider as part of their analysis.

Issue: Restore certain contributing factors removed in the Assessment Tool provided in the 30-Day Notice, and include certain additional factors. Commenters stated that HUD eliminated critical contributing factors from the Assessment Tool that were the subject of comment for 30 days and these contributing factors should be restored. Commenters stated that HUD eliminated the following important contributing factors from the Assessment Tool: Foreclosure patterns; major private investments; residential steering; and the availability of units with two or more bedrooms. Commenters further stated that there are contributing factors that should be added to the lists in the segregation/integration and R/ECAPs sections of the template. A commenter recommended that State and local funding be included as contributing factors under the ''other'' category. Commenters provided lengthy lists of additional contributing factors that they recommended be included in the Assessment Tool.

HUD Response: HUD evaluated the inclusion of additional contributing factors and factors previously included, but removed, from the Revised Assessment Tool. HUD determined that many of the issues raised by commenters concerning the contributing factors were similar to existing contributing factors and HUD modified the descriptions of existing contributing factors to include such concerns. HUD did include one new contributing factor—''lending discrimination''—in response to requests from commenters. Note, however, that program participants are required to identify contributing factors outside of the list provided in the Final Assessment Tool if those factors are significant.

Issue: Restore the three levels of significance for contributing factors. Commenters stated that the three levels of significance—highly significant, moderately significant, and not significant—should be restored in the analysis of contributing factors. Commenters stated that by requiring program participants to explicitly identify the significance of a factor would provide the public with a basis for raising objections to HUD reviewers. Commenters stated that this system provided a stronger basis for analysis, transparency, and accountability than the approach in the version of the Assessment Tool that was the subject of the 30-day notice.

HUD Response: HUD did not include the three levels of significance in the Final Assessment Tool. HUD wants to give program participants the flexibility to prioritize contributing factors in a manner that works best for them. Commenters can prioritize contributing factors as highly significant, moderately significant or minimally significant, program participants can use a numbering system to prioritize contributing factors, or any other method of prioritization that program participants may wish to employ. The only requirement is that the prioritization method utilized by the program participant must prioritize significant contributing factors by giving highest priority to those factors that limit or deny fair housing choice or access to opportunity, or negatively impact fair housing or civil rights compliance.

Issue: Source of income discrimination should not be a contributing factor. Commenters stated that there are many reasons for landlords to refuse tenant-based rental assistance and that the landlord's choice to avoid administrative burden should not be considered discrimination and should not be used as an example of discrimination.

HUD Response: HUD has included source of income discrimination as a contributing factor because regardless of the reasons why a landlord may refuse to accept payment for rent based on certain sources of income, such refusals are a common barrier to fair housing choice and access to opportunity for many persons who rely on such income to pay for housing, including many members of minority groups and many persons with disabilities. Source of income discrimination is, therefore, an important consideration in a fair housing analysis. In response to comments on this specific contributing factor, HUD amended the language to clarify that it may apply to either Housing Choice Vouchers specifically or more broadly to other sources of income, such as Social Security Disability Insurance. HUD further clarified the last sentence of the factor to state, ''The elimination of source of income discrimination and acceptance of payment for housing, regardless of source or type of income, increases fair housing choice and access to opportunity.'' In addition, the description of the contributing factor on ''Impediments to Mobility'' was amended to add a reference to discrimination based on source of income.

Issue: Include strategies and actions in the Assessment Tool. Commenters

stated that program participants should include their strategies and actions to implement the goals and priorities of the Assessment Tool, even though the final rule calls for strategies and actions only in the consolidated plan or PHA plan, or that, at a minimum, there should be an opportunity for program participants to mention specific strategies that can connect with the Consolidated Plan and the PHA plan. Commenters stated that providing a set of recommended actions in the Assessment Tool would more firmly and link the AFH to the subsequent planning processes. Other commenters requested that HUD provide examples of effective fair housing strategies and evidenced-based best practices.

HUD Response: Program participants are free to include in the Final Assessment Tool strategies and actions to implement the priorities and goals set in their assessments of fair housing. However, HUD declines to mandate such inclusion. HUD believes that the inclusion of strategies and actions in the consolidated plan and PHA plan allows for full consideration of needs, resources, and objective of program participants. As provided in the final AFFH rule, the strategies and actions in the consolidated plan and PHA plan must be informed by the goals and priorities in the AFH.

Issue: Recommended goal-setting changes. Commenters requested a number of changes and clarifications to the Fair Housing Goals and Priorities section and its instructions. Commenters stated that an additional column for ''Timeframe'' should be added to the goal-setting table. Commenters stated that this would provide a prompt to program participants to include a timeframe for achieving fair housing goals. Other commenters suggested that HUD establish specific metrics and timeframes for evaluating progress toward meeting fair housing goals. Other comments stated that while the formulation of goals is appropriately left with the program participants, HUD should ensure that examples of goals should be sufficient and diverse enough to aid program participants in developing goals to meet the needs of their communities. Other commenters stated that guidance on goal setting with examples is critical.

Commenters requested that HUD require more than one goal and require robust and specific goals. Commenters stated that it is highly unlikely that a local government that sets just one goal would be doing enough to meaningfully address particularly complex issues like exclusionary zoning.

HUD Response: HUD appreciates the suggestions made by commenters and has made changes to the Final Assessment Tool based on these suggestions. HUD has included ''timeframe for achievement'' as part of the metrics and milestones column of the goal-setting chart, and has added an additional column for ''responsible program participants.'' HUD recognizes that events may occur that make the metrics and milestones unachievable in the timeframe for achievement set by program participants; nonetheless, program participants must still take meaningful actions that address goals to affirmatively further fair housing. With respect to requiring program participants to establish more than one goal, this issue was addressed in the AFFH final rule, and HUD stated that it believes it would be a rare situation in which a program participant has only one goal but that HUD does not disregard the possibility that a program participant may identify a single contributing factor and have only one goal for addressing that contributing factor, or that a program participant that has more than one contributing factor may have the same goal for addressing each of those contributing factors. HUD further stated that it is interested in the substance of the goals and how a program participant's goal or goals would address contributing factors and related fair housing issues.

By providing data and a framework for analysis, however, the AFH is intended to assist program participants in prioritization of fair housing contributing factors that inform policies and how best to allocate resources to meet identified local needs and comply with their duty to affirmatively further fair housing.

''A basic tenet of planning and performance management is recognition of ''external factors'' and other barriers to achieving goals, and which are beyond an organization to control (See, *e.g.,* the Federal Government Performance and Results Act). This rule allows grantees to identify such barriers. Included in such considerations is the identification of funding dependencies and contingencies.'' The purpose of the AFH process is to set goals that will lead to meaningful actions that affirmatively further fair housing.

With respect to providing examples of goals, HUD included such examples in the Guidebook.

Issue: Vulnerability of program participants to litigation. Commenters stated that once a program participant has set goals, the program participant may be left vulnerable to litigation based on its ability to meet its goals. Other commenters stated that without concrete guidance and safe harbors, the Assessment Tool does not remedy the uncertainty about the legal liability of program participants.

HUD Response: HUD emphasizes once again that the AFH process is a planning process, and the goals are objectives the program participant will strive to achieve. HUD recognizes that events may occur that may make the goals unachievable or unachievable within the timeframe initially established by the program participant. In the preamble to the final rule, since program participants are required to affirmatively further fair housing, HUD encouraged program participants to set goals that they believed they will be able to achieve.

Issue: The Assessment Tool should include detailed guidance. Commenters stated that by including detailed guidance in the Assessment Tool, HUD will minimize the need for program participants to toggle between the final rule, subsequent guidance, and the Assessment Tool. Other commenters stated that HUD should provide additional guidance on the analysis of the fair housing issues and the formulation of goals, either through more comprehensive instructions or through a frequently-asked-questions (FAQ) document. Other commenters stated that clear definitions of terms, such as national origin, color, family status, are important for helping to reduce burden. Commenters stated that Appendix C is very helpful, but requested that HUD provide additional guidance on contributing factors, along with examples where possible, as more elaboration on certain factors such as land use and zoning would be helpful. Commenters further requested that HUD provide clarification on several areas, such as admissions and occupancy policies and procedures, including preferences in publicly supported housing; community opposition; deteriorated and abandoned properties; lack of affordable in-home or community-based supportive services; lack of affordable, integrated housing for individuals who need supportive services; lack of State or local fair housing laws; land use and zoning laws; and location and type of affordable housing.

HUD Response: HUD appreciates the comments provided, and to the Guidebook complements the Assessment Tool. However, HUD has concluded that guidance is not appropriate for inclusion in the Final Assessment Tool itself or the instructions for completing the template. Official HUD guidance on

AFFH and the Assessment Tool, such as the Guidebook, will be posted on the HUD Exchange Web site at *https://www.hudexchange.info/programs/affh/.*

Issue: Instructions need to be worded more clearly. Commenters stated that the instructions could be clearer by providing examples and more explanatory language. Commenters stated that while HUD did a good job of explaining the indices, the instructions could be clearer by providing more guidance on how to interpret them. Other commenters stated that the instructions related to disability and access ''residency preferences'' are ambiguous, stating that the instruction could either be referring to preferences that give priority for assistance to households that reside within a given jurisdiction or preferences that give priority to persons with disabilities. The commenters stated that the first type of preference raises serious fair housing concerns and often perpetuates residential racial segregation, while the second type may be a necessary component of a strategy to overcome the historical legacy of discrimination against persons with disabilities and to promote meaningful community integration.

Commenters stated that the descriptions of how to interpret the indices and dot density maps are helpful, and other commenters commended HUD for including a definition of ''siting selection.'' However, they stated while the term is correctly assigned to new developments, the definition conflates the issue of siting with respect to existing developments and this could lead to confusion. Commenters added that LIHTC is not a siting mechanism, but instead the primary financing tool for both rehabilitation and new construction of affordable housing. Other commenters stated that the outline for the template and instructions are not consistent and make it difficult to refer back and forth between the documents. To be more helpful, commenters suggested that the instructions should specifically note where local data and local knowledge may be relevant and provide examples of the types of local data and local knowledge that may be helpful. Other commenter stated that the instructions should emphasize the fact that program participants are required to supplement their responses for all questions when local data and local knowledge are available, even though HUD data is provided.

HUD Response: As the Compare Assessment Tool reflects, HUD made considerable changes to the instructions to provide the clarity program participants requested, and to eliminate any contradictions identified by HUD.

Issue: Guidance is needed for assessing fair housing issues for persons living in institutional settings. Commenters stated that the Assessment Tool should identify examples of policies that encourage or discourage individuals with disabilities living in integrated settings. Commenters state that the revised Assessment Tool is a step backward with respect to this analysis and that without this type of guidance, program participants will not be able to undertake fair housing planning and will be unable to adequately assess and address the fair housing needs of persons with disabilities who are institutionalized.

HUD Response: HUD appreciates the comments and the need for guidance to identify strategies to address fair housing issues for individuals with disabilities, including individuals with disabilities living in institutional settings. HUD is evaluating the need for guidance in a variety of areas, including the disability context, and has provided some examples in the Guidebook. In the Final Assessment Tool, the contributing factor of ''lack of assistance for transitioning from institutional settings to integrated housing'' addresses the policy concerns raised by commenters. In addition, HUD directs program participants to the ''Statement of the Department of Housing and Urban Development on the Role of Housing in Accomplishing the Goals of *Olmstead,*'' located at *http://portal.hud.gov/hudportal/documents/huddoc?id=OlmsteadGuidnc060413.pdf.*

Issue: Clearly specify minimum requirements for acceptance of an AFH and HUD review of AFHs. Commenters stated that the Assessment Tool lacks clarity about the minimal expectations for program participants' AFHs to be accepted by HUD. Commenters recommended these requirements and explicit evaluation criteria be included in the Assessment Tool. Another commenter stated that HUD has not publicized a description of the standards it will use to accept or non-accept AFHs. Commenters requested that the standards for monitoring compliance be made public. Other commenters recommended that the ''Comments'' section on the cover page include a specific checklist of key compliance items.

Commenters asked how HUD staff will review the AFH, including the contributing factors, and what metrics HUD staff will use to ensure clear and consistent review. Another commenter stated that metrics are needed to help HUD staff in reviewing a submitted AFH, and that similarly, metrics and benchmarks for contributing factors should be provided to help program participants and HUD staff to evaluate them. Other commenters requested that HUD identify the HUD reviewers of the AFH expressing concern that review may be conducted by an employee who does not have direct knowledge of the core functions of the program participant. Another commenter stated that the underlying principal behind the AFH must be to establish a causal connection between the policy or practice and the disparate impact. The commenter stated that Justice Kennedy has said that, ''it may be difficult to establish causation because of the multiple factors'' that go into a particular decision. Commenter suggested that this is the standard HUD should apply to the analysis in the AFH.

HUD Response: The AFFH final rule, in § 5.162, ''Review of AFH,'' sets forth standards under which HUD will review an AFH. Section 5.162(a) provides that HUD's review of an AFH is to determine whether the program participant has met the requirements for providing its analysis, assessment, and goal setting, as set forth in § 5.154(d). Section 5.154(d) of the AFFH regulations specifies the minimum required content of the AFH, which is a summary of fair housing issues and capacity, analysis of data, assessment of fair housing issues, identification of fair housing priorities and goals, strategies and actions planned to be taken by the program participant, and a summary of the community participation process. For each AFH submitted after the first AFH submission, the AFFH regulations provide that the program participant must provide a summary or progress achieved in meeting the goals and associated metrics and milestones of the prior submitted AFH, and must identify any barriers that impeded or prevented achievement of the program participant's goals.

In § 5.162(b) HUD provides the bases for HUD's non-acceptance of an AFH. This section provides that HUD will not accept an AFH if HUD finds that the AFH or a portion of the AFH is inconsistent with fair housing or civil rights requirements or is substantially incomplete. In § 5.162(b)(i) and (ii), HUD provides, respectively, examples of an AFH that is inconsistent with fair housing and civil rights requirements, and an AFH that is substantially incomplete. For a regional or joint AFH, § 5.162(b) provides that a determination by HUD to not accept the AFH with respect to one program participant does not necessarily affect the acceptance of

the AFH with respect to another program participant.

Through these regulatory provisions, HUD sets out the standard for review of AFHs. HUD is further committed to providing technical assistance and examples that will help guide program participants as to what it means to have an AFH that is substantially incomplete or one that is inconsistent with fair housing or civil rights laws. HUD can, and will, provide a checklist to help program participants ensure they have responded to all required elements of the Assessment Tool.

Issue: The certification statement for the Assessment Tool is too broad. A commenter stated that it is unreasonable to require broad certification of AFFH compliance without providing program participants with the standards HUD will use to assess that compliance. Another commenter suggested that HUD revise the certification language to read, ''All information provided by the signatory entity in this assessment is true, complete, and accurate to the best of my knowledge and belief as of the date of this submission.'' The commenter stated that this will better facilitate submissions for program participants that will submit a single AFH on behalf of multiple agencies.

HUD Response: Several changes were made to both the certification language itself to align it with the certification provisions in the AFFH final rule and clarifying language was also added to the instructions accompanying the Assessment Tool that pertain to the certification. First, a new item was added to the certification, reflecting the AFFH final rule:

> By this signature, I am authorized to certify on behalf of the program participant that the program participant will take meaningful actions to further the goals identified in its AFH conducted in accordance with the requirements in §§ 5.150 through 5.180 and 24 CFR 91.225(a)(1), 91.325(a)(1), 91.425(a)(1), 570.487(b)(1), 570.601, 903.7(o), and 903.15(d), as applicable.

Second, an instruction was added for the certification that states: ''Please note, for a joint or regional AFH, each collaborating program participant must authorize a representative to sign the certification on the program participant's behalf. In a joint or regional AFH, when responding to each question, collaborating program participants may provide joint analyses and individual analyses. The authorized representative of each program participant certifies only to information the program participant provides individually or jointly in response to each question in the assessment. The authorized representative does not certify for information applicable only to other collaborating program participants' analyses, if any.'' HUD believes this additional instruction will provide greater clarity and further encourage joint and regional AFH submissions.

As the AFFH final rule itself makes clear, joint and regional submitting agencies are both responsible for the joint portions of the Assessment, including joint goals, and for their own individual portions of the assessment, including their agencies individual goals and priorities. They are therefore not responsible for other agencies' individual goals and priorities. As stated in § 5.156 (a)(3) of the AFFH final rule:

> Collaborating program participants must designate, through express written consent, one participant as the lead entity to oversee the submission of the joint or regional AFH on behalf of all collaborating program participants. When collaborating to submit a joint or regional AFH, program participants may divide work as they choose, but all program participants are accountable for the analysis and any joint goals and priorities, and each collaborating program participant must sign the AFH submitted to HUD. Collaborating program participants are also accountable for their individual analysis, goals, and priorities to be included in the collaborative AFH.

HUD encourages program participants to enter into joint and regional collaborations. Doing so can have benefits for both the analysis of issues, which often cross-jurisdictional boundaries and for setting goals. HUD will work with all joint and regional participating entities to facilitate their cooperation and further clarify the roles and responsibilities of these agencies through additional technical assistance and guidance documents.

III. Summary

In issuing this Final Assessment Tool, HUD has strived to reach the appropriate balance in having program participants produce a meaningful assessment of fair housing that carefully considers barriers to fair housing choice and accessing opportunity and how such barriers can be overcome in respective jurisdictions and regions without being unduly burdensome. HUD has further committed to addressing program participant burden by providing data, guidance, and technical assistance, and such assistance will occur throughout the AFH process.

Dated: December 22, 2015.

Gustavo Velasquez,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 2015–32680 Filed 12–30–15; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–NER–FIIS–18941; PXXNR5E2150001]

Notice of Availability of the Final White-Tailed Deer Management Plan and Environmental Impact Statement, Fire Island National Seashore, New York

AGENCY: National Park Service, Interior.

ACTION: Notice of availability.

SUMMARY: The National Park Service (NPS) announces the availability of the Final White-tailed Deer Management Plan and Environmental Impact Statement (Final Plan/EIS) for Fire Island National Seashore, New York. The Final Plan/EIS identifies Alternative D as the NPS preferred alternative. When approved, the management plan will guide management of white-tailed deer at Fire Island National Seashore through the use of integrated tools and strategies to control the deer population and support preservation of the natural and cultural landscape, protection and restoration of native vegetation and other natural and cultural resources.

DATES: The NPS will prepare a Record of Decision (ROD) no sooner than 30 days following publication by the Environmental Protection Agency of a Notice of Availability of the Final Plan/EIS in the **Federal Register**.

ADDRESSES: The Final Plan/EIS is available electronically at *http://www.parkplanning.nps.gov/fiis.* A limited number of printed copies will be available upon request by contacting the Superintendent's office.

FOR FURTHER INFORMATION CONTACT: Morgan Elmer, NPS Denver Service Center, 303–969–2317, *Morgan_Elmer@nps.gov.*

SUPPLEMENTARY INFORMATION: Fire Island National Seashore (the Seashore), a unit of the National Park System, is located along the south shore of Long Island in Suffolk County, New York. The Seashore encompasses 19,579 acres of upland, tidal, and submerged lands along a 26-mile stretch of the 32-mile barrier island—part of a much larger system of barrier islands and bluffs stretching from New York City to the very eastern end of Long Island at

Montauk Point. The Seashore sustains a white-tailed deer (*Odocoileus virginianus*) population that has expanded since the late 1960s to the extent that impacts from high densities of deer have been, and continue to be, a complex issue for National Park Service (NPS) managers. As a result, pursuant to the National Environmental Policy Act of 1969 (NEPA), the Seashore prepared a Draft White-tailed Deer Management Plan and Environmental Impact Statement (Draft Plan/EIS) to develop a deer management strategy that supports preservation of the natural and cultural landscape through population management and the protection of native vegetation. The Draft Plan/EIS was prepared in cooperation with the New York State Department of Environmental Conservation (NYS–DEC) and the U.S. Department of Agriculture (USDA) Animal and Plant Health Inspection Services (APHIS).

The NPS released the Draft Plan/EIS for public and agency review and comment beginning July 31, 2014 and ending October 10, 2014. The Draft Plan/EIS evaluated a no action alternative (A) and three action alternatives (B, C, and D). Each action alternative presented a different strategy to protect native plant communities and cultural plantings, promote forest regeneration, further reduce undesirable human-deer interactions, and reduce the deer population in the Seashore.

Alternative A would continue existing deer management and monitoring efforts throughout the Seashore. These actions include continued public education/interpretation efforts, vegetation monitoring, and deer population and behavior surveys.

Alternative B provides a nonlethal deer reduction option to implement nonsurgical reproductive control of does when an acceptable reproductive control agent is available that meets NPS established criteria. Large fence exclosures would also protect forested areas and vegetation to allow restoration of the maritime holly forest, other natural vegetation and the culturally important vegetation at the William Floyd Estate.

Alternative C provides a lethal deer reduction option through the use of sharpshooting with firearms, and possible capture and euthanasia to reduce deer populations to the target density and maintain that level.

Alternative D, identified as the NPS preferred alternative, provides a combined lethal and nonlethal deer reduction option through the use of sharpshooting with firearms, and possible capture and euthanasia to reduce deer populations to a desirable level. Once the target density has been reached, use of nonsurgical reproductive control of does may be used to maintain that level when an acceptable reproductive control agent is available that meets NPS established criteria.

Comments were accepted on the Draft Plan/EIS during the 60-day public comment period. After reviewing and considering all comments received, the NPS has prepared this Final White-tailed Deer Management Plan and Environmental Impact Statement (Final Plan/EIS). The Final Plan/EIS identifies Alternative D as the NPS preferred alternative with no changes from the Draft Plan/EIS and presents the likely environmental consequences of implementing the preferred alternative, as well as the other alternatives considered. The Final Plan/EIS also discusses the comments received on the Draft Plan/EIS and responds to substantive comments.

Dated: August 5, 2015.

Michael A. Caldwell,

Regional Director, Northeast Region, National Park Service.

[FR Doc. 2015–32970 Filed 12–30–15; 8:45 am]

BILLING CODE 4310–WV–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Hearings of the Judicial Conference Advisory Committee on the Federal Rules of Bankruptcy Procedure

AGENCY: Advisory Committee on the Federal Rules of Bankruptcy Procedure, Judicial Conference of the United States.

ACTION: Notice of cancellation of public hearing.

SUMMARY: The following public hearing on proposed amendments to the Federal Rules of Bankruptcy Procedure has been canceled: Bankruptcy Rules Hearing on January 22, 2016 in Washington, DC. Announcements for this meeting were previously published in 80 FR 48120, 80 FR 50324 and 80 FR 51604. The public hearing on proposed amendments to the Federal Rules of Bankruptcy Procedure scheduled for January 29, 2016, in Pasadena, California, remains scheduled, subject to sufficient expressions of interest.

FOR FURTHER INFORMATION CONTACT: Rebecca A. Womeldorf, Rules Committee Secretary, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: December 28, 2015.

Rebecca A. Womeldorf,

Rules Committee Secretary.

[FR Doc. 2015–32923 Filed 12–30–15; 8:45 am]

BILLING CODE 2210–55–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decrees Under the Clean Water Act

On December 23, 2015, the Department of Justice lodged two proposed consent decrees with the United States District Court for the District of Puerto Rico in the lawsuit entitled *United States* v. *The Municipality of San Juan, the Puerto Rico Department of Natural and Environmental Resources, the Puerto Rico Department of Transportation and Public Works, the Puerto Rico Highway and Transportation Authority, and the Commonwealth of Puerto Rico,* Civil Action No. 3:14–cv–1476–CCC.

One proposed consent decree resolves the United States' claims against the Puerto Rico Department of Natural and Environmental Resources (''DNER'') under the Clean Water Act (''CWA''), 33 U.S.C. 1251–1387, concerning CWA violations at three of its storm water pump stations located within San Juan. The proposed consent decree requires DNER to apply for a permit and implement a Storm Water Management Program, to undertake certain capital and operation improvements to its pump stations, and to provide financial support for investigations and work performed in the pump station service areas. The proposed consent decree resolves only the violations alleged against DNER in the Complaint through the date of lodging of the consent decree and does not resolve claims against the other Defendants. Due to financial challenges currently facing the Commonwealth, no civil penalties for past violations will be recovered under this consent decree.

The second proposed consent decree resolves the United States' claims against the Puerto Rico Department of Transportation and Public Works (''DTPW'') and the Puerto Rico Highways and Transportation Authority (''HTA'') under the CWA, concerning CWA violations throughout their storm sewer systems located within San Juan. The proposed consent decree provides for injunctive relief to be implemented in a two-stage, multi-phased approach including the study and repair of their MS4s, in addition to other infrastructure and operational improvements. The proposed consent decree resolves only

the violations alleged against DTPW and HTA in the Complaint through the date of lodging of the consent decree and does not resolve claims against the other Defendants. Due to financial challenges currently facing the Commonwealth, no civil penalties for past violations will be recovered under this consent decree.

The publication of this notice opens a period for public comment on the proposed consent decrees. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division and should refer to *United States* v. *The Municipality of San Juan,* D.J. Ref. No. 90–5–1–1–09551. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611

During the public comment period, the proposed consent decrees may be examined and downloaded at this Justice Department Web site: *http://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the proposed consent decrees upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $10.25 (25 cents per page reproduction cost) for a copy of the DTPW/HTA proposed consent decree and $9.25 for a copy of the DNER proposed consent decree (copies of the appendices attached to the consent decrees are not included in this amount) payable to the United States Treasury.

Maureen Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

BILLING CODE 4410–15–P

Appendix

DEPARTAMENTO DE JUSTICIA DE LOS ESTADOS UNIDOS

AVISO DE RADICACIÓN DE DOS DECRETOS POR CONSENTIMIENTO PROPUESTO BAJO LA LEY DE AGUA LIMPIA

El 23 de diciembre de 2015, el Departamento de Justicia de los Estados Unidos radicó dos propuestos decretos por consentimiento ante el Tribunal de Distrito de los Estados Unidos para el Distrito de Puerto Rico en una demanda judicial titulada *Los Estados Unidos contra el Municipio de San Juan, el Departamento de Recursos Naturales y Ambientales de Puerto Rico, el Departamento de Transportación y Obras Publicas de Puerto Rico, la Autoridad de Carreteras y Transportación de Puerto Rico, y el Estado Libre Asociado de Puerto Rico*, Acción Civil Núm. 3:14-cv-1476-CCC.

Uno de los decretos por consentimiento propuestos resuelve las alegaciones de los Estados Unidos contra el Departamento de Recursos Naturales y Ambientales de Puerto Rico ("DRNA") bajo la Ley de Agua Limpia ("CWA" por sus siglas en inglés), 33 U.S.C. 1251-1387, en relación a violaciones al CWA en tres de sus estaciones de bombeo de aguas pluviales ubicadas dentro del municipio de San Juan. El decreto por consentimiento propuesto le requiere al DRNA solicitar un permiso e implementar un Programa de Manejo de Aguas Pluviales, para mejorar la operación de sus estaciones de bombas, llevar a cabo ciertas mejoras capitales y para separar parte de su presupuesto para realizar investigaciones y mejoras en las áreas de servicio de las estaciones de bombeo. El decreto por consentimiento propuesto resuelve solo las violaciones imputadas al DRNA en la demanda hasta la fecha de la presentación del decreto por consentimiento y no resuelve las alegaciones contra los otros demandados. Debido a los problemas financieros que enfrenta actualmente el Estado Libre Asociado de Puerto Rico, el Gobierno de los Estados Unidos no le impuso sanciones civiles por las violaciones alegadas en virtud de este decreto por consentimiento.

El segundo de los decretos por consentimiento propuestos resuelve las alegaciones de los Estados Unidos contra Departamento de Transportación y Obras Publicas de Puerto Rico ("DTOP") y la Autoridad de Carreteras y Transportación de Puerto Rico ("ACT") bajo el CWA, en relación a violaciones al CWA a través de su sistemas de alcantarillado pluvial dentro del municipio de San Juan. El decreto de consentimiento propuesto provee medidas cautelares para ser implementadas en dos etapas para que se lleven a cabo estudios y reparaciones en parte de sus sistemas de drenaje pluvial separados dentro de los límites geográficos del municipio de San Juan, además de otras obras de infraestructura y mejoras operacionales. El decreto por consentimiento propuesto resuelve solo las violaciones imputadas al DTOP y la ACT en la demanda hasta la fecha de la presentación del decreto por consentimiento y no resuelve las alegaciones contra los otros demandados. Debido a los problemas financieros que enfrenta actualmente el Estado Libre Asociado de Puerto Rico, el Gobierno de los Estados Unidos no le impuso sanciones civiles por las violaciones alegadas en virtud de este decreto por consentimiento.

La publicación de este aviso inicia un período para recibir comentarios del público sobre los decretos por consentimiento propuestos. Los comentarios deben dirigirse al Fiscal Auxiliar General, División de Recursos Naturales y Medioambiente, y deben mencionar el caso titulado *Los Estados Unidos contra el Municipio de San Juan,* D. J. Ref. Núm. 90-5-1-1-09551. Todos los comentarios deben enviarse antes de que transcurran treinta (30) días de la fecha de publicación de este aviso. Los comentarios pueden enviarse por correo electrónico o por correo regular:

Para enviar comentarios:	*Envíelos a:*
Por correo electrónico	Pubcomment-ees.enrd@usdoj.gov
Por correo regular	Assistant Attorney General U.S. DOJ - ENRD P.O. Box 7611 Washington, D.C. 20044-7611

Durante el período de comentarios públicos, los decretos por consentimiento propuestos pueden examinarse y descargarse en la siguiente página web del Departamento de Justicia de los Estados Unidos: http://www.justice.gov/enrd/consent-decrees. Se proporcionará una copia impresa de los decretos por consentimiento propuestos luego de recibir una petición por escrito y pago por los costos de reproducción. Debe enviar su solicitud escrita y pago a:

Consent Decree Library
U.S. DOJ – ENRD
P.O. Box 7611
Washington, D.C. 20044-7611

Adjunte un cheque o giro postal pagadero al *United States Treasury* por la cantidad de $10.25 (el costo de reproducción es de 25 centavos por página) si desea una copia del decreto por consentimiento propuesto del DRNA y de $9.25 si desea una copia del decreto por consentimiento propuesto del DTOP/HTA (las copias de los apéndices adjuntos a los decretos por consentimiento no están incluidos en estas cantidades).

Maureen Katz,
Asistente de Jefe Sección,
Sección de Cumplimiento Medioambiental,
División de Recursos Naturales y Medioambiente.

[FR Doc. 2015–32908 Filed 12–30–15; 8:45 am]
BILLING CODE 4410–15–C

LIBRARY OF CONGRESS

U.S. Copyright Office

[Docket No. 2015–7]

Section 512 Study: Notice and Request for Public Comment

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Notice of inquiry.

SUMMARY: The United States Copyright Office is undertaking a public study to evaluate the impact and effectiveness of the DMCA safe harbor provisions contained in 17 U.S.C. 512. Among other issues, the Office will consider the costs and burdens of the notice-and-takedown process on large- and small-scale copyright owners, online service providers, and the general public. The Office will also review how successfully section 512 addresses online infringement and protects against improper takedown notices. To aid in this effort, and to provide thorough assistance to Congress, the Office is seeking public input on a number of key questions.

DATES: Written comments must be received no later than 11:59 p.m. Eastern Time on March 21, 2016. The Office will be announcing one or more public meetings to discuss issues related to this study, to take place after initial written comments are received, by separate notice in the future.

ADDRESSES: All comments should be submitted electronically. Specific instructions for the submission of comments will be posted on the Copyright Office Web site at *http://www.copyright.gov/policy/section512* on or before February 1, 2016. To meet accessibility standards, all comments must be provided in a single file not to exceed six megabytes (MB) in one of the following formats: Portable Document File (PDF) format containing searchable, accessible text (not an image); Microsoft Word; WordPerfect; Rich Text Format (RTF); or ASCII text file format (not a scanned document). The form and face of the comments must include the name of the submitter and any organization the submitter represents. The Office will post all comments publicly in the form that they are received. If electronic submission of comments is not feasible, please contact the Office using the contact information below for special instructions.

FOR FURTHER INFORMATION CONTACT: Jacqueline C. Charlesworth, General Counsel and Associate Register of Copyrights, by email at *jcharlesworth@loc.gov* or by telephone at 202–707–8350; or Karyn Temple Claggett, Director of the Office of Policy and International Affairs and Associate Register of Copyrights, by email at *kacl@loc.gov* or by telephone at 202–707–8350.

SUPPLEMENTARY INFORMATION:

I. Background

Congress enacted section 512 in 1998 as part of the Digital Millennium Copyright Act (''DMCA'').[1] At that time, less than 5% of the world's population used the internet,[2] and bulletin board services were the popular online platforms.[3] Even then, however, Congress recognized that ''the [i]nternet . . . made it possible for information—including valuable American copyrighted works—to flow around the globe in a matter of hours,'' and, as a consequence, copyright law needed to be ''set . . . up to meet the promise and the challenge of the digital world.'' [4]

In enacting section 512, Congress created a system for copyright owners and online entities to address online infringement, including limitations on liability for compliant service providers to help foster the growth of internet-based services.[5] The system reflected Congress' recognition that the same innovative advances in technology that would expand opportunities to reproduce and disseminate content could also facilitate exponential growth in copyright infringement. Accordingly, section 512 was intended by Congress to provide strong incentives for service providers and copyright owners to ''cooperate to detect and deal with copyright infringements that take place in the digital networked environment,'' as well as to offer ''greater certainty to service providers concerning their legal exposure for infringements that may occur in the course of their activities.'' [6]

Congress was especially concerned about the liability of online service providers for infringing activities of third parties occurring on or through their services. To address this issue, Congress created a set of ''safe harbors''—*i.e.,* limitations on copyright infringement liability—''for certain common activities of service providers.'' [7] But the safe harbors are not automatic. To qualify for protection from infringement liability, a service provider must fulfill certain requirements, generally consisting of implementing measures to expeditiously address online copyright infringement.

Recent research suggests that the volume of infringing material accessed via the internet more than doubled from 2010 to 2012, and that nearly one-quarter of all internet bandwidth in North America, Europe, and Asia is devoted to hosting, sharing, and acquiring infringing material.[8] While Congress clearly understood that it would be essential to address online infringement as the internet continued to grow, it was likely difficult to anticipate the online world as we now know it—where, each day, users post hundreds of millions of photos, videos and other items, and service providers receive over a million notices of alleged infringement.

As observed by the House Judiciary Committee's Ranking Member in the course of the Committee's ongoing multi-year review of the Copyright Act, and consistent with the testimony of the Register of Copyrights in that hearing, the operation of section 512 poses policy issues that warrant study and analysis.[9] Section 512 has also been a focus of the U.S. Department of Commerce in recent years, which has noted ambiguities in the application of

[1] Pub. L. 105–304, 112 Stat. 2860 (1998).

[2] *See Internet Users,* Internet Live Stats (Dec. 1, 2015), *http://www.internetlivestats.com/internet-users/#trend* (In 1998, there were only 188 million internet users; today, there are over 3.25 billion.).

[3] *See The History of Social Networking,* Digital Trends (Aug. 5, 2014), *http://www.digitaltrends.com/features/the-history-of-social-networking/* (providing a timeline for the development of social networks).

[4] 144 Cong. Rec. S11,889 (daily ed. Oct. 8, 1998) (statement of Sen. Orrin Hatch).

[5] *See* H.R. Rep. No. 105–551, pt. 2, at 21 (1998) (noting that the DMCA, including section 512 of title 17, ''balance[s] the interests of content owners, on-line and other service providers, and information users in a way that will foster the continued development of electronic commerce and the growth of the [i]nternet'').

[6] *Id.* at 49–50.

[7] S. Rep. No. 105–190, at 19 (1998).

[8] *See* David Price, Sizing the Piracy Universe 3 (2013), *http://www.netnames.com/digital-piracy-sizing-piracy-universe* (infringing bandwidth use increased by 159% between 2010 to 2012 in North America, Europe, and [the] Asia-Pacific, which account for more than 95% of global bandwidth use).

[9] *Register's Perspective on Copyright Review: Hearing Before the H. Comm. on the Judiciary,* 114th Cong. 6 (2015) (statement of Maria A. Pallante, Register of Copyrights and Director, U.S. Copyright Office) (''We are . . . recommending appropriate study of section 512 of the DMCA . . . . [T]here are challenges now that warrant a granular review.''); *id.* at 49 (statement of Rep. John Conyers, Jr., Ranking Member, H. Comm. on the Judiciary) (''[T]here are policy issues that warrant studies and analysis, including section 512, section 1201, mass digitization, and moral rights. I would like the Copyright Office to conduct and complete reports on those policy issues . . . .'').

the safe harbor and encouraged service providers and rightsholders to discuss and pursue voluntary improvements.[10]

The present study will review the statutory requirements of section 512 and evaluate its current effectiveness and impact on those who rely upon it. The key aspects of section 512 that are the subject of this review, including notable legal and practical developments, are summarized below.

A. Overview of Section 512 Safe Harbors

Section 512 provides safe harbors from infringement liability for online service providers that are engaged in qualifying activities and that also meet certain eligibility requirements. There are four distinct safe harbors, detailed in sections 512(a), (b), (c), and (d), respectively. These safe harbors are available when a service provider engages in one or more of the following corresponding activities: (a) Serving as a conduit for the automatic online transmission of material as directed by third parties; (b) caching (*i.e.,* temporarily storing) material that is being transmitted automatically over the internet from one third party to another; (c) storing (*i.e.,* hosting) material at the direction of a user on a service provider's system or network; or (d) referring or linking users to online sites using information location tools (*e.g.,* a search engine).

A service provider that meets the relevant eligibility requirements for one or more of the safe harbors is not liable for monetary relief and is subject only to limited injunctive relief for infringing activities conducted on or through its system or network.[11] In the case of a service provider that qualifies for a safe harbor under 512(b), (c), or (d), this injunctive relief is limited to: (1) Disabling access to infringing material; (2) terminating the infringer's account(s); and (3) providing such other relief as may be necessary to address infringement at a particular online location; provided, however, that the relief is ''the least burdensome [form of relief] to the service provider.'' [12] For a service provider that qualifies for the 512(a) safe harbor, the court may order only termination of an infringer's account(s) or blocking of access to a ''specific, identified, online location outside the United States.'' [13]

In order to qualify for the limitation on liability provided under section 512(a), (b), (c), or (d), the service provider must comply with certain threshold requirements. Two of these requirements apply to all four safe harbors: (1) The adoption and reasonable implementation of a policy to terminate ''repeat infringers''; [14] and (2) the accommodation of ''standard technical measures'' that identify or protect copyrighted works and have been developed according to broad consensus between copyright owners and service providers, to the extent any such measures exist.[15] A service provider that acts as a mere conduit for online transmissions qualifies for the limitation on liability provided by section 512(a) if the provider satisfies these two threshold requirements.

Service providers seeking protection under the safe harbors in section 512(b), (c), or (d), however, must, in addition, maintain a compliant notice-and-takedown process by responding expeditiously to remove or disable access to material claimed to be infringing upon receipt of proper notice from a copyright owner or the owner's authorized agent.[16] A service provider seeking to avail itself of the section 512(c) safe harbor for user-posted content is further required to designate an agent to receive notifications of claimed infringement and provide contact information for the agent on its Web site and to the Copyright Office, which, in turn, is to maintain a public directory of such agents.[17]

The statute prescribes that a copyright owner's takedown notice must include ''substantially the following'': (i) The signature of the copyright owner or an authorized agent (*i.e.,* the complaining party); (ii) identification of the copyrighted work claimed to have been infringed, or, if multiple works are on a single site, ''a representative list of such works''; (iii) identification of the infringing material or activity (or the reference or link to such material) and ''information reasonably sufficient'' to permit the service provider to locate the material (or the reference or link); (iv) contact information for the complaining party; (v) a statement that the complaining party has ''a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law''; and (vi) a statement that the information is accurate and, under penalty of perjury, that the complaining party is authorized to act on behalf of the copyright owner.[18] A copyright owner's communication that does not substantially comply with these criteria will not serve as effective notice for purposes of the statutory process.[19] Further, under section 512(f), as discussed more fully below, ''[a]ny person who knowingly materially misrepresents . . . that material or activity is infringing'' can be held liable for any damages, including costs and attorneys' fees, incurred by an alleged infringer who is injured by the misrepresentation.

In addition to responding to takedown notices, service providers that seek protection under the section 512(c) and (d) safe harbors must also act expeditiously to remove or disable access to material when they have ''actual knowledge'' of infringement or, in the absence of such actual knowledge, when they have ''aware[ness] of facts or circumstances from which infringing activity is apparent''—the ''awareness'' standard often referred to as ''red flag'' knowledge.[20] But, while service providers are not free to ignore infringement of which they have actual or red flag knowledge, section 512 at the same time provides that an online entity has no duty to ''monitor[ ] its service or affirmatively seek[ ] facts indicating

[10] U.S. Dep't of Commerce Internet Policy Task Force, Copyright Policy, Creativity, and Innovation in the Digital Economy 54, 56 (Jul. 2013), *http://www.uspto.gov/sites/default/files/news/publications/copyrightgreenpaper.pdf* (''Copyright Policy, Creativity, and Innovation in the Digital Economy''); Dep't of Commerce Internet Policy Task Force, DMCA Multistakeholder Forum, DMCA Notice-and-Takedown Processes: List of Good, Bad, and Situational Practices 3 (2015), *http://www.uspto.gov/sites/default/files/documents/DMCA_Good_Bad_and_Situational_Practices_Document-FINAL.pdf* (''Dep't of Commerce Multistakeholder Forum Recommended Practices'').

[11] 17 U.S.C. 512(a)–(d).

[12] *Id.* at 512(j)(1)(A).

[13] *Id.* at 512(j)(1)(B).

[14] A service provider must adopt, ''reasonably implement[ ],'' and inform subscribers and account holders of a policy ''that provides for the termination in appropriate circumstances of . . . repeat infringers.'' *Id.* at 512(i)(1)(A).

[15] *Id.* at 512(i)(1)(B), (i)(2).

[16] *Id.* at 512(b)(2)(E), (c)(1)(C), (d)(3). The process for notification under the 512(c) and (d) safe harbors is set out in 512(c)(3); the process differs somewhat under the 512(b) safe harbor in that, in addition to following the requirements of 512(c)(3), the complaining party must also confirm that the content or link has been removed or disabled by the originating site or that a court has ordered that it be removed or disabled.

[17] *Id.* at 512(c)(2). Although section 512(d) does not itself expressly require service providers to designate an agent to receive notifications of infringement, it incorporates the notice provisions of section 512(c)(3), which require that notices be sent to ''the designated agent of the service provider.'' The statutory scheme thus indicates that service providers operating under section 512(d) would also designate agents to receive takedown notices. *See id.* at 512(c)(3).

[18] *Id.* at 512(c)(3)(A)(i)–(vi).

[19] *See id.* at 512(c)(3)(B)(i) (''[A] notification . . . that fails to comply substantially . . . shall not be considered . . . in determining whether a service provider has actual knowledge or is aware of facts or circumstances from which infringing activity is apparent.''); *see also Perfect 10, Inc.* v. *CCBill LLC,* 488 F.3d 1102, 1112–14 (9th Cir. 2007) (''*CCBill LLC*'') (''[A] service provider will not be deemed to have notice of infringement when 'the notification . . . fails to comply substantially with all the provisions of [17 U.S.C. 512(c)(3)(A)].' '').

[20] *See* 17 U.S.C. 512(c), (d).

infringing activity, except to the extent consistent with a standard technical measure.'' [21]

Finally, to qualify for the section 512(c) and (d) safe harbors, a service provider must not ''receive a financial benefit directly attributable to the infringing activity, in a case in which the service provider has the right and ability to control such activity.'' [22] The statutory financial benefit/right to control test does not incorporate a knowledge element.[23]

In addition to the general limitations on infringement liability, the statute provides specific protections for service providers that remove material in response to takedown notices, as well as for users who post material that is claimed to be infringing. Under section 512, a service provider is not liable for the good-faith removal or disabling of access to material ''claimed to be infringing or based on facts or circumstances from which infringing activity is apparent''—even material not ultimately found to be infringing—so long as the provider takes reasonable steps to promptly notify the user who posted the material that it has been removed and also complies, as applicable, with a statutory counter-notification process.[24]

Section 512(g) allows a user whose content has been removed in response to a takedown notice to submit a counter notification to a service provider's designated agent requesting that the content be reposted. The counter notification must include: (i) The signature of the subscriber (*i.e.,* the counter-notifying party); (ii) identification of the material that was removed or to which access was disabled, as well as the location where it previously appeared; (iii) a statement under penalty of perjury that the subscriber has a ''good faith belief'' that the material ''was removed or disabled as a result of mistake or misidentification of the material to be removed or disabled''; and (iv) the subscriber's contact information, as well as a statement that the subscriber consents to the jurisdiction of the federal district court for the relevant judicial district and agrees to accept service of process from the party who provided the takedown notice (or that party's agent).[25] To preserve its safe harbor immunity, the service provider must repost the content within 10 to 14 business days of receiving the counter notification unless the service provider first receives notice from the party who provided the takedown notice that a judicial action has been filed ''seeking . . . to restrain the subscriber from engaging in infringing activity relating to the material on the service provider's system or network.'' [26] As in the case of misrepresentations in takedown notices, under section 512(f), any person who knowingly materially misrepresents that ''material or activity was removed or disabled by mistake or misidentification'' may be held liable for monetary damages, including costs and attorneys' fees.[27]

B. Key Developments

Since the enactment of section 512, stakeholders have adopted practices and systems to implement it, and courts have been called upon to interpret its provisions—from eligibility for safe harbors to the requirements for valid takedown notices to the standards that govern misrepresentations in the notification process. Some stakeholders have created best practices, entered into voluntary agreements to streamline enforcement procedures, and/or pursued other non-judicial approaches. Notwithstanding these developments, many on both sides of the equation express significant frustration with the process. A brief overview of the most salient issues follows.

Notice-and-Takedown Process

Today, copyright owners send takedown notices requesting service providers to remove and disable access to hundreds of millions of instances of alleged infringement each year.[28] The number of removal requests sent to service providers has increased dramatically since the enactment of section 512. For example, one search engine now ''receive[s] removal requests for more URLs every week than [it] did . . . from 1998 to 2010 combined.'' [29] Technology has come to play a significant role in the notice-and-takedown process, as automated processes that use fingerprinting, hash values, and keyword/metadata searches can identify movies, sound recordings, and other types of content that is being posted and disseminated.[30] But regardless of increasing technological capabilities, stakeholders frequently voice concerns about the efficiency and efficacy—not to mention the overall sustainability—of the system.[31]

Many smaller copyright owners, for example, lack access to third-party services and sophisticated tools to monitor for infringing uses, which can be costly, and must instead rely on manual search and notification processes [32]—an effort that has been likened to ''trying to empty the ocean with a teaspoon.'' [33] In addition to the burden of policing infringement across the internet, copyright owners complain that material they succeed in having taken down is often promptly reposted on the same site—the so-called ''whack-a-mole'' problem.[34] Under section 512 as it has been interpreted, providers are not required to filter out or prevent the reposting of copyrighted content

[21] *Id.* at 512(m)(1).

[22] *Id.* at 512(c)(1)(B), (d)(2).

[23] *See id.* at 512(c)(1)(B), (d)(2).

[24] *Id.* at 512(g)(1).

[25] *Id.* at 512(g)(3).

[26] *Id.* at 512(g)(2)(C).

[27] *Id.* at 512(f).

[28] *See Section 512 of Title 17: Hearing Before the Subcomm. on Courts, Intellectual Prop., & the Internet of the H. Comm. on the Judiciary,* 113th Cong. 3 (2014) (''*Section 512 Hearing*'') (written statement of Rep. Jerrold Nadler) (noting that in 2013, Google received notices requesting removal of approximately 230 million items); Joe Mullin, *Google Handled 345 Million Copyright Takedowns in 2014,* Ars Technica (Jan. 6, 2015), *http://arstechnica.com/tech-policy/2015/01/google-handled-345-million-copyright-takedowns-in-2014.*

[29] Google, How Google Fights Piracy 15 (2013), *https://docs.google.com/file/d/0BwxyRPFduTN2dVFqYml5UENUeUE/edit?pli=1#*!.

[30] *See, e.g.,* TheFlo, *White Paper: Audio Fingerprinting,* Maximum PC (Apr. 3, 2009), *http://www.maximumpc.com/white-paper-audio-fingerprinting/* (explaining the use of algorithms to create unique ''audio fingerprints'' to identify sound recordings); *What is a Hash Value?,* Pinpoint Labs (Dec. 10, 2010), *http://pinpointlabs.com/2010/12/what-is-a-hash-value/* (explaining use of hash values for text, audio, and video); Dep't of Commerce Multistakeholder Forum Recommended Practices (discussing use of automated tools to identify infringing material).

[31] *See, e.g., Section 512 Hearing* at 9 (written statement of Sean M. O'Connor, Entrepreneurial Law Clinic, University of Washington (Seattle)) (''[T]here are takedown notices now filed on millions of posts every month. That is clearly unsustainable.''); Copyright Policy, Creativity, and Innovation in the Digital Economy 56 (''[R]ight holders and ISPs alike have identified respects in which [the notice-and-takedown system's] operation can become unwieldy or burdensome.'').

[32] *See Section 512 Hearing* at 100 (statement of Rep. Doug Collins) (''[I]ndividual songwriters and the independent filmmakers . . . often have limited or no technical expertise or software at their disposal . . . .''); *id.* at 88–89 (2014) (written statement of Sandra Aistars, Copyright Alliance) (Independent authors and creators ''lack the resources of corporate copyright owners'' and instead issue ''takedown notices themselves, taking time away from their creative pursuits.'').

[33] Trevor Little, *Google and Microsoft Outline the Challenges Facing Online Intermediaries,* World Trademark Rev. (Mar. 1, 2013), *http://www.worldtrademarkreview.com/blog/detail.aspx?g=DFF24612-D6F7-4ED2-BFDB-383724E93D57* (quoting symposium comments by a vice president at Fox Group Legal).

[34] *Section 512 Hearing* at 35 (written statement of Paul Doda, Elsevier) (The ''*same books* are repeatedly re-uploaded on the same sites hundreds of times after being taken down . . . .''); *id.* at 57 (written statement of Maria Schneider, musician) (''As fast as I take my music down, it reappears again on the same site—an endless whac-a-mole game.'').

through the use of content identification technologies or other means.[35]

Accordingly, some have proposed that the notice-and-takedown procedure be revised to become a ''notice-and-stay-down'' procedure—that is, once a service provider receives an effective and uncontested takedown notice for a particular work, the provider should be required to make commercially reasonable efforts to keep that work from reappearing on its site.[36] Others, however, pointing to the very substantial efforts—especially of larger service providers—to respond promptly to takedown notices, are of the view that the existing system has ''scaled well'' over time to address the large volume of takedown notices, and does not need to be changed.[37]

Of course, the burdens of the notice-and-takedown process do not fall on copyright owners alone. Service providers must devote the time and resources necessary to respond to the increasing number of takedown notices sent each day. Smaller providers, in particular, may find the task to be a daunting one.[38] In addition, service providers complain that some notices do not meet the statutory requirements or, as discussed below, concern materials and activities that are not in fact infringing.

Since the passage of the DMCA, courts have been called upon to address the elements required for an ''effective''—*i.e.,* valid—takedown notice. Looking to section 512's requirement to provide ''information reasonably sufficient to permit the service provider to locate the material,'' courts have generally required a high degree of specificity, such as the particular link, or uniform resource locator (''URL''), where the infringing material is found.[39] Likewise, service providers often request that the specific URL for each allegedly infringing use be included in a notice.[40] Such a requirement can be burdensome in the case of a notice that references a large number of infringements at multiple locations throughout the same site. Additionally, copyright owners question whether this level of specificity is in conflict with the statute's express language allowing complaining parties to submit a ''representative list'' of works alleged to be infringed ''at a single online site.'' [41]

In addition, there is debate about whether search engine services must disable access to (*e.g.,* ''de-list'') entire sites that copyright owners report as consisting largely of infringing material.[42] While the legislative history of section 512(d) observes that ''safe harbor status for a provider that views [a pirate] site and then establishes a link to it would not be appropriate,'' [43] service providers assert that de-listing could lead to censorship, and yet still not effectively address infringement, because the site would remain online.[44]

Knowledge Standards

A good deal of litigation relating to section 512 to date has focused on the legal standards for determining when a service provider has sufficient knowledge or awareness to require it to remove or disable infringing material in order to remain eligible for the safe harbor protections of section 512(c) or (d). Courts have held ''actual knowledge'' to require evidence that the service provider subjectively knew that specific material on its site infringed copyright.[45] Alternatively, actual knowledge can be demonstrated with evidence that a service provider received information about specific infringing material through a statutorily effective takedown notice, *i.e.,* a notice that includes ''substantially'' all of the information required under section 512(c)(3).[46]

Courts have also recognized the common law doctrine of willful blindness in addressing whether a service provider has actual knowledge of infringement.[47] A service provider is considered to have engaged in willful blindness when it is ''aware of a high probability'' of infringement and has ''consciously avoided confirming that fact.'' [48] Accordingly, courts have held that a service provider's willful blindness to infringement on its site and failure to remove or disable access to infringing material can disqualify it

[35] 17 U.S.C. 512(m); *see UMG Recordings, Inc.* v. *Shelter Capital Partners LLC,* 718 F.3d 1006, 1024 (9th Cir. 2013) (rejecting plaintiffs' argument that service provider should have ''taken the initiative to use search and indexing tools to locate and remove from its Web site any other content by the artists identified in . . . notices''); *Capitol Records, LLC* v. *Vimeo, LLC,* 972 F. Supp. 2d 500, 525 (S.D.N.Y. 2013) (''512(m) and attendant case law make clear that service providers are under no affirmative duty to seek out infringement . . . [and t]his remains the case even when a service provider has developed technology permitting it to do so.'').

[36] *See Section 512 Hearing* at 14–15, 39, 58 (written statements of Sean M. O'Connor, Entrepreneurial Law Clinic, University of Washington (Seattle); Paul Doda, Elsevier; and Maria Schneider, musician).

[37] *Id.* at 16 (statement of Annemarie Birdy, University of Idaho College of Law) (''The notice and takedown regime in [s]ection 512(c) has scaled well for enforcing copyrights in the voluminous content hosted by online service providers.'').

[38] *See* U.S. Dep't of Commerce, *Multistakeholder Forum: Improving the Operation of the DMCA Notice and Takedown Policy: Second Public Meeting,* Tr. 63:03–05 (May 8, 2014), *http://www.uspto.gov/sites/default/files/ip/global/copyrights/2nd_forum_transcript.pdf* (Fred von Lohmann, Google) (''[W]hat large service providers are capable of doing is very different from what smaller service providers are doing.''); U.S. Dep't of Commerce, *Multistakeholder Forum: Improving the Operation of the DMCA Notice and Takedown Policy: First Public Meeting,* Tr. 34:16–38:06 (Mar. 20, 2014), *http://www.uspto.gov/ip/global/copyrights/First_Public_Meeting-Improving_Operation_of_DMCA_Notice_and_Takedown_Policy.pdf* (Ron Yokubaitis, Giganews) (describing burden of processing non-standardized notices for a ''small company [of] fifty-something people'').

[39] *See, e.g., Wolk* v. *Kodak Imaging Network, Inc.,* 840 F. Supp. 2d 724, 747 (S.D.N.Y. 2012), *aff'd sub nom., Wolk* v. *Photobucket.com, Inc.,* 569 F. App'x 51 (2d Cir. 2014) (noting that an example of sufficient information in a notice allowing a service provider to locate the infringing material ''would be a copy or description of the allegedly infringing material and the so-called 'uniform resource locator' (URL) (*i.e.,* Web site address)'') (citing *Viacom Int'l, Inc.* v. *YouTube, Inc.,* 718 F. Supp. 2d 514, 521 (S.D.N.Y. 2010), *vacated in part on other grounds,* 676 F.3d 19 (2d Cir. 2012)).

[40] *See, e.g., Digital Millennium Copyright Act (DMCA) Notice,* Automattic, *https://automattic.com/dmca-notice* (last visited Dec. 17, 2015); *DMCA Copyright Notifications, Tumblr, https://www.tumblr.com/*dmca (last visited Dec. 17, 2015); *Copyright Infringement Notification,* YouTube, *https://www.youtube.com/copyright_complaint_form* (last visited Dec. 17, 2015).

[41] 17 U.S.C. 512(c)(3)(A)(ii).

[42] *Compare* MPAA, Comments on Office of Intellectual Property Enforcement Coordinator Development of the Joint Strategic Plan on Intellectual Property Enforcement 17 (Oct. 16, 2015), *http://www.regulations.gov/#!documentDetail;D=OMB-2015-0003-0058* (''Search engines should delist sites based on court orders or other comparable judicial determinations of infringement . . . [meaning that] no results from a particular site would appear in any search results.'') *with* Google, Comments on Office of Intellectual Property Enforcement Coordinator Development of the Joint Strategic Plan on Intellectual Property Enforcement 7–8 (Oct. 16, 2015), *http://www.regulations.gov/#!documentDetail;D=OMB-2015-0003-0061* (''Google, IPEC Comments'') (''[W]hole-site removal is ineffective and can easily result in censorship of lawful material . . . [and] would jeopardize free speech principles, emerging services, and the free flow of information online globally and in contexts far removed from copyright.'').

[43] S. Rep. No. 105–190, at 48 (1998).

[44] Google, IPEC Comments, at 7–8.

[45] *See, e.g., UMG Recordings,* 718 F.3d at 1025 (quoting *Viacom Int'l, Inc.* v. *YouTube, Inc.,* 676 F.3d 19, 31 (2d Cir. 2012) (''*Viacom*'')).

[46] *See UMG Recordings,* 718 F.3d at 1020 (''[T]he DMCA notice protocol . . . [is] the most powerful evidence of a service provider's knowledge.'') (internal quotations omitted); *cf.* 17 U.S.C. 512(c)(3)(B)(i) (stating that a notice ''that fails to comply substantially'' with the 512(c) notice requirements ''shall not be considered . . . in determining whether a service provider has actual knowledge.'').

[47] *See, e.g., Viacom,* 676 F.3d at 35 (''[W]illful blindness doctrine may be applied, in appropriate circumstances, to demonstrate knowledge or awareness of specific instances of infringement under the DMCA.'').

[48] *Id.* at 35 (quoting *United States* v. *Aina-Marshall,* 336 F.3d 167, 170 (2d Cir. 2003)). For example, a service provider was found to have ''blinded itself'' where it encouraged users to encrypt files so that the service provider could not know the contents of particular files. *In re Aimster Copyright Litig.,* 334 F.3d 643, 653 (7th Cir. 2003) (''*In re Aimster*'').

from the protections of a section 512 safe harbor.[49]

As also noted above, sections 512(c) and (d) require a service provider to disable access to material or activity if it has ''red flag'' knowledge, *i.e.,* is aware of ''facts or circumstances from which infringing activity is apparent.'' [50] In enacting the statute, Congress explained that ''a service provider [has] no obligation to seek out copyright infringement, but it [does] not qualify for the safe harbor if it . . . turn[s] a blind eye to 'red flags' of obvious infringement.'' [51] The legislative history of section 512 also suggests Congress' view that the red flag test ''has both a subjective and an objective element . . . the subjective awareness of the service provider of the facts or circumstances in question . . . [and the objective assessment of] whether infringing activity would have been apparent to a reasonable person operating under the same or similar circumstances.'' [52] With regard to information location tools, for example, Congress observed that if ''an [i]nternet site is obviously pirate, then seeing it may be all that is needed for the service provider to encounter a 'red flag.' '' [53]

Copyright owners have argued that Congress' intent in creating the red flag test was to ''require[ ] less specificity than the actual knowledge'' standard and to prevent service providers from qualifying for safe harbor protection when they are aware of widespread infringement.[54] Courts, however, have largely rejected the notion that a general awareness of infringement is sufficient to establish red flag knowledge.[55] Instead, courts have held that red flag knowledge requires ''knowledge of specific and identifiable infringements'' because, in order to retain the protection of the safe harbor, the service provider is required to expeditiously ''remove or disable 'the [infringing] material.' '' [56]

In assessing these knowledge requirements, courts have also looked to the language of section 512(m), which states that ''[n]othing'' in section 512 conditions the availability of safe harbor protection on ''a service provider monitoring its service or affirmatively seeking facts indicating infringing activity, except to the extent consistent with a standard technical measure.'' [57] Based on this language, courts have concluded that ''the DMCA . . . place[s] the burden of policing copyright infringement . . . squarely on the owners of the copyright.'' [58]

Financial Benefit/Right To Control

Litigation regarding the Section 512(c) and (d) safe harbors has also addressed what it means for a service provider to receive a ''financial benefit directly attributable'' to infringing activity where it has the ''right and ability to control'' such activity.

Like the traditional standard for vicarious liability under common law, the financial benefit/right to control test has been held not to turn on a service provider's knowledge of infringement.[59] But courts have also indicated that ''right and ability to control'' in the context of section 512 means that the service provider '' 'exert[s] substantial influence on the activities of users,' '' *i.e.,* '' 'something more than' '' the basic ability to remove or block access to infringing materials.[60] Such control may include, for example, taking an active role in the listing of infringing material on a Web site, assisting users in locating infringing files, or encouraging the uploading or downloading of particular copyrighted works.[61] These courts have reasoned that because the takedown process itself requires the ability to remove or block access, Congress must have intended a greater degree of control than just this, or it would undermine the availability of the safe harbors.[62]

Sections 512(c) and (d) also exclude service providers from safe harbor protection when they ''receive a financial benefit directly attributable to the infringing activity.'' [63] While the legislative history suggests that merely requiring a periodic payment for service does not constitute a direct financial benefit,[64] courts have found such a benefit when the service provider charges a subscription fee to its users and the ''infringing activity constitutes a draw for subscribers, not just an added benefit.'' [65] Financial benefit has also been found when a service provider's ''ability to attract advertisers'' and the ''amount of revenue'' received from advertising are ''tied directly to the infringing activity.'' [66]

Repeat Infringers

Under section 512(i), a service provider seeking to avail itself of any of the safe harbors is required to ''adopt[ ] and reasonably implement[ ]'' a policy to terminate ''repeat infringers'' in ''appropriate circumstances.'' [67] Congress, however, did not define these terms in the statute, so it has been left to courts to determine whether a service provider's repeat infringer policy is sufficient to qualify the provider for safe harbor protection. In interpreting this aspect of the statute, courts have held that a repeat infringer is a user ''who repeatedly or blatantly infringe[s] copyright,'' and that such a determination may be based upon information from valid takedown notices and does not require a court determination.[68] Courts have further

[49] *See, e.g., Viacom,* 676 F.3d at 30, 35; *see also In re Aimster,* 334 F.3d at 653, 655.

[50] 17 U.S.C. 512(c)(1)(A)(ii), (d)(1)(B).

[51] H.R. Rep. No. 105–551, pt. 2, at 57 (1998).

[52] *Id.* at 53; S. Rep No. 105–190, at 44 (1998); *accord Viacom,* 676 F.3d at 31.

[53] H.R. Rep. No. 105–551, pt. 2, at 58 (1998); *see also Columbia Pictures Indus., Inc.* v. *Fung,* 710 F.3d 1020, 1043 (9th Cir. 2013) (''*Fung''*) (finding that a service provider had red flag knowledge where ''material in question was sufficiently current and well-known that it would have been objectively obvious to a reasonable person that the material . . . was both copyrighted and not licensed to random members of the public'').

[54] *See, e.g., Viacom,* 676 F.3d at 31–32 (internal quotations omitted).

[55] *See, e.g., UMG Recordings,* 718 F.3d at 1022–23; *Viacom,* 676 F.3d at 32.

[56] *Viacom,* 676 F.3d at 30–31 (emphasis omitted) (''[E]xpeditious removal is possible only if the service provider knows with particularity which items to remove.'').

[57] 17 U.S.C. 512(m).

[58] *UMG Recordings,* 718 F.3d at 1022 (quoting *CCBill LLC,* 488 F.3d at 1113).

[59] *See Viacom,* 676 F.3d at 36–38 (2d Cir. 2012) (''[17 U.S.C.] 512(c)(1)(B) does not include a specific knowledge requirement'' because to ''import[ ] a specific knowledge requirement into [17 U.S.C.] 512(c)(1)(B) renders the control provision duplicative of [17 U.S.C.] 512(c)(1)(A).''); H.R. Rep. No. 105–551, pt. 1, at 25–26 (1998) (''The financial benefit standard in subparagraph (B) is intended to codify and clarify the direct financial benefit element of vicarious liability. . . . The 'right and ability to control' language in Subparagraph (B) codifies the second element of vicarious liability.''); 3 Melville Nimmer & David Nimmer, Nimmer on Copyright 12.04[A][2] (Matthew Bender rev. ed.) (''Notably lacking from the foregoing two elements [of vicarious liability] is knowledge.'').

[60] *UMG Recordings,* 718 F.3d at 1029–31 (quoting *Viacom,* 676 F.3d at 38); *Perfect 10, Inc.* v. *Cybernet Ventures, Inc.,* 213 F. Supp. 2d 1146, 1173, 1181–82 (C.D. Cal. 2002) (''*Cybernet Ventures''*).

[61] *Fung,* 710 F.3d at 1043, 1046; *see also Viacom,* 676 F.3d at 38 & n.13 (''[C]ontrol may exist where the service provider is 'actively involved in the listing, bidding, sale and delivery' of items.'') (quoting *Hendrickson* v. *eBay, Inc.,* 165 F. Supp. 2d 1082, 1094 (C.D. Cal. 2001)); *Cybernet Ventures,* 213 F. Supp. 2d at 1173 (finding that service provider had control where it required user Web sites to comply with ''detailed instructions regard[ing] issues of layout, appearance, and content'').

[62] *See, e.g., Viacom,* 676 F.3d at 37.

[63] 17 U.S.C. 512(c)(1)(B), (d)(2).

[64] H.R. Rep. No. 105–551, pt. 2, at 54 (1998) (noting that financial benefit is not established through a ''one-time set-up fee [or] flat, periodic payments for service from a person engaging in infringing activities'').

[65] *CCBill LLC,* 488 F.3d at 1117; *Ellison* v. *Robertson,* 357 F.3d 1072, 1079 (9th Cir. 2004)).

[66] *Fung,* 710 F.3d at 1045–46.

[67] 17 U.S.C. 512(i)(1)(A); *BMG Rights Mgmt. (US) LLC* v. *Cox Commc'ns, Inc.,* No. 1:14–cv–1611, 2015 WL 7756130, at *14 (E.D. Va. Dec. 1, 2015) (''*BMG Rights Mgmt.''*) (denying 512(a) safe harbor protection to service provider because it did not reasonably implement a repeat infringer policy).

[68] *CCBill LLC,* 488 F.3d at 1109; *Disney Enters., Inc.* v. *Hotfile Corp.,* No. 11–20427–CIV, 2013 WL 6336286, at *20 (S.D. Fla. Sept. 20, 2013) (''*Hotfile''*); *see also BMG Rights Mgmt.,* No. 1:14–cv–1611, 2015 WL 7756130, at *13.

held that a reasonable policy, at a minimum, must provide a mechanism to identify and keep a record of users responsible for files referenced in takedown notices and, ''under 'appropriate circumstances,' '' result in termination of ''users who repeatedly or blatantly infringe copyright.'' [69]

Misuse of Takedown Process

Service providers and advocacy groups have raised concerns about fraudulent and abusive section 512 notices that may restrain fair use, free speech, or otherwise misuse the notice-and-takedown process.[70] Some of the concerns arise from takedown notices for content that appears to constitute an obvious fair use of a copyright work.[71] Others relate to efforts to remove criticism or commentary—such as negative reviews—under the guise of copyright.[72] While the posting party can invoke the counter-notification procedure of section 512(g) to have the material reinstated, some believe that posters may not be aware of this, or may be too intimidated to pursue a counter notification.[73] A related concern is that the improper takedown of legitimate material, even if for a limited time, may harm important speech interests—for example, if a political advertisement is wrongly removed at a critical time in a campaign.[74]

As noted above, a takedown notice must include a statement that the complaining party has a ''good faith belief'' that the use is not authorized.[75] Similarly, a counter notification must include a statement that the sender has a ''good faith belief'' that the material in question was removed as a result of ''mistake or misidentification.'' [76] Section 512(f) provides for a cause of action and damages if a sender ''knowingly materially misrepresents'' in a takedown notice that material is infringing, or, in a counter notification, was wrongfully removed.[77]

In a number of cases challenging the validity of takedown notices, courts have fleshed out the meaning and application of section 512(f). For example, courts have held that the ''good faith belief'' requirement of section 512(c)(3)(A)(v) ''encompasses a subjective, rather than objective standard''; that is, the sender is not responsible for an ''unknowing mistake,'' even if the sender's assessment of infringement was objectively unreasonable.[78] But it has also been held that before sending a takedown notice, the complaining party must ''consider the existence of fair use'' in forming the subjective good faith belief that the use is not authorized by the law.[79] The need to consider fair use may present challenges in the context of automated takedown processes relied upon by copyright owners to address large-volume infringements, including how such processes might be calibrated to accommodate this requirement and the necessity, if any, for human review.[80]

Voluntary Measures

While interested parties continue to test and clarify aspects of section 512 in the courts, some stakeholders have chosen to work together to develop voluntary protocols and best practices to avoid litigation, improve online enforcement, and protect free speech and innovation. Several of these initiatives have been undertaken with the support of the U.S. government, including the Copyright Alert System, an effort supported by the U.S. Intellectual Property Enforcement Coordinator (''IPEC''),[81] and the DMCA Notice-and-Takedown Processes: List of Good, Bad, and Situational Practices, stemming from the efforts of the Internet Policy Task Force,[82] both of which seek to improve the efficiency and effectiveness of notice-and-takedown procedures, as well as the IPEC-led Payment Processor Best Practices, which seeks to cut off revenue to sites that promote infringement.[83] Other multistakeholder initiatives include the Trustworthy Accountability Group certification process, aimed at curbing ad revenue supporting piracy Web sites,[84] and the Principles for User Generated Content Services, which sets forth agreed principles for screening and addressing infringing content.[85]

II. Subjects of Inquiry

The Copyright Office seeks public input, including, where available, empirical data on the efficiency and effectiveness of section 512 for owners and users of copyrighted works and the overall sustainability of the system if, as appears likely, the volume of takedown notices continues to increase. The Office invites written comments in particular on the subjects below. A party choosing to respond to this Notice of Inquiry need not address every subject, but the Office requests that responding parties clearly identify and separately address each

[69] *CCBill LLC,* 488 F.3d at 1109 (internal citation omitted); *see also Hotfile,* No. 11–20427–CIV, 2013 WL 6336286, at *21.

[70] *See, e.g., Section 512 Hearing* at 48, 63–67, 246–47 (written statements of Katherine Oyama, Google Inc.; Paul Sieminski, Automattic Inc.; and Library Copyright Alliance) (discussing misuse of takedown process).

[71] *See, e.g., id.* at 65 (written statement of Paul Sieminski, Automattic Inc.) (noting concern for ''companies who issue DMCA notices specifically against content that makes use of their copyrighted material as part of a criticism or negative review—which is classic fair use'').

[72] *See, e.g., Automattic Inc.* v. *Steiner,* 82 F. Supp. 3d 1011, 1016 (N.D. Cal. 2015) (entering default judgment against the submitter of takedown notices for knowingly materially misrepresenting that a blog infringed its press release); *Online Policy Grp.* v. *Diebold, Inc.,* 337 F. Supp. 2d 1195, 1204 (N.D. Cal. 2004) (finding voting machine manufacturer liable under section 512(f) for ''knowingly materially misrepresent[ing]'' that publication of email archive discussing technical problems with voting machines was infringing).

[73] *See, e.g.,* Brief for Org. for Transformative Works *et al.* as Amici Curiae Supporting Appellee and Cross-Appellant at 16, *Lenz* v. *Universal Music Corp.,* 801 F.3d 1126 (9th Cir. 2015) (Nos. 13–16106, 13–16107) (noting that creators worry about sending a counter notice because they may have to provide their real names and addresses or become subject to a lawsuit they cannot afford).

[74] *See, e.g.,* Ctr. for Democracy & Tech., Campaign Takedown Troubles: How Meritless Copyright Claims Threaten Online Political Speech 1 (2010), *https://cdt.org/files/pdfs/copyright_takedowns.pdf.*

[75] 17 U.S.C. 512(c)(3)(A)(v).

[76] *Id.* at 512(g)(3)(C).

[77] *Id.* at 512(f).

[78] *Rossi* v. *Motion Picture Ass'n of Am. Inc.,* 391 F.3d 1000, 1004–05 (9th Cir. 2004); *accord Lenz* v. *Universal Music Corp.,* 801 F.3d 1126, 1134 (9th Cir. 2015). The *Rossi* and *Lenz* courts reasoned that to hold otherwise would conflict with Congress' intent that a copyright owner only be penalized for ''knowing'' misrepresentations. *Rossi,* 391 F3d at 1004–05; *accord Lenz,* 801 F.3d at 1134.

[79] *Lenz,* 801 F.3d at 1133.

[80] *See id.* at 1135–36. In *Lenz,* the Ninth Circuit was ''mindful of the pressing crush of voluminous infringing content that copyright holders face,'' and noted, ''without passing judgment, that the implementation of computer algorithms appears to be a valid and good faith middle ground for processing a plethora of content while still meeting the DMCA's requirements to somehow consider fair use.'' *Id.* at 1135. The court further addressed how an algorithm might accommodate fair use, observing that it was ''unaware of any [court] decision to date that actually addressed the need for human review.'' *Id.*

[81] *See generally* Ctr. For Copyright Info., The Copyright Alert System: Phase One and Beyond (May 28, 2014), *http://www.copyrightinformation.org/wp-content/uploads/2014/05/Phase-One-And_Beyond.pdf.*

[82] *See generally* Dep't of Commerce Multistakeholder Forum Recommended Practices (list of recommended practices developed by a diverse group of copyright owners, service providers, and public interest representatives).

[83] *See* Intellectual Prop. Enforcement Coordinator, 2011 U.S. Intellectual Property Enforcement Coordinator Annual Report on Intellectual Property Enforcement 46 (2012), *https://www.whitehouse.gov/sites/default/files/omb/IPEC/ipec_annual_report_mar2012.pdf* (describing a June 2011 agreement among American Express, Discover, MasterCard, PayPal, and Visa to abide by best practices to ''stop sites distributing counterfeit and pirated goods from conducting financial transactions through payment processors'').

[84] *See* Press Release, Trustworthy Accountability Group, Advertising Industry Launches Initiative to Protect Brands Against Piracy Web sites (Feb. 10, 2015), *https://www.tagtoday.net/advertising-industry-launches-initiative-to-protect-brands-against-piracy-Web sites.*

[85] *See Principles for User Generated Content Services, http://www.ugcprinciples.com* (last visited Dec. 16, 2015).

numbered subject for which a response is submitted.

General Effectiveness of Safe Harbors

1. Are the section 512 safe harbors working as Congress intended?
2. Have courts properly construed the entities and activities covered by the section 512 safe harbors?
3. How have section 512's limitations on liability for online service providers impacted the growth and development of online services?
4. How have section 512's limitations on liability for online service providers impacted the protection and value of copyrighted works, including licensing markets for such works?
5. Do the section 512 safe harbors strike the correct balance between copyright owners and online service providers?

Notice-and-Takedown Process

6. How effective is section 512's notice-and-takedown process for addressing online infringement?
7. How efficient or burdensome is section 512's notice-and-takedown process for addressing online infringement? Is it a workable solution over the long run?
8. In what ways does the process work differently for individuals, small-scale entities, and/or large-scale entities that are sending and/or receiving takedown notices?
9. Please address the role of both ''human'' and automated notice-and-takedown processes under section 512, including their respective feasibility, benefits, and limitations.
10. Does the notice-and-takedown process sufficiently address the reappearance of infringing material previously removed by a service provider in response to a notice? If not, what should be done to address this concern?
11. Are there technologies or processes that would improve the efficiency and/or effectiveness of the notice-and-takedown process?
12. Does the notice-and-takedown process sufficiently protect against fraudulent, abusive or unfounded notices? If not, what should be done to address this concern?
13. Has section 512(d), which addresses ''information location tools,'' been a useful mechanism to address infringement that occurs as a result of a service provider's referring or linking to infringing content? If not, what should be done to address this concern?
14. Have courts properly interpreted the meaning of ''representative list'' under section 512(c)(3)(A)(ii)? If not, what should be done to address this concern?
15. Please describe, and assess the effectiveness or ineffectiveness of, voluntary measures and best practices—including financial measures, content ''filtering'' and takedown procedures—that have been undertaken by interested parties to supplement or improve the efficacy of section 512's notice-and-takedown process.

Counter Notifications

16. How effective is the counter-notification process for addressing false and mistaken assertions of infringement?
17. How efficient or burdensome is the counter-notification process for users and service providers? Is it a workable solution over the long run?
18. In what ways does the process work differently for individuals, small-scale entities, and/or large-scale entities that are sending and/or receiving counter notifications?

Legal Standards

19. Assess courts' interpretations of the ''actual'' and ''red flag'' knowledge standards under the section 512 safe harbors, including the role of ''willful blindness'' and section 512(m)(1) (limiting the duty of a service provider to monitor for infringing activity) in such analyses. How are judicial interpretations impacting the effectiveness of section 512?
20. Assess courts' interpretations of the ''financial benefit'' and ''right and ability to control'' standards under the section 512 safe harbors. How are judicial interpretations impacting the effectiveness of section 512?
21. Describe any other judicial interpretations of section 512 that impact its effectiveness, and why.

Repeat Infringers

22. Describe and address the effectiveness of repeat infringer policies as referenced in section 512(i)(A).
23. Is there sufficient clarity in the law as to what constitutes a repeat infringer policy for purposes of section 512's safe harbors? If not, what should be done to address this concern?

Standard Technical Measures

24. Does section 512(i) concerning service providers' accommodation of ''standard technical measures'' (including the definition of such measures set forth in section 512(i)(2)) encourage or discourage the use of technologies to address online infringement?
25. Are there any existing or emerging ''standard technical measures'' that could or should apply to obtain the benefits of section 512's safe harbors?

Remedies

26. Is section 512(g)(2)(C), which requires a copyright owner to bring a federal lawsuit within ten business days to keep allegedly infringing content offline—and a counter-notifying party to defend any such lawsuit—a reasonable and effective provision? If not, how might it be improved?
27. Is the limited injunctive relief available under section 512(j) a sufficient and effective remedy to address the posting of infringing material?
28. Are the remedies for misrepresentation set forth in section 512(f) sufficient to deter and address fraudulent or abusive notices and counter notifications?

Other Issues

29. Please provide any statistical or economic reports or studies that demonstrate the effectiveness, ineffectiveness, and/or impact of section 512's safe harbors.
30. Please identify and describe any pertinent issues not referenced above that the Copyright Office should consider in conducting its study.

Dated: December 28, 2015.

Maria A. Pallante,

Register of Copyrights, U.S. Copyright Office.

[FR Doc. 2015–32973 Filed 12–30–15; 8:45 am]

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MILLENNIUM CHALLENGE CORPORATION

[MCC FR 15–06]

Report on the Selection of Eligible Countries for Fiscal Year 2016

AGENCY: Millennium Challenge Corporation.

ACTION: Notice.

SUMMARY: This report is provided in accordance with section 608(d)(1) of the Millennium Challenge Act of 2003, Pub. L. 108–199, Division D, (the ''Act''), 22 U.S.C. 7708(d)(1).

Dated: December 18, 2015.

Maame Ewusi-Mensah Frimpong,

Vice President and General Counsel, Millennium Challenge Corporation.

Report on the Selection of Eligible Countries for Fiscal Year 2016

Summary

This report is provided in accordance with section 608(d)(1) of the Millennium Challenge Act of 2003, as amended, Public Law 108–199, Division D, (the ''Act'') (22 U.S.C. 7707(d)(1)).

The Act authorizes the provision of Millennium Challenge Account

(''MCA'') assistance under section 605 of the Act (22 U.S.C. 7704) to countries that enter into compacts with the United States to support policies and programs that advance the progress of such countries in achieving lasting economic growth and poverty reduction, and are in furtherance of the Act. The Act requires the Millennium Challenge Corporation (''MCC'') to determine the countries that will be eligible to receive MCA assistance for the fiscal year, based on their demonstrated commitment to just and democratic governance, economic freedom, and investing in their people, as well as on the opportunity to reduce poverty and generate economic growth in the country. The Act also requires the submission of reports to appropriate congressional committees and the publication of notices in the **Federal Register** that identify, among other things:

1. The countries that are ''candidate countries'' for assistance for fiscal year (''FY'') 2016 based on their per-capita income levels and their eligibility to receive assistance under U.S. law, and countries that would be candidate countries but for specified legal prohibitions on assistance (section 608(a) of the Act (22 U.S.C. 7707(a)));

2. The criteria and methodology that the Board of Directors of MCC (the ''Board'') will use to measure and evaluate the policy performance of the ''candidate countries'' consistent with the requirements of section 607 of the Act in order to select ''eligible countries'' from among the ''candidate countries'' (section 608(b) of the Act (22 U.S.C. 7707(b))); and

3. The list of countries determined by the Board to be ''eligible countries'' for FY 2016, with justification for eligibility determination and selection for compact negotiation, including with which of the eligible countries the Board will seek to enter into compacts (section 608(d) of the Act (22 U.S.C. 7707(d))).

This is the third of the above-described reports by MCC for FY 2016. It identifies countries determined by the Board to be eligible under section 607 of the Act (22 U.S.C. 7706) for FY 2016 and countries with which the MCC will seek to enter into compacts under section 609 of the Act (22 U.S.C. 7708), as well as the justification for such decisions. The report also identifies countries determined by the Board to be eligible for MCC's Threshold Program under section 616 of the Act (22 U.S.C. 7715).

Eligible Countries

The Board met on December 16, 2015, to select countries that will be eligible for assistance under section 607 of the Act (22 U.S.C. 7706) for FY 2016. The Board selected the following countries as eligible for such assistance for FY 2016: Cote d'Ivoire, Kosovo, and Senegal. The Board also reselected the following countries as eligible for FY 2016 compact assistance: Niger, Nepal, and the Philippines. The Board did not vote on the re-selection of Tanzania and Lesotho. The Board also reaffirmed its support for Mongolia's continued effort to develop its compact proposal that will access funds appropriated to MCC when Mongolia was a candidate country.

Criteria

In accordance with the Act and with the ''Report on the Criteria and Methodology for Determining the Eligibility of Candidate Countries for Millennium Challenge Account Assistance in Fiscal Year 2016'' formally submitted to Congress on September 22, 2015, selection was based primarily on a country's overall performance in three broad policy categories: Ruling Justly, Encouraging Economic Freedom, and Investing in People. The Board relied, to the maximum extent possible, upon transparent and independent indicators to assess countries' policy performance and demonstrated commitment in these three broad policy areas. The Board compared countries' performance on the indicators relative to their income-level peers, evaluating them in comparison to either the group of low income countries (''LIC'') or the group of lower middle income countries (''LMIC'').

The criteria and methodology used to assess countries on the annual scorecards are outlined in the ''Report on the Criteria and Methodology for Determining the Eligibility of Candidate Countries for Millennium Challenge Account Assistance in Fiscal Year 2016.'' [1] Scorecards reflecting each country's performance on the indicators are available on MCC's Web site at *www.mcc.gov/scorecards.*

The Board also considered whether any adjustments should be made for data gaps, data lags, or recent events since the indicators were published, as well as strengths or weaknesses in particular indicators. Where appropriate, the Board took into account additional quantitative and qualitative information, such as evidence of a country's commitment to fighting corruption, investments in human development outcomes, or poverty rates. For example, for additional information in the area of corruption, the Board considered how a country is evaluated by supplemental sources like Transparency International's Corruption Perceptions Index, the Global Integrity Report, Open Government Partnership status, and the Extractive Industry Transparency Initiative, among others, as well as on the defined indicator. The Board may also take into account the margin of error around an indicator, when applicable. In keeping with legislative directives, the Board also considered the opportunity to reduce poverty and promote economic growth in a country, in light of the overall information available, as well as the availability of appropriated funds.

This was the sixth year the Board considered the eligibility of countries for subsequent compacts, as permitted under section 609(k) of the Act (22 U.S.C. 7708(k)). The Board also considered the eligibility of countries for initial compacts. The Board sees the selection decision as an annual opportunity to determine where MCC funds can be most effectively invested to support poverty reduction through economic growth in relatively well-governed, poor countries. The Board carefully considers the appropriate nature of each country partnership—on a case by case basis—based on factors related to economic growth and poverty reduction, the sustainability of MCC's investments, and the country's ability to attract and leverage public and private resources in support of development.

MCC's engagement with partner countries is not open-ended, and the Board is very deliberate when determining eligibility for follow-on partnerships. In determining subsequent compact eligibility, the Board considered—in addition to the criteria outlined above—the country's performance implementing its first compact, including the nature of the country's partnership with MCC, the degree to which the country has demonstrated a commitment and capacity to achieve program results, and the degree to which the country has implemented the compact in accordance with MCC's core policies and standards. To the greatest extent possible, this was assessed using pre-existing monitoring and evaluation targets and regular quarterly reporting. This information was supplemented with direct surveys and consultation with MCC staff responsible for compact implementation, monitoring, and evaluation. MCC published a Guide to

[1] Available at *https://www.mcc.gov/resources/doc/report-selection-criteria-and-methodology-fy16.*

the Supplemental Information Sheet [2] and a Guide to the Compact Survey Summary [3] in order to increase transparency about the type of supplemental information the Board uses to assess a country's policy performance and compact implementation performance. The Board also considered a country's commitment to further sector reform, as well as evidence of improved scorecard policy performance.

As with previous years, a number of countries that performed well on the quantitative elements of the selection criteria (*i.e.,* on the policy indicators) were not chosen as eligible countries for FY 2016. FY 2016 was a particularly competitive year: Several countries were already working to develop compacts, multiple countries passed the scorecard (some for the first time), and funding was limited due to budget constraints. As a result, only three countries that passed the scorecard were newly selected for MCC compact eligibility, and two others for the threshold program.

Countries Newly Selected for Compact Eligibility

Using the criteria described above, Cote d'Ivoire, Kosovo, and Senegal are the only candidate countries under section 606(a) of the Act (22 U.S.C. 7705(a)) that were newly selected as eligible for assistance under section 607 of the Act (22 U.S.C. 7706).

Cote d'Ivoire: After years of working with MCC and MCC indicator institutions in order to strengthen their scorecard performance, Cote D'Ivoire went from passing 5 to 13 indicators over the last four years, due to updating data and pursuing policy reforms linked to the scorecard. In FY 2015, Cote D'Ivoire met the minimum scorecard criteria for the first time, passing 10 indicators, including both hard hurdles. Given the continued improvement from FY 2015 to FY 2016, selection for a compact program allows MCC to continue strengthen its relationship with Cote d'Ivoire while rewarding continued policy improvement.

Kosovo: After years of working to improve data collection and quality, as well as improve policy outcomes, Kosovo passed the MCC scorecard for the first time in FY16, passing 13 of 20 indicators including both hard hurdles and passing Control of Corruption. The country remains one of the poorest in Europe with close to 30% of the population living on less than $2/day, and an economy highly dependent on remittances. A compact investment will serve as an opportunity to reduce poverty through sustainable economic development while also building on the positive relationship built over the past few years.

Senegal: Senegal has consistently passed the scorecard criteria for eight consecutive years and scored above the 90th percentile in Control of Corruption for three consecutive years. Through its first compact, Senegal has proven to be a strong partner, successfully completing the compact ($540 million) in September 2015. In working on a second compact, MCC is able to continue to partner with the Government of Senegal to reduce poverty and support strong economic investments in the country.

Countries Reselected To Continue Compact Development

Three of the countries selected as eligible for compact assistance for FY 2016 were previously selected as eligible in FY 2015. These countries are Niger, Nepal and the Philippines. The Board reselected these countries based on their continued or improved policy performance since their prior selection. The Board also expressed its support for continued development of a compact with Mongolia using funds appropriated in FY 2015 and prior years, as the country moved in FY 2016 to the upper middle income category before its proposal was finalized. The Board deferred a vote on the selection of Tanzania and Lesotho and emphasized the seriousness with which it takes a country's commitment to MCC's eligibility criteria.

Tanzania: The Board deferred a vote on Tanzania's reselection. The Board discussed the fact that due to ongoing concerns about the Zanzibar elections, as well as the use of Tanzania's Cyber Crimes legislation in the context of the national elections, a vote on reselection would be premature at this time. The Board may revisit its decision over the course of 2016 as more information becomes available.

Lesotho: The Board deferred a vote on Lesotho's reselection. The Board discussed the fact that due to ongoing concerns over the rule of law and accountability in the country, and an expected report from the Southern Africa Development Community on these same issues, a vote on reselection would be premature at this time. The Board may revisit its decision over the course of 2016 as more information becomes available.

Countries Selected as Eligible To Receive Threshold Program Assistance

The Board selected Sri Lanka and Togo as eligible to receive threshold program assistance.

Sri Lanka: Sri Lanka consistently passed the scorecard from FY 2011 through FY 2015. Though Sri Lanka failed the scorecard in FY 2016 due to failing the democratic rights indicators, this was largely due to the indicators reflecting events in 2014, and likely not yet capturing the democratic rights improvements following the 2015 elections. A threshold program investment is an opportunity to build on this positive momentum, and allows Sri Lanka the opportunity to further strengthen its scorecard performance. It also allows MCC the opportunity to work with the government on the country's ongoing efforts in policy reform.

Togo: Togo has shown consistent improvements on the MCC scorecard over the past three years. A government committee has been strongly engaged with MCC to strategize and prioritize policy improvements, including reforming the family code to ensure gender equality and improving control of corruption. As a result, Togo moved from passing 5 of 20 indicators in FY 2014 to 10 of 20 indicators in FY 2016. Togo's eligibility for threshold program assistance will allow MCC to engage with Togo on continued policy reform, as well as offer Togo an opportunity to further strengthen its scorecard performance.

Ongoing Review of Partner Countries' Policy Performance

Once MCC has signed a compact with a country, MCC does not consider the country for reselection on an annual basis during the term of its compact. However, the Board emphasized the need for all partner countries to maintain or improve their policy performance. If it is determined during compact implementation that a country has demonstrated a significant policy reversal, MCC can hold it accountable by applying MCC's Suspension and Termination Policy.[4]

[FR Doc. 2015–32353 Filed 12–30–15; 8:45 am]

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[2] Available at *https://www.mcc.gov/resources/doc/guide-to-supplemental-information-fy16.*

[3] Available at *https://www.mcc.gov/resources/doc/guide-to-the-compact-survey-summary-fy15.*

[4] Available at *https://www.mcc.gov/resources/doc/policy-on-suspension-and-termination.*

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (15–121)]

Notice of Intent To Grant an Exclusive License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to grant exclusive license.

SUMMARY: This notice is issued in accordance with 35 U.S.C. 209(e) and 37 CFR 404.7(a)(1)(i). NASA hereby gives notice of its intent to grant an exclusive license in the United States to practice the inventions described and claimed in U.S. Patent No. 7,341,883 titled ''Silicon Germanium Semiconductive Alloy and Method Of Fabricating Same,'' NASA Case No. LAR–16868–1; U.S. Patent No. 7,514,726 titled ''Graded Index Silicon Germanium on Lattice Matched Silicon Germanium Semiconductive Alloy,'' NASA Case No. LAR–16872–1; U.S. Patent No. 7,558,371 titled ''Method of Generating X-Ray Diffraction Data for Integral Detection of Twin Defects in Super-Hetero-Epitaxial Materials,'' NASA Case No. LAR–17044–1; U.S. Patent No, 7,906,358 titled ''Epitaxial Growth of Cubic Crystalline Semiconductor Alloys on Basal Plane of Trigonal or Hexagonal Crystal,'' NASA Case No. LAR–17185–1; U.S. Patent No. 8,226,767 titled ''Hybrid Bandgap Engineering for Super-Hetero-Epitaxial Semiconductor Materials, and Products Thereof,'' NASA Case No. LAR–17405–1; U.S. Patent No. 8,257,491 titled ''Rhombohedral Cubic Semiconductor Materials on Trigonal Substrate with Single Crystal Properties and Devices Based on Such Materials,'' NASA Case No. LAR–17553–1; U.S. Patent No. 7,769,135 titled ''X-ray Diffraction Wafer Mapping Method for Rhombohedral Super-Hetero-Epitaxy,'' NASA Case No. LAR–17554–1; U.S. Patent Application No. 14/202,699 titled ''High Mobility Transport Layer Structures for Rhombohedral Si/Ge/SiGe Devices,'' NASA Case No. LAR–17841–1; U.S. Patent Application No. 14/204,535 titled ''Double Sided Si(Ge)/Sapphire/III-Nitride Hybrid Structure,'' NASA Case No. LAR–17922–1; U.S. Patent No. 8,044,294 titled ''Thermoelectric Materials and Devices,'' NASA Case No. LAR–17381–1; and U.S. Patent Application No. 14/279,614 titled ''Integrated Multi-Color Light Emitting Device Made with Hybrid Crystal Structure,'' NASA Case No. LAR–18133–1, to innoScience, Inc., having its principal place of business in Gaithersburg, Maryland. Certain patent rights in these inventions have been assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. The prospective exclusive license will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7.

DATES: The prospective exclusive license may be granted unless, within fifteen (15) days from the date of this published notice, NASA receives written objections including evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7. Competing applications completed and received by NASA within fifteen (15) days of the date of this published notice will also be treated as objections to the grant of the contemplated partially exclusive license.

Objections submitted in response to this notice will not be made available to the public for inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

ADDRESSES: Objections relating to the prospective license may be submitted to Patent Counsel, Office of Chief Counsel, NASA Langley Research Center, MS 30, Hampton, VA 23681; (757) 864–3221 (phone), (757) 864–9190 (fax).

FOR FURTHER INFORMATION CONTACT: Jennifer L. Riley, Patent Attorney, Office of Chief Counsel, NASA Langley Research Center, MS 30, Hampton, VA 23681; (757) 864–5057; Fax: (757) 864–9190. Information about other NASA inventions available for licensing can be found online at *http://technology.nasa.gov*.

Mark P. Dvorscak,

Agency Counsel for Intellectual Property.

[FR Doc. 2015–32718 Filed 12–30–15; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL LABOR RELATIONS BOARD

Sunshine Act Meetings: January 2016

TIME AND DATES:

All meetings are held at 2:00 p.m.
Tuesday, January 5;
Wednesday, January 6;
Thursday, January 7;
Tuesday, January 12;
Wednesday, January 13;
Thursday, January 14;
Tuesday, January 19;
Wednesday, January 20;
Thursday, January 21;
Tuesday, January 26;
Wednesday, January 27;
Thursday, January 28;

PLACE: Board Agenda Room, No. 5065, 1015 Half St., SE., Washington, DC 20570

STATUS: Closed.

MATTERS TO BE CONSIDERED: Pursuant to § 102.139(a) of the Board's Rules and Regulations, the Board or a panel thereof will consider ''the issuance of a subpoena, the Board's participation in a civil action or proceeding or an arbitration, or the initiation, conduct, or disposition . . . of particular representation or unfair labor practice proceedings under section 8, 9, or 10 of the [National Labor Relations] Act, or any court proceedings collateral or ancillary thereto.'' See also 5 U.S.C. 552b(c)(10).

CONTACT PERSON FOR MORE INFORMATION: Gary Shinners, Executive Secretary, (202) 273–3737.

Dated: December 29, 2015.

William B. Cowen,

Solicitor.

[FR Doc. 2015–33089 Filed 12–29–15; 4:15 pm]

BILLING CODE 7545–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nature McGinn, ACA Permit Officer, Division of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Or by email: *ACApermits@nsf.gov*.

SUPPLEMENTARY INFORMATION: On November 12, 2015 the National Science Foundation published a notice in the **Federal Register** of a permit application received. The permit was issued on December 23, 2015 to:

Laura K.O. Smith, Owner, Operator of Quixote Expeditions—Permit No. 2016–020.

Nadene G. Kennedy,

Polar Coordination Specialist, Division of Polar Programs.

[FR Doc. 2015–32925 Filed 12–30–15; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–271; NRC–2015–0111]

Entergy Operations, Inc.; Vermont Yankee Nuclear Power Station

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing exemptions in response to a February 13, 2015, request from Entergy Nuclear Operations, Inc. (ENO or the licensee). The licensee requested that Vermont Yankee Nuclear Power Station (Vermont Yankee) be granted a permanent partial exemption from regulations that require retention of records for certain systems, structures, and components (SSCs) until the termination of the operating license.

ADDRESSES: Please refer to Docket ID NRC–2015–0111 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

• *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2015–0111. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents''* and then select ''*Begin Web-based ADAMS Search.''* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced.

• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: James Kim, Office of Nuclear Reactor Regulation, telephone: 301–415–4125; email: *James.Kim@nrc.gov;* U.S. Nuclear Regulatory Commission, Washington DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Background

Vermont Yankee is a single unit General Electric 4, Mark 1 Boiling Water Reactor located in Vernon, Vermont. Vermont Yankee was granted Operating License No. DPR–28 under part 50 of title 10 of the *Code of Federal Regulations* (10 CFR) on March 21, 1972, and subsequently shut down on December 29, 2014. The operating license for Vermont Yankee is held by ENO.

On January 12, 2015, ENO submitted the certifications, pursuant to 10 CFR 50.82(a)(1), of permanent cessation of operations and permanent removal of fuel from the reactor (ADAMS Accession No. ML15013A426). Decommissioning activities will be carried out by Entergy Nuclear Vermont Yankee, and are described in the Post Shutdown Decommissioning Activities Report submitted to the NRC on December 19, 2014 (ADAMS Accession No. ML14357A110). The SSCs that supported the generation of electric power are being prepared to enter the SAFSTOR phase. Completion of fuel transfer from the spent fuel pool (SFP) to an independent spent fuel storage installation (ISFSI) is scheduled for 2020. Preparation for dismantlement and license termination are scheduled to begin in 2068.

II. Request/Action

By letter dated February 13, 2015 (ADAMS Accession No. ML15069A439), ENO filed a request for NRC approval of a permanent exemption from the following recordkeeping requirements: 10 CFR part 50, appendix B, Criterion XVII, 10 CFR 50.59(d)(3), and 10 CFR 50.71(c). The request was made pursuant to 10 CFR 50.12, ''Specific exemptions.''

The licensee is requesting NRC approval of an exemption from 10 CFR part 50, appendix B, Criterion XVII, which requires certain records be retained throughout the life of the unit; 10 CFR 50.59(d)(3), which requires records to be maintained ''until the termination of an operating license''; and 10 CFR 50.71(c) where records required by license condition or technical specifications (TS) are to be retained until termination of the license. The licensee proposes that:

(1) The need to maintain records for SSCs associated with nuclear power generation will be eliminated when those SSCs are removed from the licensing basis documents, such as TSs or the updated final safety analysis report (UFSAR), by appropriate change mechanisms.

(2) The need to maintain records for SSCs associated with safe storage of fuel in the SFP will be eliminated when spent nuclear fuel has been completely transferred from the SFP to dry storage, and the SFP and associated SSCs are removed from licensing basis documents by appropriate change mechanisms.

The licensee justifies the request by stating that when the associated SSCs are removed from the licensing basis documents, the SSCs will not serve any function regulated by the NRC. Therefore, the need to retain the records will be, on a practical basis, eliminated. The licensee cites precedents for records retention exemptions granted to Zion Nuclear Power Station, Units 1 and 2 (ADAMS Accession No. ML111260277), Millstone Power Station, Unit No. 1, (ADAMS Accession No. ML070110567), and Haddam Neck Plant (ADAMS Accession No. ML052160088).

Records associated with residual radiological activity and with necessary programmatic controls, such as security and quality assurance, are addressed through current licensing documents and are therefore, not affected by the exemption request. Also, the licensee did not request an exemption from records associated with the Vermont Yankee ISFSI, records associated with retention of the spent fuel assemblies, or records associated with decommissioning or dismantlement. In addition, the licensee did not request an exemption from 10 CFR part 50, appendix A, Criterion 1, ''Quality standards and records,'' as had been granted in the cited precedents. Because Vermont Yankee was granted a construction license prior to February 1971, it is not subject to the requirements in 10 CFR part 50, appendix A.

III. Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50 when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security, and (2) when special circumstances are present.

Vermont Yankee permanently shut down on December 29, 2014, and subsequently removed the spent fuel from the reactor to the SFP. The nuclear reactor and SSCs associated with the nuclear steam supply system and balance of plant that had supported

power generation have been drained as necessary and retired in place. Once these SSCs have been prepared for SAFSTOR, dismantlement, or demolition, they will no longer serve any purpose regulated by the NRC. Subsequently, these SSCs can be removed from NRC licensing basis documents, such as TSs or the UFSAR, by appropriate change mechanisms defined in regulations (*e.g.* 10 CFR 50.48(f), 10 CFR 50.59, 10 CFR 50.54(a), 10 CFR 50.54(p), or 10 CFR 50.54(q)). At that point, there will be no regulatory need to retain associated records until termination of the license. However, certain records associated with these SSCs, namely records pertaining to residual radioactivity and records pertaining to programmatic controls such as security or quality assurance, will continue to be governed by NRC regulation and addressed in licensing documents, and therefore, are not affected by these exemptions.

The SSCs supporting the continued operation of the SFP remain operable at Vermont Yankee and will be configured for operational efficiency until the fuel is removed to permanent dry storage. The records associated with the SFP SSCs will be retained through the SFP's functional life. Similar to other plant SSCs, when the SFP is emptied of fuel, drained, and prepared for demolition, SSCs that support the SFP will be removed from licensing basis documents by appropriate change mechanisms. At that point, there will be no safety-related or regulatory basis to retain the records associated with SFP SSCs.

The Exemption is Authorized by Law

Section 50.71(d)(2) allows for the granting of specific exemptions to the retention of records required by regulations. Section 50.71(d)(2) states, in part, ''the retention period specified in the regulations in this part for such records shall apply unless the Commission, pursuant to § 50.12 of this part, has granted a specific exemption from the record retention requirements specified in the regulations in this part.''

Based on 10 CFR 50.71(d)(2), if the requirements of 10 CFR 50.12 are satisfied, an exemption from the recordkeeping requirements in 10 CFR part 50, appendix B, 10 CFR 50.59(d)(3), and 10 CFR 50.71(c), as requested by the licensee, is authorized by law.

Specific Exemption Presents No Undue Risk to Public Health and Safety

As SSCs are prepared for SAFSTOR and eventual decommission and dismantlement, they will be removed from NRC licensing basis documents through appropriate change mechanisms, such as through the process stipulated by 10 CFR 50.59 or through a license amendment request approved by the NRC. These change processes involve either a determination by the licensee or an approval by the NRC that the affected SSC no longer serves any safety purpose regulated by the NRC. Therefore, the removal of the SSC would not present an undue risk to the public health and safety. In turn, removal of the records associated with the affected SSC would not cause any additional impact to public health and safety.

The partial exemptions from the requested requirements of 10 CFR part 50, appendix B, Criterion XVII; 10 CFR 50.59(d)(3); and 10 CFR 50.71(c) are administrative in nature and will have no impact on future decommissioning activities or radiological effluents. The partial exemptions will only advance the schedule for the removal of the records. Because the content of the records pertains to SSCs that have already been removed from licensing basis documents, elimination of the records on an advanced timetable will have no reasonable potential to present any undue risk to the public health and safety.

The Exemption is Consistent With the Common Defense and Security

The elimination of records associated with SSCs, which have already been removed from NRC licensing basis documents, is administrative in nature, and does not involve information or involve activities that could potentially impact the common defense or security. After the SSCs are removed from NRC licensing basis documents by appropriate change mechanisms, they are determined to no longer serve the purpose of safe operation or maintain conditions that would affect the ongoing health and safety of workers or the public. Therefore, removal of the associated records will also present no potential for impacting the safe operation of the plant or the defense or security of the workers or the public.

The exemptions requested are administrative in nature and will merely advance the current schedule for removal of the specified records. Therefore, the partial exemptions from the recordkeeping requirements of 10 CFR part 50, appendix B, Criterion XVII; 10 CFR 50.59(d)(3); and 10 CFR 50.71(c), and for the types of records as specified above, are consistent with the common defense and security.

Special Circumstances

Pursuant to 10 CFR 50.12, the Commission will consider granting an exemption if special circumstances are present. Section 50.12(a)(2)(ii) states, in part, that ''Special circumstance are present whenever ''Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule, or is not necessary to achieve the underlying purpose of the rule.''

Appendix B of 10 CFR part 50, Criterion XVII, states in part: ''Sufficient records shall be maintained to furnish evidence of activities affecting quality. . . . Records shall be identifiable and retrievable.''

Section 50.59(d)(3) states in part: ''The records of changes in the facility must be maintained until the termination of an operating license under this part. . .''

Section 50.71(c), states in part: ''Records that are required by the regulations in this part or 10 CFR part 52 of this chapter, by license condition, or by technical specifications must be retained for the period specified by the appropriate regulation, license condition, or technical specification. If a retention period is not otherwise specified, these records must be retained until the Commission terminates the facility license. . . .''

In the statements of consideration for the final rulemaking, effective July 26, 1988 (53 FR 19240; May 27, 1988) ''Retention Periods for Records,'' as a response to public comments during the rulemaking process, the NRC states that records must be retained ''. . . so they will be available for examination by the Commission in any analysis following an accident, incident, or other problem involving public health and safety . . . [and] . . . for NRC to ensure compliance with the safety and health aspects of the nuclear environment and for the NRC to accomplish its mission to protect the public health and safety.''

The statements of consideration express that the underlying purpose of the recordkeeping rule is to ensure that, in the event of an accident, incident, or condition that could impact public health and safety, the NRC has access to information in the records that would assist in the recovery from the event and prevent similar events or conditions, which would impact health and safety. These regulations do not consider the nature of the decommissioning process, in which safety-related SSCs are retired or disabled, and subsequently removed from NRC licensing basis documents by appropriate change mechanisms prior to the termination of the license.

Appropriate removal of an SSC from the licensing basis requires either a determination by the licensee or an approval by the NRC of whether the SSC has the potential to cause an accident, event, or other problem, which would adversely impact the public health and safety. It follows that at a nuclear power generation plant in the decommissioning stage, SSCs that have been retired from service and removed from licensing basis documents have already been determined, through that evaluation, to no longer have an adverse impact on public health and safety.

The records subject to removal under these exemptions are associated with SSCs that had been important to safety during power operation but are no longer important operationally or capable of causing an event, incident, or condition that would adversely impact public health and safety, as evidenced by their appropriate removal from licensing basis documents. If the SSCs no longer have the potential to cause an event, incident, or other problem, which would adversely impact public health and safety, then it is reasonable to conclude that the records associated with these SSCs would not reasonably be necessary for recovery from or prevention of such an event or incident, and therefore, their retention would not serve the underlying purpose of the rule to assist in recovery from an event or prevent future events, incidents, or problems. Once removed from licensing basis documents, SSCs are no longer governed by the NRC's regulations, and therefore, are not subject to compliance with the safety and health aspects of the nuclear environment. Therefore, retention of these records does not serve the underlying purpose of the rule of maintaining compliance with the safety and health aspects of the nuclear environment or to accomplish the NRC's mission.

Records, which continue to serve the underlying purpose of the rule, that is, to maintain compliance and to protect public health and safety, will continue to be retained under regulations in 10 CFR part 50 and 10 CFR part 72. These retained records not subject to the exemption include those associated with programmatic controls, such as those pertaining to residual radioactivity, security, quality assurance, etc., and records associated with the ISFSI and spent fuel assemblies.

Section 50.12(a)(2)(iii) states, in part, ''Compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted . . . .''

The retention of records required by 10 CFR part 50, appendix B, Criterion XVII, 10 CFR 50.59(d)(3), and 10 CFR 50.71(c) provides assurance that records associated with SSCs will be captured, indexed, and stored in an environmentally suitable and retrievable condition. Given the volume of records associated with the SSCs, compliance with the records retention rules results in a considerable cost to the licensee. Retention of the volume of records associated with these SSCs during the operations phase is appropriate to serve the underlying purpose of providing information to the Commission for examination in the case of an event, incident, or other problem involving the public health and safety, as discussed above. However, the cost effect of retaining operations phase records beyond the operations phase until the termination of the license was not fully considered or understood. Therefore, compliance with the rule would result in an undue cost in excess of that contemplated when the rule was adopted.

The granted exemptions apply to records that are associated with SSCs that had supported the operations phase of electricity generation and wet storage of spent fuel assemblies, and that have been, or will be, retired in place, prepared for dismantlement, and removed from licensing basis documents. Records that continue to apply to retired SSCs during the SAFSTOR and decommissioning phase, such as records associated with programmatic controls pertaining to residual radioactivity, security, quality assurance, etc., and records associated with the ISFSI and spent fuel assemblies, will continue to be maintained in an environmentally suitable and retrievable condition.

Environmental Considerations

Under 10 CFR 51.22(c)(25), granting of an exemption from the requirements of any regulation in Chapter I of 10 CFR is a categorical exclusion provided that (i) there is no significant hazards consideration; (ii) there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite; (iii) there is no significant increase in individual or cumulative public or occupational radiation exposure; (iv) there is no significant construction impact; (v) there is no significant increase in the potential for or consequences from radiological accidents: And (vi) the requirements from which an exemption is sought are among those identified in 10 CFR 51.22(c)(25)(vi).

The Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation, has determined that approval of the exemption request involves no significant hazards consideration because allowing the licensee exemption from the recordkeeping requirements of 10 CFR part 50, appendix B, Criterion XVII; 10 CFR 50.59(d)(3); and 10 CFR 50.71(c), at the permanently shutdown and defueled Vermont Yankee power reactor, does not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; (3) involve a significant reduction in a margin of safety. Accordingly, there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite, and no significant increase in individual or cumulative public or occupational radiation exposure. The exempted regulation is not associated with construction, so there is no significant construction impact. The exempted regulation does not concern the source term (*i.e.,* potential amount of radiation in an accident), nor mitigation. Therefore, there is no significant increase in the potential for, or consequences from radiological accidents.

Allowing the licensee partial exemption from record retention requirements from which the exemption is sought involve recordkeeping requirements, reporting requirements of an administrative, managerial, or organizational nature.

Therefore, pursuant to 10 CFR 51.22(b) and 51.22(c)(25), no environmental impact statement or environmental assessment need be prepared in connection with the approval of this exemption request.

IV. Conclusions

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, that ENO's request for partial exemptions from recordkeeping requirements in 10 CFR part 50, appendix B, Criterion XVII; 10 CFR 50.59(d)(3); and 10 CFR 50.71(c) are authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security. Also, special circumstances are present. Therefore, the Commission hereby grants ENO's one-time partial exemptions from 10 CFR part 50, appendix B, Criterion XVII; 10 CFR 50.59(d)(3); and 10 CFR 50.71(c) to advance the schedule to remove records

associated with SSCs that have been removed from NRC licensing basis documents by appropriate change mechanisms.

Dated at Rockville, Maryland, this 22nd day of December 2015.

For the Nuclear Regulatory Commission.

George A. Wilson,

Deputy Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2015–32932 Filed 12–30–15; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF STATE

[Public Notice: 9396]

Request for Information for the 2016 Trafficking in Persons Report

SUMMARY: The Department of State (''the Department'') requests written information to assist in reporting on the degree to which the United States and foreign governments comply with the minimum standards for the elimination of trafficking in persons (''minimum standards'') that are prescribed by the Trafficking Victims Protection Act of 2000, (Div. A, Pub. L. 106–386) as amended (''TVPA''). This information will assist in the preparation of the *Trafficking in Persons Report* (''*TIP Report*'') that the Department submits annually to the U.S. Congress on governments' level of compliance with the minimum standards. Foreign governments that do not comply with the minimum standards and are not making significant efforts to do so may be subject to restrictions on nonhumanitarian, nontrade-related foreign assistance from the United States, as defined by the TVPA. Submissions must be made in writing to the Office to Monitor and Combat Trafficking in Persons at the Department of State by January 19, 2016. Please refer to the **ADDRESSES**, *Scope of Interest,* and *Information Sought* sections of this Notice for additional instructions on submission requirements.

DATES: Submissions must be received by 5 p.m. on January 19, 2016.

ADDRESSES: Written submissions and supporting documentation may be submitted by the following methods:

Email (preferred): tipreport@state.gov for submissions related to foreign governments and *tipreportUS@state.gov* for submissions related to the United States.

- *Facsimile (fax):* 202–312–9637
- *Mail, Express Delivery, Hand Delivery and Messenger Service:* U.S. Department of State, Office to Monitor and Combat Trafficking in Persons (J/TIP), 1800 G Street NW., Suite 2148, Washington, DC 20520. Please note that materials submitted by mail may be delayed due to security screenings and processing.

Scope of Interest: The Department requests information relevant to assessing the United States' and foreign governments' compliance with the minimum standards for the elimination of trafficking in persons in the year 2015. The minimum standards for the elimination of trafficking in persons are listed in the *Background* section. Submissions must include information relevant and probative of the minimum standards for the elimination of trafficking in persons and should include, but need not be limited to, answering the questions in the *Information Sought* section. Only those questions for which the submitter has direct professional experience should be answered and that experience should be noted. For any critique or deficiency described, please provide a recommendation to remedy it. Note the country or countries that are the focus of the submission.

Submissions may include written narratives that answer the questions presented in this Notice, research, studies, statistics, fieldwork, training materials, evaluations, assessments, and other relevant evidence of local, state, and federal government efforts. To the extent possible, precise dates and numbers of officials or citizens affected should be included.

Where applicable, written narratives providing factual information should provide citations to sources, and copies of the source material should be provided. If possible, send electronic copies of the entire submission, including source material. If primary sources are utilized, such as research studies, interviews, direct observations, or other sources of quantitative or qualitative data, details on the research or data-gathering methodology should be provided. The Department does not include in the *Report,* and is therefore not seeking, information on prostitution, human smuggling, visa fraud, or child abuse, unless such conduct occurs in the context of human trafficking.

Confidentiality: Please provide the name, phone number, and email address of a single point of contact for any submission. It is Department practice not to identify in the *Report* information concerning sources to safeguard those sources. Please note, however, that any information submitted to the Department may be releasable pursuant to the provisions of the Freedom of Information Act or other applicable law. When applicable, portions of submissions relevant to efforts by other U.S. government agencies may be shared with those agencies.

Response: This is a request for information only; there will be no response to submissions.

SUPPLEMENTARY INFORMATION:

I. Background

The TIP Report: The *TIP Report* is the most comprehensive worldwide report on governments' efforts to combat trafficking in persons. It represents an updated, global look at the nature and scope of trafficking in persons and the broad range of government actions to confront and eliminate it. The U.S. government uses the *Report* to engage in diplomacy, to encourage partnership in creating and implementing laws and policies to combat trafficking, and to target resources on prevention, protection, and prosecution programs. Worldwide, the *Report* is used by international organizations, foreign governments, and nongovernmental organizations as a tool to examine where resources are most needed. Identifying victims, preventing trafficking, and bringing traffickers to justice are the ultimate goals of the *Report* and of the U.S government's anti-trafficking policy.

The Department prepares the *TIP Report* using information from across the U.S. government, foreign government officials, nongovernmental and international organizations, published reports, and research trips to every region. The *Report* focuses on concrete actions that governments take to fight trafficking in persons, including prosecutions, convictions, and prison sentences for traffickers, as well as victim protection measures and prevention efforts. Each *Report* narrative also includes recommendations for each country. These recommendations are then used to assist in measuring governments' progress from one year to the next and determining whether governments comply with the minimum standards for the elimination of trafficking in persons or are making significant efforts to do so.

The TVPA creates a four tier ranking system. Tier placement is based more on the extent of government action to combat trafficking than on the size of the problem, although that is a consideration. The Department first evaluates whether the government fully complies with the TVPA's minimum standards for the elimination of trafficking. Governments that fully comply are placed on Tier 1. For other governments, the Department considers the extent of efforts to reach compliance. Governments that are making significant efforts to meet the

minimum standards are placed on Tier 2. Governments that do not fully comply with the minimum standards and are not making significant efforts to do so are placed on Tier 3. Finally, the Department considers Special Watch List criteria and, when applicable, moves countries to Tier 2 Watch List. For more information, the 2015 *TIP Report* can be found at *http://www.state.gov/j/tip/rls/tiprpt/2015/index.htm*.

Since the inception of the *TIP Report* in 2001, the number of countries included and ranked has more than doubled to include 188 countries and territories in the 2015 *TIP Report*. Around the world, the *TIP Report* and the best practices reflected therein have inspired legislation, national action plans, policy implementation, program funding, protection mechanisms that complement prosecution efforts, and a stronger global understanding of this crime.

Since 2003, the primary reporting on the United States' anti-trafficking activities has been through the annual Attorney General's Report to Congress and Assessment of U.S. Government Activities to Combat Human Trafficking (''AG Report'') mandated by section 105 of the TVPA (22 U.S.C. 7103(d)(7)). Since 2010, the *Report,* through a collaborative interagency process, includes an analysis of U.S. government anti-trafficking efforts in light of the minimum standards to eliminate trafficking in persons set forth by the TVPA.

II. Minimum Standards for the Elimination of Trafficking in Persons

The TVPA sets forth the minimum standards for the elimination of trafficking in persons as follows:

(1) The government of the country should prohibit severe forms of trafficking in persons and punish acts of such trafficking.

(2) For the knowing commission of any act of sex trafficking involving force, fraud, coercion, or in which the victim of sex trafficking is a child incapable of giving meaningful consent, or of trafficking which includes rape or kidnapping or which causes a death, the government of the country should prescribe punishment commensurate with that for grave crimes, such as forcible sexual assault.

(3) For the knowing commission of any act of a severe form of trafficking in persons, the government of the country should prescribe punishment that is sufficiently stringent to deter and that adequately reflects the heinous nature of the offense.

(4) The government of the country should make serious and sustained efforts to eliminate severe forms of trafficking in persons.

The following factors should be considered as indicia of serious and sustained efforts to eliminate severe forms of trafficking in persons:

(1) Whether the government of the country vigorously investigates and prosecutes acts of severe forms of trafficking in persons, and convicts and sentences persons responsible for such acts, that take place wholly or partly within the territory of the country, including, as appropriate, requiring incarceration of individuals convicted of such acts. For purposes of the preceding sentence, suspended or significantly reduced sentences for convictions of principal actors in cases of severe forms of trafficking in persons shall be considered, on a case-by-case basis, whether to be considered as an indicator of serious and sustained efforts to eliminate severe forms of trafficking in persons. After reasonable requests from the Department of State for data regarding investigations, prosecutions, convictions, and sentences, a government which does not provide such data, consistent with the capacity of such government to obtain such data, shall be presumed not to have vigorously investigated, prosecuted, convicted, or sentenced such acts. The Secretary of State may disregard the presumption contained in the preceding sentence if the government has provided some data to the Department of State regarding such acts and the Secretary has determined that the government is making a good faith effort to collect such data.

(2) Whether the government of the country protects victims of severe forms of trafficking in persons and encourages their assistance in the investigation and prosecution of such trafficking, including provisions for legal alternatives to their removal to countries in which they would face retribution or hardship, and ensures that victims are not inappropriately incarcerated, fined, or otherwise penalized solely for unlawful acts as a direct result of being trafficked, including by providing training to law enforcement and immigration officials regarding the identification and treatment of trafficking victims using approaches that focus on the needs of the victims.

(3) Whether the government of the country has adopted measures to prevent severe forms of trafficking in persons, such as measures to inform and educate the public, including potential victims, about the causes and consequences of severe forms of trafficking in persons; measures to establish the identity of local populations, including birth registration, citizenship, and nationality; measures to ensure that its nationals who are deployed abroad as part of a diplomatic, peacekeeping, or other similar mission do not engage in or facilitate severe forms of trafficking in persons or exploit victims of such trafficking; a transparent system for remediating or punishing such public officials as a deterrent; measures to prevent the use of forced labor or child labor in violation of international standards; effective bilateral, multilateral, or regional information-sharing and cooperation arrangements with other countries; and effective policies or laws regulating foreign labor recruiters and holding them civilly and criminally liable for fraudulent recruiting.

(4) Whether the government of the country cooperates with other governments in the investigation and prosecution of severe forms of trafficking in persons and has entered into bilateral, multilateral, or regional law enforcement cooperation and coordination arrangements with other countries.

(5) Whether the government of the country extradites persons charged with acts of severe forms of trafficking in persons on substantially the same terms and to substantially the same extent as persons charged with other serious crimes (or, to the extent such extradition would be inconsistent with the laws of such country or with international agreements to which the country is a party, whether the government is taking all appropriate measures to modify or replace such laws and treaties so as to permit such extradition).

(6) Whether the government of the country monitors immigration and emigration patterns for evidence of severe forms of trafficking in persons and whether law enforcement agencies of the country respond to any such evidence in a manner that is consistent with the vigorous investigation and prosecution of acts of such trafficking, as well as with the protection of human rights of victims and the internationally recognized human right to leave any country, including one's own, and to return to one's own country.

(7) Whether the government of the country vigorously investigates, prosecutes, convicts, and sentences public officials, including diplomats and soldiers, who participate in or facilitate severe forms of trafficking in persons, including nationals of the country who are deployed abroad as part of a diplomatic, peacekeeping, or

other similar mission who engage in or facilitate severe forms of trafficking in persons or exploit victims of such trafficking, and takes all appropriate measures against officials who condone such trafficking. A government's failure to appropriately address public allegations against such public officials, especially once such officials have returned to their home countries, shall be considered inaction under these criteria. After reasonable requests from the Department of State for data regarding such investigations, prosecutions, convictions, and sentences, a government which does not provide such data consistent with its resources shall be presumed not to have vigorously investigated, prosecuted, convicted, or sentenced such acts. The Secretary of State may disregard the presumption contained in the preceding sentence if the government has provided some data to the Department of State regarding such acts and the Secretary has determined that the government is making a good faith effort to collect such data.

(8) Whether the percentage of victims of severe forms of trafficking in the country that are non-citizens of such countries is insignificant.

(9) Whether the government has entered into effective, transparent partnerships, cooperative agreements, or agreements that have resulted in concrete and measureable outcomes with—

(A) Domestic civil society organizations, private sector entities, or international non-governmental organizations, or into multilateral or regional arrangements or agreements, to assist the government's efforts to prevent trafficking, protect victims, and punish traffickers; or

(B) The United States toward agreed goals and objectives in the collective fight against trafficking.

(10) Whether the government of the country, consistent with the capacity of such government, systematically monitors its efforts to satisfy the criteria described in paragraphs (1) through (8) and makes available publicly a periodic assessment of such efforts.

(11) Whether the government of the country achieves appreciable progress in eliminating severe forms of trafficking when compared to the assessment in the previous year.

(12) Whether the government of the country has made serious and sustained efforts to reduce the demand for:

(A) Commercial sex acts; and

(B) Participation in international sex tourism by nationals of the country.

III. Information Sought Relevant to the Minimum Standards

Submissions should include, but need not be limited to, answers to relevant questions below for which the submitter has direct professional experience; that experience should be noted. Citations to source material should also be provided. Note the country or countries that are the focus of the submission. Please see the *Scope of Interest* section for detailed information regarding submission requirements.

1. How have trafficking methods changed in the past 12 months? For example, are there victims from new countries of origin? Is internal trafficking or child trafficking increasing? Has sex trafficking changed from brothels to private apartments? Is labor trafficking now occurring in additional types of industries or agricultural operations? Is forced begging a problem? Does child sex tourism occur in the country or involve its nationals abroad, and if so, what are their destination countries?

2. In what ways has the government's efforts to combat trafficking in persons changed in the past year? What new laws, regulations, policies, and implementation strategies exist (*e.g.,* substantive criminal laws and procedures, mechanisms for civil remedies, and victim-witness security, generally, and in relation to court proceedings)?

3. Please provide observations regarding the implementation of existing laws and procedures. Are there laws criminalizing those who knowingly solicit or patronize a trafficking victim to perform a commercial sex act and what are the prescribed penalties?

4. Are the anti-trafficking laws and sentences strict enough to reflect the nature of the crime?

5. Please provide observations on overall anti-trafficking law enforcement efforts and the efforts of police and prosecutors to pursue trafficking cases. Is the government equally vigorous in pursuing labor trafficking and sex trafficking? If aware, please note any efforts to investigate and prosecute suspects for knowingly soliciting or patronizing a sex trafficking victim to perform a commercial sex act.

6. Do government officials understand the nature of trafficking? If not, please provide examples of misconceptions or misunderstandings.

7. Do judges appear appropriately knowledgeable and sensitized to trafficking cases? What sentences have courts imposed upon traffickers? How common are suspended sentences and prison time of less than one year for convicted traffickers?

8. What was the extent of official complicity in trafficking crimes? Were officials operating as traffickers (whether subjecting persons to forced labor and/or sex trafficking offenses) or taking actions that may facilitate trafficking (including accepting bribes to allow undocumented border crossings or suspending active investigations of suspected traffickers, etc.)? Were there examples of trafficking occurring in state institutions (prisons, child foster homes, institutions for mentally or physically handicapped persons)? What proactive measures did the government take to prevent official complicity in trafficking in persons crimes? How did the government respond to reports of complicity that arose during the reporting period?

9. Has the government vigorously investigated, prosecuted, convicted, and sentenced nationals of the country deployed abroad as part of a diplomatic, peacekeeping, or other similar mission who engage in or facilitate trafficking?

10. Has the government investigated, prosecuted, convicted, and sentenced organized crime groups that are involved in trafficking?

11. Please provide observations regarding government efforts to address the issue of unlawful child soldiering.

12. Does the government make a coordinated, proactive effort to identify victims? Do officials effectively coordinate among one another and with relevant nongovernmental organizations to refer victims to care? Is there any screening conducted before deportation to determine whether individuals were trafficked?

13. What victim services are provided (legal, medical, food, shelter, interpretation, mental health care, health care, employment, training, etc.)? Who provides these services? If nongovernment organizations provide the services, does the government support their work either financially or otherwise?

14. How could victim services be improved?

15. Are services provided equally and adequately to victims of labor and sex trafficking? Men, women, and children? Citizen and noncitizen? Members of the LGBT community?

16. Do service providers and law enforcement work together cooperatively, for instance, to share information about trafficking trends or to plan for services after a raid? What is the level of cooperation, communication, and trust between service providers and law enforcement?

17. May victims file civil suits or seek legal action against their trafficker? Do victims avail themselves of those remedies? Is there a formal policy that encourages victims' voluntary participation in investigations and prosecutions? How did the government protect victims during the trial process? If a victim was a material witness in a court case against a former employer, was the victim permitted to obtain employment, move freely about the country, or leave the country pending trial proceedings? How did the government work to ensure victims were not re-traumatized during participation in trial proceedings? Can victims provide testimony via video or written statements? Were victims' identities kept confidential as part of such proceedings?

18. Does the government repatriate victims who wish to return home? Does the government assist with third country resettlement? Does the government engage in any analysis of whether victims may face retribution or hardship upon repatriation to their country of origin? Are victims awaiting repatriation or third country resettlement offered services? Are victims indeed repatriated or are they deported?

19. Does the government effectively assist its nationals exploited abroad? Does the government work to ensure victims receive adequate assistance and support for their repatriation while in destination countries? Does the government provide adequate assistance to repatriated victims after their return to their countries of origin, and if so, what forms of assistance?

20. Does the government inappropriately detain or imprison identified trafficking victims?

21. Does the government punish trafficking victims for forgery of documents, illegal immigration, unauthorized employment, or participation in illegal activities directed by the trafficker?

22. What efforts has the government made to prevent human trafficking?

23. Has the government entered into effective bilateral, multilateral, or regional information-sharing and cooperation arrangements that have resulted in concrete and measureable outcomes?

24. Does the country have effective policies or laws regulating foreign labor recruiters? What steps did the government take to minimize the trafficking risks faced by migrant workers departing from or arriving in the country?

25. Does the government undertake activities that could prevent or reduce vulnerability to trafficking, such as registering births of indigenous populations?

26. Does the government provide financial support to NGOs working to promote public awareness or does the government implement such campaigns itself? Have public awareness campaigns proven to be effective?

27. Please provide additional recommendations to improve the government's anti-trafficking efforts.

28. Please highlight effective strategies and practices that other governments could consider adopting.

Dated: December 21, 2015.

Kari Johnstone,

Principal Deputy, Office to Monitor and Combat, Trafficking in Persons, U.S. Department of State.

[FR Doc. 2015–32950 Filed 12–30–15; 8:45 am]

BILLING CODE 4710–17–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35984]

Ohio River Partners LLC—Acquisition and Operation Exemption—Hannibal Development, LLC

Ohio River Partners LLC (ORP), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire from Hannibal Development, LLC (Hannibal), and to operate 12.2 miles of rail line known as the Omal Secondary Track (the Line).[1] The Line extends between milepost 60.5 at or near Powhatan Point and milepost 72.7 at or near Hannibal, in Monroe County, Ohio.

Hannibal acquired the Line from the bankruptcy estate of ORMET Railroad Corporation (ORMET) in 2014. Prior to entering bankruptcy, ORMET granted Hannibal Real Estate, LLC (HRE) [2] an easement to use the Line for the purpose of providing rail service to an industrial park owned by HRE on property located adjacent to ORMET's property. Ohio Terminal Railway Company currently serves customers in the HRE industrial park pursuant to the easement.[3] The customers in the HRE industrial park are currently the only rail shippers on the Line. ORP will acquire certain assets including the Line (collectively, the Hannibal Property) from Hannibal, and plans to redevelop the Hannibal Property for industrial use. ORP anticipates that industries located on the Hannibal Property may require rail service. Accordingly, ORP has filed the instant verified notice of exemption to acquire and operate the Line.[4]

This transaction is related to a concurrently filed verified notice of exemption in *Fortress Investment Group LLC—Continuance in Control Exemption—Ohio River Partners, LLC,* Docket No. FD 35985, wherein Fortress seeks Board approval to continue in control of ORP and two other rail carriers (Central Maine & Quebec Railway US Inc. and Florida East Coast Railway, L.L.C.) currently controlled by other companies managed by affiliates of Fortress following consummation of the proposed transaction.

The transaction may not be consummated until January 17, 2016 (30 days after the notice of exemption was filed).

ORP certifies that its projected annual revenues as a result of this transaction will not result in its becoming a Class II or Class I rail carrier and will not exceed $5 million.

ORP states that the transaction does not impose any interchange commitment on it.

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions to stay must be filed no later than January 8, 2016 (at least seven days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35984, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Terence M. Hynes, Sidley Austin LLP, 1501 K St. NW., Washington, DC 20005.

Board decisions and notices are available on our Web site at ''*WWW.STB.DOT.GOV.*''

Decided: December 23, 2015.

[1] ORP, a Delaware limited liability company, is controlled by Ohio River Partners Shareholder LLC, a Delaware limited liability company (ORPS). ORPS is indirectly owned and controlled by Fortress Transportation and Infrastructure Investors LLC, which is managed by an affiliate of Fortress Investment Group LLC (Fortress). Upon consummation of the proposed transaction, ORPS will own a 75% interest in ORP. The remaining 25% interest in ORP will be held by Hannibal.

[2] Hannibal and HRE are not affiliated companies.

[3] *See Ohio Terminal Ry.—Operation Exemption—Hannibal Real Estate,* FD 35703 (STB served Jan. 11, 2013).

[4] The easement granted by ORMET gives HRE the right to use the Line only for the purpose of providing rail service to HRE's property. Accordingly, any new industries that locate on the Hannibal Property would be served by ORP.

By the Board, Julia M. Farr, Acting Director, Office of Proceedings.

Raina S. Contee,

Clearance Clerk.

[FR Doc. 2015–32960 Filed 12–30–15; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Release of Waybill Data

The Surface Transportation Board has received a request Neville Peterson LLP on behalf of Trinity Industries, Inc. (WB605–12—12/22/15) for permission to use certain data from the Board's 2014 Carload Waybill Sample. A copy of this request may be obtained from the Office of Economics.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.9.

Contact: Alexander Dusenberry, (202) 245–0319.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2015–32930 Filed 12–30–15; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35985]

Fortress Investment Group LLC—Continuance in Control Exemption—Ohio River Partners LLC

Fortress Investment Group LLC (Fortress) has filed a verified notice of exemption pursuant to 49 CFR 1180.2(d)(2) for the benefit of Fortress Transportation and Infrastructure Investors LLC (FTAI), which is managed by an affiliate of Fortress, to continue in control of Ohio River Partners LLC (ORP), a noncarrier, upon ORP becoming a Class III rail carrier.

This transaction is related to a concurrently filed verified notice of exemption in *Ohio River Partners LLC—Acquisition & Operation Exemption—Hannibal Development, LLC,* Docket No. FD 35984, wherein ORP seeks Board approval under 49 CFR 1150.31 to acquire and operate a line of railroad, known as the Omal Secondary Track, that extends between milepost 60.5 at or near Powhatan Point and milepost 72.7 at or near Hannibal, a distance of 12.2 miles in Monroe County, Ohio (the Line). ORP, a Delaware limited liability company, is controlled by Ohio River Partners Shareholder LLC, a Delaware limited liability company (ORPS).[1] ORPS is indirectly owned and controlled by FTAI, which is managed by an affiliate of Fortress.

The parties intend to consummate the proposed transaction as soon as practicable after the effective date of this notice of exemption and the concurrent notice of exemption filed in Docket No. FD 35984.

Two other rail carriers subject to the Board's jurisdiction, Florida East Coast Railway, L.L.C. (FECR) and Central Maine & Quebec Railway US Inc. (CMQR), are currently controlled by companies managed by affiliates of Fortress.[2] FECR, a Class II carrier operates approximately 350 miles of rail lines in the State of Florida extending between Jacksonville and the Miami metropolitan area. CMQR, a Class III carrier, operates approximately 244 miles of rail lines in the States of Maine and Vermont.

Fortress represents that: (1) The rail lines operated by FECR and CMQR do not connect with each other, nor do they connect with the Line that ORP proposes to acquire and operate in Docket No. FD 35984; (2) the transaction that is the subject of Docket No. FD 35984 is not part of a series of anticipated transactions that would connect the Line that ORP proposes to acquire with the lines of any other rail carrier owned by Fortress, any affiliate of Fortress, or any investment fund or entity managed by an affiliate of Fortress; [3] and (3) ORP, CMQR, and FECR are not Class I carriers. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. As a condition to the use of this exemption, any employees adversely affected by this transaction will be protected by the conditions set forth in *Wisconsin Central Ltd.—Acquisition Exemption—Lines of Union Pacific Railroad,* 2 S.T.B. 218 (1997).

If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than January 8, 2016.

An original and 10 copies of all pleadings, referring to Docket No. FD 35985, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Terence M. Hynes, Sidley Austin LLP, 1501 K Street NW., Washington, DC 20005.

Board decisions and notices are available on our Web site at *WWW.STB.DOT.GOV.*

Decided: December 23, 2015.

By the Board, Julia M. Farr, Acting Director, Office of Proceedings.

Raina S. Contee,

Clearance Clerk.

[FR Doc. 2015–32961 Filed 12–30–15; 8:45 am]

BILLING CODE 4915–01–P

[1] Upon consummation of the proposed transaction, ORPS will own a 75% interest in ORP. The remaining 25% interest in ORP will be held by Hannibal Development, LLC, which currently owns the rail line that is the subject of ORP's verified notice of exemption in Docket No. FD 35984.

[2] FECR is currently owned by FECR Rail Holding LLC, which is, in turn, owned by investment funds managed by an affiliate of Fortress. CMQR is a subsidiary of Rail Acquisition Holdings LLC, a Delaware limited liability company, which is, in turn, owned by FTAI.

[3] Fortress' representation concerning Docket No. FD 35984 is sufficient for purposes of the continuance in control exemption sought here through 49 CFR 1180.2(d)(2) given that the two transactions are so closely related.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35976]

Roanoke Southern, LLC—Acquisition and Operation Exemption—Norfolk Southern Railway Company

Roanoke Southern, LLC (RSRL),[1] a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire, by donation from Norfolk Southern Railway Company (NSR), and to operate an approximately 2.42-mile portion of a rail line known as the Roanoke Belt Line between milepost R–4.5 (at a point north of Rolfe St., SW) and milepost R–6.92 (at a point east of the intersection of U.S. Business 220 and Brandon Ave., SW), all of which is located in Roanoke, Va.

RSRL states that the line is being acquired to facilitate the commencement of the VMT-sponsored, intrastate excursion operations. RSRL notes that in the event that a demand for freight service was to emerge following consummation of the proposed transaction, RSRL acknowledges that it

[1] RSRL is directly controlled by the Virginia Museum of Transportation, Inc. (VMT), a noncarrier.

would assume the status and obligations of a common carrier to provide service upon a reasonable demand. According to RSRL, the parties are finalizing, and will shortly execute, an agreement providing for NSR's donation of the approximately 2.42-mile line to RRSL.

RSRL certifies that the proposed transaction would not involve a provision or agreement that would limit RSRL's ability to interchange with a third-party connecting carrier. RSRL states that it will connect and interchange with NSR in the vicinity of milepost 6.92.

RSRL also certifies that its projected annual revenues as a result of this transaction will not result in RSRL becoming a Class I or Class II rail carrier and states that its projected annual revenues will not exceed $5 million.

The transaction is expected to be consummated on or after January 17, 2016, the effective date of the exemption (30 days after the verified notice was filed).

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions to stay must be filed no later than January 8, 2016 (at least seven days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35976, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Robert A. Wimbish, Fletcher & Sippel LLC, 29 South Wacker Drive, Suite 920, Chicago, IL 60606.

Board decisions and notices are available on our Web site at *WWW.STB.DOT.GOV*.

Decided: December 23, 2015.

By the Board, Julia M. Farr, Acting Director, Office of Proceedings.

Raina S. Contee,

Clearance Clerk.

[FR Doc. 2015–32959 Filed 12–30–15; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Prompt Payment Interest Rate; Contract Disputes Act

AGENCY: Bureau of the Fiscal Service, Treasury.

ACTION: Notice.

SUMMARY: For the period beginning January 1, 2016, and ending on June 30, 2016, the prompt payment interest rate is 2½ per centum per annum.

ADDRESSES: Comments or inquiries may be mailed to: E-Commerce Division, Bureau of the Fiscal Service, 401 14th Street SW., Room 306F, Washington, DC 20227. Comments or inquiries may also be emailed to *PromptPayment@fiscal.treasury.gov.*

DATES: Effective January 1, 2016, to June 30, 2016.

FOR FURTHER INFORMATION CONTACT: Thomas M. Burnum, E-Commerce Division, (202) 874–6430; or Thomas Kearns, Attorney-Advisor, Office of the Chief Counsel, (202) 874–7036.

SUPPLEMENTARY INFORMATION: An agency that has acquired property or service from a business concern and has failed to pay for the complete delivery of property or service by the required payment date shall pay the business concern an interest penalty. 31 U.S.C. 3902(a). The Contract Disputes Act of 1978, Sec. 12, Public Law 95–563, 92 Stat. 2389, and the Prompt Payment Act, 31 U.S.C. 3902(a), provide for the calculation of interest due on claims at the rate established by the Secretary of the Treasury.

The Secretary of the Treasury has the authority to specify the rate by which the interest shall be computed for interest payments under section 12 of the Contract Disputes Act of 1978 and under the Prompt Payment Act. Under the Prompt Payment Act, if an interest penalty is owed to a business concern, the penalty shall be paid regardless of whether the business concern requested payment of such penalty. 31 U.S.C. 3902(c)(1). Agencies must pay the interest penalty calculated with the interest rate, which is in effect at the time the agency accrues the obligation to pay a late payment interest penalty. 31 U.S.C. 3902(a). ''The interest penalty shall be paid for the period beginning on the day after the required payment date and ending on the date on which payment is made.'' 31 U.S.C. 3902(b).

Therefore, notice is given that the Secretary of the Treasury has determined that the rate of interest applicable for the period beginning January 1, 2016, and ending on June 30, 2016, is 2½ per centum per annum.

David A. Lebryk,

Fiscal Assistant Secretary.

[FR Doc. 2015–32957 Filed 12–30–15; 8:45 am]

BILLING CODE 4810–AS–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

AGENCY: Department of the Treasury.

ACTION: Notice.

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 1, 2016 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 email at *PRA@treasury.gov* or the entire information collection request may be found at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

Internal Revenue Service (IRS)

OMB Number: 1545–0771.

Type of Review: Extension without change of a previously approved collection.

Title: TD 8864 (Final); EE–63–88 (Final and temp regulations) Taxation of Fringe Benefits and Exclusions From Gross Income for Certain Fringe Benefits; IA–140–86 (Temporary) Fringe Benefits.

Abstract: This regulation provides guidance on the tax treatment of taxable and nontaxable fringe benefits and general and specific rules for the valuation of taxable fringe benefits in accordance with Code sections 61 and 132 and provides guidance on exclusions from gross income for certain fringe benefits (IA–140–86). This regulation provides guidance relating to the requirement that any deduction or credit with respect to business travel, entertainment, and gift expenses be substantiated with adequate records in accordance with Code section 274(d).

Affected Public: Private Sector: Businesses or other for-profit.

Estimated Annual Burden Hours: 37,922,688.

OMB Number: 1545–1353.

Type of Review: Extension without change of a previously approved collection.

Title: TD 8517: Debt Instruments With Original Discount; Imputed Interest on Deferred Payment Sales or Exchanges of Property; TD 9599: Property Traded on an Established Market.

Abstract: This document contains regulations relating to the tax treatment of debt instruments with original issue discount and the imputation of interest on deferred payments under certain contracts for the sale or exchange of property and determining when property is traded on an established market for purposes of determining the issue price of a debt instrument. The regulations provide needed guidance to holders and issuers of debt instruments.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Annual Burden Hours: 195,500.

OMB Number: 1545–1520.

Type of Review: Revision of a previously approved collection.

Title: Revenue Procedures 2016–4 (Letter Rulings), 2011–5 (Technical Advice), 2016–6 (Determination Letters), and 2016–8 (User Fees).

Abstract: The information requested in Revenue Procedures 2016–4, 2011–5, 2016–6, and 2016–8 is required to enable the Internal Revenue Service to give advice on filing letter ruling, determination letter, and technical advice requests, to process such requests, and to determine the amount of any user fees.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Annual Burden Hours: 45,787.

OMB Number: 1545–1809.

Type of Review: Revision of a previously approved collection.

Title: Credit for Employer-Provided Childcare Facilities and Services.

Form: 8882.

Abstract: Qualified employers use Form 8882 to request a credit for employer-provided childcare facilities and services. Section 45F provides credit based on costs incurred by an employer in providing childcare facilities and resource and referral services. The credit is 25% of the qualified childcare expenditures plus 10% of the qualified childcare resource and referral expenditures for the tax year, up to a maximum credit of $150,000 per tax year.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Annual Burden Hours: 1,053.

OMB Number: 1545–2002.

Type of Review: Extension without change of a previously approved collection.

Title: Notice 2006–25 (superseded by Notice 2007–53), Qualifying Gasification Project Program.

Abstract: This notice establishes the qualifying gasification project under Section 48B of the Internal Revenue Code. This notice provides the time and manner for a taxpayer to apply for an allocation of qualifying gasification project credits.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Annual Burden Hours: 1,700.

OMB Number: 1545–2003.

Type of Review: Extension without change of a previously approved collection.

Title: Notice 2006–24, Qualifying Advanced Coal Project Program.

Abstract: Notice 2006–24 establishes the qualifying advanced coal project program under Sec. 48A of the Internal Revenue Code. The notice provides the time and manner for a taxpayer to apply for an allocation of qualifying advanced coal project credits and, once the taxpayer has received this allocation, the time and manner for the taxpayer to file for a certification of its qualifying advanced coal project.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Annual Burden Hours: 4,950.

OMB Number: 1545–2141.

Type of Review: Extension without change of a previously approved collection.

Title: Notice 2009–31—Election and Notice Procedures for Multiemployer Plans under Sections 204 and 205 of WRERA.

Abstract: The guidance in this notice implements temporary, elective relief under the Workers, Retirees, and Employers Relief Act of 2008 (WRERA), which was enacted December 2008 for multi-employer pension plans from certain funding requirements.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Annual Burden Hours: 1,600.

OMB Number: 1545–2143.

Type of Review: Extension without change of a previously approved collection.

Title: Notice 2009–26, Build America Bonds and Direct Payment Subsidy Implementation.

Abstract: This Notice provides guidance on the tax incentives for Build America Bonds under § 54AA of the Internal Revenue Code (''Code'') and the implementation plans for the refundable credit payment procedures for these bonds. It includes guidance on the modified Build America Bond program for Recovery Zone Economic Development Bonds under § 1400U–2 of the Code. The Notice also provides guidance on the initial refundable credit payment procedures, required elections, and information reporting and solicits public comments on the refundable credit payment procedures for these bonds. This Notice is intended to facilitate prompt implementation of the Build America Bond program and to enable state and local governments to begin issuing these bonds for authorized purposes to promote economic recovery and job creation.

Affected Public: State, Local, and Tribal Governments.

Estimated Annual Burden Hours: 15,000.

OMB Number: 1545–2155.

Type of Review: Extension without change of a previously approved collection.

Title: TD 9469 (REG–102822–08) Section 108 Reduction of Tax Attributes for S Corporations.

Abstract: The regulation provides guidance to S corporations that must reduce their tax attributes under section 108(b) of the Internal Revenue Code for taxable years in which an S corporation incurs discharge of indebtedness income that is excluded under section 108(a). The regulations will affect S corporations and their shareholders. The collection of information in the regulations requires shareholders to inform the S corporation of a shareholder-level tax attribute that the S corporation must reduce under section 108(b). Following the tax attribute reduction, the S corporation must inform the shareholders of the remaining balance, if any, of the shareholder's tax attribute.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Annual Burden Hours: 1,000.

OMB Number: 1545–2262.

Type of Review: Extension without change of a previously approved collection.

Title: Form 5498–QA (ABLE Account Contribution Information) and 1099–QA (Distributions from ABLE Accounts).

Form: 5498–QA, 1099–QA.

Abstract: This form will be used to report the contributions of Achieving a Better Life Experience (ABLE) accounts under IRC 529A. IRS uses the information to verify compliance with the reporting rules and to verify that the recipient has included the proper

amount of income on his or her income tax return.

Affected Public: Private Sector: Businesses or other for-profits; farms; Not-for-profit institutions.

Estimated Annual Burden Hours: 3,600.

Dated: December 28, 2015.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2015–32913 Filed 12–30–15; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

AGENCY: Department of the Treasury.

ACTION: Notice.

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 1, 2016 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 may be obtained by emailing *PRA@treasury.gov,* or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

Alcohol and Tobacco Tax and Trade Bureau (TTB)

OMB Number: 1513–0004.

Type of Review: Revision of a currently approved collection.

Title: Authorization to Furnish Financial Information and Certificate of Compliance.

Form: TTB F 5030.6.

Abstract: The TTB regulations require applicants for alcohol and tobacco permits to provide certain information regarding the money used to finance the business. The Right to Financial Privacy Act of 1978 (the Act; 12 U.S.C. 3401 *et seq.*) limits government access to records held by financial institutions, provides for certain procedures to gain access to such information, and requires that government agencies certify to a financial institution that the agency has complied with all provisions of the Act. To comply with the requirements of the Act, TTB F 5030.6 acts as both a customer authorization to their financial institution providing TTB with the authority to receive the customer's financial information and as the required certification by TTB to the financial institution that it has complied with the Act's provisions.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Annual Burden Hours: 240.

OMB Number: 1513–0089.

Type of Review: Revision of a currently approved collection.

Title: Records Supporting Drawback Claims on Eligible Articles Brought into the United States from Puerto Rico or the Virgin Islands (TTB REC 5530/3).

Abstract: TTB uses the records required to be kept under this information collection to verify claims for drawback of the Federal excise tax paid on eligible articles (generally nonbeverage products) brought into the United States from Puerto Rico and the U.S. Virgin Islands.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Annual Burden Hours: 160.

Dated: December 28, 2015.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2015–32912 Filed 12–30–15; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0118]

Proposed Information Collection (Transfer of Scholastic Credit (Schools) (FL–315)) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed for students to transfer course credit from one school to another school.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before February 29, 2016.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. ''2900–0118'' in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 632–8924 or FAX (202) 632–8925.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501—21), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Transfer of Scholastic Credit (Schools)—(FL 22–315).

OMB Control Number: 2900–0118.

Type of Review: Revision of a currently approved collection.

Abstract: VA FL 22–315 is used when a student is receiving Department of Veterans Affairs (VA) education benefits while enrolled at two training institutions at the same time. The institution at which the student pursues his approved program of education must

verify that courses pursued at a second or supplemental institution will be accepted as full credit toward the student's course objective.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,769 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 10,614.

By direction of the Secretary.

Crystal Rennie,

Department Clearance Officer, Department of Veterans Affairs.

[FR Doc. 2015–32955 Filed 12–30–15; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0831]

Agency Information Collection: Collection (Requirement To Present Certain Health Information for a Service Dog

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 and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed for Veterans, Veteran Representatives and health care providers to request reimbursement from the federal government for emergency services at a private institution.

DATES: Comments must be submitted on or before February 1, 2016.

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. 2900–0831'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Crystal Rennie, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 632–7492 or email *crystal.rennie@va.gov.* Please refer to ''OMB Control No. 2900–0831''.

SUPPLEMENTARY INFORMATION:

Title: Requirement to Present Certain Health Information for a Service Dog under 38 CFR 1.218(a)(11)

OMB Control Number: 2900–0831.

Type of Review: Emergency.

Abstract: Pursuant to 38 U.S.C. 901, VA may prescribe rules to provide for the maintenance of law and order and the protection of persons and property on VA property. VA implements this authority in regulations at 38 CFR 1.218 pertaining to security and law enforcement. This final rule will amend § 1.218(a)(11) to require VA facilities to permit service animals on VA property consistent with 40 U.S.C. 3103 (section 3103) and Public Law 112–154, § 109, 126 Stat. 1165 (2012) (section 109). Section 3103(a) provides that guide dogs or other service animals accompanying individuals with disabilities and especially trained for that purpose shall be admitted to any building or other property owned or controlled by the Federal Government on the same terms and conditions, and subject to the same regulations, as generally govern the admission of the public to the property. Section 109 provides that VA specifically may not prohibit the use of a covered service dog in any VA facility, on any VA property, or in any facility or on any property that receives funding from VA, and further defines a covered service dog as a service dog that has been trained by an entity that is accredited by an appropriate accrediting body that evaluates and accredits organizations which train guide or service dogs. Current 38 CFR 1.218(a)(11), however, reads that dogs and other animals, except seeing-eye dogs, shall not be brought upon property except as authorized by the head of the facility or designee. Our current regulation can be interpreted to allow the head of a VA facility or designee to bar access to all animals other than seeing-eye dogs, which is inconsistent with both section 3103(a) and section 109. We therefore revise our regulation to be consistent with the requirements in section 3103(a) and section 109. The collection associated with this regulation revision only applies to those service dogs that would be staying on VA property with a Veteran for extended periods of time while that Veteran is being treated in a residential treatment setting. This collection is not associated with the basic entry of a service dog generally on VA property. This collection is also associated with the entry of Animal Assisted Therapy and Animal Assisted Activity animals on VA property, and residential animals on VA residential units.

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 80 FR 49157 on August 17, 2015.

Affected Public: Individuals or households.

Estimated Annual Burden: 125 burden hours.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 1,500.

By direction of the Secretary.

Crystal Rennie,

Department Clearance Officer, Department of Veterans Affairs.

[FR Doc. 2015–32954 Filed 12–30–15; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

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Part II

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Chapter 1
Federal Acquisition Regulations; Final Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket No. FAR 2015–0051, Sequence No. 6]

Federal Acquisition Regulation; Federal Acquisition Circular 2005–86; Introduction

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of interim and final rules.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) in this Federal Acquisition Circular (FAC) 2005–86. A companion document, the *Small Entity Compliance Guide* (SECG), follows this FAC. The FAC, including the SECG, is available via the Internet at *http://www.regulations.gov.*

DATES: For effective dates see the separate documents, which follow.

FOR FURTHER INFORMATION CONTACT: The analyst whose name appears in the table below in relation to the FAR case. Please cite FAC 2005–86 and the specific FAR case number. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755.

RULES LISTED IN FAC 2005–86

Item	Subject	FAR Case	Analyst
I	Definition of "Multiple-Award Contract"	2015–019	Uddowla.
II	Sole Source Contracts for Women-Owned Small Businesses (Interim)	2015–032	Uddowla.
III	New Designated Countries—Montenegro and New Zealand	2015–034	Davis.
IV	Trade Agreements Thresholds	2016–001	Davis.

SUPPLEMENTARY INFORMATION:

Summaries for each FAR rule follow. For the actual revisions and/or amendments made by these rules, refer to the specific item numbers and subjects set forth in the documents following these item summaries. FAC 2005–86 amends the FAR as follows:

Item I—Definition of ''Multiple-Award Contract'' (FAR Case 2015–019)

This rule amends the FAR to define ''multiple-award contract.'' This rule implements the definition established by the Small Business Administration (SBA) in its final rule that published in the **Federal Register** at 78 FR 61114 on October 2, 2013. SBA's final rule implements the statutory definition of the term from section 1311 of the Small Business Jobs Act of 2010, Pub. L. 111–240.

This final rule does not place any new requirements on small entities.

Item II—Sole Source Contracts for Women-Owned Small Businesses (FAR Case 2015–032) (Interim)

This interim rule amends the FAR to implement regulatory changes made by the Small Business Administration (SBA) in its final rule as published in the **Federal Register** at 80 FR 55019, on September 14, 2015. SBA's final rule implements the statutory requirements of paragraph (a)(3) of section 825 of the Carl Levin and Howard P. 'Buck' McKeon National Defense Authorization Act for Fiscal Year 2015, Public Law 113–291, which grants contracting officers the authority to award sole source contracts to economically disadvantaged women-owned small business (EDWOSB) concerns and to women-owned small business (WOSB) concerns eligible under the WOSB Program. The anticipated price, including options, must not exceed $6.5 million for manufacturing NAICS codes, or $4 million for other NAICS codes.

This interim rule may have a positive economic impact on women-owned small businesses.

Item III—New Designated Countries—Montenegro and New Zealand (FAR Case 2015–034)

This final rule amends the FAR to add Montenegro and New Zealand as new designated countries under the World Trade Organization Government Procurement Agreement (WTO GPA). The rule also updates the list of parties to the Agreement on Trade in Civil Aircraft by adding Montenegro.

This final rule has no significant impact on the Government and contractors, including small business entities.

Item IV—Trade Agreements Thresholds (FAR Case 2016–001)

This final rule amends the FAR to adjust the thresholds for application of the World Trade Organization Government Procurement Agreement and the Free Trade Agreements as determined by the United States Trade Representative, according to a pre-determined formula under the agreements.

Dated: December 17, 2015.

William Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Federal Acquisition Circular (FAC) 2005–86 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005–86 is effective December 31, 2015 except for item I and III which are effective February 1, 2016, and item IV which is effective January 1, 2016.

Dated: December 18, 2015.

Althea H. Coetzee, RADM,

Acting Director, Defense Procurement and Acquisition Policy.

Dated: December 16, 2015.

Jeffrey A. Koses,

Senior Procurement Executive/Deputy CAO, Office of Acquisition Policy, U.S. General Services Administration.

Dated: December 16, 2015.

William P. McNally,

Assistant Administrator, Office of Procurement National Aeronautics and Space Administration.

[FR Doc. 2015–32426 Filed 12–30–15; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 2

[FAC 2005–86; FAR Case 2015–019; Item I; Docket 2015–0019, Sequence 1]

RIN 9000–AM96

Federal Acquisition Regulation; Definition of ''Multiple-Award Contract''

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA are issuing a final rule to amend the Federal Acquisition Regulation (FAR) to define ''multiple-award contract.''

DATES: *Effective:* February 1, 2016.

FOR FURTHER INFORMATION CONTACT: Ms. Mahruba Uddowla, Procurement Analyst, at 703–605–2868, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755. Please cite FAC 2005–86, FAR Case 2015–019.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 80 FR 31342 on June 2, 2015, soliciting public comments regarding the definition of the term ''multiple-award contract.'' The proposed rule was implementing the definition that the U.S. Small Business Administration (SBA) established at 13 CFR 125.1(k) in its final rule which published in the **Federal Register** at 78 FR 61114 on October 2, 2013. SBA's final rule implemented several provisions of the Small Business Jobs Act of 2010, Pub. L. 111–240. Section 1311 of Pub. L. 111–240 (15 U.S.C. 632(v)) added a definition of ''multiple-award contract.'' One respondent submitted a comment on the proposed rule.

II. Discussion and Analysis

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) reviewed the comment in the development of the final rule. A discussion of the comment is provided as follows:

A. Summary of Significant Changes

There were no changes made to the rule as a result of the comment received. There were no comments on the Regulatory Flexibility Act analysis.

B. Analysis of Public Comments

Comment: One respondent stated that based on the proposed definition, any award made to multiple sources from one solicitation is a multiple award, even when the requirement is split between offerors and none of the subsequent task orders are competed because each offeror gets part of the overall requirement in the solicitation. The respondent requested that the FAR definition clarify that a multiple-award contract is one that should be subject to fair opportunity.

Response: FAR 16.505(b)(1) provides information concerning fair opportunity. Additional clarity is not needed for the definition of ''multiple-award contract'' concerning fair opportunity since it is already provided at FAR 16.505(b)(1).

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

DoD, GSA, and NASA have prepared a Final Regulatory Flexibility Analysis (FRFA) consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The FRFA is summarized as follows:

The final rule amends the FAR to define ''multiple-award contract.'' On October 2, 2013, the Small Business Administration (SBA) issued a final rule in the **Federal Register** at 78 FR 61114 to implement various sections of the Small Business Jobs Act of 2010 (Public L. 111–240) by establishing new policies and procedures for multiple-award contracts and task and delivery orders. SBA's final rule included a definition of ''multiple-award contract''. The final rule defines ''multiple-award contract'' in order to implement that part of SBA's final rule in the FAR.

There were no significant issues raised by the public in response to the Initial Regulatory Flexibility Analysis provided in the proposed rule.

This rule applies to all entities that do business with the Federal Government, but it is not expected to have a significant impact.

This rule does not impose any new reporting, recordkeeping or other compliance requirements. The rule does not duplicate, overlap, or conflict with any other Federal rules.

Interested parties may obtain a copy of the FRFA from the Regulatory Secretariat. The Regulatory Secretariat has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

V. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subject in 48 CFR Part 2

Government procurement.

Dated: December 17, 2015.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR part 2 as set forth below:

PART 2—DEFINITIONS OF WORDS AND TERMS

■ 1. The authority citation for 48 CFR part 2 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

■ 2. Amend section 2.101 in paragraph (b)(2) by adding, in alphabetical order, the definition ''Multiple-award contract'' to read as follows:

2.101 Definitions.

* * * * *

(b) * * *

(2) * * *

Multiple-award contract means a contract that is—

(1) A Multiple Award Schedule contract issued by GSA (*e.g.,* GSA Schedule Contract) or agencies granted Multiple Award Schedule contract authority by GSA (*e.g.,* Department of Veterans Affairs) as described in FAR part 38;

(2) A multiple-award task-order or delivery-order contract issued in accordance with FAR subpart 16.5, including Governmentwide acquisition contracts; or

(3) Any other indefinite-delivery, indefinite-quantity contract entered into

with two or more sources pursuant to the same solicitation.

* * * * *

[FR Doc. 2015–32427 Filed 12–30–15; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 4, 6, 18, 19, and 52

[FAC 2005–86; FAR Case 2015–032; Item II; Docket No. 2015–0032; Sequence No. 1]

RIN 9000–AN13

Federal Acquisition Regulation; Sole Source Contracts for Women-Owned Small Businesses

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and the National Aeronautics and Space Administration (NASA).

ACTION: Interim rule.

SUMMARY: DoD, GSA, and NASA are issuing an interim rule amending the Federal Acquisition Regulation (FAR) to implement regulatory changes made by the Small Business Administration (SBA) that provide for authority to award sole source contracts to economically disadvantaged women-owned small business concerns and to women-owned small business concerns eligible under the Women-Owned Small Business (WOSB) Program.

DATES: *Effective:* December 31, 2015.

Comment date: Interested parties should submit written comments to the Regulatory Secretariat Division at one of the addresses shown below on or before February 29, 2016 to be considered in the formation of the final rule.

ADDRESSES: Submit comments identified by FAC 2005–86, FAR Case 2015–032, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching for ''FAR Case 2015–032.'' Select the link ''Comment Now'' that corresponds with ''FAR Case 2015–032.'' Follow the instructions provided on the screen. Please include your name, company name (if any), and ''FAR Case 2015–032'' on your attached document.
- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), ATTN: Ms. Flowers, 1800 F Street NW., 2nd Floor, Washington, DC 20405.

Instructions: Please submit comments only and cite FAC 2005–86, FAR Case 2015–032, in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Mahruba Uddowla, Procurement Analyst, at 703–605–2868 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755. Please cite FAC 2005–86, FAR Case 2015–032.

SUPPLEMENTARY INFORMATION:

I. Background

This interim rule revises the FAR to implement regulatory changes that the SBA has made in its final rule published in the **Federal Register** at 80 FR 55019, on September 14, 2015, concerning sole source award authority under the WOSB Program. SBA's final rule implements the statutory requirements of paragraph (a)(3) of section 825 of the Carl Levin and Howard P. ''Buck'' McKeon National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2015, Public Law 113–291, granting contracting officers the authority to award sole source contracts to both economically disadvantaged women-owned small business (EDWOSB) concerns and to WOSB concerns eligible under the WOSB Program.

The WOSB Program, as set forth in section 8(m) of the Small Business Act (15 U.S.C. 637(m)), authorizes contracting officers to restrict competition to EDWOSB concerns and to WOSB concerns eligible under the WOSB Program for Federal contracts, in certain industries that SBA has determined to be underrepresented or substantially underrepresented by small business concerns owned and controlled by women. DoD, GSA, and NASA published an interim rule for FAR Case 2010–015 in the **Federal Register** at 76 FR 18304, on April 1, 2011, providing guidance to contracting officers for the set-asides and implementing SBA's final rule, published in the **Federal Register** at 75 FR 62258, on October 7, 2010. The FAR rule was finalized with changes and published in the **Federal Register** at 77 FR 12913, on March 2, 2012. The establishment of a set-aside mechanism exclusively for women-owned small businesses was the first step towards leveling the playing field among the socioeconomic programs covered by the Small Business Act, *i.e.,* the HUBZone, service-disabled veteran-owned small-business, 8(a), and WOSB programs.

The WOSB Program was subsequently amended in section 825 of the NDAA for FY2015, which granted contracting officers the authority to award sole source contracts to EDWOSB concerns and WOSB concerns eligible under the WOSB Program. SBA established procedures for this new statutory authority in its final rule published in the **Federal Register** at 80 FR 55019, on September 14, 2015. As in SBA's earlier WOSB Program set-aside rule, sole source awards under the WOSB program are only permitted in the industries that SBA has determined to be underrepresented or substantially underrepresented by WOSB concerns. Implementation of these sole source procedures in the FAR ensures that contracting officers will have the tools necessary to maximize Federal procurement opportunities for WOSB concerns.

II. Discussion and Analysis

In keeping with the tenets of the WOSB Program, the sole source authority may only be used in industry sectors that SBA has determined to be underrepresented or substantially underrepresented by WOSB concerns. The same eligibility requirements for participating in set-asides under the WOSB Program, set forth in SBA's regulations at 13 CFR 127.100 through 127.509, also apply to sole source acquisitions. In general, an award under the WOSB program may be pursued on a sole source basis when the contracting officer does not have a reasonable expectation, through market research, that two or more eligible EDWOSB or WOSB concerns will submit offers at a fair and reasonable price, but identifies one responsible EDWOSB or WOSB that can perform at a fair and reasonable price. The dollar thresholds for sole source awards are equal to or less than $6.5 million for manufacturing requirements and equal to or less than $4 million for all other requirements, including all options.

This rule amends FAR subparts 2.1, 4.8, 6.3, 18.1, 19.0, 19.1, 19.3, 19.15, and 52.2. These changes are summarized in the following paragraphs:

A. Subpart 2.1, Definitions of Words and Terms

• *2.101, Definitions.* This section is amended to revise the definitions of the WOSB Program to include contracts awarded using the sole source authority.

B. Subpart 4.8, Government Contract Files

• *4.803, Contents of contract files.* This section is amended to include acquisitions awarded on a sole source basis under the WOSB Program.

C. Subpart 6.3, Other Than Full and Open Competition

• *6.302–5, Authorized or required by statute.* This section is amended to add the statutory authority to make sole source awards under the WOSB program (15 U.S.C. 637(m)).

D. Subpart 18.1, Available Acquisition Flexibilities

• *18.117, Awards to economically disadvantaged women-owned small business concerns and women-owned small business concerns eligible under the Women-Owned Small Business Program.* This section is amended to add the statutory authority to make sole source awards under the WOSB Program.

PART 19—Small Business Programs

E. 19.000, Scope of Part.

This section is amended to include the authority for sole source awards to EDWOSB concerns and WOSB concerns eligible under the WOSB program.

F. Subpart 19.1—Size Standards

• *19.102, Size standards.* This section is amended to make conforming changes.

G. Subpart 19.3—Determination of Small Business Status for Small Business Programs

• *19.308, Protesting a firm's status as an economically disadvantaged women-owned small business concern or women-owned small business concern eligible under the Women-Owned Small Business Program.* This section is amended to include protests of sole source acquisitions.

H. Subpart 19.15, Women-Owned Small Business Program

• *19.1505, Set-aside procedures.* This section is amended for editorial changes.

• *19.1506, Women-Owned Small Business Program sole source awards.* This section replaces the current FAR 19.1506, Contract clauses, and discusses the conditions under which a contracting officer may award a sole source contract to an EDWOSB concern or to a WOSB concern eligible under the WOSB Program.

• *FAR 19.1507, Contract clauses.* This section is renumbered (from 19.1506 to 19.1507) and amended to make conforming changes.

I. Subpart 52.2, Text of Provisions and Clauses

• *FAR 52.212–5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.* This clause is amended to make conforming changes.

• *FAR 52.219–29, Notice of Set-Aside for Economically Disadvantaged Women-Owned Small Business Concerns.* This clause is amended to add sole source awards.

• *FAR 52.219–30 Notice of Set-Aside for Women-Owned Small Business Concerns.* This clause is amended to add sole source awards.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This rule amends the FAR clauses at 52.219–29, Notice of Set-Aside for Economically Disadvantaged Women-owned Small Business Concerns, and 52.219–30, Notice of Set-Aside for Women-Owned Small Business Concerns Eligible Under the Women-Owned Small Business Program, in order to implement paragraph (a)(3) of section 825 of the NDAA for FY 2015. The Federal Acquisition Regulatory Council, pursuant to the authority granted in 41 U.S.C. 1905 and 1906, and the Administrator, Office of Federal Procurement Policy, pursuant to the authority granted in 41 U.S.C. 1907, have determined that the application of this statutory authority to contracts at or below the simplified acquisition threshold and to contracts for commercial items and commercially available off-the-shelf items, is in the best interests of the Federal Government.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

V. Regulatory Flexibility Act

The changes may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act 5 U.S.C. 601, *et seq.* The Initial Regulatory Flexibility Analysis (IRFA) is summarized as follows:

DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to implement paragraph (a)(3) of section 825 of the Carl Levin and Howard P. 'Buck' McKeon National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2015, Public Law 113–291. Section 825 of the NDAA for FY 2015 included language granting contracting officers the authority to award sole source contracts to Women-Owned Small Businesses (WOSBs) and Economically Disadvantaged Women-Owned Small Businesses (EDWOSBs) under the WOSB Program.

The objectives of this interim rule are to put the WOSB Program on a level playing field with other SBA Government contracting programs that have sole source authority, and to provide an additional, needed tool for agencies to meet the statutorily mandated goal of 5 percent of the total value of all prime contract and subcontract awards for WOSBs. The authorizing legislation is paragraph (a)(3) of section 825 of the NDAA for Fiscal Year 2015.

This rule may have a positive economic impact on WOSB concerns. The Dynamic Small Business Supplemental Search (DSBS) lists approximately 41,500 firms as either WOSBs or EDWOSBs under the WOSB Program. An analysis of the Federal Procurement Data System from April 1, 2011 (the implementation date of the WOSB Program), through September 1, 2015, revealed that there were approximately 44,053 women-owned small business concerns, including 332 EDWOSBs and 1,063 WOSBs eligible under the WOSB Program, that received obligated funds from Federal contract awards, task or delivery orders, and modifications to existing contracts. This rule could affect a smaller number of EDWOSBs and WOSBs than those eligible under the WOSB Program since the sole source authority can only be used where a contracting officer does not have a reasonable expectation, through market research, that two or more eligible EDWOSB or WOSB concerns will submit offers at a fair and reasonable price; in addition, the sole source authority for WOSBs and EDWOSBs is limited to contracts valued at $6.5 million or less for manufacturing contracts and $4 million or less for all other contracts.

This interim rule does not impose any new reporting, recordkeeping or other compliance requirements for small businesses. This rule

does not duplicate, overlap, or conflict with any other Federal rules.

The Regulatory Secretariat has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the SBA. A copy of the IRFA may be obtained from the Regulatory Secretariat Division. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by the rule consistent with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAR Case 2015–032), in correspondence.

VI. Paperwork Reduction Act

The interim rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

VII. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary to meet the Congressional intent of leveling the playing field between the Women-Owned Small Business (WOSB) Program and SBA's other socioeconomic contracting programs. Prior to passage of section 825 of the National Defense Authorization Act for Fiscal Year 2015, the WOSB Program was the only socioeconomic small business program that did not provide contracting officials the authority to make sole source awards to its intended beneficiaries.

WOSBs are an important growth area in the U.S. economy and yet the Federal Government has consistently failed to achieve the minimum five percent annual women-owned small business participation goal set forth in statute. As a result, women entrepreneurs continue to struggle to gain access to the Federal marketplace. This situation will persist, and women-owned small businesses will be excluded from valuable Federal procurement opportunities on a daily basis unless the sole source authority for EDWOSBs and WOSBs is implemented as quickly as possible. The new sole source authority allows contracting officers to implement the preferences accorded under the WOSB Program to the fullest extent possible, and serves as an additional, needed tool to increase procurement opportunities for WOSBs.

The statute went into effect on the date of enactment, December 19, 2014. The SBA final rule went into effect October 14, 2015. Pursuant to 41 U.S.C. 1707 and FAR 1.501–3(b), DoD, GSA, and NASA will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 2, 4, 6, 18, 19, and 52

Government procurement.

Dated: December 17, 2015.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 2, 4, 6, 18, 19, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 2, 4, 6, 18, 19, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 2—DEFINITIONS OF WORDS AND TERMS

■ 2. Amend section 2.101, paragraph (b)(2), the definition ''Women-Owned Small Business (WOSB) Program'' by—

■ a. Revising the introductory text of paragraph (1) and paragraph (1)(i);

■ b. Removing from paragraph (1)(ii) ''Eligible'' and adding to the end of the paragraph ''in Federal procurement''; and

■ c. Removing from the last sentence in paragraph (2) ''business concern'' and adding ''business (WOSB) concern'' in its place.

The revisions read as follows:

2.101 Definitions.

* * * * *

(b) * * *

Women-Owned Small Business (WOSB) Program. (1) *Women-Owned Small Business (WOSB) Program* means a program that authorizes contracting officers to limit competition, including award on a sole source basis, to—

(i) Economically disadvantaged women-owned small business (EDWOSB) concerns eligible under the WOSB Program for Federal contracts assigned a North American Industry Classification Systems (NAICS) code in an industry in which the Small Business Administration (SBA) has determined that WOSB concerns are underrepresented in Federal procurement; and

* * * * *

PART 4—ADMINISTRATIVE MATTERS

■ 3. Amend section 4.803 by revising the introductory text of paragraph (a)(42) and paragraphs (a)(42)(ii)(A) and (B) to read as follows:

4.803 Contents of contract files.

* * * * *

(a) * * *

(42) When limiting competition, or awarding on a sole source basis, to economically disadvantaged women-owned small business (EDWOSB) concerns or women-owned small business (WOSB) concerns eligible under the WOSB Program in accordance with subpart 19.15, include documentation—

* * * * *

(ii) * * *

(A) Underrepresented for EDWOSB concerns; or

(B) Substantially underrepresented for WOSB concerns.

* * * * *

PART 6—COMPETITION REQUIREMENTS

■ 4. Amend section 6.302–5 by adding paragraph (b)(7) to read as follows:

6.302–5 Authorized or required by statute.

* * * * *

(b) * * *

(7) Sole source awards under the WOSB Program-15 U.S.C. 637(m) (see 19.1506).

* * * * *

PART 18—EMERGENCY ACQUISITIONS

■ 5. Revise section 18.117 to read as follows:

18.117 Awards to economically disadvantaged women-owned small business concerns and women-owned small business concerns eligible under the Women-Owned Small Business Program.

Contracts may be awarded to economically disadvantaged women-owned small business (EDWOSB) concerns and women-owned small business (WOSB) concerns eligible under the WOSB Program on a competitive or sole source basis. (See subpart 19.15.)

PART 19—SMALL BUSINESS PROGRAMS

■ 6. Amend section 19.000 by—

■ a. Revising paragraph (a)(3);

■ b. Removing paragraph (a)(7);
■ c. Redesignating paragraphs (a)(8) through (10) as paragraphs (a)(7) through (9), respectively; and
■ d. Revising newly redesignated paragraph (a)(9).

The revisions read as follows:

19.000 Scope of part.

(a) * * *

(3) Setting acquisitions aside for exclusive competitive participation by small business, 8(a) business development participants, HUBZone small business concerns, service-disabled veteran-owned small business concerns, and economically disadvantaged women-owned small business (EDWOSB) concerns and women-owned small business (WOSB) concerns eligible under the WOSB Program;

* * * * *

(9) Sole source awards to HUBZone small business concerns, service-disabled veteran-owned small business concerns, and EDWOSB concerns and WOSB concerns eligible under the WOSB Program.

* * * * *

■ 7. Amend section 19.102 by revising the last sentence of paragraph (f)(1) to read as follows:

19.102 Size standards.

* * * * *

(f) * * *

(1) * * * However, see the limitations on subcontracting at 52.219–14 that apply to any small business offeror other than a nonmanufacturer for purposes of set-asides and 8(a) awards, 52.219–3 for HUBZone set-asides and HUBZone sole source awards, 52.219–27 for SDVOSB set-asides and SDVOSB sole source awards, 52.219–29 for economically disadvantaged women-owned small business (EDWOSB) set-asides and EDWOSB sole source awards, and 52.219–30 for set-asides and sole source awards to women-owned small business (WOSB) concerns eligible under the WOSB Program.

* * * * *

■ 8. Amend section 19.308 by revising the section heading and paragraph (b)(1) to read as follows:

19.308 Protesting a firm's status as an economically disadvantaged women-owned small business concern or women-owned small business concern eligible under the Women-Owned Small Business Program.

* * * * *

(b)(1) For sole source acquisitions, the contracting officer or SBA may protest the offeror's status as an economically disadvantaged women-owned small business (EDWOSB) concern or as a WOSB concern eligible under the WOSB Program. For all other acquisitions, an interested party (see 13 CFR 127.102) may protest the apparent successful offeror's EDWOSB or WOSB status.

* * * * *

■ 9. Revise the heading of subpart 19.15 to read as follows:

Subpart 19.15—Women-Owned Small Business Program

* * * * *

■ 10. Amend section 19.1505 by revising paragraph (a)(2) to read as follows:

19.1505 Set-aside procedures.

(a) * * *

(2) May set aside acquisitions exceeding the micro-purchase threshold for competition restricted to EDWOSB concerns or WOSB concerns eligible under the WOSB Program when the acquisition—

(i) Is assigned a NAICS code in which SBA has determined that WOSB concerns are underrepresented in Federal procurement; or

(ii) Is assigned a NAICS code in which SBA has determined that WOSB concerns are substantially underrepresented in Federal procurement, as specified on SBA's Web site at *http://www.sba.gov/WOSB.*

* * * * *

19.1506 [Redesignated as 19.1507]

■ 11. Redesignate section 19.1506 as section 19.1507.

■ 12. Add section 19.1506 to read as follows:

19.1506 Women-Owned Small Business Program sole source awards.

(a) A contracting officer shall consider a contract award to an EDWOSB concern on a sole source basis (see 6.302–5(b)(7)) before considering small business set-asides (see 19.203 and subpart 19.5) provided none of the exclusions at 19.1504 apply and—

(1) The acquisition is assigned a NAICS code in which SBA has determined that WOSB concerns are underrepresented in Federal procurement;

(2) The contracting officer does not have a reasonable expectation that offers would be received from two or more EDWOSB concerns; and

(3) The conditions in paragraph (c) of this section exist.

(b) A contracting officer shall consider a contract award to a WOSB concern (including EDWOSB concerns) eligible under the WOSB Program on a sole source basis (see 6.302–5(b)(7)) before considering small business set-asides (see 19.203 and subpart 19.5) provided none of the exclusions at 19.1504 apply and—

(1) The acquisition is assigned a NAICS code in which SBA has determined that WOSB concerns are substantially underrepresented in Federal procurement;

(2) The contracting officer does not have a reasonable expectation that offers would be received from two or more WOSB concerns (including EDWOSB concerns); and

(3) The conditions in paragraph (c) of this section exist.

(c)(1) The anticipated award price of the contract, including options, will not exceed—

(i) $6.5 million for a requirement within the NAICS codes for manufacturing; or

(ii) $4 million for a requirement within any other NAICS codes.

(2) The EDWOSB concern or WOSB concern has been determined to be a responsible contractor with respect to performance.

(3) The award can be made at a fair and reasonable price.

(d) The SBA has the right to appeal the contracting officer's decision not to make a sole source award to either an EDWOSB concern or WOSB concern eligible under the WOSB program.

12. Revise newly redesignated section 19.1507 to read as follows:

19.1507 Contract clauses.

(a) The contracting officer shall insert the clause 52.219–29, Notice of Set-Aside for, or Sole Source Award to, Economically Disadvantaged Women-owned Small Business Concerns, in solicitations and contracts for acquisitions that are set aside or reserved for, or awarded on a sole source basis to, EDWOSB concerns under 19.1505(b) or 19.1506(a). This includes multiple-award contracts when orders may be set aside for EDWOSB concerns as described in 8.405–5 and 16.505(b)(2)(i)(F).

(b) The contracting officer shall insert the clause 52.219–30, Notice of Set-Aside for, or Sole Source Award to, Women-Owned Small Business Concerns Eligible Under the Women-Owned Small Business Program, in solicitations and contracts for acquisitions that are set aside or reserved for, or awarded on a sole source basis to WOSB concerns under 19.1505(c) or 19.1506(b). This includes multiple-award contracts when orders may be set aside for WOSB concerns eligible under the WOSB Program as

described in 8.405–5 and 16.505(b)(2)(i)(F).

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 13. Amend section 52.212–5 by revising the date of the clause and paragraphs (b)(23) and (24) to read as follows:

52.212–5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items.

* * * * *

Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items (Dec 2015)

* * * * *

(b)* * *

___(23) 52.219–29, Notice of Set-Aside for, or Sole Source Award to, Economically Disadvantaged Women-Owned Small Business Concerns (Dec 2015) (15 U.S.C. 637(m)).

___(24) 52.219–30, Notice of Set-Aside for, or Sole Source Award to, Women-Owned Small Business Concerns Eligible Under the Women-Owned Small Business Program (Dec 2015) (15 U.S.C. 637(m)).

* * * * *

■ 14. Amend section 52.219–29 by revising the section heading, the introductory paragraph, the title and date of the clause, and paragraph (b)(1) to read as follows:

52.219–29 Notice of Set-Aside for, or Sole Source Award to, Economically Disadvantaged Women-Owned Small Business Concerns.

As prescribed in 19.1507, insert the following clause:

Notice of Set-Aside for, or Sole Source Award to, Economically Disadvantaged Women-Owned Small Business Concerns (Dec 2015)

* * * * *

(b) * * *

(1) Contracts that have been set aside or reserved for, or awarded on a sole source basis to, EDWOSB concerns;

* * * * *

■ 15. Amend section 52.219–30 by revising the section heading, the introductory paragraph, the title and date of clause, and paragraph (b)(1) to read as follows:

52.219–30 Notice of Set-Aside for, or Sole Source Award to, Women-Owned Small Business Concerns Eligible Under the Women-Owned Small Business Program.

As prescribed in 19.1507, insert the following clause:

Notice of Set-Aside for, or Sole Source Award to, Women-Owned Small Business Concerns Eligible Under the Women-Owned Small Business Program (Dec 2015)

* * * * *

(b) * * *

(1) Contracts that have been set aside or reserved for, or awarded on a sole source basis to, WOSB concerns eligible under the WOSB Program;

* * * * *

[FR Doc. 2015–32428 Filed 12–30–15; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 22, 25, and 52

[FAC 2005–86; FAR Case 2015–034; Item III; Docket No. 2015–0034; Sequence No. 1]

RIN 9000–AN15

Federal Acquisition Regulation; New Designated Countries—Montenegro and New Zealand

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to add Montenegro and New Zealand as new designated countries under the World Trade Organization Government Procurement Agreement (WTO GPA) and update the list of parties to the Agreement on Trade in Civil Aircraft.

DATES: *Effective:* February 1, 2016.

FOR FURTHER INFORMATION CONTACT: Ms. Cecelia L. Davis, Procurement Analyst, at 202–219–0202, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755. Please cite FAC 2005–86, FAR Case 2015–034.

SUPPLEMENTARY INFORMATION:

I. Background

On July 15, 2015, Montenegro became a party to the WTO GPA. New Zealand became a party to the WTO GPA on August 12, 2015. The Trade Agreements Act (19 U.S.C. 2501 *et seq.*) provides the authority for the President to waive the Buy American Act and other discriminatory provisions for eligible products from countries that have signed an international trade agreement with the United States (such as the WTO GPA). The President has delegated this authority to the U.S. Trade Representative.

Effective July 15, 2015, because Montenegro became a party to the WTO GPA, and because the U.S. Trade Representative has determined that Montenegro will provide appropriate reciprocal competitive Government procurement opportunities to United States products and services, the U.S. Trade Representative published a notice in the **Federal Register** at 80 FR 39829 on July 10, 2015, waiving the Buy American Act and other discriminatory provisions for eligible products from Montenegro.

Effective August 12, 2015, because New Zealand became a party to the WTO GPA, and because the U.S. Trade Representative has determined that New Zealand will provide appropriate reciprocal competitive Government procurement opportunities to United States products and services, the U.S. Trade Representative published a notice in the **Federal Register** at 80 FR 48386 on August 12, 2015, waiving the Buy American Act and other discriminatory provisions for eligible products from New Zealand.

In addition, the Office of the U.S. Trade Representative has also indicated that Montenegro is a party to the Agreement on Trade in Civil Aircraft. The U.S. Trade Representative has waived the Buy American Act for civil aircraft and related articles from countries that are parties to the Agreement on Trade in Civil Aircraft.

II. Discussion and Analysis

Therefore, this rule adds Montenegro and New Zealand to the list of World Trade Organization Government Procurement Agreement countries wherever it appears in the FAR, whether as a separate definition, part of the definition of ''designated country'' or ''Recovery Act designated country,'' or as part of the list of countries exempt from the prohibition of acquisition of products produced by forced or indentured child labor (FAR 22.1503, 25.003, 52.222–19, 52.225–5, 52.225–11, and 52.225–23).

This rule also updates FAR 25.407 and 52.225–7 to reflect that Montenegro is already a party to the Agreement on Trade in Civil Aircraft.

Conforming changes were required to FAR 52.212–5, Contract Terms and Conditions Required to Implement Statute or Executive Orders—Commercial Items, and 52.213–4, Terms

and Conditions—Simplified Acquisitions (Other Than Commercial Items).

III. Publication of This Final Rule for Public Comment Is Not Required by Statute

''Publication of proposed regulations'', 41 U.S.C. 1707, applies to the publication of the Federal Acquisition Regulation. Paragraph (a)(1) of the statute requires that a procurement policy, regulation, procedure or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because it has no significant cost or administrative impact on contractors or offerors. The rule solely updates the lists of designated countries and countries that are parties to the Agreement on Trade in Civil Aircraft, in order to conform to the determinations by the U.S. Trade Representative.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

V. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because this final rule does not constitute a significant FAR revision within the meaning of FAR 1.501–1 and 41 U.S.C. 1707 does not require publication for public comment.

VI. Paperwork Reduction Act

The Paperwork Reduction Act does apply, because the rule affects the response of an offeror that is offering a product of Montenegro to the information collection requirements in the provisions at FAR 52.212–3(g)(5), 52.225–6, and 52.225–11. The offeror is no longer required to list a product from Montenegro or New Zealand under ''other end products'', because Montenegro is now a designated country. These information collection requirements are currently approved under OMB clearances 9000–0136, 9000–0025, and 9000–0141 respectively. The impact, however, is negligible.

List of Subjects in 48 CFR Parts 22, 25, and 52

Government procurement.

Dated: December 17, 2015.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 22, 25, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 22, 25, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

22.1503 [Amended]

■ 2. Amend section 22.1503 by adding to paragraph (b)(4), in alphabetical order, ''Montenegro,'' and ''New Zealand,''.

PART 25—FOREIGN ACQUISITION

25.003 [Amended]

■ 3. Amend section 25.003 by—

■ a. In the definition ''Designated country''—

■ i. Removing from paragraph (1) ''Agreement'' and adding ''Agreement (WTO GPA)'' in its place and adding, in alphabetical order, ''Montenegro,'' and ''New Zealand,''; and

■ ii. Removing from paragraph (2) ''Agreement'' and adding ''Agreement (FTA)'' in its place; and

■ b. In the definition ''World Trade Organization Government Procurement Agreement (WTO GPA) country'', adding, in alphabetical order, ''Montenegro,'' and ''New Zealand,''.

25.407 [Amended]

■ 4. Amend section 25.407 by adding, in alphabetical order, the word ''Montenegro,''.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 5. Amend section 52.212–5 by revising the date of the clause and paragraphs (b)(26) and (43) to read as follows:

52.212–5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items.

* * * * *

Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items (FEB 2016)

* * * * *

(b) * * *

____ (26) 52.222–19, Child Labor—Cooperation with Authorities and Remedies (FEB 2016) (E.O. 13126).

* * * * *

____ (43) 52.225–5, Trade Agreements (FEB 2016) (19 U.S.C. 2501, *et seq.,* 19 U.S.C. 3301 note).

* * * * *

■ 6. Amend section 52.213–4 by adding a period at the end of the section heading and revising the date of the clause and paragraph (b)(1)(ii) to read as follows:

52.213–4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).

* * * * *

Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items) (FEB 2016)

* * * * *

(b) * * *

(1) * * *

(ii) 52.222–19, Child Labor—Cooperation with Authorities and Remedies (FEB 2016) (E.O. 13126). (Applies to contracts for supplies exceeding the micro-purchase threshold).

* * * * *

■ 7. Amend section 52.222–19 by revising the date of the clause and adding to paragraph (a)(4), in alphabetical order, ''Montenegro,'' and ''New Zealand,'' to read as follows:

52.222–19 Child Labor—Cooperation with Authorities and Remedies.

* * * * *

Child Labor—Cooperation With Authorities and Remedies (FEB 2016)

■ 8. Amend section 52.225–5 by—

■ a. Revising the date of the clause; and

■ b. In paragraph (a), under the definition of ''Designated country''—

■ i. In paragraph (1)—

■ A. Removing ''Agreement'' and adding ''Agreement (WTO GPA)'' in its place;

■ B. Adding, in alphabetical order, ''Montenegro,'' and ''New Zealand,''; and
■ C. Removing ''Taipei))'','' and adding ''Taipei)''),'' in its place; and
■ ii. Removing from paragraph (2) ''Agreement'' and adding ''Agreement (FTA)'' in its place.

The revision reads as follows:

52.225–5 Trade Agreements.

* * * * *

Trade Agreements (FEB 2016)

* * * * *

■ 9. Amend section 52.225–7 by revising the date of the provision and adding to paragraph (b), in alphabetical order, ''Montenegro,'' to read as follows:

52.225–7 Waiver of Buy American Statute for Civil Aircraft and Related Articles.

* * * * *

Waiver of Buy American Statute for Civil Aircraft and Related Articles (FEB 2016)

* * * * *

■ 10. Amend section 52.225–11 by—
■ a. Revising the date of the clause; and
■ b. In paragraph (a), under the definition of ''Designated country''—
■ i. In paragraph (1), removing ''Agreement'' and adding ''Agreement (WTO GPA)'' in its place and adding, in alphabetical order ''Montenegro,'' and ''New Zealand,''; and
■ ii. Removing from paragraph (2) ''Agreement'' and adding ''Agreement (FTA)'' in its place.

The revision reads as follows:

52.225–11 Buy American—Construction Materials Under Trade Agreements.

* * * * *

Buy American—Construction Materials Under Trade Agreements (FEB 2016)

* * * * *

■ 11. Amend section 52.225–23 by—
■ a. Revising the date of the clause; and
■ b. In paragraph (a)—
■ i. In the definition of ''Designated country'', adding to paragraph (1), in alphabetical order, ''Montenegro,'' and ''New Zealand,''; and
■ ii. In the definition of ''Recovery Act designated country'', adding in paragraph (1), in alphabetical order, ''Montenegro,'' and ''New Zealand,''.

The revision reads as follows:

52.225–23 Required Use of American Iron, Steel, and Manufactured Goods—Buy American Statute—Construction Materials Under Trade Agreements.

* * * * *

Required Use of American Iron, Steel, and Manufactured Goods—Buy American Statute—Construction Materials Under Trade Agreements (FEB 2016)

* * * * *

[FR Doc. 2015–32429 Filed 12–30–15; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 22, 25, and 52

[FAC 2005–86; FAR Case 2016–001; Item No. IV; Docket No. 2016–0001, Sequence No. 1]

RIN 9000–AN16

Federal Acquisition Regulation; Trade Agreements Thresholds

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to incorporate revised thresholds for application of the World Trade Organization (WTO) Government Procurement Agreement (GPA) and the Free Trade Agreements (FTAs), as determined by the United States Trade Representative.

DATES: *Effective:* January 1, 2016.

FOR FURTHER INFORMATION CONTACT: Ms. Cecelia L. Davis, Procurement Analyst, at 202–219–0202, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755. Please cite FAC 2005–86, FAR case 2016–001.

SUPPLEMENTARY INFORMATION:

I. Background

Approximately every two years, the trade agreements thresholds are adjusted according to a pre-determined formula under the agreements. These thresholds become effective on January 1, 2016. The United States Trade Representative published new procurement thresholds in the **Federal Register** at 80 FR 77694, on December 15, 2015. The United States Trade Representative has specified the following new thresholds:

Trade agreement	Supply contract (equal to or exceeding)	Service contract (equal to or exceeding)	Construction contract (equal to or exceeding)
WTO GPA	$191,000	$191,000	$7,358,000
FTAs:			
Australia FTA	77,533	77,533	7,358,000
Bahrain FTA	191,000	191,000	10,079,365
CAFTA–DR (Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua)	77,533	77,533	7,358,000
Chile FTA	77,533	77,533	7,358,000
Colombia FTA	77,533	77,533	7,358,000
Korea FTA	100,000	100,000	7,358,000
Morocco FTA	191,000	191,000	7,358,000
NAFTA:			
—Canada	25,000	77,533	10,079,365
—Mexico	77,533	77,533	10,079,365
Oman FTA	191,000	191,000	10,079,365
Panama FTA	191,000	191,000	7,358,000
Peru FTA	191,000	191,000	7,358,000
Singapore FTA	77,533	77,533	7,358,000
Israeli Trade Act	50,000	.....	.....

II. Discussion and Analysis

This final rule implements the new thresholds in FAR subpart 25.4, Trade Agreements, and other sections in the FAR that include trade agreements thresholds (*i.e.,* FAR sections 22.1503, 25.202, 25.603, 25.1101, and 25.1102).

In addition, changes are required to FAR sections 52.204–8, Annual Representations and Certifications, and 52.222–19, Child Labor-Cooperation with Authorities and Remedies, with conforming changes to the clause dates in FAR sections 52.212–5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders-Commercial Items, and 52.213–4, Terms and Conditions-Simplified Acquisitions (Other Than Commercial Items).

III. Publication of This Final Rule for Public Comment Is Not Required by Statute

''Publication of proposed regulations,'' 41 U.S.C. 1707, applies to the publication of the FAR. Paragraph (a)(1) of the statute requires that a procurement policy, regulation, procedure, or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure, or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because it only adjusts the thresholds according to pre-determined formulae to adjust for changes in economic conditions, thus maintaining the status quo, without significant effect beyond the internal operating procedures of the Government.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

V. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because this final rule does not constitute a significant FAR revision, and 41 U.S.C. 1707 does not require publication for public comment.

VI. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does apply, because the final rule affects the prescriptions for use of the certification and information collection requirements in the provisions at FAR sections 52.225–4, OMB Control No. 9000–0130, titled: Buy American Act—Free Trade Agreement-Israeli Trade Certificate; 52.225–6, OMB Control No. 9000–0025, titled: Trade Agreements Certificate; and the clauses at FAR 52.225–9, 52.225–11, 52.225–21, and 52.225–23, OMB Control No. 9000–0141, titled: Buy American—Construction. However, there is no impact on the estimated burden hours, because the threshold changes are in line with inflation and maintain the status quo.

List of Subjects in 48 CFR Parts 22, 25, and 52

Government procurement.

Dated: December 17, 2015.

William Clark,

Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 22, 25, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 22, 25, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

22.1503 [Amended]

■ 2. Amend section 22.1503 by removing from paragraph (b)(3) ''$79,507'' and adding ''$77,533'' in its place and removing from paragraph (b)(4) ''$204,000'' and adding ''$191,000'' in its place.

PART 25—FOREIGN ACQUISITION

25.202 [Amended]

■ 3. Amend section 25.202 by removing from paragraph (c) ''$7,864,000'' and adding ''$7,358,000'' in its place.

■ 4. Amend section 25.402 by removing from paragraph (a)(1) ''the USTR'' and adding ''the U.S. Trade Representative'' in its place and revising the table in paragraph (b) to read as follows:

25.402 General.

* * * * *

(b) * * *

Trade agreement	Supply contract (equal to or exceeding)	Service contract (equal to or exceeding)	Construction contract (equal to or exceeding)
WTO GPA	$191,000	$191,000	$7,358,000
FTAs:			
Australia FTA	77,533	77,533	7,358,000
Bahrain FTA	191,000	191,000	10,079,365
CAFTA–DR (Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua)	77,533	77,533	7,358,000
Chile FTA	77,533	77,533	7,358,000
Colombia FTA	77,533	77,533	7,358,000
Korea FTA	100,000	100,000	7,358,000
Morocco FTA	191,000	191,000	7,358,000
NAFTA:			
—Canada	25,000	77,533	10,079,365
—Mexico	77,533	77,533	10,079,365
Oman FTA	191,000	191,000	10,079,365
Panama FTA	191,000	191,000	7,358,000
Peru FTA	191,000	191,000	7,358,000
Singapore FTA	77,533	77,533	7,358,000

Trade agreement	Supply contract (equal to or exceeding)	Service contract (equal to or exceeding)	Construction contract (equal to or exceeding)
Israeli Trade Act	50,000		

25.603 [Amended]

■ 5. Amend section 25.603 by removing from paragraph (c)(1) ''$7,864,000'' and adding ''$7,358,000'' in its place.

25.1101 [Amended]

■ 6. Amend section 25.1101 by—
■ a. Removing from paragraph (b)(1)(i)(A) ''$204,000'' and adding ''$191,000'' in its place;
■ b. Removing from paragraphs (b)(1)(iii), (b)(1)(iv), (b)(2)(iii), and (b)(2)(iv) ''$79,507'' and adding ''$77,533'' in their places;
■ c. Removing from paragraph (c)(1) ''$204,000'' and adding ''$191,000'' in its place; and
■ d. Removing from paragraph (d) ''statute'' and ''$204,000'' and adding ''Statute'' and ''$191,000'' in their places, respectively.

25.1102 [Amended]

■ 7. Amend section 25.1102 by—
■ a. Removing from the introductory texts of paragraphs (a) and (c) ''$7,864,000'' and adding ''$7,358,000'' in their place; and
■ b. Removing from paragraphs (c)(3) and (d)(3) ''$7,864,000'' and ''$10,335,931'' and adding ''$7,358,000'' and ''$10,079,365'' in their places, respectively.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 8. Revise section 52.204–8 by—
■ a. Revising the date of the provision;
■ b. Removing from paragraphs (c)(1)(xvii)(C) and (D) ''$79,507'' and adding ''$77,533'' in their places; and
■ c. Removing from the introductory text of paragraph (c)(2) ''certifications'' and adding ''representations or certifications'' in its place.

The revision reads as follows:

52.204–8 Annual Representations and Certifications.

* * * * *

Annual Representations and Certifications (JAN 2016)

* * * * *

■ 9. Amend section 52.212–5 by revising the date of the clause and paragraph (b)(26) and removing from paragraph (e)(2) ''contractor'' and adding ''Contractor'' in its place to read as follows:

52.212–5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items.

* * * * *

Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items (JAN 2016)

* * * * *

(b) * * *

____(26) 52.222–19, Child Labor—Cooperation with Authorities and Remedies (JAN 2016) (E.O. 13126).

* * * * *

■ 10. Amend section 52.213–4 by revising the date of the clause and paragraph (b)(1)(ii) to read as follows:

52.213–4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).

* * * * *

Terms and Conditions—Simplified Acquisition (Other Than Commercial Items) (JAN 2016)

* * * * *

(b) * * *

(1) * * *

(ii) 52.222–19, Child Labor—Cooperation with Authorities and Remedies (JAN 2016) (E.O. 13126). (Applies to contracts for supplies exceeding the micro-purchase threshold.)

* * * * *

■ 11. Amend section 52.222–19 by—
■ a. Revising the date of the clause;
■ b. Removing from paragraph (a)(3) ''$79,507'' and adding ''$77,533'' in its place; and
■ c. Removing from paragraph (a)(4) ''$204,000'' and adding ''$191,000'' in its place.

The revision reads as follows:

52.222–19 Child Labor—Cooperation with Authorities and Remedies.

* * * * *

Child Labor—Cooperation with Authorities and Remedies (JAN 2016)

* * * * *

[FR Doc. 2015–32430 Filed 12–30–15; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket No. FAR 2015–0051, Sequence No. 6]

Federal Acquisition Regulation; Federal Acquisition Circular 2005–86; Small Entity Compliance Guide

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of DOD, GSA, and NASA. This *Small Entity Compliance Guide* has been prepared in accordance with section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of the rules appearing in Federal Acquisition Circular (FAC) 2005–86, which amends the Federal Acquisition Regulation (FAR). An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared. Interested parties may obtain further information regarding these rules by referring to FAC 2005–86, which precedes this document. These documents are also available via the Internet at *http://www.regulations.gov.*

DATES: December 31, 2015.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact the analyst whose name appears in the table below. Please cite FAC 2005–86 and the FAR case number. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755.

RULES LISTED IN FAC 2005–86

Item	Subject	FAR case	Analyst
*I	Definition of "Multiple-Award Contract"	2015–019	Uddowla.
*II	Sole Source Contracts for Women-Owned Small Businesses (Interim)	2015–032	Uddowla.
III	New Designated Countries—Montenegro and New Zealand	2015–034	Davis.
IV	Trade Agreements Thresholds	2016–001	Davis.

SUPPLEMENTARY INFORMATION:

Summaries for each FAR rule follow. For the actual revisions and/or amendments made by these rules, refer to the specific item numbers and subjects set forth in the documents following these item summaries. FAC 2005–86 amends the FAR as follows:

Item I—Definition of ''Multiple-Award Contract'' (FAR Case 2015–019)

This rule amends the FAR to define ''multiple-award contract.'' This rule implements the definition established by the Small Business Administration (SBA) in its final rule that published in the **Federal Register** at 78 FR 61114 on October 2, 2013. SBA's final rule implements the statutory definition of the term from section 1311 of the Small Business Jobs Act of 2010, Pub. L. 111–240.

This final rule does not place any new requirements on small entities.

Item II—Sole Source Contracts for Women-Owned Small Businesses (FAR Case 2015–032) (Interim)

This interim rule amends the FAR to implement regulatory changes made by the Small Business Administration (SBA) in its final rule as published in the **Federal Register** at 80 FR 55019, on September 14, 2015. SBA's final rule implements the statutory requirements of paragraph (a)(3) of section 825 of the Carl Levin and Howard P. 'Buck' McKeon National Defense Authorization Act for Fiscal Year 2015, Public Law 113–291, which grants contracting officers the authority to award sole source contracts to economically disadvantaged women-owned small business (EDWOSB) concerns and to women-owned small business (WOSB) concerns eligible under the WOSB Program. The anticipated price, including options, must not exceed $6.5 million for manufacturing NAICS codes, or $4 million for other NAICS codes.

This interim rule may have a positive economic impact on women-owned small businesses.

Item III—New Designated Countries—Montenegro and New Zealand (FAR Case 2015–034)

This final rule amends the FAR to add Montenegro and New Zealand as new designated countries under the World Trade Organization Government Procurement Agreement (WTO GPA). The rule also updates the list of parties to the Agreement on Trade in Civil Aircraft by adding Montenegro.

This final rule has no significant impact on the Government and contractors, including small business entities.

Item IV—Trade Agreements Thresholds (FAR Case 2016–001)

This final rule amends the FAR to adjust the thresholds for application of the World Trade Organization Government Procurement Agreement and the Free Trade Agreements as determined by the United States Trade Representative, according to a pre-determined formula under the agreements.

Dated: December 17, 2015.

William Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2015–32431 Filed 12–30–15; 8:45 am]

BILLING CODE 6820–EP–P

FEDERAL REGISTER

Vol. 80 Thursday,
No. 251 December 31, 2015

Part III

Department of Homeland Security

8 CFR Parts 204, 205, 214, et al.
Retention of EB–1, EB–2, and EB–3 Immigrant Workers and Program Improvements Affecting High-Skilled Nonimmigrant Workers; Proposed Rules

DEPARTMENT OF HOMELAND SECURITY

8 CFR Parts 204, 205, 214, 245 and 274a

[CIS No. 2571–15; DHS Docket No. USCIS–2015–0008]

RIN 1615–AC05

Retention of EB–1, EB–2, and EB–3 Immigrant Workers and Program Improvements Affecting High-Skilled Nonimmigrant Workers

AGENCY: U.S. Citizenship and Immigration Services, DHS.

ACTION: Proposed rule.

SUMMARY: The Department of Homeland Security (DHS) is proposing to amend its regulations related to certain employment-based immigrant and nonimmigrant visa programs. The proposed amendments would provide various benefits to participants in those programs, including: Improved processes for U.S. employers seeking to sponsor and retain immigrant and nonimmigrant workers, greater stability and job flexibility for such workers, and increased transparency and consistency in the application of agency policy related to affected classifications. Many of these changes are primarily aimed at improving the ability of U.S. employers to hire and retain high-skilled workers who are beneficiaries of approved employment-based immigrant visa petitions and are waiting to become lawful permanent residents (LPRs), while increasing the ability of such workers to seek promotions, accept lateral positions with current employers, change employers, or pursue other employment options.

First, DHS proposes to amend its regulations consistent with certain worker portability and other provisions in the American Competitiveness in the Twenty-first Century Act of 2000 (AC21), as amended, as well as the American Competitiveness and Workforce Improvement Act of 1998 (ACWIA). These proposed amendments would clarify and improve longstanding agency policies and procedures—previously articulated in agency memoranda and precedent decisions—implementing sections of AC21 and ACWIA related to certain foreign workers, including sections specific to workers who have been sponsored for LPR status by their employers. In so doing, the proposed rule would enhance consistency among agency adjudicators and provide a primary repository of governing rules for the regulated community. In addition, the proposed rule would clarify several interpretive questions raised by AC21 and ACWIA.

Second, consistent with existing DHS authorities and the goals of AC21 and ACWIA, DHS proposes to amend its regulations governing certain employment-based immigrant and nonimmigrant visa programs to provide additional stability and flexibility to employers and workers in those programs. The proposed rule would, among other things: improve job portability for certain beneficiaries of approved employment-based immigrant visa petitions by limiting the grounds for automatic revocation of petition approval; further enhance job portability for such beneficiaries by increasing their ability to retain their priority dates for use with subsequently approved employment-based immigrant visa petitions; establish or extend grace periods for certain high-skilled nonimmigrant workers so that they may more easily maintain their nonimmigrant status when changing employment opportunities; and provide additional stability and flexibility to certain high-skilled workers by allowing those who are working in the United States in certain nonimmigrant statuses, are the beneficiaries of approved employment-based immigrant visa petitions, are subject to immigrant visa backlogs, and demonstrate compelling circumstances to independently apply for employment authorization for a limited period. These and other proposed changes would provide much needed flexibility to the beneficiaries of employment-based immigrant visa petitions, as well as the U.S. employers who employ and sponsor them for permanent residence.

Finally, to provide additional certainty and stability to certain employment-authorized individuals and their U.S. employers, DHS is also proposing changes to its regulations governing the processing of applications for employment authorization to minimize the risk of any gaps in such authorization. These changes would provide for the automatic extension of the validity of certain Employment Authorization Documents (EADs or Forms I–766) for an interim period upon the timely filing of an application to renew such documents. At the same time, in light of national security and fraud concerns, DHS is proposing to remove regulations that provide a 90-day processing timeline for EAD applications and that require the issuance of interim EADs if processing extends beyond the 90-day mark.

DATES: Written comments must be received on or before February 29, 2016.

ADDRESSES: You may submit comments, identified by DHS Docket No. USCIS–2015–0008, by one of the following methods:

- *Federal eRulemaking Portal:* You may submit comments to USCIS by visiting *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email:* You may submit comments directly to USCIS by emailing them to: *USCISFRComment@dhs.gov.* Please include DHS Docket No. USCIS–2015–0008 in the subject line of the message.
- *Mail:* You may submit comments directly to USCIS by mailing them to: Laura Dawkins, Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue NW., Washington, DC 20529. This mailing address may be used for paper, disk, or CD–ROM submissions. To ensure proper handling, please reference DHS Docket No. USCIS–2015–0008 on your correspondence.
- *Hand Delivery/Courier:* You may submit comments directly to USCIS by hand delivery or courier to: Laura Dawkins, Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue NW., Washington, DC 20529. The contact telephone number is (202) 272–8377. To ensure proper handling, please reference DHS Docket No. USCIS–2015–0008 on your delivery.

FOR FURTHER INFORMATION CONTACT: Kathleen Angustia or Nikki Lomax-Larson, Adjudications Officers (Policy), Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue NW., Washington, DC 20529. The contact telephone number is (202) 272–8377.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Public Participation

All interested parties are invited to participate in this rulemaking by submitting written data, views, or comments on all aspects of this proposed rule. DHS and USCIS also invite comments that relate to the economic, environmental, or federalism effects that might result from this proposed rule. To provide the most assistance to USCIS in implementing these changes, comments should reference a specific portion of the proposed rule, explain the reason for any recommended change, and include data, information, or authority that supports such recommended change.

Instructions: All submissions must include the agency name and DHS Docket No. USCIS–2015–0008 for this rulemaking. 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. Submitted information will be made public. You may thus wish to consider limiting the amount of personal information that you provide in any voluntary public comment submission you make to DHS. DHS may withhold information provided in comments from public viewing if DHS determines that such information is offensive or may impact the privacy of an individual. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov*.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* and enter this rulemaking's eDocket number: USCIS–2015–0008.

II. Executive Summary

A. Purpose and Summary of the Regulatory Action

DHS is proposing to amend its regulations related to certain employment-based immigrant and nonimmigrant visa programs. The proposed rule is intended to benefit U.S. employers and foreign workers participating in these programs, by streamlining the processes for employer sponsorship of nonimmigrant workers for lawful permanent resident (LPR) status, increasing job portability and otherwise providing stability and flexibility for such workers, and providing additional transparency and consistency in the application of agency policies and procedures related to these programs. These changes are primarily intended to better enable U.S. employers to employ and retain high-skilled workers who are beneficiaries of employment-based immigrant visa petitions, while increasing the ability of such workers to further their careers by accepting promotions, changing positions with current employers, changing employers, and pursuing other employment opportunities.

First, this proposed rule would largely conform DHS regulations to longstanding agency policies and procedures established in response to certain sections of the American Competitiveness and Workforce Improvement Act of 1998 (ACWIA), Public Law 105–277, div. C, tit. IV, 112 Stat. 2681, and the American Competitiveness in the Twenty-first Century Act of 2000 (AC21), Public Law 106–313, 114 Stat. 1251, as amended by the 21st Century Department of Justice Appropriations Authorization Act, Public Law 107–273, 116 Stat. 1758 (2002). These sections were intended, among other things, to provide greater flexibility and job portability to certain nonimmigrant workers, particularly those who have been sponsored for LPR status as an employment-based immigrant, while enhancing opportunities for innovation and expansion, maintaining U.S. competitiveness, and protecting U.S. workers. The proposed rule would further clarify and improve agency policies and procedures in this area—policies and procedures that have long been set through a series of policy memoranda and a precedent decision of the USCIS Administrative Appeals Office. By clarifying such policies in regulation, DHS would provide greater transparency and certainty to affected employers and workers, while increasing consistency among agency adjudications. In addition, the proposed rule would clarify several interpretive questions raised by AC21 and ACWIA.

Specifically, this proposed rule would clarify and improve policies and practices related to:

- The ability of H–1B nonimmigrant workers who are being sponsored for lawful permanent residence (and their dependents in H–4 nonimmigrant status) to extend their nonimmigrant status beyond the otherwise-applicable 6-year limit pursuant to AC21.
- The ability of certain workers who have pending applications for adjustment of status to change employers or jobs without endangering the approved employment-based immigrant visa petitions filed on their behalf.
- The ability of H–1B nonimmigrant workers to change jobs or employers,

including: (1) The ability to begin employment with new H–1B employers that have filed non-frivolous petitions for new H–1B employment; and (2) the ability of H–1B employers to file successive H–1B portability petitions (often referred to as ''bridge petitions'') and how these petitions affect lawful status and work authorization.

- The way in which H–1B nonimmigrant workers are counted against the annual H–1B numerical cap, including: (1) The method for calculating when such workers may access so-called ''remainder time'' (*i.e.,* time when they were physically outside the United States), thus allowing them to use their full period of H–1B status; and (2) the method for determining which H–1B nonimmigrant workers are ''cap-exempt'' as a result of previously being counted against the cap.
- The method for determining which H–1B nonimmigrant workers are exempt from the H–1B numerical cap due to their employment with an institution of higher education, a nonprofit entity related to or affiliated with such an institution, or a governmental or nonprofit research organization, including a revision to the definition of the term ''related or affiliated nonprofit entity'' for such purposes.
- The ability of H–1B nonimmigrant workers who are disclosing information in aid of, or otherwise participating in, investigations regarding alleged violations of Labor Condition Application obligations in the H–1B program to provide documentary evidence to USCIS to demonstrate that their resulting failure to maintain H–1B status was due to ''extraordinary circumstances.''

Except where changes to current policies and practices are noted in the preamble of this proposed rule, DHS intends these proposals to effectively capture the longstanding policies and procedures that have developed since enactment of AC21 and ACWIA. The Department welcomes comments that identify any such proposals that commenters believe are unintentionally inconsistent with current practices, so that any such inconsistencies can be resolved in the final rule.

Second, this rulemaking builds on the provisions listed above by proposing additional changes consistent with the immigration laws to further provide stability and flexibility in certain immigrant and nonimmigrant visa categories. These provisions would improve the ability of certain foreign workers, particularly those who are successfully sponsored for LPR status by their employers, to accept new employment opportunities, pursue normal career progression, better establish their lives in the United States, and contribute more fully to the U.S. economy. The changes would also provide certainty in the regulated community and improve consistency across agency adjudications, thereby enhancing the agency's ability to fulfill its responsibilities related to U.S. employers and certain foreign workers. Specifically, this proposed rule would provide the following:

- *Retention of employment-based immigrant visa petitions.* DHS proposes to enhance job portability for certain workers who have approved immigrant visa petitions in the employment-based first preference (EB–1), second preference (EB–2), and third preference (EB–3) categories but who are unable to obtain those visas in the foreseeable future due to significant immigrant visa backlogs. Specifically, DHS proposes to amend its automatic revocation regulations so that immigrant visa petitions that have been approved for 180 days or more would no longer be subject to automatic revocation based solely on withdrawal by the petitioner or termination of the petitioner's business. As long as the petition approval has not been revoked for fraud, material misrepresentation, the invalidation or revocation of a labor certification, or USCIS error, the petition will generally continue to be valid to the beneficiary for various job portability and status extension purposes under the immigration laws. Such a beneficiary, however, must obtain a new job offer and may need another immigrant visa petition approved on his or her behalf to ultimately obtain status as an LPR.
- *Retention of priority dates.* DHS proposes to further enhance job portability for workers with approved EB–1, EB–2, and EB–3 immigrant visa petitions by providing greater clarity regarding when they may retain the priority dates assigned to those petitions and effectively transfer those dates to new and subsequently approved employment-based immigrant visa petitions. As with the immediately preceding provision, priority date retention generally would be available so long as the initial immigrant visa petition was approved and this approval has not been revoked for fraud, material misrepresentation, the invalidation or revocation of a labor certification, or USCIS error. This provision would improve the ability of certain workers to accept promotions, change employers, or accept other employment opportunities without fear of losing their place in line for immigrant visas based on the skills they contribute to the U.S. economy.
- *Nonimmigrant grace periods.* To enhance job portability for certain high-skilled nonimmigrants, DHS proposes to generally establish a one-time grace period, during an authorized validity period, of up to 60 days whenever employment ends for individuals holding E–1, E–2, E–3, H–1B, H–1B1, L–1, or TN nonimmigrant status. This proposal would allow these high-skilled workers to more readily pursue new employment should they be eligible for other employer-sponsored nonimmigrant classifications or for the same classification with a new employer. Conversely, the proposal allows U.S. employers to more easily facilitate changes in employment for existing or newly recruited nonimmigrant workers. The individual may not work during the grace period, unless otherwise authorized by regulation. As needed, DHS in its discretion may eliminate or shorten the 60-day period on a case-by-case basis.
- *Eligibility for employment authorization in compelling circumstances.* DHS also proposes to provide additional stability and flexibility to certain high-skilled nonimmigrant workers in the United States who are the beneficiaries of approved employment-based immigrant visa petitions but who cannot obtain an immigrant visa number due to statutory limits on immigrant visa issuance and are experiencing compelling circumstances. Specifically, DHS proposes to allow such beneficiaries in the United States on E–3, H–1B, H–1B1, L–1, or O–1 nonimmigrant status to apply for separate employment authorization for a limited period if there are compelling circumstances that, in the discretionary determination of DHS, justify the consideration of such employment authorization.
- *H–1B licensing.* DHS proposes to clarify exceptions to the requirement that make approval of an H–1B petition contingent upon licensure where such licensure is required to fully perform the duties of the specialty occupation. The proposed rule would generally allow a petitioning employer that has filed an H–1B petition for an unlicensed worker to meet the licensure requirement by demonstrating that the worker has filed a request for such license but is unable to obtain it, or is unable to file a request for such a license, because a state or locality requires a social security number or the issuance of employment authorization before accepting or approving such requests. The proposed rule also clarifies that DHS may approve an H–1B

petition on behalf of an unlicensed worker if he or she will work in a State that allows such individuals to be employed in the occupation under the supervision of licensed senior or supervisory personnel.

As noted above, these changes would help improve various employment-based immigrant and nonimmigrant visa classifications, including by making it easier to hire and retain nonimmigrant workers who have approved immigrant visa petitions and giving such workers additional career options as they wait for immigrant visa numbers to become available. These improvements are increasingly important considering the lengthy and growing backlogs of immigrant visas.

Finally, to provide additional stability and certainty to U.S. employers and individuals eligible for employment authorization in the United States, DHS is also proposing several changes to its regulations governing its processing of applications for employment authorization. First, to minimize the risk of any gaps in employment authorization, DHS proposes to automatically extend the validity of Employment Authorization Documents (EADs or Forms I–766) in certain circumstances based on the timely filing of an application to renew such EADs. Specifically, DHS would automatically extend the employment authorization and validity of existing EADs issued to certain employment-eligible individuals for up to 180 days from the date of the cards' expiration, so long as: (1) A renewal application is filed based on the same employment authorization category as the previously issued EAD (or the renewal application is for an individual approved for Temporary Protected Status (TPS) whose EAD was issued pursuant to 8 CFR 274a.12(c)(19)); (2) such renewal application is timely filed prior to the expiration of the EAD and remains pending; and (3) the individual's eligibility for employment authorization continues beyond the expiration of his or her EAD, and an independent adjudication of the individual's underlying eligibility is not a prerequisite to the extension of employment authorization. At the same time, DHS would eliminate the current regulatory provisions that require adjudication of EAD applications within 90 days of filing and that authorize interim EADs in cases where such adjudications are not conducted within the 90-day timeframe. These changes would provide enhanced stability and certainty to employment-authorized individuals and their employers, while reducing opportunities for fraud and protecting the security-related processes undertaken for each EAD application.

B. Legal Authority

The authority of the Secretary of Homeland Security (Secretary) for these regulatory amendments is found in various sections of the Immigration and Nationality Act (INA), 8 U.S.C. 1101 *et seq.,* ACWIA, AC21, and the Homeland Security Act of 2002 (HSA), Public Law 107–296, 116 Stat. 2135, 6 U.S.C. 101 *et seq.* General authority for issuing the proposed rule is found in section 103(a) of the INA, 8 U.S.C. 1103(a), which authorizes the Secretary to administer and enforce the immigration and nationality laws, as well as section 102 of the HSA, 6 U.S.C. 112, which vests all of the functions of DHS in the Secretary and authorizes the Secretary to issue regulations. Further authority for the regulatory amendments in the proposed rule is found in:

- Section 205 of the INA, 8 U.S.C. 1155, which grants the Secretary broad discretion in determining whether and how to revoke any immigrant visa petition approved under section 204 of the INA, 8 U.S.C. 1154;
- Section 214(a)(1) of the INA, 8 U.S.C. 1184(a)(1), which authorizes the Secretary to prescribe by regulation the terms and conditions of the admission of nonimmigrants;
- Section 274A(h)(3)(B) of the INA, 8 U.S.C. 1324a(h)(3)(B), which recognizes the Secretary's authority to extend employment authorization to noncitizens in the United States;
- Section 413(a) of ACWIA, which amended Section 212(n)(2)(C) of the INA, 8 U.S.C. 1182(n)(2)(C), to authorize the Secretary to provide certain whistleblower protections to H–1B nonimmigrant workers;
- Section 414 of ACWIA, which added section 214(c)(9) of the INA, 8 U.S.C. 1184(c)(9), to authorize the Secretary to impose a fee on certain H–1B petitioners to fund the training and education of U.S. workers;
- Section 103 of AC21, which amended section 214(g) of the INA, 8 U.S.C. 1184(g), to provide: (1) An exemption from the H–1B numerical cap for certain H–1B nonimmigrant workers employed at institutions of higher education, nonprofit entities related to or affiliated with such institutions, and nonprofit or governmental research organizations; and (2) that a worker who has been counted against the H–1B numerical cap within the 6 years prior to petition approval will not again be counted against the cap unless the individual would be eligible for a new 6-year period of authorized H–1B admission.
- Section 104(c) of AC21, which authorizes the extension of H–1B status beyond the general 6-year maximum for H–1B nonimmigrant workers who have approved EB–1, EB–2, or EB–3 immigrant visa petitions but are subject to backlogs due to application of certain ''per-country'' limitations on immigrant visas;
- Section 105 of AC21, which added what is now section 214(n) of the INA, 8 U.S.C. 1184(n),[1] to allow an H–1B nonimmigrant worker to begin concurrent or new H–1B employment upon the filing of a timely, non-frivolous H–1B petition;
- Sections 106(a) and (b) of AC21, which, as amended, authorize the extension of H–1B status beyond the general 6-year maximum for H–1B nonimmigrant workers who have been sponsored for permanent residence by their employers and who are subject to certain lengthy adjudication or processing delays;
- Section 106(c) of AC21, which added section 204(j) of the INA, 8 U.S.C. 1154(j), to authorize certain beneficiaries of approved EB–1, EB–2, and EB–3 immigrant visa petitions who have filed applications for adjustment of status to change jobs or employers without invalidating their approved petitions; and
- Section 101(b)(1)(F) of the HSA, 6 U.S.C. 111(b)(1)(F), which establishes as a primary mission of DHS the duty to ''ensure that the overall economic security of the United States is not diminished by efforts, activities, and programs aimed at securing the homeland.''

C. Costs and Benefits

Taken together, the proposed amendments aim to reduce unnecessary disruption to businesses and families caused by immigrant visa backlogs, as described in Section III.E. The benefits from these proposed amendments add value to the U.S. economy by retaining high-skilled workers who make important contributions to the U.S. economy, including technological advances and research and development endeavors, which are highly correlated with overall economic growth and job creation.[2] For more information, the

[1] Section 8(a)(3) of the Trafficking Victims Protection Reauthorization Act of 2003, Public Law 108–193, (Dec. 19, 2003), redesignated section 214(m) of the INA, 8 U.S.C. 1184(m), as section 214(n) of the INA, 8 U.S.C. 1184(n).

[2] Hart, David, et al., ''High-tech Immigrant Entrepreneurship in the United States,'' Small Business Administration Office of Advocacy (July 2009), available at: *https://www.sba.gov/sites/default/files/rs349tot_0.pdf. See also* Fairlie, Robert., ''Open for Business: How Immigrants are

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public may consult the Regulatory Impact Analysis, reflecting that although there may be short-term negative or neutral impacts, the addition of high-skilled workers presents long-term benefits to the U.S. economy.[3]

DHS has analyzed potential costs of these proposed regulations and has determined that the changes proposed by DHS have direct impacts to individual beneficiaries of employment-based nonimmigrant and immigrant visa petitions in the form of filing costs, consular processing costs, and potential for longer processing times for EAD applications during filing surges, among other costs. Due to the fact that some of these petitions are filed by a sponsoring employer, this rule also has indirect effects on employers in the form of employee replacement costs.

The proposed amendments would clarify and amend policies and practices in various employment-based immigrant and nonimmigrant visa programs, with the primary aim of providing additional stability and flexibility to both foreign workers and U.S. employers participating in those programs. In part, the proposed rule clarifies and improves upon longstanding policies adopted in response to the enactment of ACWIA and AC21 to ensure greater consistency across agency adjudications and provide greater certainty to regulated employers and workers. These changes would provide various benefits to U.S. employers and certain foreign workers, including the enhanced ability of such workers to accept promotions or change positions with their employers, as well as change employers or pursue other employment opportunities. These proposals also benefit the regulated community by providing instructive rules governing: Extensions of stay for certain H–1B nonimmigrant workers facing long delays in the immigrant visa process; the ability of workers who have been sponsored by their employers for LPR status to change jobs or employers 180 days after they file applications for adjustment of status; the circumstances under which H–1B nonimmigrant workers may begin employment with a new employer; how H–1B nonimmigrant workers count time toward maximum periods of stay; which entities are properly considered related to or affiliated with institutions of higher education for purposes of the H–1B program; and when H–1B nonimmigrant workers can claim whistleblower protections. The increased clarity provided by these rules will enhance the ability of these workers to take advantage of the job portability and related provisions in AC21 and ACWIA.

The proposed rule would also amend the current regulatory scheme governing certain immigrant and nonimmigrant visa programs to enhance job portability for certain workers and improve the ability of U.S. businesses to retain highly valued individuals. These benefits are achieved by: Proposing a revised method to retain the approval of employment-based immigrant visa petitions already adjudicated by DHS and to retain priority dates of these approved petitions for purposes of immigrant visa or adjustment of status processing; providing a grace period to certain nonimmigrants to enhance their ability to seek an authorized change of employment; establishing a means for certain nonimmigrant workers with approved employment-based immigrant visa petitions to directly request separate employment authorization for a limited time when facing compelling circumstances; and identifying exceptions to licensing requirements applicable to certain H–1B nonimmigrant workers.

Finally, the proposed rule would also amend current regulations governing the processing of applications for employment authorization to provide additional stability to certain employment-authorized individuals in the United States while addressing fraud and national security concerns. To prevent gaps in employment for such individuals and their employers, the proposed rule would provide for the automatic extension of EADs (and, where necessary, employment authorization) upon the timely filing of a renewal application. To protect against fraud and other abuses, the proposed rule would also eliminate current regulatory provisions that require adjudication of applications for employment authorization in 90 days and that authorize interim EADs when that timeframe is not met.

DHS has prepared a full costs and benefits analysis of the proposed regulation, which can be found on *regulations.gov.*

III. Background

A. Permanent Employment-Based Immigration

1. Employment-Based Immigrant Visa Preference Categories

Current employment-based immigrant visa (*i.e.,* permanent visa)[4] levels were set 25 years ago with the enactment of the Immigration Act of 1990 (''IMMACT 90''), Public Law 101–649, 104 Stat. 4978. As amended by IMMACT 90, the INA generally makes 140,000 employment-based immigrant visas available each fiscal year, plus any family-sponsored immigrant visas authorized under section 203(a) of the INA, 8 U.S.C. 1153(a) that went unused during the previous fiscal year. *See* INA section 201(d), 8 U.S.C. 1151(d). The INA allots the minimum 140,000 immigrant visas per fiscal year through five separate employment-based (EB) ''preference categories'' as follows:

- *First Preference (EB–1) Category:* 40,040 immigrant visas for so-called ''priority workers,'' including (1) ''aliens with extraordinary ability,'' (2) ''outstanding professors and researchers,'' and (3) ''certain multinational executives and managers.'' INA section 203(b)(1), 8 U.S.C. 1153(b)(1).
- *Second Preference (EB–2) Category:* 40,040 immigrant visas for (1) ''members of the professions holding advanced degrees'' and (2) ''aliens of exceptional ability.'' INA section 203(b)(2), 8 U.S.C. 1153(b)(2).
- *Third Preference (EB–3) Category:* 40,040 immigrant visas for (1) ''skilled workers'' (workers with at least 2 years of training or experience), (2) ''professionals'' (members of the professions holding baccalaureate degrees), and (3) ''other workers'' (unskilled workers of less than 2 years of training or experience). INA section 203(b)(3), 8 U.S.C. 1153(b)(3).
- *Fourth Preference (EB–4) Category:* 9,940 immigrant visas for certain ''special immigrants'' described in section 101(a)(27) of the INA, 8 U.S.C. 1101(a)(27). INA section 203(b)(4), 8 U.S.C. 1153(b)(4).
- *Fifth Preference (EB–5) Category:* 9,940 immigrant visas for employment-creation immigrant investors seeking to enter the United States for the purpose of engaging in a ''new commercial

Driving Small Business Creation in the United States,'' The Partnership for a New American Economy (August 2012), available at: *http://www.renewoureconomy.org/sites/all/themes/pnae/openforbusiness.pdf*; ''Immigrant Small Business Owners a Significant and Growing Part of the Economy,'' Fiscal Policy Institute (June 2012), available at: *http://www.fiscalpolicy.org/immigrant-small-business-owners-FPI-20120614.pdf*; Anderson, Stuart, ''American Made 2.0 How Immigrant Entrepreneurs Continue to Contribute to the U.S. Economy,'' National Venture Capital Association (June 2013), available at: *http://nvca.org/research/stats-studies/.*

[3] ''The Economic Impact of S. 744, the Border Security, Economic Opportunity, and Immigration Modernization Act,'' June 18, 2013, available at *http://www.cbo.gov/sites/default/files/cbofiles/attachments/44346-Immigration.pdf.*

[4] Immigrant visas are essentially permanent visas that lead to LPR status. The employment-based immigration process discussed here focuses on the process through which an individual may obtain LPR status in the United States through an employment-based immigration category.

enterprise.'' INA section 203(b)(5), 8 U.S.C. 1153(b)(5).[5]

The INA further provides that immigrant visa numbers authorized in one preference category may be moved to other preference categories when demand for visas in the original preference category is insufficient to use all available visas. *See generally* INA section 203(b), 8 U.S.C. 1153(b).

Although the INA makes the above minimum number of employment-based immigrant visas available each fiscal year, the INA requires that no more than 27 percent of the available number be issued in any of the first 3 quarters of the fiscal year. *See* INA section 201(a)(2), 8 U.S.C. 1151(a)(2). Moreover, these immigrant visa numbers are subject to what are known as ''per-country'' limitations. *See* INA section 202(a)(2), 8 U.S.C. 1152(a)(2). Generally, in any fiscal year, individuals born in any given country may be allocated no more than 7 percent of the total number of immigrant visas. As discussed further below, depending on the level of demand in the governing preference category, the individual's country of birth, and the applicability of any statutory exceptions to these limitations, an individual may be subject to lengthy delays in the employment-based immigration process due to lack of immigrant visa availability.

2. The Employment-Based Immigrant Visa Process

Individuals seeking to obtain LPR status in the United States through the EB–1, EB–2, or EB–3 preference categories must often go through a complex, multi-step process. With respect to most individuals described in the EB–2 and EB–3 categories, the immigrant visa process normally begins when a U.S. employer seeks to obtain a labor certification from the U.S. Department of Labor (DOL).[6] *See* INA section 212(a)(5), 8 U.S.C. 1182(a)(5); 8 CFR 204.5. Generally, the U.S. employer is required to test the U.S. labor market for the offered position by advertising the position and attempting to recruit qualified U.S. workers in the area of intended employment. *See* 20 CFR 656.17. In the alternative, the employer may provide evidence to USCIS that the position to be filled by the worker qualifies for what is known as a ''Schedule A'' designation due to a shortage of U.S. workers in a specific occupation. *See* 20 CFR 656.5, 656.15. Schedule A applications are not required to obtain labor certification through DOL prior to petitioning USCIS. *Id.*

Upon completion of the recruitment process (if recruitment is required), the employer files an ''Application for Permanent Employment Certification'' (ETA Form 9089) with DOL's Office of Foreign Labor Certification. *See* 20 CFR 656.17(a). The application constitutes a request for DOL to certify, among other things, that (1) there ''are not sufficient workers who are able, willing, qualified . . . , and available'' to perform the advertised job, and (2) the individual's admission to the United States ''will not adversely affect the wages and working conditions'' of U.S. workers. INA section 212(a)(5)(A)(i), 8 U.S.C. 1182(a)(5)(A)(i). For immigrant visa petitions that require an approved permanent labor certification from DOL, the date the application for labor certification is accepted by DOL for processing is the employee's ''priority date.'' *See* 8 CFR 204.5(d). The priority date sets an individual's place in the queue for the allocation of employment-based immigrant visas.

After obtaining an approved permanent labor certification from DOL, or if no such certification is required for the classification sought, the U.S. employer files an immigrant visa petition with USCIS on behalf of the worker (or ''beneficiary'').[7] *See* INA section 204(a)(1)(F), 8 U.S.C. 1154(a)(1)(F). Such petition is known as an ''Immigrant Petition for Alien Worker,'' or USCIS Form I–140. The purpose of the petition is to demonstrate that the job offered and the beneficiary's qualifications meet the requirements of the requested immigrant visa classification under section 203(b) of the INA, 8 U.S.C. 1153(b), and pertinent regulatory requirements, *see* 8 CFR 204.5. If no labor certification was required, the employee's priority date (*i.e.,* place in the queue for an employment-based immigrant visa) is the date the immigrant visa petition is properly filed with USCIS. *See* 8 CFR 204.5(d); *see also* 22 CFR 42.53(a).

If the immigrant visa petition is approved, the beneficiary must take additional steps to obtain LPR status, by either requesting an immigrant visa to enter the United States from abroad or filing an application for adjustment of status while in the United States. The ability to take such steps, however, is limited by the number of immigrant visas authorized for issuance and any superseding demand for such visas. As mentioned above, the beneficiary's priority date determines the duration of that beneficiary's wait for an immigrant visa by positioning the beneficiary behind individuals with earlier priority dates in the same employment-based preference category and country of birth. In certain situations, the beneficiary of an approved EB–1, EB–2, or EB–3 immigrant visa petition may retain the priority date listed in the approved petition for use in a subsequent immigrant visa petition. *See* 8 CFR 204.5(e).

The beneficiary of an approved immigrant visa petition may be able to obtain LPR status in one of two ways. The beneficiary may apply at a U.S. consular post abroad for an immigrant visa, which, once received, would allow the beneficiary to apply for admission to the United States as an LPR.[8] Such a beneficiary must generally wait to receive visa application instructions from the U.S. Department of State (DOS) National Visa Center. After receiving these instructions, the beneficiary collects required information and files the immigrant visa application with DOS. Depending on the demand for immigrant visas in the beneficiary's preference category and country of birth, the beneficiary may be required to wait further for visa issuance. Once DOS allocates visa numbers to be issued to applicants in the relevant preference category and country of birth with the beneficiary's priority date, DOS contacts the beneficiary for an immigrant visa interview. If the beneficiary's application is ultimately approved, he or she is issued an immigrant visa and, on the date of admission to the United States, obtains LPR status. DOS publishes a monthly ''Visa Bulletin'' that indicates when individuals may expect to receive their visa application instructions, as well as whether they are currently authorized to be issued immigrant visas by DOS consular offices abroad. *See* INA sections 203(e) and (g), 245(a), 8 U.S.C. 1153(e) and (g), 1255(a); *see also* 8 CFR 245.1(g)(1) and

[5] This proposed rule largely does not affect individuals applying for immigrant visas in the EB–4 and EB–5 preference categories. Accordingly, the remainder of this section concerns only individuals seeking immigrant visas under the EB–1, EB–2, and EB–3 preference categories.

[6] Labor certifications are unnecessary for petitions seeking EB–1 classification and for petitions seeking a ''national interest waiver'' under the EB–2 category. *See* INA sections 203(b)(2)(B) and 212(a)(5)(D), 8 U.S.C. 1153(b)(2)(B) and 1182(a)(5)(D); 8 CFR 204.5(h)(5), (i)(3)(iii), (j)(5), (k)(4)(ii).

[7] Individuals seeking immigrant visas through the EB–1 preference category as workers with extraordinary ability (rather than as outstanding professors and researchers or multinational executives and managers), or through the EB–2 preference category with ''national interest waivers,'' may file immigrant visa petitions on their own behalf and thus do not require sponsorship by a U.S. employer. *See* INA sections 203(b)(1)(B), (b)(1)(C), and (b)(2)(B)(i), 8 U.S.C. 1153(b)(1)(B), (b)(1)(C), and (b)(2)(B)(i).

[8] INA sections 203, 221 and 222; 8 U.S.C. 1153, 1201 and 1202.

245.2(a)(2)(i)(B), 22 CFR 42.51 through 42.55.

In the alternative, a beneficiary who is in the United States in lawful nonimmigrant status, with limited exception, may seek LPR status by filing with USCIS an application for adjustment of status to that of a lawful permanent resident (''application for adjustment of status'') in accordance with section 245 of the INA, 8 U.S.C. 1255. Before filing such an application, however, the beneficiary must wait until an immigrant visa is ''immediately available'' to him or her. *See* INA section 245(a), 8 U.S.C. 1255(a); 8 CFR 245.2(a)(2)(i)(B) and (C). An immigrant visa is considered ''immediately available'' to the beneficiary if his or her priority date for the preference category is earlier than the relevant cut-off date indicated in the monthly DOS Visa Bulletin.[9] *See* 8 CFR 245.1(g)(1) and 245.2(a)(2)(i)(B). These dates allow individuals to determine—based on their priority dates, countries of birth, and preference categories—whether they can file applications for adjustment of status and when they may expect to have their status adjusted to that of an LPR.

After the application for adjustment of status is filed, USCIS commences its adjudication. It is possible, however, that while the application is pending, higher than expected demand for immigrant visas will cause DOS to determine that immigrant visas that previously were available are no longer available to the applicant and cannot be authorized for issuance to him or her. This is often referred to as ''visa retrogression.'' In such cases, USCIS may not approve the application until an immigrant visa is again available and authorized for issuance to the applicant under the Visa Bulletin. USCIS will place these cases on ''hold'' in the interim. Similarly, retrogression may cause a DOS consular post abroad to no longer be able to issue an immigrant visa to an overseas applicant.

B. Nonimmigrant Visa Classifications

Prior to being sponsored for an immigrant visa by a U.S. employer, many foreign national employees first come to the United States pursuant to a nonimmigrant visa, such as an H–1B visa for ''specialty occupation workers'' or an L–1 visa for ''intracompany transferees.'' These and other nonimmigrant visa classifications allow these individuals to be employed in the United States for temporary periods. Each classification has its own eligibility requirements, as well as requirements related to duration of status, ability to renew status, ability to change jobs or employers, minimum wages, and worker protections.

1. The H–1B Nonimmigrant Visa Classification

A U.S. employer seeking to temporarily employ a foreign national in the United States in a ''specialty occupation'' may file a petition to obtain H–1B nonimmigrant classification on behalf of the individual.[10] *See* INA section 101(a)(15)(H)(i)(*B*), 8 U.S.C. 1101(a)(15)(H)(i)(*B*). A specialty occupation is defined as an occupation that requires (1) ''theoretical and practical application of a body of highly specialized knowledge'' and (2) ''the attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum qualification for entry into the occupation in the United States.'' *See* INA section 214(i)(l), 8 U.S.C. 1184(i)(1). Subject to certain exemptions, the total number of individuals who may be issued H–1B visas or otherwise accorded H–1B status in a fiscal year may not exceed 65,000. *See* INA section 214(g)(1)(A)(vii), 8 U.S.C. 1184(g)(1)(A)(vii). Employers eligible to file H–1B petitions include the actual employer of the worker as well as certain agents that satisfy DHS regulatory requirements. *See* 8 CFR 214.2(h)(2)(i)(A) and (F).

Before filing an H–1B petition, the U.S. employer (or ''petitioner'') generally must first file a Labor Condition Application (LCA) with DOL that covers the proposed dates of H–1B employment.[11] *See* INA sections 101(a)(15)(H)(i)(B) and 212(n), 8 U.S.C. 1101(a)(15)(H)(i)(B) and 1182(n). Among other things, the LCA requires the petitioner to attest to the occupational classification in which the worker will be employed, the wage to be paid to the worker, and the location(s) where the employment will occur. *See* INA section 212(n), 8 U.S.C. 1182(n); *see also* 20 CFR 655.730(c)(4). If DOL certifies the LCA, the petitioner may then file a Petition for a Nonimmigrant Worker (Form I–129) with USCIS seeking approval of H–1B classification for the worker (or ''beneficiary'').[12] *See* INA section 214(c)(1), 8 U.S.C. 1184(c)(1); 8 CFR 214.2(h)(4)(i)(B)(*1*). If the H–1B position requires a state or local license to fully perform the job duties, the H–1B petition may not be approved unless the beneficiary possesses the required license. *See* 8 CFR 214.2(h)(4)(v)(A).

If the H–1B petition is approved, H–1B classification may generally be issued for a period of up to 3 years but may not exceed the validity period of the LCA.[13] *See* 8 CFR 214.2(h)(9)(iii)(A)(*1*). Subsequently, the original petitioner or a different petitioner may petition USCIS to authorize continued or new employment of the beneficiary as an H–1B nonimmigrant worker. Such a renewal petition may, if the H–1B nonimmigrant worker is in the United States and (with limited exception) maintaining H–1B status at the time the petition is filed, include a request to extend his or her stay in H–1B status. *See* 8 CFR 214.1(c)(1) and 214.2(h)(2)(i)(D), (h)(14) and (h)(15).

The maximum period of authorized admission of an individual in the H–1B classification is generally limited to 6 years. *See* INA section 214(g)(4), 8 U.S.C. 1184(g)(4).[14] Typically, an H–1B petition may not be approved for a beneficiary who has stayed for the maximum allowable amount of time in the United States as an H–1B (or L–1 [15]) nonimmigrant worker, unless the beneficiary has resided and been physically present outside the United States for the immediate prior year. *See* 8 CFR 214.2(h)(13)(iii)(A). The INA defines the terms ''admission'' and ''admitted'' to mean ''the lawful entry of the [foreign national] into the United States after inspection and authorization by an immigration officer.'' *See* INA section 101(a)(13), 8 U.S.C. 1101(a)(13). Therefore, DHS calculates an H–1B nonimmigrant worker's period of authorized admission by excluding time spent outside the United States during the validity of an H–1B petition. Such

[9] The Visa Bulletin, which is issued monthly, is available at *http://travel.state.gov/visa/bulletin/bulletin_1360.html.*

[10] An H–1B petition can be filed for a foreign national to perform services in a specialty occupation, services relating to a Department of Defense (DOD) cooperative research and development project or coproduction project, or services of distinguished merit and ability in the field of fashion modeling. 8 CFR 214.2(h)(4)(i)(A).

[11] Petitions for H–1B visas relating to Department of Defense cooperative research, development, and coproduction projects do not require petitioners to file a Labor Condition Application. *See* 8 CFR 214.2(h)(4)(vi).

[12] In such case, the worker would be considered the beneficiary of the H–1B petition.

[13] H–1B visas relating to Department of Defense cooperative research, development, and coproduction projects may be issued for up to 5 years, and they may be renewed for a maximum H–1B period of 10 years. *See* Public Law 101–649, section 222(a)(2), 104 Stat. 4978 (Nov. 29, 1990); 8 CFR 214.2(h)(9)(iii)(A)(*2*).

[14] The maximum period of authorized admission for Department of Defense H–1B nonimmigrant workers is 10 years. As explained in detail below, AC21, as amended, contains two provisions that allow for USCIS to approve H–1B petitions for beneficiaries beyond the otherwise applicable statutory 6-year maximum period of authorized admission.

[15] The L–1 nonimmigrant classification is described further below.

''remainder time'' is effectively added back to the period of stay allowed the individual as an H–1B nonimmigrant worker. Reclaiming this time is referred to as ''recapture'' of H–1B time (*i.e.,* the time allowed an individual to be employed in H–1B status within the 6-year period of authorized admission).[16]

Spouses and minor, unmarried children of an H–1B nonimmigrant worker are eligible for H–4 nonimmigrant status subject to the same period of admission and limits as the H–1B nonimmigrant. *See* 8 CFR 214.2(h)(9)(iv). H–1B nonimmigrant workers and their H–4 nonimmigrant dependents are currently afforded a grace period of up to 10 days to remain in the United States after the end of the petition validity period. *See* 8 CFR 214.2(h)(13)(i)(A). During any such grace period, the H–1B nonimmigrant worker is considered ''admitted to the United States,'' but not authorized to work. *Id.*

Generally, a request for an extension of H–1B stay may be filed only if the individual's H–1B status has not expired. *See* 8 CFR 214.1(c)(4) and 214.2(h)(14). Under certain circumstances, failure to file a request for an extension of H–1B stay before H–1B nonimmigrant status has expired may be excused. *Id.* In such cases, the petitioner must demonstrate that:

- The delay was due to extraordinary circumstances beyond the control of the foreign national or petitioner, and USCIS finds the delay commensurate with the circumstances;
- The foreign national has not otherwise violated his or her nonimmigrant status;
- The foreign national remains a bona fide nonimmigrant; and
- The foreign national is not the subject of deportation proceedings under section 242 of the INA, 8 U.S.C. 1252 (prior to April 1, 1997), or removal proceedings under section 240 of the INA, 8 U.S.C. 1229a.

Id. If such a request for an extension of H–1B stay is approved, the extension may be granted from the date the previously authorized stay expired. *Id.*

2. Other Relevant Nonimmigrant Visa Classifications

Foreign nationals may also work in the United States in other temporary nonimmigrant statuses. The employment-based nonimmigrant statuses that are relevant to this proposed rule are described below.

E–1 classification. The E–1 nonimmigrant classification allows nationals of certain ''treaty countries'' to be admitted to the United States solely to engage in international trade on his or her own behalf. To qualify for E–1 classification, the ''treaty trader'' must: (1) Be a national of a country with which the United States maintains a qualifying treaty; and (2) carry on substantial trade, principally between the United States and the treaty country that qualifies the treaty trader for E–1 classification. *See* 8 CFR 214.2(e)(1). Certain employees of such a person or of a qualifying organization may also be eligible for this classification. A treaty trader or employee may only engage in the trade activity or work in the employment for which he or she was approved at the time the classification was granted. *See* 8 CFR 214.2(e)(8)(i). An E–1 employee, however, may also work for the treaty organization's parent company or one of its subsidiaries in certain circumstances. *See* 8 CFR 214.2(e)(8)(ii). Treaty traders may be admitted in E–1 nonimmigrant status for a period of up to 2 years, and such status may be renewed indefinitely so long as the individual continues to meet the relevant qualifications. *See* 8 CFR 214.2(e)(19) and (20).

E–2 classification. The E–2 nonimmigrant classification concerns nationals of treaty countries who invest a substantial amount of capital in a U.S. enterprise. To qualify for E–2 classification, the ''treaty investor'' must: (1) Be a national of a country with which the United States maintains a qualifying treaty; (2) have invested, or be actively in the process of investing, a substantial amount of capital in a bona fide enterprise in the United States; and (3) be seeking to enter the United States solely to develop and direct the enterprise. Certain employees of such a person or of a qualifying organization may also be eligible for this classification. A ''treaty investor'' or employee in E–2 nonimmigrant status may only engage in the investment activity or work in the employment for which he or she was approved at the time the classification was granted. *See* 8 CFR 214.2(e)(8)(i). An E–2 nonimmigrant employee, however, may also work for the treaty organization's parent company or one of its subsidiaries in certain circumstances. *See* 8 CFR 214.2(e)(8)(ii). Treaty investors may be admitted in E–2 nonimmigrant status for a period of 2 years, and such status may be renewed indefinitely so long as the individual continues to meet the relevant qualifications. *See* 8 CFR 214.2(e)(19) and (20).

E–3 classification. The E–3 nonimmigrant visa classification concerns specialty occupation workers who are nationals of the Commonwealth of Australia. *See* INA section 101(a)(15)(E)(iii), 8 U.S.C. 1101(a)(15)(E)(iii). The definition of the term ''specialty occupation'' is the same for E–3 classification as that for the H–1B classification. *See* INA section 214(i)(1), 8 U.S.C. 1184(i)(1). To qualify for E–3 classification, the applicant must present a Labor Condition Application in accordance with section 212(t)(1) of the INA, 8 U.S.C. 1182(t)(1). The total number of Australian nationals who may be accorded E–3 nonimmigrant status in a fiscal year is capped at 10,500. *See* INA section 214(g)(11)(B), 8 U.S.C. 1184(g)(11)(B). E–3 nonimmigrant workers may be admitted initially for a period not to exceed the validity period of the accompanying LCA (granted for 2 years) and may be granted indefinite extensions of stay in increments of up to 2 years. *See* 20 CFR 655.750(a)(2).[17]

H–1B1 classification. Similar to the H–1B and E–3 classifications, the H–1B1 classification is for specialty occupation workers, but is limited to temporary workers from Chile and Singapore. *See* INA sections 101(a)(15)(H)(i)(*b*)(*1*) and 214(i), 8 U.S.C. 1101(a)(15)(H)(i)(*b*)(*1*) and 1184(i). Consistent with Free Trade Agreements with Chile and Singapore, up to 1,400 nationals from Chile and 5,400 nationals from Singapore may enter the United States annually in the H–1B1 classification to perform specialty occupation work. *See* INA section 214(g)(8)(B), 8 U.S.C. 1184(g)(8)(B). Individuals admitted in such status are counted against the overall H–1B annual numerical limitation of 65,000. *Id.* The H–1B1 nonimmigrant classification requires the filing of an LCA certified by DOL. *See* INA sections 101(a)(15)(H)(i)(*B*)(*1*) and 212(t), 8 U.S.C. 1101(a)(15)(H)(i)(*B*)(*1*) and 1182(t). H–1B1 nonimmigrants may be admitted for a period of up to 1 year, and may extend their period of stay in the United States in up to 1-year increments. *See* INA section 214(g)(8)(C), 8 U.S.C. 1184(g)(8)(C).

L–1 classification. The L–1 nonimmigrant visa classification

[16] *See* USCIS Memorandum from Michael Aytes, ''Procedures for Calculating Maximum Period of Stay Regarding the Limitations on Admission for H–1B and L–1 Nonimmigrants,'' (Oct. 21, 2005) (''Aytes Memo Oct. 2005'').

[17] *See* Michael Aytes Memorandum: Processing Guidelines for E–3 Australian Specialty Occupation Workers and Employment Authorization for E–3 Dependent Spouses (Dec. 15, 2005), available at *http://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/Static_Files_Memoranda/Archives%201998-2008/2005/e3polgdnc_121505.pdf.*

concerns ''intracompany transferees'' of multinational entities who are executives, managers, or employees with specialized knowledge and who are transferring from an office abroad to a qualifying office in the United States. *See* INA section 101(a)(15)(L), 8 U.S.C. 1101(a)(15)(L). Executive and managerial employees qualify for L–1A status and are admitted for a maximum initial stay of 3 years, with extensions of stay granted in increments of up to 2 years, until the employee has reached the maximum limit of 7 years. *See* INA section 214(c)(1)(D)(i), 8 U.S.C. 1184(c)(1)(D)(i); *see also* 8 CFR 214.2(l)(12)(i) and (15)(ii). Specialized knowledge employees qualify for L–1B status and are admitted for a maximum initial stay of 3 years, with extensions of stay granted in increments of up to 2 years, until the employee has reached the maximum limit of 5 years. *See* INA section 214(c)(1)(D)(ii); *see also* 8 CFR 214.2(l)(12)(i) and (15)(ii).

O–1 classification. The O–1 nonimmigrant visa classification includes individuals who either: (1) Have ''extraordinary ability'' in the sciences, arts, education, business or athletics, as demonstrated by sustained national or international acclaim; or (2) have a demonstrated record of extraordinary achievements in the motion picture or television industry, as recognized in the field through extensive documentation. *See* INA section 101(a)(15)(O), 8 U.S.C. 1101(a)(15)(O). O–1 nonimmigrants must be coming temporarily to the United States to continue work in the relevant area of extraordinary ability or achievement. *Id.* O–1 nonimmigrants may be admitted to the United States for up to 3 years, plus a period of up to 10 days before the validity period begins and 10 days after the validity period ends. *See* 8 CFR 214.2(o)(6)(iii)(A) and (o)(10). Extensions of status may be authorized in increments of up to 1 year, and such status may be renewed indefinitely so long as the individual continues to meet the relevant qualifications. *See* 8 CFR 214.2(o)(12)(ii).

TN Classification. The TN nonimmigrant classification, established in the North American Free Trade Agreement,[18] permits qualified Canadian and Mexican citizens to seek temporary entry into the United States to engage in business activities at a professional level. *See* INA section 214(e), 8 U.S.C. 1184(e); *see also* 8 CFR 214.6(b). The TN nonimmigrant worker may not intend to establish a business in the United States or be self-employed in this country, and he or she must be arriving pursuant to a prearranged agreement with a U.S. employer. *Id.* The TN nonimmigrant worker must also demonstrate that he or she possesses at least the minimum qualification prescribed for his or her respective profession and that he or she intends to remain in the United States temporarily. *See* 8 CFR 214.6(a), (d)(3)(ii). An eligible alien seeking TN classification may be granted TN status for an initial period not to exceed 3 years. *See* 8 CFR 214.6(e). Extensions of stay may be granted for periods not to exceed 3 years at a time. *See* 8 CFR 214.6(h)(1)(iii). TN is a temporary nonimmigrant classification, although there is no specific limit on the total period of time an alien may remain in the United States in TN status as long as he or she continues to be engaged in TN business activities for a U.S. employer or entity at a professional level, and otherwise continues to properly maintain TN status. *See* 8 CFR 214.6(h)(1)(iv).

C. ACWIA and AC21

1. The American Competitiveness and Workforce Improvement Act of 1998

ACWIA was enacted on October 21, 1998. Among other things, ACWIA was intended to address shortages of workers in the U.S. high-technology sector. To increase the number of such workers in the United States, section 411 of ACWIA increased the annual numerical cap on H–1B visas from 65,000 to 115,000 in each of fiscal years (FY) 1999 and 2000, and to 107,500 in FY 2001.[19] *See* ACWIA section 411 (amending INA section 214(g)(1), codified at 8 U.S.C. 1184(g)(1)). The congressional statements accompanying ACWIA recognized that the continued competitiveness of the U.S. high-technology sector is ''crucial for [U.S.] economic well-being as a nation, and for increased economic opportunity for American workers.'' *See* 144 Cong. Rec. S12,741, S12,749 (daily ed. Oct. 21, 1998) (statement of Sen. Spencer Abraham); *see also id.* (''This issue is not only about shortages, it is about opportunities for innovation and expansion, since people with valuable skills, whatever their national origin, will always benefit our nation by creating more jobs for everyone.'').[20]

ACWIA also included several measures intended to improve protections for U.S. and H–1B nonimmigrant workers. Section 413 of the act provided enhanced penalties for employer violations of LCA obligations, as well as willful misrepresentations by employers in LCAs. *See* ACWIA section 413 (creating INA section 212(n)(2)(C), codified at 8 U.S.C. 1182(n)(2)(C)). Such enhancements included increased monetary penalties, as well as temporary prohibitions on the approval of certain types of petitions, such as H–1B petitions and employment-based immigrant visa petitions.[21] *Id.* This prohibition against petition approval is often referred to as ''debarment.'' The severity of the penalty awarded to an employer depends upon the seriousness of the employer's violation, as determined by DOL. *See* INA section 212(n)(2)(C)(*i*)–(*iii*), 8 U.S.C. 1182(n)(2)(C)(*i*)–(*iii*). DOL is required to notify USCIS of the entities determined to be subject to debarment. *See* 20 CFR 655.855 and 656.31(f)(2).

Section 413 of ACWIA also made it a violation for an H–1B employer to retaliate against an employee for providing information to the employer or other persons, or for cooperating in an investigation, related to an employer's violation of its LCA attestations and obligations. Employers are prohibited from taking retaliatory action in such situations, including any action ''to intimidate, threaten, restrain, coerce, blacklist, discharge, or in any other manner discriminate'' against an employee for ''disclos[ing] information to the employer, or to any other person, that the employee reasonably believes evidences [an LCA] violation, any rule or regulation pertaining to the statutory LCA attestation requirements, or for cooperating, or attempting to cooperate, in an investigation or proceeding pertaining to the employer's LCA compliance.'' *See* INA section 212(n)(2)(C)(iv), 8 U.S.C. 1182(n)(2)(C)(iv). Section 413 further required the development of a process to enable H–1B nonimmigrant workers who file complaints with DOL regarding such illegal retaliation, and are otherwise eligible to remain and work in

[18] *See* 58 FR 69205 (Dec. 30, 1993); 58 FR 68526 (Dec. 28, 1993).

[19] Section 102(a) of AC21 further amended INA section 214(g)(1) by increasing the annual numerical cap on H–1B visas to 195,000 for each of the fiscal years 2001, 2002, 2003.

[20] Senator Abraham drafted and sponsored the original Senate bill for ACWIA, then titled the American Competitiveness Act, S. 1723, 105th Cong. (1998), which passed the full Senate by a 78–20 margin on May 18, 1998. 144 Cong. Rec. as S12,748–49 (daily ed. Oct. 21, 1998). He negotiated with the House of Representatives on a compromise ACWIA bill and was deputized to negotiate in talks between Congress and the White House to finalize the bill.

[21] *Legal Opinion: INS Procedure for Processing Debarment of Employer Pursuant to Sec. 212(n)(2)(C)(ii) of the INA,* Genco Op. No. 94–21, 1994 WL 1753125 (Apr. 12, 1994) (concluding that the determination of whether a section 212(n)(2)(C)(ii) violation has occurred rests solely with DOL, and that DHS must accept that determination).

the United States, to seek other appropriate employment in the United States. *See* INA section 212(n)(2)(C)(v), 8 U.S.C. 1182(n)(2)(C)(v).

Section 412 of ACWIA created additional requirements for U.S. employers deemed to be ''H–1B dependent,'' *see* INA section 212(n)(3)(A), 8 U.S.C. 1182(n)(3)(A), and those that have willfully failed to comply with their LCA obligations or who have misrepresented material facts in an LCA, *see* INA section 212(n)(1)(E)–(G), 8 U.S.C. 1182(n)(1)(E)–(G). These U.S. employers are required to attest that they will not displace U.S. workers to fill a prospective position with an H–1B nonimmigrant worker, and that they took good faith steps to recruit qualified U.S. workers for the prospective H–1B position. *Id.* Employers are not subject to these additional non-displacement requirements, however, with regard to petitions for H–1B nonimmigrant workers who receive at least $60,000 in annual wages or have attained a master's or higher degree in a specialty related to the relevant employment. *See* ACWIA section 412 (creating INA section 212(n)(1)(E)(ii) and (n)(3)(B), codified at 8 U.S.C. 1182(n)(1)(E)(ii) and (n)(3)(B)).

Section 414 of ACWIA imposed a temporary fee on certain H–1B employers to fund, among other things, job training of U.S. workers and scholarships in the science, technology, engineering, and mathematics (STEM) fields. *See* ACWIA section 414 (creating INA section 214(c)(9), codified at 8 U.S.C. 1184(c)(9)). The ACWIA fee was initially scheduled to sunset on September 30, 2001. Public Law 106–311, however, increased the fee from $500 to $1,000 and extended the sunset provision to September 30, 2003. Public Law 106–311 also amended section 214(c)(9)(A) of the INA, 8 U.S.C. 1184(c)(9), by specifying additional employers that are exempt from the ACWIA fee (*i.e.,* employers in addition to the exempt employers described in section 212(p)(1) of the INA, 8 U.S.C. 1182(p)(1)). Exempt employers currently include institutions of higher education, nonprofit entities related or affiliated with such institutions, and nonprofit or governmental research organizations, among others. *See* INA section 214(c)(9)(A), 8 U.S.C. 1184(c)(9)(A). Subsequently, the H–1B Visa Reform Act of 2004, enacted as part of the Consolidated Appropriations Act, 2005, Public Law 108–447, div. J, tit. IV, made the ACWIA fee permanent and raised it from $1,000 to $1,500 per qualifying petition filed with USCIS after December 8, 2004. This fee was also reduced to $750 for employers with no more than 25 full-time equivalent employees employed in the United States (including employees employed by any affiliate or subsidiary of such employer).

2. The American Competitiveness in the Twenty-first Century Act of 2000

AC21 was enacted on October 17, 2000. It made numerous changes to the INA designed, among other things, to improve the U.S. economy in both the short and long term. First, AC21 sought to positively impact economic growth and job creation by immediately increasing the United States' access to high-skilled workers. *See* S. Rep. No. 260, at 10 (''[A]rtificially limiting companies' ability to hire skilled foreign professionals will stymie our country's economic growth and thereby partially atrophy its creation of new jobs. . . . American workers' interests are advanced, rather than impeded, by raising the H–1B cap''). Second, AC21 sought to improve the education and training of U.S. workers in high-skilled sectors, and thereby produce a U.S. workforce better equipped to fill the need in such sectors, through the funding of scholarships and high-skilled training programs. *See* AC21 section 111. As noted by the accompanying Senate Report, foreign-born high-skilled individuals have played an important role in U.S. economic prosperity and the competitiveness of U.S. companies in numerous fields. *Id.* AC21 sought to provide such benefits by making improvements to both the employment-based immigrant visa process and the H–1B specialty occupation worker program.

a. AC21 Provisions Relating to Employment-Based Immigrant Visas

To improve the immigrant visa process for certain workers, AC21 contained several provisions designed to improve access to employment-based immigrant visas. Section 104 of AC21, for example, sought to ameliorate the impact on intending immigrants of the per-country limitations, which, as noted earlier, generally limit the number of immigrant visas that may be issued to the nationals of any one country to no more than 7 percent of the total number of such visas. *See* INA section 202(a)(2), 8 U.S.C. 1152(a)(2). Sections 104(a) and (b) of AC21 amended the INA to excuse application of the per country limitations when such application would result in immigrant visas going unused in any quarter of the fiscal year. Specifically, these sections amended the INA so that when the number of employment-based immigrant visas authorized for issuance in a calendar quarter exceeds the number of qualified immigrants who may otherwise be issued such visas, the visas may be issued in the same quarter without regard to per-country limitations. *See* AC21 sections 104(a) and (b) (amending INA section 202(a)(5), codified at 8 U.S.C. 1152(a)(5)); *see also* S. Rep. No. 260, 106th Cong., 2nd Sess. at 2. This provision recognized ''the discriminatory effects of [the per-country limitations] on nationals from certain Asian Pacific nations,'' specifically Chinese and Indian nationals, which ''prevent[ed] an employer from hiring or sponsoring someone permanently simply because he or she is Chinese or Indian, even though the individual meets all other legal criteria.'' S. Rep. No. 260, at 22.

Section 104(c) of AC21 was designed to further ameliorate the impact of the per-country limitations on H–1B nonimmigrant workers who are the beneficiaries of approved EB–1, EB–2, or EB–3 immigrant visa petitions. Specifically, section 104(c) authorized the extension of H–1B status beyond the statutory 6-year maximum for such individuals if immigrant visa numbers are not immediately available to them because the relevant preference category is already over-subscribed for that foreign national's country of birth. *See* AC21 section 104(c). In support of this provision, Congress noted that ''these immigrants would otherwise be forced to return home at the conclusion of their allotted time in H–1B status, disrupting projects and American workers.'' *See* S. Rep. No. 260, at 22. Section 104(c) ''enables these foreign nationals to remain in H–1B status until they are able to receive an immigrant visa and adjust their status within the United States, thus limiting the disruption to American businesses.'' *Id.*

AC21 also sought to more generally ameliorate the impact of the lack of employment-based immigrant visas on the high-skilled beneficiaries of approved immigrant visa petitions. Sections 106(a) and (b) of AC21, as amended by section 11030A of the 21st Century DOJ Appropriations Act, Public Law 107–273(2002), authorized the extension of H–1B status beyond the statutory 6-year maximum for H–1B nonimmigrant workers who are being sponsored for LPR status by U.S. employers and are subject to lengthy adjudication or processing delays. Specifically, these provisions exempted H–1B nonimmigrant workers from the 6-year limitation on H–1B status contained in INA section 214(g)(4), 8 U.S.C. 1184(g)(4), if 365 days or more have elapsed since the filing of a labor certification application (if such

certification is required under INA section 212(a)(5), 8 U.S.C. 1182(a)(5)), or an immigrant visa petition under INA section 203(b), 8 U.S.C. 1153(b). These provisions were intended to allow such high-skilled individuals to remain in the United States as H–1B nonimmigrant workers, rather than being forced to leave the country and disrupt their employers due to a long pending labor certification application or immigrant visa petition. *See* S. Rep. No. 260, at 23.

Finally, to provide stability and flexibility to beneficiaries of approved immigrant visa petitions subject to immigrant visa backlogs and processing delays, AC21 also provided certain workers the improved ability to change jobs or employers without losing their position in the immigrant visa queue. Specifically, section 106(c) of AC21 provides that certain immigrant visa petitions filed under the EB–1, EB–2, and EB–3 preference categories will remain valid with respect to a new qualifying job offer if the beneficiary changes jobs or employers, provided an application for adjustment of status has been filed and such application has been pending for 180 days or more. *See* AC21 section 106(c) (creating INA section 204(j), codified at 8 U.S.C. 1154(j)). In such cases, the new job offer must be in the same or a similar occupational classification as the job for which the original immigrant visa petition was filed. *Id.*

b. AC21 Provisions Seeking To Improve the H–1B Nonimmigrant Worker Classification

As noted above, one of the principle purposes for the enactment of AC21 was to improve the country's access to high-skilled workers. As such, AC21 contains several additional provisions intended to expand and strengthen the H–1B program.

i. Exemptions From the H–1B Numerical Cap

Section 103 of AC21 amended the INA to create an exemption from the H–1B numerical cap for those H–1B nonimmigrant workers who are employed or offered employment at an institution of higher education, a nonprofit entity related or affiliated to such an institution, or a nonprofit research or governmental research organization. *See* INA section 214(g)(5)(A) and (B); 8 U.S.C. 1184(g)(5)(A) and (B).[22] Congress deemed such employment advantageous to the United States. Among other things, Congress recognized a short- and long-term need to increase the number of workers in specialty occupation fields, and it determined that increasing the number of high-skilled foreign nationals working in specialty occupations at U.S. institutions of higher education would increase the number of Americans who will be ready to fill specialty occupation positions upon completion of their education. *See* S. Rep. No. 260, at 21–22. Congress reasoned that ''by virtue of what they are doing, people working in universities are necessarily immediately contributing to educating Americans.'' *Id.* at 21. Congress also recognized that U.S. institutions of higher education are on a different hiring cycle from other U.S. employers, and in years of high H–1B demand, these institutions would be unable to hire cap-subject H–1B nonimmigrant workers. *Id.* at 22.

For purposes of this H–1B numerical cap exemption, the term ''institution of higher education'' is given the same meaning as that set forth in section 101(a) of the Higher Education Act of 1965, Public Law 89–329, 79 Stat. 1224 (1965), as amended (codified at 20 U.S.C. 1001(a) (''Higher Education Act'').[23] *See* INA section 214(g)(5)(A); 8 U.S.C. 1184(g)(5)(A). The terms ''related or affiliated nonprofit entity,'' and ''nonprofit research organization or governmental research organization'' are defined at 8 CFR 214.2(h)(19)(iii)(B) and 8 CFR 214.2(h)(19)(iii)(C), respectively, and adopted as a matter of interpretation in the cap exemption context.[24]

ii. Application of the H–1B Numerical Cap to Persons Previously Counted

Section 103 of AC21 also amended the INA to ensure that H–1B nonimmigrant workers can change jobs or employers without requiring that they again count against the H–1B cap. Specifically, section 103 provides that an individual who has been counted against the H–1B numerical cap within the 6 years prior to petition approval will not be counted against the cap unless that individual would be eligible for a new 6-year period of authorized H–1B admission. *See* INA section 214(g)(6); 8 U.S.C. 1184(g)(6). As noted above, an individual previously in the United States on H–1B nonimmigrant status is eligible for a full 6 years of authorized admission as an H–1B nonimmigrant after residing and being physically present outside the United States for the immediate prior year. *See* 8 CFR 214.2(h)(13)(iii)(A).

Section 103 of AC21 also amended the INA to address cases in which an H–1B nonimmigrant worker seeks to change employment from a cap-exempt entity to a ''cap-subject'' entity. Specifically, section 103 provides that once employment ceases with respect to a cap-exempt entity, the H–1B nonimmigrant worker will be subject to the cap if not previously counted and no other exemptions from the cap apply. *See* INA section 214(g)(6), 8 U.S.C. 1184(g)(6).

iii. H–1B Portability

Section 105 of AC21 further improved the H–1B program by increasing job portability for H–1B nonimmigrant workers. Specifically, section 105 allows an H–1B nonimmigrant worker to begin concurrent or new H–1B employment upon the filing of a timely, non-frivolous H–1B petition. *See* INA section 214(n), 8 U.S.C. 1184(n). The H–1B nonimmigrant worker must have been lawfully admitted to the United States, must not have worked without authorization subsequent to such lawful admission, and must be in a period of stay authorized by the Secretary.[25] Employment authorization based on the pending petition continues until adjudication. *See* INA section 214(n)(1), 8 U.S.C. 1184(n)(1). If the H–1B petition is denied, the employment

[22] *See* USCIS Memorandum from Michael Aytes, ''Guidance Regarding Eligibility for Exemption from the H–1B Cap Based on § 103 of the American Competitiveness in the Twenty-First Century Act of 2000 (AC21) (Public Law 106–313) 2–4 (June 6, 2006)'' (''Aytes Memo June 2006'').

[23] Section 101(a) of the Higher Education Act of 1965, as amended, defines ''institution of higher education'' as an educational institution in any State that—

(1) admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate, or persons who meet the requirements of [8 U.S.C. 1091(d)];

(2) is legally authorized within such State to provide a program of education beyond secondary education;

(3) provides an educational program for which the institution awards a bachelor's degree or provides not less than a 2-year program that is acceptable for full credit toward such a degree, or awards a degree that is acceptable for admission to a graduate or professional degree program, subject to review and approval by the Secretary [of Education];

(4) is a public or other nonprofit institution; and

(5) is accredited by a nationally recognized accrediting agency or association, or if not so accredited, is an institution that has been granted preaccreditation status by such an agency or association that has been recognized by the Secretary [of Education] for the granting of preaccreditation status, and the Secretary [of Education] has determined that there is satisfactory assurance that the institution will meet the accreditation standards of such an agency or association within a reasonable time.

[24] *See* Aytes Memo June 2006, at 4.

[25] *See* USCIS Memorandum from Donald Neufeld, ''Consolidation of Guidance Concerning Unlawful Presence for Purposes of Sections 212(a)(9)(B)(i) and 212(a)(9)(C)(i)(I) of the Act'' (May 6, 2009) (''Neufeld Memo May 2009'') (describing various ''periods of authorized stay'').

authorization provided under this provision ceases. *Id.* Congress created such H–1B portability to ''allow an H–1B visa holder to change employers at the time a new employer files the initial paperwork, rather than having to wait for the new H–1B petition to be approved. This responds to concerns raised about the potential for exploitation of H–1B visa holders as a result of a specific U.S. employer's control over the employee's legal status.'' *See* S. Rep. No. 260, at 22–23.

D. The Processing of Applications for Employment Authorization Documents

The Secretary of Homeland Security has broad authority to extend employment authorization to noncitizens in the United States. *See, e.g.,* section 274A(h)(3)(B) of the INA, 8 U.S.C. 1324a(h)(3)(B). DHS regulations at 8 CFR 274a.12(a), (b), and (c) describe three broad categories of foreign nationals authorized to work in the United States. Individuals in the first class, described at 8 CFR 274a.12(a), are authorized to work in the United States incident to their immigration status, without restriction on the location of their employment or the type of employment they may accept. Such individuals who travel to the United States by air and sea may electronically access an Arrival-Departure Record (Form I–94) indicating their nonimmigrant status and attendant employment authorization; such individuals who are admitted at land border port of entry may receive a paper Form I–94. Those individuals seeking to obtain an EAD (Form I–766) containing both evidence of employment authorization and a photograph typically must file a separate application with USCIS. *See* 8 CFR 274a.13(a).

Individuals in the second class, described at 8 CFR 274a.12(b), are also employment authorized incident to their nonimmigrant status, but such employment authorization is valid only with a specific employer. Individuals in this second group are not issued an EAD; instead these individuals obtain an Arrival-Departure Record (Form I–94) indicating their nonimmigrant status and attendant employment authorization and do not file separate requests for evidence of employment authorization.

Individuals in the third class, described at 8 CFR 274a.12(c), are required to apply for employment authorization and may begin working only if USCIS approves their application. Such employment authorization is subject to the restrictions described in the regulations for his or her respective employment eligibility category. With respect to individuals described in the first and third categories, USCIS has the discretion to establish a specific validity period for the EAD.

Individuals requesting an EAD must file an Application for Employment Authorization (Form I–765) with USCIS in accordance with the form instructions. *See* 8 CFR 274a.13. Under current regulations, if USCIS does not adjudicate an Application for Employment Authorization within 90 days from the date USCIS receives the application, an applicant will be granted an interim document evidencing employment authorization with a validity period not to exceed 240 days. *See* 8 CFR 274a.13(d). Generally, the approval of an Application for Employment Authorization by an individual described in 8 CFR 274a.12(c) is within the discretion of USCIS.[26] And there is no right to appeal the denial of an Application for Employment Authorization. *See* 8 CFR 274a.13(c).

E. The Increasing Damage Caused by Immigrant Visa Backlogs

This proposed rule is intended, in part, to address some of the challenges that flow from the statutory limits on immigrant visas, consistent with existing DHS authorities. As noted above, the number of employment-based immigrant visas allocated per year has remained unchanged since the passage of the Immigration Act of 1990. In the intervening 25 years, the country's economy has expanded dramatically. The U.S. economy, as measured by U.S. gross domestic product (GDP), has increased by 78 percent from $8.955 trillion in 1990 to $15.961 trillion in 2014.[27] The per capita share of GDP has also increased by almost 40 percent from $35,794 in 1990 to $50,010 in 2014.[28] And the number of entities doing business in the United States increased at least 24 percent during the same period.[29] Over the same period, employer demand for immigrant visas has increasingly outpaced supply, resulting in growing waits for sponsored employees to obtain their LPR status. Such delays have resulted in substantial inequalities and other hardships flowing from limits on a sponsored worker's ability to seek employment to enhance his or her skills and on the ability of employers to promote them or otherwise change their positions.

Since AC21 was enacted in October of 2000, workers seeking LPR status in the United States—particularly within the EB–2 and EB–3 preference categories—have faced increasing challenges as a consequence of the escalating wait times for immigrant visas. It often takes many years before an immigrant visa number becomes available. For some, the delays can last more than a decade. The combination of numerical limitations in the various employment-based preference categories with the per-country limitations that further limit visa availability to certain workers, has produced significant oversubscription in the EB–2 and EB–3 categories, particularly for Indian and Chinese nationals. For instance, the current approximate backlog for an EB–3 immigrant visa for workers from most countries is only a few months. For nationals of certain countries applying in the EB–3 category, delays have extended more than a decade.[30]

Given the long and growing delays for many beneficiaries of employment-based immigrant visa petitions, the challenges facing such workers and the U.S. economy, while similar to those recognized by AC21, are substantially greater than those that existed at the time AC21 passed. Although DHS has worked diligently to improve processing times during the intervening period, visa backlogs due to statutory numerical limits for many individuals seeking EB–2 and EB–3 classification have grown significantly.[31] DHS recognizes the

[26] Approval of an application for employment authorization based on a pending asylum application is not discretionary. *See* 8 CFR 274a.13(a)(1).

[27] U.S. Department of Commerce, Bureau of Economic Analysis, Table 1.1.6 Real Gross Domestic Product, Chained (2009) Dollars, *https://www.bea.gov/iTable/index_nipa.cfm.*

[28] U.S. Department of Commerce, Bureau of Economic Analysis, Table 7.1 Selected Per Capita Product and Income Series and Chained (2009) Dollars, *https://www.bea.gov/iTable/index_nipa.cfm.*

[29] *Compare* U.S. Census data collected in 1992 identifying over 4.61 million firms doing business in the United States, available at *http://www.census.gov/prod/www/economic_census.html,* with U.S. Census data collected in 2012 identifying over 5.72 million firms doing business, available at *http://www.census.gov/econ/susb/.*

[30] According to the DOS Visa Bulletin for November 2015, immigrant visas are currently issuable to all persons qualifying under the EB–1 preference category. The EB–2 category Application Final Action date is current for all countries except for China and India, with cut-off dates for nationals of those countries currently set between 2006 and 2012 (a wait of 3 to 9 years). The Application Final Action cut-off dates for nationals of most countries under the EB–3 preference category are set at August 15, 2015 (a wait of less than one month). But for Indian nationals, the Application Final Action cut-off dates are set at April 1, 2004 (a wait of over 10 years). *See* DOS Visa Bulletin for November 2015, *http://www.travel.state.gov/content/visas/en/law-and-policy/bulletin/2016/visa-bulletin-for-november-2015.html.*

[31] According to the DOS Visa Bulletin for October 2000 (the month AC21 was enacted), visa

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resulting realities confronting individuals seeking employment-based permanent residence who, due to immigrant visa unavailability, are required to wait many years for visa numbers to become available before they can file applications for adjustment of status or seek immigrant visas abroad and become LPRs. In many instances, these individuals are in the United States in a nonimmigrant, employer-specific temporary worker category (*e.g.,* H–1B or L–1 visa classification) and may be unable to accept promotions or otherwise change jobs or employers without abandoning their existing efforts—including great investments of time and money—to become permanent residents. Their employment opportunities may be limited to their original job duties with the U.S. employer that sponsored their temporary admission to the United States, despite the fact that they may have gained professional experience that would otherwise have allowed them to progress substantially in their careers.

Indeed, many individuals subject to the immigrant visa backlogs confront the choice between remaining employed in a specific job under the same terms and conditions originally offered to them or abandoning either their place in the immigrant visa queue or the pursuit of LPR status altogether. When such a worker changes employers or jobs—including a change to an identical job with a different employer or to a related job for the same employer—the worker is typically subject to uncertainty as well as expensive additional immigration processes, greatly discouraging any such changes. Indeed, under current regulations, some changes in employment could result in the loss of nonimmigrant status, loss of the ability to change to another nonimmigrant status, loss of the ability to obtain an immigrant visa or adjust to LPR status, and the need for the affected worker and his or her family to immediately depart the United States. As a result, these employees often suffer through many years of effective career stagnation, as they are largely dependent on current employers for immigration status and are substantially restricted in their ability to change employers or even accept promotions from, or make lateral movements within, their current employers.

Simply put, many workers in the immigrant visa process are not free to consider all available employment and career development opportunities. This effectively prevents U.S. employers from treating them like the high-potential individuals the employer hired them to be, thus restricting productivity and the promise they offer to our nation's economy and undermining the very purpose of the employment-based immigrant visa system that prioritizes such workers for LPR status. The lack of predictability and flexibility for such workers may also prevent them from otherwise investing in and contributing to the local, regional, and national economy or fully assimilating into American society.

IV. Proposed Regulatory Changes

DHS is proposing to amend its regulations related to certain employment-based immigrant and nonimmigrant visa programs. The proposed amendments are intended to benefit U.S. employers and workers participating in these programs, including by: Streamlining the processes for employer sponsorship of individuals for permanent residence; ameliorating some of the effects of immigrant visa backlogs by increasing job portability and otherwise providing stability and flexibility for such workers; and providing additional transparency and consistency in the application of agency policies and procedures related to these programs. These changes are primarily aimed at improving the ability of U.S. employers to employ and retain workers who are beneficiaries of approved immigrant visa petitions and are waiting for LPR status, while increasing the ability of such workers to further their careers by accepting promotions, making lateral changes within current employers, changing employers, and pursuing other employment opportunities.

The improvements proposed in this rulemaking would help DHS fulfill its responsibility to assist U.S. employers, U.S. workers, and foreign national workers, while strengthening and protecting the U.S. economy. The immigrant and nonimmigrant visa programs at issue in this proposed rule were designed to improve the ability of U.S. employers to hire and retain critical foreign workers, while creating job opportunities for and protecting U.S. workers. Consistent with these provisions, the proposed rule would enhance the Department's ability to administer the INA in a manner that better accounts for fluctuating economic conditions and that provides additional stability and flexibility to regulated persons and entities.

A. Proposed Implementation of AC21 and ACWIA

DHS proposes to clarify and improve longstanding agency policies and procedures established in response to certain sections of AC21 and ACWIA. These sections were intended, among other things, to provide greater flexibility and job portability to certain workers, particularly those who have been sponsored for LPR status by their employers, while protecting U.S. workers, enhancing opportunities for innovation and expansion, and maintaining U.S. competitiveness. The proposed rule would further clarify and improve agency policies and procedures in this area—policies and procedures that have long been set through a series of policy memoranda and a precedent decision of the USCIS Administrative Appeals Office. By establishing such policies in regulation, DHS would provide greater transparency and certainty to affected employers and workers and increase consistency among agency adjudications. In addition, the proposed rule would clarify several interpretive questions raised by AC21 and ACWIA.

As noted above, except where improvements on current practices are noted in the following sections, DHS intends the following proposals to effectively capture the longstanding policies and procedures that have developed since enactment of AC21 and ACWIA. The Department welcomes all comments on these proposals, including those that identify any such proposals that commenters believe are inconsistent with current practices (and not identified as such in the preamble), so that any such inconsistencies can be resolved in the final rule.

1. Extending H–1B Nonimmigrant Status for Certain Individuals Who Are Being Sponsored for Lawful Permanent Residence

DHS proposes to codify in regulation and improve longstanding agency policies and practices related to two provisions in AC21 that allow for certain individuals who are being sponsored by employers for permanent residence to obtain H–1B status beyond the general 6-year maximum period of stay. The first provision provides an exemption to certain beneficiaries of approved employment-based immigrant

availability was current for all persons qualifying under the EB–1 preference category. The EB–2 category was current for all countries except for China and India. The EB–2 cut-off dates were March 8, 1999 for persons chargeable to China (a wait of 19 months) and November 1, 1999 for persons chargeable to India (a wait of 11 months). The EB–3 category likewise was current for all countries except for China and India, with a cut-off date of March 15, 1998 for individuals charged to China (a wait of 31 months) and February 8, 1997 for individuals charged to India (a wait of 44 months). *See http://dosfan.lib.uic.edu/ERC/visa_bulletin/2000-10bulletin.html.*

visa petitions who are subject to per-country limitations on immigrant visas that prevent the filing and adjudication of applications for adjustment of status. The second provision provides an exemption to certain H–1B nonimmigrant workers who are being sponsored for permanent residence by U.S. employers and are subject to certain lengthy adjudication delays.

a. H–1B Extensions for Individuals Affected by the Per-Country Limitations

First, the proposed rule would clarify and improve DHS' implementation of section 104(c) of AC21. *See* proposed 8 CFR 214.2(h)(13)(iii)(E). This section authorizes approval of H–1B status beyond the general 6-year maximum period for certain beneficiaries of approved EB–1, EB–2, and EB–3 immigrant visa petitions. *See* AC21 section 104(c). Specifically, section 104(c) authorizes such an exemption from the 6-year limit when the H–1B petitioner can demonstrate that an immigrant visa is not available to the beneficiary at the time the H–1B petition is filed because the immigrant visa classification sought is already over-subscribed for that beneficiary's country of birth (*i.e.,* is subject to the per-country limitations on immigrant visas). *Id.*

Consistent with current practice, DHS proposes that such exemptions be granted in 3-year increments until USCIS adjudicates the beneficiary's adjustment of status application. *See* proposed 8 CFR 214.2(h)(13)(iii)(E)(*1*). Although the heading for section 104(c) describes a ''one-time protection,'' the statutory text makes clear that the exemption remains available until the beneficiary has an EB–1, EB–2, or EB–3 immigrant visa number immediately available to him or her. *See* AC21 section 104(c) (authorizing H–1B extensions under this exemption ''until the alien's application for adjustment of status has been processed and a decision made thereon''). As such, the proposed rule ''enables these individuals to remain in H–1B status until they are able to receive an immigrant visa and adjust their status within the United States, thus limiting the disruption to American businesses.'' *See* S. Rep. No. 260, at 22. Moreover, this proposal would allow DHS to review the continued eligibility of the H–1B nonimmigrant worker in 3-year intervals, which is consistent with the duration of H–1B status awarded under general H–1B provisions. *See* 8 CFR 214.2(h)(9)(iii)(A)(*1*) and (h)(15)(ii)(B)(*1*). An H–1B petition filed under this provision may include any time remaining within the normal 6-year period of authorized H–1B stay [32] in addition to the exemption request, but in no case may the approval period exceed 3 years or the validity period of the LCA. *See* proposed 8 CFR 214.2(h)(13)(iii)(E)(*5*).

DHS also proposes, consistent with current policy guidance, to make this exemption available to individuals who remain eligible for an additional period of admission in H–1B status, whether or not such individuals are physically in the United States on H–1B status at the time the H–1B petition is filed.[33] *See* proposed 8 CFR 214.2(h)(13)(iii)(E)(*3*). Section 104(c) of AC21 does not specifically limit the granting of H–1B status under its provisions to only those individuals currently in H–1B status within the United States. Rather, as is stated in current policy guidance, DHS interprets the provision to require only that the individual have previously held H–1B status and be otherwise eligible for an H–1B approval, including through an extension of current H–1B status, a change to H–1B status, or notification to a U.S. consulate or port of entry (if visa exempt).[34] The petitioner bears the burden of proving the individual's eligibility under this provision.

Consistent with current practice, DHS proposes to allow any qualified H–1B petitioner to file for an exemption under section 104(c) with respect to any qualified beneficiary of an approved EB–1, EB–2, or EB–3 immigrant visa petition. *See* proposed 8 CFR 214.2(h)(13)(iii)(E)(*4*). There is no requirement that the H–1B petitioner be the same employer as that listed on the qualifying immigrant visa petition, which by definition contemplates an offer of future employment upon a grant of permanent residence.[35] Similarly, the H–1B nonimmigrant worker can rely on any currently approved and qualifying immigrant visa petition, even if the H–1B nonimmigrant worker had previously been granted an exemption under section 104(c) based on a different petition.

As discussed later in this proposed rule, however, DHS is effectively proposing to improve access to exemptions under section 104(c) by proposing amendments to DHS regulations promulgated under section 205 of the INA, 8 U.S.C. 1155, that govern when approvals of immigrant visa petitions are automatically revoked. *See* Section IV.B. Pursuant to these amendments, employment-based immigrant visa petitions that have been approved for 180 days or more would no longer have such approval automatically revoked based only on withdrawal by the petitioner or termination of the petitioner's business. *See* proposed 8 CFR 205.1(a)(3)(iii)(C) and (D). As long as such an approval has not been revoked for fraud, material misrepresentation, the invalidation or revocation of a labor certification, or USCIS error, the petition will generally continue to be valid with regard to the beneficiary for various job portability and status extension purposes under the immigration laws. *Id.* As further described below, this change would effectively improve the ability of H–1B nonimmigrants with approved EB–1, EB–2, or EB–3 immigrant visa petitions to rely on such petitions for obtaining exemptions under section 104(c) of AC21.

Finally, the proposed rule, as per current practice, would allow exemptions authorized under section 104(c) of AC21 only with respect to the principal beneficiaries of employment-based immigrant visa petitions, and not any derivative beneficiaries named in such petitions who may also be in H–1B status. *See* proposed 8 CFR 214.2(h)(13)(iii)(E)(*6*). Section 104(c) expressly allows H–1B nonimmigrant status beyond the six-year general limitation for ''the beneficiary of a petition filed under section 204(a) of [the INA] for a preference status under paragraph (1), (2), or (3) of section 203(b) [of the INA].'' AC21 section 104(c). Section 203(b), in turn, applies to principal beneficiaries of immigrant visa petitions, but not derivative beneficiaries who are separately addressed in section 203(d) of the INA. *Compare* INA section 203(b), 8 U.S.C 1153(b), *with* INA section 203(d), 8 U.S.C 1153(d). The reference to a single beneficiary (*i.e.,* ''the beneficiary'') in section 104(c) of AC21 further supports the interpretation that the provision applies only to the principal beneficiary of the immigrant visa petition. As noted above, however, the spouse or dependent children of H–1B nonimmigrant workers are eligible for H–4 status and are subject to the same period of authorized stay as the principal H–1B nonimmigrant worker. Therefore, eligible H–4 spouses and

[32] Where applicable, the time remaining within the normal 6-year period (''remainder time'') may include periods in which the beneficiary was outside the United States during qualifying H–1B or L–1 visa petition validity that the petitioner seeks to recapture for the beneficiary. As noted previously, USCIS counts any time spent in H–1B or L–1 status towards the limitation for either classification. *See* 8 CFR 214.2(h)(13)(i)(B) and 214.2(l)(12)(i).

[33] Aytes Memo Dec. 2006 *supra* note 11 at 3–4.

[34] *Id.*

[35] *See, e.g., Matter of Rajah,* 25 I&N Dec. 127, 132–133 (BIA 2009).

dependent children may be granted H–4 status during the period the H–1B nonimmigrant spouse or parent maintains H–1B status under this exemption.

Thus, if both spouses are H–1B nonimmigrant workers, to extend their H–1B authorized admission period under section 104(c) of AC21, each spouse would individually have to be the beneficiary of an approved EB–1, EB–2, or EB–3 immigrant visa petition. If only one spouse is eligible for the exemption as an H–1B nonimmigrant, the spouse who is not eligible could seek a change of status to H–4 status and, if otherwise eligible, may remain in H–4 status, as described above. While such a spouse may no longer be eligible to be employed as an H–1B nonimmigrant, certain H–4 spouses may be eligible to apply for and obtain work authorization pursuant to 8 CFR 214.2(h)(9)(iv), including, among others, those whose H–1B nonimmigrant spouse is the beneficiary of an approved EB–1, EB–2, or EB–3 immigrant visa petition.

DHS invites the public to comment on all aspects of this proposal.

b. H–1B Extensions for Individuals Affected by Lengthy Adjudication Delays

Second, the proposed rule would clarify and improve DHS' implementation of sections 106(a) and (b) of AC21, as amended by the 21st Century DOJ Appropriations Act. *See* proposed 8 CFR 214.2(h)(13)(iii)(D). These provisions authorize approval of H–1B status beyond the general 6-year maximum period for certain H–1B nonimmigrant workers who are being sponsored by their employers for permanent residence and are subject to lengthy adjudication delays. *See* AC21 section 106(a) and (b). Specifically, section 106(b) provides extensions of H–1B status in 1-year increments for H–1B nonimmigrant workers seeking LPR status through employment if 365 days or more have passed since the filing by a U.S. employer of a labor certification application or an employment-based immigrant visa petition on the nonimmigrant's behalf. *Id.* These 1-year extensions would generally remain available until a final decision is made to grant or deny the pertinent labor certification application or immigrant visa petition, or to grant or deny the beneficiary's application for adjustment of status or for an immigrant visa. *Id.*

Consistent with existing policy, DHS proposes to make H–1B extensions under section 106(b) available to workers who remain eligible for additional periods of H–1B status, whether or not such individuals are in H–1B status or in the United States at the time the H–1B petition is filed. *See* proposed 8 CFR 214.2(h)(13)(iii)(D)(*1*). DHS also proposes to allow the H–1B petitioner to file for an extension under section 106(b) with respect to any qualifying labor certification application or employment-based immigrant visa petition, pursuant to section 106(a) of AC21, as amended. *See* proposed 8 CFR 214.2(h)(13)(iii)(D)(6).

As with section 104(c), section 106 of AC21 does not limit its application only to those individuals currently in H–1B status within the United States. DHS interprets the provision to require only that the individuals have previously been issued H–1B status, meet the requirements of section 106(a), and are otherwise eligible for an H–1B approval.[36] Also like section 104(c), section 106 contains no requirement that the H–1B petitioner be the same employer as that listed on the labor certification application or immigrant visa petition in order to seek an exemption from the six-year period of authorized admission. The H–1B nonimmigrant worker can thus rely on any qualifying labor certification application or immigrant visa petition, even if the nonimmigrant had previously been granted an extension under section 106(b) based on a different application or petition. The petitioner bears the burden of proving the individual's eligibility under these provisions.

DHS also proposes to conform its regulations with existing policy in this area by requiring the prospective H–1B employer to file an H–1B petition demonstrating that the beneficiary has previously held H–1B status and that 365 days has elapsed or will have elapsed between: (1) The filing of an application for labor certification or an employment-based immigrant visa petition on behalf of the individual; and (2) the date on which the individual reached or will reach the 6-year limitation on H–1B admission. *See* proposed 8 CFR 214.2(h)(13)(iii)(D)(*1*) and (*2*). DHS further proposes, consistent with current policy, to grant H–1B approvals in 1-year increments for such individuals until either the application for labor certification expires or a final decision is made to: (1) Deny the labor certification application; (2) revoke or invalidate approval of the labor certification application; (3) deny the immigrant visa petition; (4) revoke approval of the immigrant visa petition; (5) grant or deny the individual's application for adjustment of status or for an immigrant visa; or (6) administratively close the application for permanent labor certification, immigrant visa petition, or application for adjustment of status. *See* proposed 8 CFR 214.2(h)(13)(iii)(D)(*2*).[37] DHS notes that in cases involving denials, invalidations, or revocations of labor certification applications and denials of immigrant visa petitions, the petitioner may administratively appeal those determinations with DOL and USCIS, respectively. Under this proposed rule, a denial or revocation would not be considered final by USCIS during the period authorized to file such an administrative appeal, or during the period in which any such appeal is pending. *See* proposed 8 CFR 214.2(h)(13)(iii)(D)(*3*). During any such period, as with current practice, the petition or labor certification application that is the subject of the appeal may be used for purposes of seeking an extension of H–1B status under this section.[38]

Also consistent with existing policy, DHS proposes not to grant an extension of H–1B status under section 106(b) if, at the time the extension request is filed, the labor certification is deemed expired under DOL regulations. *See* proposed 8 CFR 214.2(h)(13)(iii)(D)(*2*). Under current DOL regulations, ''[a]n approved permanent labor certification granted on or after July 16, 2007 expires if not filed in support of a Form I–140 [employment-based immigrant visa] petition with [DHS] within 180 calendar days of the date [DOL] granted the certification.'' 20 CFR 656.30(b)(1). DHS treats a labor certification that has expired similarly to one that has been denied or revoked. Indeed, DHS automatically rejects or denies immigrant visa petitions related to expired labor certifications, effectively barring the granting of extensions under section 106(b) in such cases.[39]

DHS also proposes to conform its regulations with current policy by

[36] Aytes Memo Dec. 2006, at 3.

[37] *See* Aytes Memo Dec. 2005, at 6.

[38] *See* Aytes Memo Dec. 2005, at 6.

[39] DHS also proposes to conform its regulations to current policy regarding the substitution of beneficiaries in labor certification applications. *See* proposed 8 CFR 214.2(h)(13)(iii)(D)(*4*). In 2007, DOL changed its regulations to effectively prohibit the substitution of labor certification beneficiaries, except for substitution requests submitted on or before July 16, 2007. *See* 20 CFR 656.11(a). With respect to substitutions occurring before July 16, 2007, DHS policy now provides that for purposes of section 106(b) of AC21, the labor certification application may only be used for the most recently substituted individual. *See* Neufeld Memo May 2008, at 5 n.4. DHS proposes to conform its regulations accordingly, which will prevent multiple individuals from using the same labor certification to obtain H–1B extensions under this proposed rule.

allowing petitioners to file H–1B petitions under sections 106(a) and (b) as early as 6 months prior to the requested H–1B start date. *See* proposed 8 CFR 214.2(h)(13)(iii)(D)(*5*). The petitioner would generally be required to demonstrate that the individual will meet the requirements of sections 106(a) and (b) as of the date he or she will reach the end of the 6-year period of H–1B admission. This request may include any time remaining within the general 6-year period, including, for example, periods of time spent outside the United States during H–1B petition validity, for which ''recapture'' of H–1B remainder time is sought, as well as any H–1B ''remainder'' periods available to the foreign national.[40] But in no case may the approval period exceed 3 years or the validity period of the LCA. *See* proposed 8 CFR 214.2(h)(13)(iii)(D)(*5*); *see also* 8 CFR 214.2(h)(9)(iii)(A)(*1*) and (h)(15)(ii)(B).

Moreover, each approval granted under sections 106(a) and (b) will provide the beneficiary with a new date upon which the limitation on H–1B admission will be reached. Employers filing an H–1B petition seeking a second or subsequent extension of H–1B status for a beneficiary under sections 106(a) and (b) must demonstrate that a qualifying labor certification or immigrant visa petition was filed at least 365 days prior to the new H–1B expiration date authorized under that section.[41] *See* proposed 8 CFR 214.2(h)(13)(iii)(D)(*7*). However, only one labor certification application or immigrant visa petition may be used to establish eligibility in support of any single H–1B petition filed under sections 106(a) and (b). A petitioner may not aggregate the days on which multiple labor certification applications or immigrant visa petitions are on file in order to satisfy the 365-day requirement. *See* proposed 8 CFR 214.2(h)(13)(iii)(D)(*8*).

DHS proposes, consistent with current practice, to allow applications for extensions under section 106(b) to be filed only by principal beneficiaries seeking to obtain status under section 203(b) of the INA, and not by derivative beneficiaries described in section 203(d) of the INA. *See* proposed 8 CFR 214.2(h)(13)(iii)(D)(*9*). Section 106(a) expressly limits eligibility to individuals who have been accorded H–1B status and who have had a labor certification application or employment-based immigrant visa petition filed on their behalf. *See* AC21 section 106(a), as amended. H–4 dependents do not meet these statutory criteria. As noted previously, however, dependents in H–4 status are subject to the same period of authorized stay as the principal H–1B nonimmigrant worker. Therefore, eligible H–4 spouses and dependent children may be granted H–4 status during the period the H–1B nonimmigrant spouse or parent maintains H–1B status under section 106.

Finally, DHS proposes to restrict extensions of H–1B status under sections 106(a) and (b) for beneficiaries who have not taken certain steps in furtherance of obtaining LPR status. As noted above, these sections were intended to allow individuals to remain in the United States as H–1B nonimmigrant workers while pursuing permanent residence. *See* S. Rep. No. 260, at 23. Accordingly, the proposed rule would generally require that to remain eligible for extensions of H–1B status under sections 106(a) and (b), the individual must file an application for adjustment of status or submit an application for an immigrant visa within 1 year of an immigrant visa becoming immediately available. *See* proposed 8 CFR 214.2(h)(13)(iii)(D)(*10*). This requirement would be effectively tolled, however, during any period in which an application for adjustment of status could not be filed due to the unavailability of immigrant visas. *Id.* Moreover, if the accrual of the 1-year period is interrupted by the retrogression of previously available immigrant visas, the individual would be permitted a full new 1-year period to seek LPR status when immigrant visas become available again. *Id.* In addition, failure to file within such year could be excused at the discretion of DHS if the individual establishes that the failure to apply was due to circumstances beyond his or her control. *Id.*

DHS invites the public to comment on all aspects of this proposal.

2. Job Portability Under AC21 for Certain Applicants for Adjustment of Status

DHS is proposing to clarify and improve policies and procedures related to the job portability protections provided by section 106(c) of AC21. *See* proposed 8 CFR 245.25. That section amended the INA by adding section 204(j), codified at 8 U.S.C. 1154(j), to enhance the ability of certain workers to change jobs or employers if they have been sponsored for permanent residence by U.S. employers and have pending applications for adjustment of status. *See* AC21 section 106(c). Specifically, section 204(j) of the INA provides that an employment-based immigrant visa petition filed for EB–1 (other than for ''aliens of extraordinary ability''), EB–2, or EB–3 classification will remain valid with respect to a new qualifying job offer when the worker changes jobs or employers if an application for adjustment of status has been filed and remains pending for 180 days or more. *See* INA section 204(j), 8 U.S.C. 1154(j); *see also* INA sections 204(a)(1)(F) and 212(a)(5)(A)(iv), 8 U.S.C. 1154(a)(1)(F) and 1182(a)(5)(A)(iv). Section 204(j) allows such portability when the new job offer is for a job which is in the same or a similar occupational classification as the job for which the original immigrant visa petition was filed. *Id.*

To provide greater clarity to the regulated community and enhance consistency across agency determinations under section 204(j) of the INA, DHS proposes to update and conform its regulations governing adjustment of status consistent with longstanding agency policy. For purposes of approving an application for adjustment of status, the proposed rule would clarify that an immigrant visa petition for EB–1 (other than for ''aliens of extraordinary ability''), EB–2, or EB–3 classification filed under section 204(a)(1)(F) of the INA, 8 U.S.C. 1154(a)(1)(F), remains valid if the petition is approved and either:

(1) The employment offer from the petitioning employer is continuing and remains bona fide; or

(2) pursuant to section 204(j), the beneficiary has a new offer of employment in the same or a similar occupational classification as the employment offer listed in the approved petition, the application for adjustment of status based on this petition has been pending for 180 days or more, and the approval of the petition has not been revoked.

See proposed 8 CFR 245.25(a). Under the second option, the new offer of employment may be from the petitioning employer, from a different U.S. employer, or based on self-employment. *Id.* Under either option, the individual and his or her U.S. employer must intend that the individual will be employed under the continuing or new employment offer (including self-employment), as

[40] *See* Aytes Memo Dec. 2006, at 4. (''The 'remainder' period of the initial six-year admission period refers to the full six-year period of admission minus the period of time that the individual previously spent in the United States in valid H–1B status.'') USCIS policy relating to such ''recapture'' is discussed in greater detail below at section IV.C.(2), ''Calculating the 6-Year H–1B Authorized Admission Period.'' The ''remainder'' period is discussed at IV.C.(2), ''Recapture of H–1B Remainder Period.''

[41] As noted above, the H–1B petitioner need not be the same employer that filed the labor certification or immigrant visa petition.

applicable, upon the individual's grant of LPR status. *Id.*

Although the individual need not have been employed at any time by the employer that filed the immigrant visa petition—or, in a case involving section 204(j) portability, the employer presenting the new offer of employment—DHS will in all cases determine whether a relevant offer of employment is bona fide. In cases involving 204(j) portability, DHS considers whether the employer that filed the immigrant visa petition had the intent, at the time the petition was approved, to employ the beneficiary upon approval of the application for adjustment of status.[42] With respect to the new employer, DHS considers whether the employer intends to employ the beneficiary in the offered position, and whether the beneficiary intends to work in that position, upon approval of the application for adjustment of status.[43]

As noted above, DHS is proposing to amend its regulations governing applications for adjustment of status to prohibit approval of such an application when the approval of the immigrant visa petition on which the application is based has been revoked. *See* proposed 8 CFR 245.25(a). DHS is also proposing, however, as discussed in section IV.B., to amend its regulations governing revocation of petition approval so that employment-based immigrant visa petitions that have been approved for 180 days or more would no longer have such approval automatically revoked based only on withdrawal by the petitioner or termination of the petitioner's business. *See* proposed 8 CFR 205.1(a)(3)(iii)(C) and (D). As long as such an approval has not been revoked for fraud, material misrepresentation, the invalidation or revocation of a labor certification, or USCIS error, the petition would generally continue to be valid for purposes of section 204(j) job portability and certain status extension purposes under the immigration laws. *Id.* Such a petition, however, cannot on its own serve as the basis for obtaining an immigrant visa or adjustment of status as there is no longer a bona fide employment offer related to the petition. *Id.* In such cases, the beneficiary will need a new immigrant visa petition approved on his or her behalf, or a new offer of employment in section 204(j) portability cases, in order to obtain an immigrant visa or adjust status. *Id.*

Taken together, these regulatory changes are generally consistent with current policy concerning adjustment of status. The regulatory amendments, for example, do not change existing policy with respect to applications for adjustment of status filed by beneficiaries of immigrant visa petitions who seek to adjust status based on a continuing offer of employment from the petitioning employer. In such cases, if the petitioning employer withdraws or goes out of business, there would be no continuing offer of employment on which the beneficiary may rely. Thus, even in a case where such a petition has been approved for at least 180 days and would no longer be subject to automatic revocation based upon withdrawal of the petition or termination of the employer's business, the beneficiary would remain ineligible to file for adjustment of status based solely on that petition. *See* proposed 8 CFR 204.5(a)(3)(iii)(C) and (D); *see also* proposed 8 CFR 245.25(a). Under this proposed rule, the beneficiary would require a new immigrant visa petition filed on his or her behalf in order to file for or receive adjustment of status. *Id.*

With respect to beneficiaries who have applications for adjustment of status that have been pending for at least 180 days and seek to adjust status pursuant to section 204(j), the proposed regulations are also consistent with current policy, except in one respect. Under current policy, withdrawal by the petitioner in such cases does not require the beneficiary to be named in a new immigrant visa petition; rather, the beneficiary would only be required to demonstrate, pursuant to section 204(j) of the INA, that he or she has a new offer of employment in a same or similar occupational classification.[44] This would continue to be the case under this proposed rule. *See* proposed 8 CFR 204.5(a)(3)(iii)(C); *see also* proposed 8 CFR 245.25(a). The proposed rule would, however, expand such treatment to cover cases in which the petitioner's business terminates after the application for adjustment of status has been pending for at least 180 days. Under current policy, termination of the employer's business in such cases would require the beneficiary to be named in a new employment-based immigrant visa petition in order to adjust status. Under the proposed rule, the beneficiary would not be required to have a new immigrant visa petition filed on his or her behalf, and instead would be required to demonstrate that he or she has a new offer of employment in a same or similar occupational classification, consistent with section 204(j) of the INA. *Id.* DHS believes that such an extension of section 204(j) portability is consistent with congressional intent to allow long-delayed applicants for adjustment of status to change employers with reasonable assurance that they will not be disadvantaged by so doing.[45]

DHS is further proposing a new supplementary form to the application for adjustment of status to assist the Department in the adjudicative process. In general cases, the supplementary form will assist DHS in confirming that a job offer described in an employment-based immigrant visa petition is still available at the time an individual files an application for adjustment of status. In cases involving section 204(j) portability requests, the form will assist DHS in determining, among other things, whether a new offer of employment is in the same or a similar occupational classification as the job offer listed in the immigrant visa petition. In section 204(j) cases, an individual may submit the supplement affirmatively or when required at the request of USCIS to establish eligibility under the proposed regulatory requirements. Currently, DHS is not proposing an extra fee for submission of this new supplement, but may consider implementing a fee in the future.

DHS contemplates that applicants for adjustment of status seeking approval based on a new offer of employment will submit various pieces of evidence, along with the supplementary form, demonstrating compliance with section 204(j) and the proposed regulations. Unless instructed otherwise, including by the form or form instructions, an applicant will be able to submit: (1) A written attestation signed by the applicant and employer describing the new employment offer, including a description of the position and its requirements; (2) an explanation demonstrating that the new employment offer is in the same or a similar occupational classification as the original employment offer listed in the approved petition; and (3) a copy of the Notice of Action (Form I–797C) issued by USCIS (or, if unavailable, secondary evidence) showing that the individual's application for adjustment of status has

[42] *See* USCIS Adjudicator's Field Manual, Chapter 20.2(c).

[43] *See* Aytes Memo Dec. 2005, at 4; *Matter of Cardoso,* 13 I. & N. Dec. 228, 230–31 (BIA 1969).

[44] *See* Aytes Memo Dec. 2005, at 4–5.

[45] DHS also proposes conforming changes to 8 CFR 204.5 to ensure the retention of priority dates related to certain employment-based immigrant visa petitions that are approved for less than 180 days when a petitioner withdraws the petition or the petitioner goes out of business. In such cases, the priority date listed in the petition may still be used for section 204(j) portability purposes. This regulatory amendment codifies current agency policy and practice. *See* proposed 8 CFR 204.5(e)(5).

been pending with USCIS for 180 days or more. *See* proposed 8 CFR 245.25(b)(2).

Because the statute does not define the terms ''same'' or ''similar,'' DHS proposes definitions for those terms based on their common dictionary definitions, as well as the agency's practice and experience in this context.[46] The proposed regulatory provision accordingly defines ''same occupational classification'' as an occupation that resembles in every relevant respect [47] the occupation for which the underlying employment-based immigrant visa petition was approved.[48] *See* proposed 8 CFR 245.25(c). The term ''similar occupational classification'' is defined as an occupation that shares essential qualities or has a marked resemblance or likeness with the occupation for which the underlying employment-based immigrant visa petition was approved.[49] *Id.*

DHS invites the public to comment on all aspects of this proposal, including the new proposed supplementary form to the application for adjustment of status (and form instructions) and the possibility of charging a supplemental fee in the future related to such form.

3. Job Portability for H–1B Nonimmigrant Workers

DHS proposes to conform its regulations to its policies and practices under section 105(a) of AC21, which amended the INA by adding the H–1B job portability provision at section 214(n), 8 U.S.C. 1184(n). This section enhances the ability of H–1B nonimmigrant workers to change jobs or employers by authorizing them to accept new or concurrent employment upon the filing of a non-frivolous H–1B petition (''H–1B portability petition''). *See* INA section 214(n), 8 U.S.C. 1184(n). The H–1B nonimmigrant worker must have been lawfully admitted into the United States, must not have worked without authorization subsequent to such lawful admission, and must be in a period of stay authorized by the Secretary of Homeland Security.[50] Employment authorization under the pending H–1B portability petition continues until its adjudication. *Id.*

In harmony with the statutory provision, the proposed rule would provide that H–1B nonimmigrant workers who are beneficiaries of new H–1B petitions seeking an amendment or extension of their stay in H–1B status are eligible to commence new or concurrent employment upon the filing of a non-frivolous H–1B petition by that employer. *See* proposed 8 CFR 214.2(h)(2)(i)(H). If the H–1B nonimmigrant worker meets the requirements of section 214(n), he or she is authorized to commence new employment while adjudication of the new H–1B petition is pending. *Id.* If the petition is approved, the H–1B nonimmigrant worker's employment authorization continues under the approved petition. *Id.* If the petition is denied, employment authorization under section 214(n) generally ceases upon the date of denial.[51] *Id.*

DHS proposes, consistent with current policy, to make the H–1B portability provision discussed in this section available only to H–1B beneficiaries who are in the United States in H–1B status.[52] This interpretation is consistent with the language of section 214(n), which requires in part that the H–1B nonimmigrant worker have been lawfully admitted into the United States at the time the new H–1B petition is filed. *See* INA section 214(n), 8 U.S.C. 1184(n). This interpretation is also in harmony with congressional intent behind the creation of the provision. As noted in the Senate Report accompanying the bill, the H–1B portability provision was intended to ''respond[ ] to concerns raised about the potential for exploitation of H–1B visa holders as a result of a specific employer's control over the employee's legal status.'' *See* S. Rep. No. 260, at 22–23.

DHS also proposes to conform its regulations to current policy regarding the ability of H–1B employers to file successive H–1B portability petitions (often referred to as ''bridge petitions'') on behalf of H–1B nonimmigrant workers. Under current policy, an H–1B nonimmigrant worker who has changed employment based on an H–1B portability petition filed on his or her behalf may again change employment based on the filing of a new H–1B portability petition, even if the former H–1B portability petition remains pending.[53] Approval of any subsequent H–1B portability petition, however, would effectively be dependent on the approval of any prior H–1B portability petition if the individual's Arrival-Departure Record (Form I–94) has expired and the prior portability petitions remain pending at the time that the subsequent portability petition is filed. In such a case, where the request for an extension of stay was denied in a preceding H–1B portability petition, a request for an extension of stay in any successive H–1B portability petition(s) must also be denied. *See* proposed 8 CFR 214.2(h)(2)(i)(H)(*3*). DHS proposes to maintain this policy in order to best achieve the ameliorative purpose of section 212(n) to enhance the job flexibility of H–1B nonimmigrant workers and minimize their potential exploitation by employers.

DHS is also proposing conforming changes to its employment authorization regulations to recognize the employment authorization of H–1B nonimmigrant workers who are employed pursuant to an H–1B portability petition filed under section 214(n) of the INA. *See* proposed 8 CFR 274a.12(b)(9). Specifically, the proposed rule would add this class of H–1B nonimmigrant workers to the description of H nonimmigrants authorized for employment incident to status with a specific employer. *Id.*

DHS invites the public to comment on all aspects of this proposal.

4. Calculating the H–1B Admission Period

DHS proposes to clarify in regulation its current policy with respect to calculating and ''recapturing'' what is known as ''remainder time'' for H–1B nonimmigrant workers. *See* proposed 8 CFR 214.2(h)(13)(iii)(C). Currently, with respect to an H–1B nonimmigrant worker's maximum period of authorized admission in H–1B status, DHS does not count against this period any days he or

[46] *See Taniguchi* v. *Kan Pacific Saipan, Ltd.,* 132 S. Ct. 1997, 2002–03 (2012) (when a term goes undefined in a statute, an agency ordinarily should ''give the term its ordinary meaning'').

[47] For these purposes, USCIS adjudicators may consider, among other factors, the job duties of the respective jobs, and the skills, experience, education, training, licenses or certifications specifically required to perform each of the jobs.

[48] *See, e.g., Same Definition,* Merriam-Webster.com, *http://www.merriam-webster.com/dictionary/same* (last visited May 20, 2015) (defining ''same'' as ''identical'' or ''resembling in every relevant respect''); *Same Definition, OED.com, http://www.oed.com/view/Entry/170362?redirectedFrom=same#eid* (last visited Jan. 2, 2015) (defining ''same'' as ''identical'').

[49] *See, e.g., Similar Definition,* Merriam-Webster.com, *http://www.merriam-webster.com/dictionary/similar* (last visited May 20, 2015) (defining ''similar'' as ''alike in substance or essentials''); *Similar Definition, Oed.com, http://www.oed.com/view/Entry/179873?redirectedFrom=similar#eid* (last visited May 20, 2015) (defining ''similar'' as ''having a marked resemblance or likeness'').

[50] Neufeld Memo May 2009 (describing various ''periods of authorized stay'').

[51] If the petition is denied after the H–1B nonimmigrant worker's Arrival-Departure Record (Form I–94) or successor form) has expired, and while the H–1B nonimmigrant worker is in an authorized period of stay consistent with 8 CFR 274a.12(b)(20) and proposed revisions to 8 CFR 274a.12(b)(9), DHS intends to interpret section 214(g)(4) of the INA, 8 U.S.C. 1184(g)(4), to count the time spent in the United States based on a timely filed H–1B extension of stay petition towards the 6 year H–1B period of authorized admission.

[52] Aytes Memo Dec. 2005, at 7.

[53] Aytes Memo Dec. 2005, at 7.

she spent outside of the United States during the validity period of the H–1B petition.[54] Any such period outside the United States may still be used, or ''recaptured,'' by an H–1B petitioner on behalf of the H–1B nonimmigrant worker.[55] An H–1B petitioner seeking to recapture such time must establish, through objective, documentary evidence—such as passport stamps, Arrival-Departure Records (Forms I–94), or airline ticket stubs—that the H–1B nonimmigrant worker was in fact physically outside of the United States during the day(s) for which recapture is sought.[56]

DHS proposes to codify this policy through this rulemaking. Under this proposed rule, time spent outside the United States by an individual during the validity of an H–1B petition that was approved on his or her behalf could be added back to or ''recaptured'' for his or her maximum period of authorized admission as an H–1B nonimmigrant worker. *See* proposed 8 CFR 214.2(h)(13)(iii)(C); *see also* INA section 214(g)(4), 8 U.S.C. 1184(g)(4) (generally establishing a 6-year limit on the period of stay of an H–1B nonimmigrant worker). Consistent with current practice, if an H–1B nonimmigrant worker had counted against the H–1B numerical cap with respect to the 6-year maximum period of H–1B admission from which recapture is sought, then the H–1B petition seeking recapture of such time (''H–1B recapture petition'') would not subject the H–1B nonimmigrant worker again to the cap.[57] *See* proposed 8 CFR 214.2(h)(13)(iii)(C)(*2*). If the H–1B nonimmigrant worker had not counted against the H–1B cap in such a case, the recapture petition would be cap-subject (*i.e.,* require that the H–1B nonimmigrant worker count against the cap), unless the H–1B nonimmigrant worker is eligible for another exemption from the cap.

In accordance with current policy, the H–1B petitioner would bear the burden of demonstrating ''recapture'' eligibility. Along with documentary evidence, the petitioner may provide complementary, explanatory evidence (as described above) to assist USCIS adjudicators in the adjudication process. *See* proposed 8 CFR 214.2(h)(13)(iii)(C)(*1*). Moreover, as with current practice, an H–1B petitioner filing a recapture petition would not need to demonstrate that the time spent outside the United States by the H–1B nonimmigrant worker was meaningfully interruptive of the H–1B period in which recapture is sought. The reason for the absence is irrelevant to the recapture determination, but such reason may be relevant to the determination of the individual's admissibility. Any trip of at least one continuous 24-hour period (''day'') outside the United States for any purpose may be recaptured.

DHS invites public comment on all aspects of this proposal.

5. Exemptions from the H–1B Numerical Cap Under AC21 and ACWIA

a. Employers Not Subject to H–1B Numerical Limitations

DHS proposes to clarify and improve its regulations and policies identifying which employers are cap-exempt under the H–1B program. As discussed above in section III.C.2.b.i., AC21 amended section 214(g)(5) of the INA to allow certain employers to employ H–1B nonimmigrant workers without application of the numerical cap on H–1B visas. *See* AC21 section 103 (adding paragraphs (5), (6), and (7) to INA section 214(g), 8 U.S.C. 1184(g)). As amended by AC21, section 214(g)(5) of the INA specifically exempts from the H–1B cap those H–1B nonimmigrant workers who are employed (1) ''at an institution of higher education . . . , or a related or affiliated nonprofit entity,'' or (2) ''at a nonprofit research organization or a governmental research organization.'' INA section 214(g)(5), 8 U.S.C. 1184(g)(5). DHS is now proposing to codify its long-standing policy interpretations regarding this exemption from the cap. See proposed 8 CFR 214.2(h)(8)(ii)(F).

DHS has interpreted this provision to exempt H–1B nonimmigrant workers in two types of circumstances. First, H–1B nonimmigrant workers are currently exempt from the cap if they are employed *directly by* an employer described in section 214(g)(5) of the INA, 8 U.S.C. 1184(g)(5). Thus, any H–1B nonimmigrant worker would be exempt if employed directly by: (1) An institution of higher education, (2) a nonprofit entity related to or affiliated with such an institution, (3) a nonprofit research organization, or (4) a governmental research organization. *See* proposed 8 CFR 214.2(h)(8)(ii)(F)(1)–(3). Second, because section 214(g)(5) exempts workers who are employed ''at'' such qualifying institutions, organizations, or entities, H–1B nonimmigrant workers may also be exempt from the cap in certain circumstances even when they are not directly employed by them.[58] *See* proposed 8 CFR 214.2(h)(8)(ii)(F)(4). Under current policy, such H–1B nonimmigrant workers may only be treated as cap exempt when: (1) The employment is located at a qualifying institution, organization, or entity; and (2) the H–1B nonimmigrant worker will perform job duties that directly and predominately further the normal, primary, or essential purpose, mission, objectives or function of the qualifying institution, organization, or entity.[59]

DHS is now proposing to amend its regulations, in part, to provide additional clarity with respect to the ''employed at'' statutory language. *See* proposed 8 CFR 214.2(h)(8)(ii)(F)(*4*). Under the proposed rule, an H–1B petitioner that is not itself a qualifying institution, organization or entity may claim an exemption from the cap for an H–1B nonimmigrant worker employed at such organization or entity if: (1) The majority of the worker's duties will be performed at a qualifying institution, organization, or entity; and (2) such job duties directly and predominately further the essential purpose, mission, objectives or functions of the qualifying institution, organization or entity (*e.g.,* higher education, or nonprofit or governmental research). *Id.* In such cases, the burden is on the petitioner to establish by a preponderance of the evidence that there is a nexus between the work performed by the H–1B nonimmigrant worker and the essential purpose, mission, objectives or

[54] *See* Aytes Memo Oct. 2005.

[55] *Id.*

[56] To assist in the adjudication process, a petitioner may also provide complementary evidence explaining any such time to be recaptured, such as a chart indicating the dates spent outside of the United States and referencing the relevant objective documentary evidence supporting the chart.

[57] This analysis would also be applied to cases in which the worker has been outside the United States for a full year and would thus be eligible for a new period of admission under section 214(g)(4) of the INA, 8 U.S.C. 1184(g)(4). In such cases, the H–1B petitioner may file a recapture petition or a petition seeking a new period of H–1B admission. If the petitioner does not include a recapture request in the H–1B petition, DHS generally would treat the petition as a request for a new 6-year maximum H–1B admission period under section 214(g)(4) of the INA, 8 U.S.C. 1184(g)(4). The worker in such a case would be subject to the numerical cap unless an exemption applies.

[58] In contrast to the ''employed at'' terminology used in section 214(g)(5) of the INA, 8 U.S.C. 1184(g)(5), other provisions governing the H–1B program use terminology limited to a direct employer-employee relationship with a qualifying employer. Section 212(p)(1) of the INA, 8 U.S.C. 1182(p)(1), for example, provides for special prevailing wage computations where an H–1B nonimmigrant is to be an ''employee of'' a qualifying institution, organization, or entity. Similarly, section 214(c)(9)(A) of the INA, 8 U.S.C. 1184(c)(9)(A), exempts only qualifying employers from certain H–1B petition fees enacted under ACWIA. Unlike section 214(g)(5), these provisions clearly apply only when the H–1B petitioner is itself a qualifying employer.

[59] Aytes Memo June 2006, at 2–3 and note 2.

functions of the qualifying institution, organization, or entity.

DHS also proposes to conform its regulations to current policy with respect to the definitions of several terms in section 214(g)(5) and the applicability of these terms to both: (1) ACWIA provisions that require the payment of fees by certain H–1B employers; and (2) AC21 provisions that exempt certain employers from the H–1B numerical caps. First, the proposed rule would expressly adopt for the purpose of cap exemption the definition of the term ''institution of higher education'' provided by section 101(a) of the Higher Education Act.[60] *See* proposed 8 CFR 214.2(h)(8)(ii)(F)(*1*). Notably, this definition does not include for-profit institutions of higher education, which would continue to be subject to the H–1B cap. The proposed rule would also adopt definitions for the terms ''nonprofit research organization'' and ''governmental research organization'' as currently set forth in DHS regulations at 8 CFR 214.2(h)(19)(iii). *See* proposed 8 CFR 214.2(h)(8)(ii)(F)(*3*). The proposed rule additionally clarifies that an entity would be considered a ''nonprofit entity'' for purpose of proposed 8 CFR 214.2(h)(8)(ii)(F) if it meets the definition of that term at 8 CFR 214.2(h)(19)(iv).

Furthermore, consistent with current DHS regulations, see 8 CFR 214.2(h)(19)(iii)(B), the term ''related or affiliated nonprofit entity'' would be defined, both for ACWIA fee and cap exemption purposes, to continue to include nonprofit entities that are: (1) Connected or associated with an institution of higher education through shared ownership or control by the same board or federation; (2) operated by an institution of higher education; or (3) attached to an institution of higher education as a member, branch, cooperative, or subsidiary. *See* proposed 8 CFR 214.2(h)(8)(ii)(F)(*2*). DHS intends to improve upon current policy, however, by proposing additional means by which nonprofit entities may establish a sufficient relation or affiliation with an institution of higher education. This change would better reflect current operational realities for institutions of higher education and how they interact with, and sometimes rely on, nonprofit entities. *See* proposed 8 CFR 214.2(h)(8)(ii)(F)(*2*)(*iv*) and (h)(19)(iii)(B).

In particular, based on its experience in this area, DHS believes that the current definition for ''affiliated or related nonprofit entities'' does not sufficiently account for the nature and scope of common, bona fide affiliations between nonprofit entities and institutions of higher education. To better account for such relationships, DHS proposes to expand on the current definition by including nonprofit entities that have entered into formal written affiliation agreements with institutions of higher education and are able to meet two additional criteria. First, such entities must establish an active working relationship with the institution of higher education for the purposes of research or education. Second, they must establish that one of their primary purposes is to directly contribute to the research or education mission of the institution of higher education. *See* proposed 8 CFR 214.2(h)(8)(ii)(F)(*2*)(*iv*) and (h)(19)(iii)(B)(*4*).

This proposed definition provides much needed flexibility in this area, allowing DHS to better account for the full range of nonprofit entities that are ''related or affiliated'' with institutions of higher education and thus better ensure that such entities are not subject to the H–1B cap or the ACWIA fee as Congress intended. For example, under federal statute, Veterans Affairs (VA) hospitals are considered affiliated with a medical school or institution of higher learning based on ''a contract or agreement . . . for the training or education of health personnel.'' 38 U.S.C. 7423(d)(1). But such agreements may be inadequate under the current regulatory definition to establish the requisite affiliation or relation for purposes of the H–1B cap or ACWIA fee exemptions. Such bona fide affiliation contracts or agreements are common in the private sector as well. DHS believes the proposed definition better captures these and other valid types of relationships with institutions of higher education that are contemplated under AC21 and ACWIA.

DHS welcomes public comment on all aspects of this proposal.

b. Counting Previously Exempt H–1B Nonimmigrant Workers

DHS also proposes to conform its regulations to existing policy for determining when a change in employment requires a previously exempt H–1B nonimmigrant worker to be counted against the H–1B cap. *See* proposed 8 CFR 214.2(h)(8)(ii)(F)(*5*). As discussed above, an H–1B nonimmigrant worker is exempt from the H–1B cap if he or she is employed at an institution of higher education, a nonprofit entity related or affiliated to such an institution, a nonprofit research organization, or a governmental research organization.[61] *See* INA section 214(g)(5), 8 U.S.C. 1184(g)(5). Under section 214(g)(6) of the INA, 8 U.S.C. 1184(g)(6), once cap-exempt employment ceases, the H–1B nonimmigrant worker will be subject to the cap if he or she was not previously counted against it and exemptions from the cap no longer apply. Section 214(g)(6) expressly refers to cap-exempt H–1B nonimmigrant workers who cease to be employed by employers described under *subparagraph (A)* of section 214(g)(5), 8 U.S.C. 1184(g)(5)(A), which lists only institutions of higher education and related or affiliated nonprofit entities. DHS, however, has long maintained the same policy with regard to cessation of employment with employers described under *subparagraph (B)* of section 214(g)(5), 8 U.S.C. 1184(g)(5)(B), which lists nonprofit research organizations and governmental research organizations.[62] DHS now proposes to incorporate this interpretation into its H–1B regulations. *See* proposed 8 CFR 214.2(h)(8)(ii)(F)(*5*). DHS believes this reading is a reasonable interpretation and best implements the congressional intent behind the H–1B cap exemption provisions, which expressly exempt workers employed at those entities described in sections 214(g)(5)(A) and (B). It reasonably follows that termination of such employment should result in the cessation of the cap-exemption.

Consistent with this interpretation, the proposed rule would require a reassessment of an H–1B nonimmigrant worker's cap-exempt status when he or she ceases employment at an institution of higher education, a nonprofit entity related to or affiliated with such an institution, a nonprofit research organization, or a governmental research organization. *See* proposed 8 CFR 214.2(h)(8)(ii)(F)(*5*) and (*6*). If such an H–1B nonimmigrant worker was not previously counted against the H–1B numerical cap within the 6-year period of authorized admission to which the cap-exempt employment applied, he or she would now be subject to the cap if no other exemptions from the cap apply. *Id.* Accordingly, USCIS will deny any subsequent cap-subject H–1B petition [63] filed for the H–1B nonimmigrant worker if no cap numbers are available, and

[60] *See id,* note 1.

[61] Such cap-exempt H–1B nonimmigrant workers may also undertake concurrent, non-exempt H–1B employment without being subjected to the cap. *See* INA section 214(g)(5), 8 U.S.C. 1184(g)(5).

[62] Neufeld Memo May 2008, at 7–8.

[63] The subsequent petition may be, for example, a cap-subject petition by a new employer or a petition by the same cap-subject employer for an extension of the beneficiary's stay.

may revoke the approval of a petition for concurrent employment of the H–1B nonimmigrant worker at a cap-subject employer. *Id.*

DHS welcomes public comment on this proposal.

6. Whistleblower Protections in the H–1B Program

DHS proposes to conform its regulations governing the H–1B program to certain policies and practices that have developed since ACWIA amended the INA to provide additional protections to H–1B nonimmigrant workers and other workers. *See* proposed 8 CFR 214.2(h)(20). As noted previously, section 413 of ACWIA amended the INA by adding new section 212(n)(2)(C), which is codified at 8 U.S.C. 1182(n)(2)(C). Among other things, section 212(n)(2)(C) makes it a violation for an H–1B employer to retaliate against an employee for providing information to the employer or any other person, or for cooperating in an investigation, with respect to an employer's violation of its LCA attestations. *See* INA section 212(n)(2)(C)(iv), 8 U.S.C. 1182(n)(2)(C)(iv). Employers are prohibited from taking retaliatory action against such an employee, including any action to intimidate, threaten, restrain, coerce, blacklist, discharge, or in any other manner discriminate against an employee for disclosing information to the employer, or to any other person, that the employee reasonably believes evidences an LCA violation, any rule or regulation pertaining to the statutory LCA attestation requirements, or for cooperating, or attempting to cooperate, in an investigation or proceeding pertaining to the employer's LCA compliance. *Id.*

Section 212(n)(2)(C) also requires DHS to establish a process under which an H–1B nonimmigrant worker who files a complaint with DOL regarding such illegal retaliation, and is otherwise eligible to remain and work in the United States, ''may be allowed to seek other appropriate employment in the United States for a period not to exceed the maximum period of stay authorized for such nonimmigrant classification.'' INA section 212(n)(2)(C)(v), 8 U.S.C. 1182(n)(2)(C)(v). Under current policy, if credible documentary evidence is provided in support of an H–1B petition demonstrating that the H–1B nonimmigrant worker faced retaliatory action from his or her employer based on a report regarding a violation of the employer's LCA obligations, DHS may consider any related loss of H–1B status by the worker as an ''extraordinary circumstance'' under 8 CFR 214.1(c)(4) and 248.1(b) justifying an extension of H–1B status or change of status for the worker.[64] Accordingly, the H–1B nonimmigrant worker is afforded time to acquire new H–1B employment or employment under another nonimmigrant classification notwithstanding a termination of employment or other retaliatory action by his or her employer. Credible documentary evidence may include a copy of the complaint filed by the individual, along with corroborative documentation that such a complaint has resulted in retaliatory action against the individual as described in 20 CFR 655.801.[65]

The proposed rule would codify in regulation DHS' current policy regarding these protections. *See* proposed 8 CFR 214.2(h)(20). Under the proposed rule, a qualifying employer seeking an extension of stay for an H–1B nonimmigrant worker, or a change of status from H–1B status to another nonimmigrant classification, would be able to submit documentary evidence indicating that the beneficiary faced retaliatory action from his or her employer (or former employer) based on a report regarding a violation of the employer's LCA obligations. *Id.* If DHS determines such documentary evidence to be credible, DHS may consider any loss or failure to maintain H–1B status by the beneficiary related to such violation as an ''extraordinary circumstance'' under 8 CFR 214.1(c)(4) and 248.1(b). Those regulations, in turn, authorize DHS to grant a discretionary extension of H–1B stay or a change of status to another nonimmigrant classification. *See* 8 CFR 214.1(c)(4) and 248.1(b). As with current policy, credible documentary evidence should include a copy of the complaint filed by the individual, along with corroborative documentation that such a complaint has resulted in the retaliatory action against the individual as described in 20 CFR 655.801. All evidence submitted will be considered to determine whether ''extraordinary circumstances'' have been met.

DHS invites the public to comment on all aspects of this proposal.

B. Additional Changes To Further Improve Stability and Job Flexibility for Certain Workers

DHS further proposes to amend its regulations, consistent with AC21 and DHS authorities, related to certain employment-based immigrant and nonimmigrant visa programs to provide additional stability and flexibility to employers and workers in those programs. The proposals are primarily intended to improve job portability for certain beneficiaries of approved employment-based immigrant visa petitions, including by limiting the grounds for automatic revocation of petition approval and increasing the ability of such workers to retain their priority dates for use with subsequently approved employment-based immigrant visa petitions.

The proposed rule would also: Improve or establish grace periods for certain nonimmigrant workers so that they may more easily seek and accept new employment opportunities; further assist applicants for adjustment of status and certain other employment-eligible individuals by automatically extending EADs for an interim period upon the timely filing of a renewal application; and provide additional stability and flexibility to high-skilled workers in certain nonimmigrant statuses to apply for employment authorization for a limited period if they meet certain criteria, including demonstrating that they are beneficiaries of approved employment-based immigrant visa petitions, are subject to immigrant visa backlogs, and demonstrate compelling circumstances. These and other proposed changes would provide much needed flexibility to a limited group of beneficiaries of employment-based immigrant visa petitions, as well as the U.S. employers who employ and sponsor them for permanent residence.

1. Revocation of Approved Employment-Based Immigrant Visa Petitions

As referenced above, DHS is proposing to amend its regulations governing revocation of petition approval to provide greater stability and flexibility to certain workers who have approved EB–1, EB–2, or EB–3 immigrant visa petitions and are on the path to obtaining LPR status in the United States. The INA provides that any immigrant visa petition, once approved, may have such approval revoked by the Secretary of Homeland Security ''for what he deems to be good and sufficient cause.'' INA section 205, 8 U.S.C. 1155. Pursuant to this statutory authority, current DHS regulations provide grounds for automatic revocation and revocation on notice to the petitioner. *See* 8 CFR 205.1 and 205.2.[66] With respect to employment-

[64] *See* Neufeld Memo May 2008, at 8.

[65] *Id.*

[66] The Department of Justice (DOJ) Executive Office for Immigration Review (EOIR) has corresponding revocation regulations. *See* 8 CFR part 1205. DHS and DOJ, however, are not

based immigrant visa petitions, the current regulatory grounds for automatic revocation include: (1) Invalidation of the labor certification supporting the petition; (2) death of the petitioner or beneficiary; (3) withdrawal by the petitioning employer; and (4) termination of the petitioning employer's business. *See* 8 CFR 205.1. The regulatory provisions governing revocation on notice to the petitioner allow for revocation to be pursued on any other ground ''when the necessity for the revocation comes to the attention of [DHS].'' 8 CFR 205.2(a). Such revocation may be used, for example, for petitions involving fraud, material misrepresentation, or erroneous approval.[67]

The proposed rule would amend these regulations so that EB–1, EB–2, and EB–3 immigrant visa petitions that have been approved for 180 days or more would no longer have such approval automatically revoked based only on withdrawal by the petitioner or termination of the petitioner's business. *See* proposed 8 CFR 205.1(a)(3)(iii)(C) and (D). As long as such an approval has not been revoked for fraud, material misrepresentation, the invalidation or revocation of a labor certification, or USCIS error, the petition will generally continue to be valid for various purposes under the immigration laws. *Id.* Such purposes include: (1) The retention of priority dates; (2) job portability under section 204(j) of the INA, 8 U.S.C. 1154(j); and (3) extensions of status for certain H–1B nonimmigrant workers under sections 104(c) and 106(a) and (b) of AC21. *Id.* An employment-based immigrant visa petition that is subject to withdrawal or business termination, however, cannot on its own serve as the basis for obtaining an immigrant visa or applying for adjustment of status as there is no longer a bona fide employment offer related to the petition. *See id.* In such cases, the beneficiary will need a new immigrant visa petition filed on his or her behalf, or a new offer of employment in section 204(j) portability cases, in order to obtain an immigrant visa or adjust status. *Id.*

DHS believes these regulatory changes are critical to fully implementing the job portability provisions of AC21. The current regulations concerning revocation of employment-based petition approval were last amended in 1996,[68] when wait times for employment-based immigrant visas were relatively short and the immigration laws seemed to contemplate that sponsored employees would remain with their petitioning employers during the short time it took to obtain LPR status. The passage of time, and AC21, changed this landscape. In the intervening period, wait times for immigrant visas increased substantially, particularly for workers from India and China. *See* section III.D. And in recognition of these and other delays, Congress enacted AC21 in 2000 to provide additional flexibility to workers who were subject to lengthy delays in the immigrant visa process. Since AC21, wait times for immigrant visas have grown dramatically, so that for many workers the period between the approval of an employment-based immigrant visa petition [69] and the worker's ability to obtain permanent residence is now counted in years, if not decades. *Id.* This has placed increased emphasis on and further necessitates the benefits Congress sought to provide through AC21.

Importantly, Congress enacted AC21 with the specific purpose of providing increased job flexibility to certain workers who are being sponsored for permanent residence by a particular employer, but who as a result of long delays are forced to wait inordinate periods of time for such permanent residence. Section 106(c) of AC21, for example, created section 204(j) of the INA to allow certain workers with approved immigrant visa petitions and pending applications for adjustment of status to change jobs or employers without invalidating their approved immigrant visa petitions. *See* Section III.A. This statutory change supports the regulatory change proposed in this section. In cases involving section 204(j) portability, allowing a withdrawal by the petitioning employer, or termination of its business, to automatically cause revocation of the immigrant visa petition's approval would substantially undermine the protections Congress intended to provide the beneficiaries of such petitions through section 204(j).

The same is true with respect to the various provisions of AC21 that were intended to provide certainty and flexibility to H–1B nonimmigrant workers. AC21 provided various ways in which such workers could extend their H–1B status beyond the general 6-year limitation if they had been sponsored for permanent residence by an employer. *See* Section III.C. (discussing AC21 sections 104(c) and 106(a) and (b)). At the same time, AC21 enhanced the ability of H–1B nonimmigrant workers to change jobs or employers, including by authorizing such workers to immediately commence new employment upon the filing of a non-frivolous H–1B petition. *Id.* (discussing AC21 section 105(a)). These extension and portability provisions are far less meaningful if, after the H–1B nonimmigrant worker changes jobs, the approval of his or her qualifying immigrant visa petition can be automatically revoked solely due to withdrawal by the petitioning employer or termination of its business.

Accordingly, this proposed rule would amend DHS regulations governing revocation with respect to employment-based immigrant visa petitions to better reflect and enhance the job portability eligibility authorized by AC21. As noted above, DHS proposes that an employment-based immigrant visa petition that has been approved for 180 days or more would no longer have such approval automatically revoked based only on withdrawal by the

proposing to amend those regulations. The EOIR regulations do not permit EOIR to revoke under section 205 of the INA, 8 U.S.C. 1155, employment-based immigrant visa petitions approved under section 204 of the INA, 8 U.S.C. 1154. Subsequent to enactment of the Homeland Security Act, DOJ promulgated regulations transferring or duplicating certain parts of regulations codified in 8 CFR chapter I, including the automatic revocation regulations, to a new chapter pertaining to EOIR at 8 CFR chapter V. *See* Aliens and Nationality; Homeland Security; Reorganization of Regulations, 68 FR 9824 (Feb. 28, 2003). Thereafter, on December 17, 2004, Congress vested authority for revocations under section 205 of the INA solely in the Secretary of Homeland Security, rather than the Attorney General. *See* Intelligence Reform and Terrorism Prevention Act of 2004, Public Law 108–458, sec. 5304(c), 118 Stat. 3638 (striking ''Attorney General'' and inserting ''Secretary of Homeland Security''). Moreover, EOIR's Board of Immigration Appeals has held that immigration judges are not authorized to revoke employment-based immigrant visa petitions approved under section 204 of the INA, and that the Board lacks jurisdiction to review DHS decisions to revoke such petitions. *See, e.g., Matter of Marcal-Neto,* 25 I&N Dec. 169, 174 (BIA 2010) (immigration judges lack authority to decide whether visa petitions should be revoked); *Matter of Aurelio,* 19 I&N Dec. 458, 460 (BIA 1987) (the Board lacks jurisdiction over matters involving the automatic revocation of a visa petition) (citing *Matter of Zaidan,* 19 I&N Dec. 297 (BIA 1985)). Accordingly, EOIR regulations at 8 CFR part 1205 need not be revised to conform with the proposed revisions in this rule.

[67] *See* Adjudicator's Field Manual, Chapter 22: Employment-Based Petitions, Entrepreneurs, and Special Immigrants § 22.2(d)(1) Employment-based Immigrant Visa Petitions (Form I–140); Determining the Priority Date, available at *http://www.uscis.gov/iframe/ilink/docView/AFM/HTML/AFM/0-0-0-1.html.*

[68] *See* 61 FR 13061 (1996). In 2006, the Department of Homeland Security and the Department of Justice amended the revocation regulations pertaining to immediate relatives and family-sponsored beneficiaries. *See* 71 FR 35749.

[69] The period of time necessary for USCIS to approve an employment-based immigrant visa petition requiring a labor certification from DOL does not account for the time that is required for DOL adjudication of the labor certification application. A worker's priority date in such cases, which is established as of the date DOL accepts the labor certification application for processing, *see* 8 CFR 204.5(e), typically will be more than one year before the date of petition approval under current processing times.

petitioner or termination of the petitioner's business. *See* proposed 8 CFR 205.1(a)(3)(iii)(C) and (D). This change would effectively improve the ability of certain workers with approved EB–1, EB–2, or EB–3 immigrant visa petitions to rely on such petitions for various job portability and status extension provisions in the immigration laws. Among other things, qualifying workers would be able to take advantage of these provisions without fear that certain circumstances outside of their control will automatically cause the revocation of the approval of their immigrant visa petitions, eliminate access to status extension and portability provisions intended to assist them, and potentially force them to leave their homes in the United States at a moment's notice.

While enhancing these protections, the regulatory changes in this proposed rule would remain consistent with current policy concerning these workers' ability to obtain adjustment of status or an immigrant visa. The proposed rule, for example, would continue to require a valid and qualifying offer of employment (unless the requirement for such an offer is exempted by law) at the time a worker seeks to apply for or receive adjustment of status. As discussed in Section IV.B.1. of this proposed rule, beneficiaries of employment-based immigrant visa petitions who seek to adjust status based on continuing offers of employment from petitioning employers would be unaffected by this rule. If the petitioning employer of such a beneficiary withdraws or goes out of business, the beneficiary must have a new offer of employment and a new immigrant visa petition filed on his or her behalf in order to file for or obtain adjustment of status, consistent with current policy. *See* proposed 8 CFR 245.25(a)(2) and 205.1(a)(3)(iii)(C).

The analysis is similar for beneficiaries of immigrant visa petitions who seek to adjust status based in part on the portability protection of section 204(j) of the INA. Where the petitioner withdraws or goes out of business 180 days or more after the adjustment of status application is filed, the beneficiary would continue to be required to demonstrate that he or she has a new and valid offer of employment in a same or similar occupational classification, consistent with section 204(j). *See* proposed 8 CFR 245.25(b)(2) and 205.1(a)(3)(iii)(D). Thus, in all instances of petition withdrawal or business termination where an offer of employment is necessary, the beneficiary either will need a new immigrant visa petition filed on his or her behalf, or a new offer of employment consistent with section 204(j), in order to file for or obtain adjustment of status. *Id.*

Accordingly, DHS believes that the proposed changes provide important stability and flexibility to workers who have been sponsored for permanent residence while also protecting against fraud and misuse. First, as just discussed, beneficiaries of approved employment-based immigrant visa petitions will continue to be unable to rely on such petitions for the purposes of adjusting status or obtaining an immigrant visa in cases where the petitioning employer has withdrawn or gone out of business, unless eligible for section 204(j) portability. Second, DHS is proposing to restrict revocation based on petitioner withdrawal or business termination only for petitions that have been approved for 180 days or more. *See* proposed 8 CFR 205.1(a)(3)(iii)(C) and (D). In addition to the period that it typically takes for a petitioning employer to obtain a labor certification from DOL and approval of an immigrant visa petition from DHS, the 180-day requirement would provide additional assurance that the petition was bona fide when filed. Finally, the proposed amendments do not in any way restrict DHS' current ability to revoke the approval of any immigrant visa petition for fraud, material misrepresentation, the invalidation or revocation of a labor certification, error, or any other circumstance that DHS believes is good cause for revocation. *See* 8 CFR 205.1(a)(3)(iii)(A) and 205.2; *see also* 8 CFR 205.1(a)(3)(iii)(C) and (D).

DHS welcomes public comment on all aspects of this proposed change.

2. Retention of Priority Dates

DHS also proposes to amend its regulations to enhance the ability of beneficiaries with approved EB–1, EB–2 or EB–3 immigrant visa petitions to retain the priority dates associated with those petitions and rely on them when seeking to obtain an immigrant visa or adjust status.

First, the proposed rule would update DHS regulations to provide clarity to all beneficiaries of employment-based immigrant visa petitions regarding the establishment of priority dates and to eliminate obsolete references in this area. *See* proposed 8 CFR 204.5(d). DHS regulations currently provide how priority dates are determined for employment-based immigrant visa petitions that: (1) Are accompanied by labor certifications; (2) are accompanied by applications for Schedule A designation; or (3) are filed on behalf of special immigrants described in section 203(b)(4) of the INA. *See* 8 CFR 204.5(d). The regulations, however, do not specify how priority dates are established for other employment-based immigrant visa petitions that do not require labor certifications—such as petitions filed under the EB–1 or EB–5 preference categories. DHS thus proposes to revise its regulations to clarify that the priority date of any properly filed employment-based immigrant visa petition that does not require a labor certification (including EB–1 petitions, EB–2 petitions involving national interest waivers, EB–5 petitions, and petitions filed on or after October 1, 1991 on behalf of special immigrants) will be the date the completed, signed petition is properly filed with DHS. *See* proposed 8 CFR 204.5(d). The proposed rule would also delete a reference to ''evidence that the alien's occupation is a shortage occupation within the Department of Labor's Labor Market Information Pilot Program,'' as that reference is now obsolete. *Id.*

Second, the proposed rule would clarify and expand the ability of beneficiaries of approved EB–1, EB–2, and EB–3 immigrant visa petitions to retain their priority dates for use with subsequently filed EB–1, EB–2, and EB–3 petitions. *See* proposed 8 CFR 204.5(e). Current regulations generally allow such retention, but not where DHS denies the petition or revokes its approval under section 204(e) or 205 of the INA, 8 U.S.C. 1154(e) or 1155. *See* 8 CFR 204.5(e). DHS proposes to revise these regulations so that the priority dates of EB–1, EB–2, and EB–3 petitions may be used for subsequently filed EB–1, EB–2 and EB–3 petitions, unless USCIS denies the petition (or otherwise fails to approve it) or revokes the petition's approval due to: (1) Fraud or a willful misrepresentation of a material fact; (2) a determination that the petition was approved in error; or (3) revocation or invalidation of the labor certification associated with the petition. *See* proposed 8 CFR 204.5(e). The priority date of a petition that has its approval revoked on these grounds would not be retained, regardless of whether the petition's approval was previously revoked on other grounds.

This change, in combination with the proposed changes to the automatic revocation provisions discussed above, would effectively expand beneficiaries' ability to retain the priority dates of their approved EB–1, EB–2, and EB–3 petitions, particularly those that are later withdrawn or that involve petitioning employers that go out of business. Notably, the ability to retain priority dates under this amendment

would begin immediately upon petition approval even if the petition's approval is thereafter revoked based on petition withdrawal or business termination less than 180 days after approval. This change would provide greater certainty and stability for beneficiaries in their pursuit of permanent residence in the United States. The change would also continue to allow DHS to restrict retention of priority dates in cases that merit such restriction, including in cases where the petition does not satisfy the pertinent legal requirements, cases where the underlying labor certification has been invalidated or revoked, cases involving fraud or willful misrepresentation, and cases involving DHS error.

DHS welcomes public comment on all aspects of this proposed change.

3. Nonimmigrant Grace Periods

To further improve stability and flexibility for high-skilled nonimmigrant workers, DHS proposes to authorize and improve grace periods in certain nonimmigrant visa classifications. As further described below, DHS is effectively proposing to extend the current grace periods for H–1B nonimmigrant workers—which authorize admission up to 10 days before and after the relevant validity period—to certain other high-skilled nonimmigrant classifications (E–1, E–2, E–3, L–1, and TN classifications). DHS further proposes to make a grace period available in these classifications, as well as the H–1B and H–1B1 nonimmigrant classifications, for up to 60 days during the period of petition validity (or other authorized validity period).

a. Extending 10-Day Grace Periods to Certain Nonimmigrant Classifications

First, DHS proposes to provide grace periods similar to those currently available to H–1B nonimmigrant workers to other high-skilled nonimmigrant workers. *See* proposed 8 CFR 214.1(l)(i). DHS regulations currently allow H–1B nonimmigrant workers to receive grace periods of up to 10 days before the validity periods of their H–1B petitions begin and 10 days after such validity periods end. *See* 8 CFR 214.2(h)(13)(i)(A). During any such grace period, an H–1B nonimmigrant worker is considered ''admitted to the United States'' but not authorized to work. *See* 8 CFR 214.2(h)(13)(i)(A). The initial 10-day grace period allows H–1B nonimmigrant workers to make necessary preparations for their employment in the United States. The 10-day grace period at the end of the validity period provides a short window in which H–1B nonimmigrant workers may either (1) find new qualifying H–1B employment and extend their H–1B status or (2) get their affairs in order before departing the United States. *See id.*

The proposed rule would extend similar 10-day grace periods to individuals in certain other employment-authorized nonimmigrant visa classifications, namely the E–1, E–2, E–3, L–1, and TN classifications. Providing grace periods in such classifications—which, like the H–1B classification, are generally available to high-skilled individuals and authorize stays of multiple years—reflects goals similar to those underlying AC21 and serves the national interest by promoting stability and flexibility for such workers. A 10-day grace period before the petition or authorized validity period begins allows these nonimmigrants a reasonable amount of time to enter the United States and prepare for their employment in the country. A 10-day grace period after their petition or authorized validity period ends provides a reasonable amount of time to depart the United States or take other actions to extend, change, or otherwise maintain lawful status after their period of authorized employment ends.

Consistent with the current grace periods in the H–1B classification, the proposed rule would not allow eligible nonimmigrants to be employed during either of the 10-day grace periods. *See* proposed 8 CFR 214.1(l). Such periods are provided merely for eligible nonimmigrants to prepare for employment, seek new employment in order to extend or change status, or prepare for departure from the United States. Further, the proposed rule would extend grace periods to dependents of eligible principal nonimmigrant workers. *Id.* If a principal nonimmigrant worker is eligible to extend his or her stay under a grace period provided by this proposed rule, his or her dependent would also be eligible. *Id.* Finally, DHS also proposes to amend the existing grace period provision in current regulation with respect to the H–1B classification to align such provisions with the proposed cross-classification provision described above. *See* proposed 8 CFR 214.2(h)(13)(i)(A).

DHS welcomes public comment on all aspects of this proposed change.

b. Providing a 60-Day Grace Period to Certain Nonimmigrant Classifications

Second, the proposed rule would authorize a grace period in the E–1, E–2, E–3, H–1B1, L–1, and TN classifications, as well as the H–1B classification, during the period of petition validity (or other authorized validity period). To enhance job portability for these high-skilled nonimmigrants, DHS proposes to generally establish a one-time grace period during an authorized nonimmigrant validity period of up to 60 days or until the existing validity period ends, whichever is shorter, whenever employment ends for these individuals. *See* proposed 8 CFR 214.1(l)(ii). DHS currently provides flexibility in other nonimmigrant classifications, such as those for F–1 nonimmigrant students and J–1 nonimmigrant exchange visitors.[70] DHS believes that adding this one-time interim grace period of up to 60 days upon cessation of employment for additional classifications of nonimmigrants would allow nonimmigrants in the affected classifications sufficient time to respond to sudden or unexpected changes related to their employment. Such time may be used to seek new employment, seek a change of status to a different nonimmigrant classification, or make preparations for departure from the United States.

Under current policy, for example, an H–1B nonimmigrant worker whose employment ends—whether voluntarily or upon being laid off or terminated by the H–1B employer—is generally considered to be in violation of his or her status and must depart the United States immediately. Under the proposed rule, however, H–1B nonimmigrant workers would be afforded up to 60 days upon the end of employment to seek new H–1B employment and thus extend their H–1B status without having to immediately depart the country. Accordingly, this interim grace period would further support the enhanced job portability protections provided to H–1B nonimmigrant workers by AC21, which authorizes them to change jobs or employers upon the filing of a non-frivolous H–1B petition, if otherwise eligible. The proposed change described in this section would provide H–1B and certain other nonimmigrant workers a small degree of stability and flexibility

[70] DHS regulations currently provide 60- and 30-day grace periods to F–1 nonimmigrant students and J–1 nonimmigrant exchange visitors, respectively. *See* 8 CFR 214.2(f)(5)(iv) and (j)(1)(ii). F–1 students who have completed their course of study and any subsequently authorized practical training are granted an additional 60-day period to prepare for departure or transfer to another school. *See* 8 CFR 214.2(f)(5)(iv). The 30-day grace period for J–1 nonimmigrant exchange visitors is available to them during the validity period of their J–1 duration of status, which includes the duration of their J–1 exchange program and a 30-day departure preparation period. *See* 8 CFR 214.2(j)(1)(ii).

when faced with sudden changes to their employment.

As with the 10-day grace periods discussed in the preceding section, eligible nonimmigrants would not be authorized for employment during an interim grace period of up to 60 days proposed by this rule.[71] *See* proposed 8 CFR 214.1(l). Also consistent with the 10-day grace periods, the proposed rule would extend the interim grace periods to dependents of eligible principal nonimmigrant workers. *Id.* During any interim period in which a principal nonimmigrant worker is eligible to extend his or her stay under this proposed change, his or her dependent would also be eligible.

DHS welcomes public comment on all aspects of this proposal, including on the appropriate length of the grace period and on the nonimmigrant classifications that should be afforded eligibility for such grace periods.

4. Eligibility for Employment Authorization in Compelling Circumstances

DHS proposes to further enhance stability and flexibility for high-skilled nonimmigrant workers who are the beneficiaries of approved immigrant visa petitions filed by sponsoring U.S. employers and who face compelling circumstances while they wait for their immigrant visas to become available. As discussed in Section III.E., the continually expanding backlogs for employment-based immigrant visas can place sponsored workers and their sponsoring employers in untenable positions.

Currently, sponsoring employers and sponsored workers cannot deviate from the specific job offer described in a labor certification and approved employment-based immigrant visa petition until the worker: (1) Has an immigrant visa immediately available to him or her; (2) has filed an application for adjustment of status; and (3) has such application pending for at least 180 days.[72] *See* INA section 204(j), 8 U.S.C. 1154(j). Before all three of these conditions are met, an employer generally cannot promote the sponsored worker, move the worker to another position, or transfer the worker to the same or a similar position in a different geographic area without jeopardizing the immigrant visa petition approved on the worker's behalf, regardless of the circumstances. Neither can a sponsored worker accept employment with an employer other than the sponsoring employer without creating the same risk. Whether the worker and his or her family are facing a medical or other emergency is currently immaterial. Neither is it relevant that the worker may have faced retaliation from the employer for engaging in protected conduct, or that the lack of flexibility may result in significant business or economic harm to the employer or worker.

To provide flexibility in the face of such compelling circumstances, DHS proposes to extend employment authorization to a discrete subset of high-skilled workers who are the beneficiaries of approved employment-based immigrant visa petitions and are in the United States in certain nonimmigrant statuses. Specifically, the proposed rule would provide the ability for individuals to apply for employment authorization for 1 year when they meet all of the following criteria: (1) The individual is currently in the United States and maintaining E–3, H–1B, H–1B1, O–1 or L–1 nonimmigrant status; (2) the individual is the beneficiary of an approved immigrant visa petition under the EB–1, EB–2 or EB–3 classification; (3) the individual does not have an immigrant visa immediately available; and (4) the individual can demonstrate to the satisfaction of DHS compelling circumstances that justify an independent grant of employment authorization. *See* proposed 8 CFR 204.5(p)(1). DHS is proposing this change to provide qualified nonimmigrants who are beneficiaries of approved employment-based immigrant visa petitions, but are awaiting an immigrant visa, a stopgap measure for retaining employment authorization for a limited period when compelling circumstances arise.

DHS anticipates that use of this proposal, if finalized, would be limited for various reasons. First, DHS believes that the other changes proposed in this rule to enhance flexibility for employers and nonimmigrant workers, if finalized, would significantly decrease instances where this proposal will be needed. Second, nonimmigrant workers will have significant incentive to choose other options, as the proposal discussed in this section would require the worker to relinquish his or her nonimmigrant status, thus restricting his or her ability to change nonimmigrant status or adjust status to that of a lawful permanent resident. Accepting the employment authorization under this proposal, for example, would generally require the worker to forego adjusting status in the United States and instead seek an immigrant visa abroad through consular processing. Finally, DHS anticipates that a limited number of nonimmigrant workers with approved EB–1, EB–2, or EB–3 immigrant visa petitions will be able to demonstrate *compelling* circumstances justifying an independent grant of employment authorization. Employment authorization based on compelling circumstances will not be available to a nonimmigrant worker solely because his or her statutory maximum time period for nonimmigrant status is approaching or has been reached. Likewise, employment authorization generally would not be available to a nonimmigrant if the tendered compelling circumstance is within his or her control.

DHS is not proposing to define the term ''compelling circumstances'' at this time, as the Department seeks to retain flexibility as to the types of compelling circumstances that clearly warrant the Secretary's exercise of discretion in granting employment authorization. DHS, however, has currently identified four circumstances in which it may consider granting employment authorization under the proposed change:

- *Serious Illnesses and Disabilities.* The nonimmigrant worker can demonstrate that he or she, or his or her dependent, is facing a serious illness or disability that entails the worker moving to a different geographic area for treatment or otherwise substantially changing his or her employment circumstances.
- *Employer Retaliation.* The nonimmigrant worker can demonstrate that he or she is involved in a dispute regarding the employer's illegal or dishonest activity as evidenced by, for example, a complaint filed with a relevant government agency or court, and the employer has taken retaliatory action that justifies granting separate employment authorization to the worker on a discretionary basis.
- *Other Substantial Harm to the Applicant.* The nonimmigrant worker can demonstrate that due to compelling circumstances, he or she will be unable to timely extend or otherwise maintain status, or obtain another nonimmigrant status, and absent continued employment authorization under this proposal the applicant and his or her family would suffer substantial harm.

[71] If a qualifying H–1B petition is properly filed on the H–1B nonimmigrant worker's behalf during this 60-day grace period, DHS would consider the individual to no longer be in the 60-day grace period as they would be employment authorized under section 214(n) of the INA, 8 U.S.C. 1184(n).

[72] Over 75 percent of principal beneficiaries of employment-based immigrant visa petitions, sponsored for LPR status by employers based on their skills and contributions to the U.S. economy, are seeking classification as EB–2 and EB–3 immigrants and thus, with limited exception, are subject to a labor market test requiring a labor certification from the Department of Labor. *See* DHS Yearbook of Immigration Statistics, Table 7 *http://www.dhs.gov/yearbook-immigration-statistics-2013-lawful-permanent-residents.*

Such circumstances, for example, may involve an H–1B nonimmigrant worker who has been applying an industry-specific skillset in a high-technology sector for years with a U.S. entity that is unexpectedly terminating its business, where the worker is able to establish: (1) That the same or a similar industry (*e.g.,* nuclear energy, aeronautics, or artificial intelligence) does not materially exist in the home country, and (2) that the resulting inability to find productive employment would cause significant hardship to the worker and his or her family if required to return home. In such circumstances, the employment authorization proposal would provide the individual with an opportunity to find another employer to sponsor him or her for immigrant or nonimmigrant status and thereby protect the worker and his or her family members from the substantial harm they would suffer if required to depart the United States.

- *Significant Disruption to the Employer.* The nonimmigrant worker can show that due to compelling circumstances, he or she is unexpectedly unable to timely extend or change status, there are no other possible avenues for the immediate employment of such worker with that employer, and the worker's departure would cause the petitioning employer substantial disruption to a project for which the worker is a critical employee. Such circumstances, for example, may include the following:

○ An L–1B nonimmigrant worker is sponsored for permanent residence by an employer that subsequently undergoes corporate restructuring (*e.g.,* a sale, split, or spin off) such that the worker's new employer is no longer a multinational company eligible to employ L–1B workers, there are no available avenues to promptly obtain another work-authorized nonimmigrant status for the worker, and the employer would suffer substantial disruption due to the critical nature of the worker's services. In such cases, the employment authorization proposal would provide the employer and worker a temporary bridge allowing for continued employment while they continue in their efforts to obtain a new nonimmigrant or immigrant status.

○ An H–1B nonimmigrant worker is providing critical work on biomedical research for an entity affiliated with an institution of higher education, thus making the entity exempt from the H–1B cap, when the funding for the research unexpectedly changes and now comes through a for-profit entity, thus causing the entity to lose its cap-exempt status. In cases where the worker is unable to quickly obtain H–1B status based on a cap-subject H–1B petition or another work-authorized nonimmigrant status, the employment authorization proposal would provide a temporary bridge for continued employment of the worker when his or her departure would create substantial disruption to the employer's biomedical research.

In each of these examples of situations where USCIS may find compelling circumstances, the proposed provision would provide individuals with the ability to retain employment authorization and the opportunity to find a new sponsoring employer or explore options with the current sponsoring employer. DHS invites public comment on these examples of compelling circumstances or other types of compelling circumstances that may warrant a discretionary grant of separate employment authorization. DHS also welcomes public comment on the manner in which applicants should be expected to document such compelling circumstances.

As noted above, DHS is proposing this employment authorization only for certain workers who are the beneficiaries of approved employment-based immigrant visa petitions and who are in the United States in E–3, H–1B, H–1B1, O–1, or L–1 nonimmigrant status. *See* proposed 8 CFR 204.5(p)(1)(i). The requirement that the individual must be the beneficiary of an approved employment-based immigrant visa petition is intended to limit employment authorization to those workers who are seeking employment-based permanent residence in the United States and are merely awaiting an immigrant visa and either: (1) Are the subject of an approved labor certification indicating that their employment would not harm U.S. workers or (2) are in a classification that Congress has chosen to prioritize by exempting them from the labor certification requirement. DHS is further limiting eligibility to the listed nonimmigrant classifications as they represent the vast majority of high-skilled nonimmigrant workers who are sponsored for permanent residence by U.S. employers.[73] DHS invites public comment on the listed nonimmigrant classifications and whether other nonimmigrant classifications should be considered. DHS also invites public comment on the requirement that applicants be the beneficiaries of approved EB–1, EB–2, or EB–3 immigrant visa petitions.

DHS is further proposing that workers who have been granted 1 year of employment authorization under the proposed rule would not be able to extend such employment authorization at the end of the 1-year period unless certain criteria are met. DHS is proposing to limit renewal of such employment authorization to those workers who can show that they continue to be the principal beneficiary of an approved EB–1, EB–2 or EB–3 immigrant visa petition and either: (1) The worker continues to face compelling circumstances; or (2) the worker has a priority date that is less than 1 year from the current cut-off date for the relevant employment-based category and country of nationality in the most recent visa bulletin published by the Department of State. *See* proposed 8 CFR 204.5(p)(3)(i).

DHS further proposes that individuals would be ineligible to obtain employment authorization under this rule, whether initial or renewal, if at the time of the filing of the EAD application the alien's priority date is more than 1 year beyond the date on which immigrant visa numbers were authorized to be issued to individuals with the same priority date for the relevant employment-based category and country of nationality. DHS believes this outer limit would discourage individuals from relying on the proposed employment authorization in lieu of completing the employment-based immigrant visa process. *See* proposed 8 CFR 204.5(p)(5).

DHS also proposes to generally require these applicants to appear in person at a USCIS Application Support Center (ASC) to submit biometric information and pay a biometric fee as prescribed in 8 CFR 103.7(b)(1)(i)(C). *See* proposed 8 CFR 204.5(p)(4). This requirement would allow DHS to better assess the applicant's potential risk to public safety and national security, and to enable DHS to make a more informed decision when exercising discretion to approve or deny such application for employment authorization. *See* 8 CFR 274a.13(a)(1). DHS also is proposing that, in all cases, an individual would be ineligible for employment authorization under this provision if convicted of any felony or two or more misdemeanors. *See* proposed 8 CFR 204.5(p)(5)(i). DHS welcomes public comment on these additional requirements.

With regard to dependents of qualifying principal nonimmigrants,

[73] Based on USCIS analysis of approved employment-based immigrant visa petitions with the ''beneficiary's current nonimmigrant status'' field completed, approximately 97 percent held H–1B or H–1B1 status, and approximately 2.9 percent held L–1 nonimmigrant status. Approximately 10.5 percent of approved petitions had missing information for that field.

DHS proposes to extend employment authorization eligibility to those dependent spouses and children who are also present in the United States in nonimmigrant status, but only if the principal spouse or parent is granted employment authorization under this rule and such authorization has not been terminated or revoked. *See* proposed 8 CFR 204.5(p)(2). The validity period of the family member's employment authorization may not extend beyond the period authorized for the principal spouse or parent. *Id.* Dependent family members seeking renewals of employment authorization would be subject to these same limitations. *See* proposed 8 CFR 204.5(p)(3)(ii).

DHS further proposes conforming amendments to 8 CFR 274a.12(c), which lists classes of individuals who must apply for employment authorization. These amendments would add two new categories of individuals eligible for employment authorization, one for the principal beneficiaries described above and one for their dependent spouses and children. *See* proposed 8 CFR 274a.12(c)(35) and (36). Under these regulations, qualifying individuals would not be permitted to engage in employment until USCIS approves, as a matter of discretion, the employment authorization application and issues an EAD (Form I–766, or successor form). *See* 8 CFR 274a.12(c) and 8 CFR 274a.13(a)(1).

DHS welcomes public comment on all aspects of this proposal, including the appropriate validity period for grants of employment authorization and the nonimmigrant visa classifications that should be eligible to request such employment authorization.

5. H–1B Licensing Requirements

DHS proposes to amend its regulations consistent with current policy for determining when H–1B status may be granted notwithstanding the H–1B beneficiary's inability to obtain a required license. *See* proposed 8 CFR 214.2(h)(4)(v)(C)(*2*). Generally, if the beneficiary of an H–1B petition requires a state or local license to fully perform the duties of the occupation described in the petition, the petition may not be approved unless the beneficiary possesses the license. *See* 8 CFR 214.2(h)(4)(v)(A). However, this sometimes results in a ''Catch-22'' situation, as the state or local licensing authority may not issue licenses to individuals who do not have social security numbers or cannot otherwise prove employment authorization (such as with an approved H–1B petition). Under current policy, DHS may approve an H–1B petition in such cases for a 1-year period, provided that the only obstacle to obtaining licensure is the lack of a social security number or employment authorization.[74]

DHS is now proposing to formalize this policy in its H–1B regulations. Under the proposed rule, DHS may approve an H–1B petition for a 1-year validity period if a state or local license to engage in the relevant occupation is required and the appropriate licensing authority will not grant such license absent evidence that the beneficiary has been issued a social security number or granted employment authorization. *See* proposed 8 CFR 214.2(h)(4)(v)(C)(*2*)(*i*). Petitioners filing H–1B petitions on behalf of such beneficiaries would be required to submit evidence from the relevant licensing board indicating that the only obstacle to the beneficiary's licensure is the lack of a social security number or employment authorization. *Id.* In addition, the petitioner must establish that the beneficiary satisfies all other regulatory and statutory requirements for engaging in the occupation. In other words, the petitioner would need to demonstrate that at the time of the petition's filing, the beneficiary meets the educational, training, experience, or other substantive requirements for obtaining the relevant license (other than acquiring a social security number or being employment authorized).

Moreover, the petitioner would generally be required to demonstrate that at the time of the petition's filing, the beneficiary has already filed an application for the relevant license in accordance with state or local licensing procedures. *See* proposed 8 CFR 214.2(h)(4)(v)(C)(*2*)(*ii*). In the alternative, the petitioner would be required to demonstrate that the beneficiary cannot file such an application due to the lack of a social security number or employment authorization.[75] *Id.* The proposed rule would also make clear that a beneficiary who has been approved for a 1-year validity period may not obtain an extension of H–1B status without proof of licensure. Any subsequent H–1B petition filed on behalf of such a beneficiary with respect to the same occupation must contain proof that the beneficiary has obtained the required license. *See* proposed 8 CFR 214.2(h)(4)(v)(C)(*3*).

The proposed rule would also clarify that an individual without an occupational license may obtain H–1B status if he or she will be employed in a state that allows such an unlicensed individual to fully practice the occupation under the supervision of licensed senior or supervisory personnel. In such cases, DHS will examine the nature of the H–1B nonimmigrant worker's proposed duties and the level at which they will be performed, as well as evidence provided by the petitioner as to the identity, physical location, and credentials of the individual(s) who will supervise the H–1B nonimmigrant worker. *See* proposed 8 CFR 214.2(h)(4)(v)(C)(*1*). If the facts demonstrate that the H–1B nonimmigrant worker will fully perform the duties of the occupation under the supervision of licensed senior or supervisory personnel in that occupation, H–1B classification may be granted. *Id.*

DHS invites public comment on all aspects of this proposal.

C. Processing of Applications for Employment Authorization Documents

DHS is also proposing to update its regulations governing the processing of Applications for Employment Authorization (Forms I–765). First, to help prevent gaps in employment authorization, DHS proposes to automatically extend the validity of expiring EADs for up to 180 days from such document's and such employment authorization's expiration date in certain circumstances upon the timely filing of an application to renew such documents. Such automatic renewal would be available to individuals with pending applications for adjustment of status and other employment-authorized individuals who: (1) Are seeking renewal of an EAD (and, if applicable, employment authorization) based on the same employment authorization category under which it was granted (or the renewal application is for an individual approved for Temporary Protected Status (TPS) whose EAD was issued pursuant to 8 CFR 274a.12(c)(19)); and (2) either continue to be employment authorized incident to status beyond the expiration of the

[74] USCIS Memorandum from Donald Neufeld, ''Adjudicator's Field Manual Update: Chapter 31: Accepting and Adjudicating H–1B Petitions When a Required License is not Available due to State Licensing Requirements Mandating Possession of a Valid Immigration Document as Evidence of Employment Authorization.'' (March 21, 2008) (''Neufeld Memo March 2008''), INS Memorandum from Thomas Cook, ''Social Security Cards and the Adjudication of H–1B Petitions'' (Nov. 20, 2001) (''Cook Memo Nov. 2001'').

[75] For example, as of 2014, the State of California requires provision of a social security account number when applying for an acupuncture license. According to its Web site, California will not process an application on which the applicant does not provide a social security account number. *See www.acupuncture.ca.gov/pubs_forms/license_app.pdf.* In such cases under the proposed rule, the petitioner would be allowed to obtain a 1-year approval for the unlicensed H–1B beneficiary.

EAD or are applying for renewal under a category that does not first require adjudication of an underlying application, petition, or request. Second, to address national security and fraud concerns, DHS is proposing to eliminate the current regulatory provisions that require adjudication of EAD applications within 90 days of filing and that authorize interim EADs in cases where such adjudications are not conducted within the 90-day timeframe. Taken together, these updates would provide additional stability and certainty to employment-authorized individuals and their U.S. employers, while reducing opportunities for fraud and better accommodating increased security measures, including technological advances that utilize centralized production of tamper-free documents.

1. Automatic Extensions of EADs in Certain Circumstances

First, DHS proposes to amend its regulations to help prevent gaps in employment authorization for certain employment-authorized individuals who are seeking to renew expiring EADs. Under the proposed rule, such individuals who fall within certain classes of individuals eligible for employment authorization may have the validity of their EADs (and, if necessary, their employment authorization as well) extended for up to 180 days from such document's and such employment authorization's expiration date upon the timely filing of an application to renew such EAD (or the renewal application is for an individual approved for TPS whose EAD was issued pursuant to 8 CFR 274a.12(c)(19)). *See* proposed 8 CFR 274a.13(d)(1). Specifically, the rule would authorize automatic extensions of their EADs—and, for those qualifying individuals who are not employment authorized incident to status, extensions of their employment authorization [76]—so long as all of the following conditions are met:

(1) The individual files a request for renewal of his or her EAD (currently through an Application for Employment Authorization, Form I–765) prior to its expiration date.

(2) The individual is requesting renewal based on the same employment authorization category under which the expiring EAD was granted (as indicated on the face of the EAD), or the individual has been approved for TPS and his or her EAD was issued pursuant to 8 CFR 274a.12(c)(19).

(3) The individual either continues to be employment authorized incident to status beyond the expiration of the EAD or is applying for renewal under a category that does not first require adjudication of an underlying application, petition, or request.

Id. An expiring EAD that has its validity automatically extended under this proposal would continue to be subject to any limitations and conditions that applied before the extension. *See* proposed 8 CFR 274a.13(d)(2). Moreover, although the validity of such an EAD would be extended for up to 180 days, such validity is automatically terminated upon issuance of notification of a decision denying the individual's renewal application. *See* proposed 8 CFR 274a.13(d)(3). The automatic extension could also be terminated before a decision is made on the renewal application through written notice to the applicant, notice published in the **Federal Register**, or any other applicable authority.

Moreover, DHS is proposing that the expired EAD, in combination with a Notice of Action (Form I–797C) indicating timely filing of the application to renew the EAD (provided it lists the same employment authorization category as that listed on the expiring or expired EAD), would be considered an unexpired EAD for purposes of complying with Employment Eligibility Verification (Form I–9) requirements. *See* proposed 8 CFR 274a.13(d)(4). Thus, when the expiration date on the face of the EAD is reached, an individual who is continuing in his or her employment with the same employer may, along with the employer, update the previously completed Form I–9 to reflect the extended expiration date based on the automatic extension while the renewal is pending. Reverification of employment authorization, however, would not be triggered until after the expiration of the additional period of validity granted through the automatic extension provisions discussed above. *See* proposed 8 CFR 274a.2(b)(1)(vii).

These provisions would significantly mitigate the risk of gaps in employment authorization and required documentation for eligible individuals, thereby benefitting them and their employers. For compliance with Form I–9 documentation requirements, however, individuals would need to file their renewal applications far enough in advance to receive the Notice of Action (Form I–797C), which is necessary to document that filing for their employers, prior to the expiration of their EADs. The Form I–797C generation and issuance process is currently automated such that it is able to issue forms within a few days after receiving an Application for Employment Authorization. DHS expects that applicants would generally receive the Form I–797C within 2 weeks of the date of filing.[77]

As discussed, DHS is proposing an automatic extension period of up to 180 days past the expiration date noted on the face of the EAD for qualifying individuals. DHS believes that this time period is reasonable and provides more than ample time for USCIS to complete the adjudication process based on USCIS's current 3-month average processing time for Applications for Employment Authorization.[78] Additionally, this 180-day automatic extension period is similar to that used in other contexts and would thus provide consistency for employers that are responsible for verifying employment authorization. For example, DHS has a long-standing policy of providing 180-day automatic extensions of EADs to re-registering beneficiaries of Temporary Protected Status (TPS) when the re-registration period does not provide sufficient time to renew EADs.[79] DHS regulations also provide certain F–1 nonimmigrants seeking extensions of Optional Practical Training (OPT) with automatic extensions of their employment authorization for up to 180 days. *See* 8 CFR 274a.12(b)(6)(iv).

As noted above, DHS is proposing two conditions to ensure that only eligible aliens receive automatic extensions of their EADs and thus to protect the employment authorization program from abuse. First, DHS is proposing to require that the renewal application be based on the same employment authorization category as that indicated on the expiring EAD, including renewal applications based on TPS re-registration filed by applicants who still hold EADs that were initially issued under 8 CFR 274a.12(c)(19). *See* proposed 8 CFR 274a.13(d)(1)(ii). Because the resulting Notice of Action (Form I–797C) would indicate the

[76] For classes of employment-eligible individuals listed at 8 CFR 274a.12(c), employment authorization is based on the adjudication of the Application for Employment Authorization and is not incident to their underlying immigration status. For such individuals who are covered by this rule, DHS is proposing to extend both their underlying employment authorization as well as their EADs.

[77] Depending on any significant surges in filings, however, there may be periods in which USCIS takes longer than 2 weeks to issue Notices of Action (Forms I–797C).

[78] *See* current USCIS processing timeframes at *https://egov.uscis.gov/cris/processTimesDisplayInit.do*.

[79] *See, e.g.,* 80 FR 51582 (Aug. 25, 2015) (Notice auto-extending EADs of Haitian TPS beneficiaries for 6 months).

employment authorization category cited in the application,[80] this requirement would help to ensure, both to DHS and to employers, that such a notice was issued in response to a timely filed renewal application. Second, DHS is proposing to limit eligibility for automatic extensions to individuals who continue to be employment authorized incident to status beyond the expiration of the EAD or who are seeking to renew employment authorization in a category in which eligibility for such renewal is not contingent on a USCIS adjudication of a separate, underlying application, petition, or request. *See* proposed 8 CFR 274a.13(d)(1)(iii). This limitation would similarly help to ensure that only individuals eligible for employment authorization are able to extend their employment authorization under this proposal.

Based on the above parameters, DHS has identified 15 employment authorization categories where renewal applicants would be able to receive automatic extensions under this proposed rule. Among these are applicants for adjustment of status. So long as their applications for adjustment of status remain pending or USCIS determines, upon written notice to the applicant or notice published in the **Federal Register**, that it must terminate the auto-extension by category, these applicants are eligible for employment authorization under current regulation. *See* 8 CFR 274a.12(c)(9). Because such eligibility is not contingent on the adjudication of a separate application, petition, or request, DHS believes it is reasonable to make automatic extensions available to such individuals. The 15 categories of employment authorization that would allow for automatic extensions under this rule are:

- Aliens admitted as refugees. *See* 8 CFR 274a.12(a)(3).
- Aliens granted asylum. *See* 8 CFR 274a.12(a)(5).
- Aliens admitted as parents or dependent children of aliens granted permanent residence under section 101(a)(27)(I) of the INA, 8 U.S.C. 1101(a)(27)(I). *See* 8 CFR 274a.12(a)(7).
- Aliens admitted to the United States as citizens of the Federated States of Micronesia or the Marshall Islands pursuant to agreements between the United States and the former trust territories. *See* 8 CFR 274a.12(a)(8).
- Aliens granted withholding of deportation or removal. *See* 8 CFR 274a.12(a)(10).
- Aliens granted Temporary Protected Status (TPS) (regardless of the employment authorization category on their current EADs).[81] *See* 8 CFR 274a.12(a)(12) and (c)(19).
- Aliens who have properly filed applications for TPS and who have been deemed *prima facie* eligible for TPS under 8 CFR 244.10(a) and have received an EAD as a ''temporary treatment benefit'' under 8 CFR 244.10(e) and 274a.12(c)(19).
- Aliens who have properly filed applications for asylum or withholding of deportation or removal. *See* 8 CFR 274a.12(c)(8).
- Aliens who have filed applications for adjustment of status under section 245 of the INA, 8 U.S.C. 1255. *See* 8 CFR 274a.12(c)(9).
- Aliens who have filed applications for suspension of deportation under section 244 of the INA (as it existed prior to April 1, 1997), cancellation of removal pursuant to section 240A of the INA, or special rule cancellation of removal under section 309(f)(1) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. *See* 8 CFR 274a.12(c)(10).
- Aliens who have filed applications for creation of record of lawful admission for permanent residence. *See* 8 CFR 274a.12(c)(16).
- Aliens who have properly filed legalization applications pursuant to section 210 of the INA, 8 U.S.C. 1160. *See* 8 CFR 274a.12(c)(20).
- Aliens who have properly filed legalization applications pursuant to section 245A of the INA, 8 U.S.C. 1255a. *See* 8 CFR 274a.12(c)(22).
- Aliens who have filed applications for adjustment pursuant to section 1104 of the LIFE Act. *See* 8 CFR 274a.12(c)(24).
- Aliens who are the principal beneficiaries or qualified children of approved VAWA self-petitioners, under the employment authorization category ''(c)(31)'' in the form instructions to the Application for Employment Authorization (Form I–765).

As noted above, each of these categories describes individuals who are eligible to apply for employment authorization after their EADs have expired and are thus candidates for automatic extensions of EADs under this proposed rule. To provide maximum clarity to the regulated public, DHS proposes to list these categories as eligible for automatic extensions on USCIS' Web site.

DHS is not currently proposing to make automatic extensions of EADs (or attendant employment authorization) available to other classes of employment-authorized individuals. For example, DHS considered making automatic extensions available to certain H–4 nonimmigrants (*i.e.,* spouses of H–1B nonimmigrant workers) who are eligible for employment authorization and EADs. *See* 8 CFR 274a.12(c)(26). Such H–4 nonimmigrants are generally eligible to renew their EADs, but only so long as they can extend their H–4 status, which is itself dependent on their spouses remaining in H–1B status. Thus, whether an H–4 nonimmigrant's eligibility for employment authorization continues beyond the expiration date of his or her EAD is typically contingent upon adjudication of an underlying application to extend his or her stay in H–4 status and, in most instances, an underlying petition to extend the stay of the H–1B nonimmigrant worker. In such cases, DHS cannot be reasonably assured that the individual will continue to be eligible to apply for employment authorization without first reviewing the underlying application, petition, or request. DHS thus does not propose to make automatic extensions of employment authorization available to this category, or to other categories in which employment authorization is contingent on adjudication of another application, petition, or request.

DHS welcomes public comment on all aspects of this proposal.

2. Elimination of 90-Day Processing Timeframe and Interim EADs

Second, due to fraud and national security concerns, and in light of technological and process advances with respect to document production, DHS is proposing to eliminate certain existing regulations concerning the processing of Applications for Employment Authorization (Forms I–765). Specifically, DHS would eliminate the provision at 8 CFR 247a.13(d) that currently requires, with certain limited exceptions, the adjudication of Applications for Employment Authorization within 90 days of receipt.[82] DHS would also eliminate the

[80] The Notice of Action that TPS beneficiaries will receive may not necessarily be based on the filing of a Form I–765, but instead on their TPS re-registration application filed on Form I–821, Application for Temporary Protected Status. In such cases, the employment authorization category would not be listed. USCIS intends to revise the Notices of Action issued to TPS beneficiaries to indicate the auto-extension provided by this rule.

[81] DHS is further proposing to specifically identify TPS beneficiaries as eligible for automatic extensions under this proposed rule. *See* proposed 8 CFR 274a.13(d)(1)(iii). This will include TPS beneficiaries who have existing EADs issued originally under 8 CFR 274a.12(a)(12) or (c)(19).

[82] Excepted from the 90-day processing requirement are the following classes of aliens: Applicants for asylum described in 8 CFR

provision in that regulation that requires the issuance of interim EADs with validity periods of up to 240 days when such an application is not adjudicated within the 90-day period. In addition to the automatic extension provisions for renewal applications proposed in this rule, DHS would instead address processing timeframes through operational policy guidance that reinforces the Department's continued commitment to a 90-day processing timeframe and provides recourse to individuals whose case is nearing the 90-day mark, including the ability to contact USCIS to request prioritized processing.

DHS believes that the 90-day timeframe and interim EAD provisions are outdated and no longer reflect the operational realities of the Department, including its adoption of improved processes and technological advances in document production to reduce fraud and address threats to national security. The 90-day timeframe at 8 CFR 274a.13(d), for example, was established more than 20 years ago when Applications for Employment Authorization were adjudicated at local offices of legacy INS and corresponding documents were also produced by such offices. *See* 52 FR 16216, 16228 (May 1, 1987) (setting adjudication timeframe at 60 days); *see also* 56 FR 41767, 41787 (Aug. 23. 1991) (increasing adjudication timeframe to 90 days). At the time, EADs (then known as Forms I–688B) were produced by local offices that were equipped with stand-alone machines for such purposes. While decentralized card production resulted in immediate and customized customer service for the public, the cards that were produced did not contain state-of-the art security features and were thus susceptible to tampering and counterfeiting. Such deficiencies became increasingly apparent as the United States faced new and increasing threats to national security and public safety that did not exist when the current regulations were promulgated.

In response to these concerns, the former INS and DHS made considerable efforts to upgrade application procedures and leverage technology to enhance integrity, security, and efficiency in all aspects of the immigration process. For example, to combat the document security problem discussed above, the former INS took steps to centralize application filing locations and card production. By 2006, DHS fully implemented these centralization efforts.[83] DHS now requires that Applications for Employment Authorization be filed at remote processing centers.[84] Some classes of employment-eligible aliens are also required to appear at an Application Support Center (ASC) for collection of their biometric information before DHS can complete adjudication of such applications.[85] If DHS ultimately approves such an application, a card order is sent to a card production facility. The card facility produces a tamper-proof card reflecting the specific employment authorized category and mails that card to the applicant.

While the 90-day timeframe and interim EAD provisions at 8 CFR 274a.13(d) may have made sense when applications were processed and cards were produced at the local level, DHS believes that the intervening changes discussed above now require that such provisions be eliminated. DHS, for example, may be unable to meet the 90-day processing timeframe for applicants who are required to submit biometric information at an ASC but who do not provide such information in a timely manner. DHS may also be unable to meet the 90-day timeframe in a given case where security checks remain pending. Given the fraud and national security concerns discussed above, DHS believes it is not prudent to issue interim EADs in such cases. Moreover, the 90-day timeframe constrains DHS' ability to maintain necessary levels of security when application receipt volumes suddenly increase, as well as the ability to implement security improvements if those improvements may further extend the adjudication of applications in certain cases.

Given these considerations, DHS believes that the 90-day timeframe and interim EAD provisions at 8 CFR 274a.13(d) do not provide sufficient flexibility to reconcile with DHS' core missions to enforce and administer our immigration laws and enhance security. Moreover, DHS notes that under current processing timelines, elimination of these provisions would not have any noticeable effect on the vast majority of applicants.[86] DHS remains committed to the current 90-day processing goal, as well as the current policy of prioritizing application processing where applications are pending for at least 75 days. Consistent with current protocols, applicants whose initial or renewal EAD applications have been pending for 75 days or more may continue calling the National Customer Service Center (NCSC) to request priority processing. In practice, as noted above, these policies result in the adjudication of the vast majority of Applications for Employment Authorization within 90 days of filing. DHS anticipates that it will be unable to adjudicate applications within 90 days in only a small percentage of cases, including those involving delays in security processes.

DHS welcomes public comment on all aspects of this proposal, including alternate suggestions for regulatory amendments to the 90-day processing timeframe and interim employment authorization provisions not already discussed that address customer service, national security, and identity verification considerations that USCIS must fulfill as part of its core mission within DHS.

3. Conforming and Technical Amendments

Finally, DHS proposes to make conforming and technical amendments to its regulations in light of the changes described above. The proposed rule first

274a.12(c)(8); certain H–4 spouses of H–1B nonimmigrants; and applicants for adjustment applying under the Haitian Refugee Immigrant Fairness Act of 1998 (HRIFA). Application processing for asylum applicants are governed by current 8 CFR 274a.13(a)(2) and do not include provisions for interim employment authorization documentation. The provision at 8 CFR 274a.13(d) also exempts adjustment applicants described in 8 CFR 245.13(j). In 2011, 8 CFR 245.13 was removed from DHS regulations. *See* 76 FR 53764, 53793 (Aug. 29, 2011). However, the cross-reference to 8 CFR 245.13(j) in current 8 CFR 274a.13(d) was inadvertently retained. Prior to its removal in 2011, 8 CFR 245.13 provided for adjustment of status for certain nationals of Nicaragua and Cuba pursuant to section 202 of the Nicaragua Adjustment and Central American Relief Act, Public Law 105–100, 111 Stat. 2160, 2193 (Nov. 19, 1997). The application period for benefits under this provision ended April 1, 2000. USCIS removed 8 CFR 245.13 from DHS regulations in 2011 as it no longer has pending applications pursuant to this provision. *See* 76 FR at 53793.

[83] *See* USCIS Memorandum from Michael Aytes, ''Elimination of Form I–688B, Employment Authorization Card'' (Aug. 18, 2006). In January 1997, the former INS began issuing new, more secure EADs from a centralized location and gave it a new form number (I–766) to distinguish it from the less secure, locally produced EADs (Forms I–688B). DHS stopped issuing Form I–688B EADs from local offices altogether in 2006.

[84] Asylum applicants, however, make their request for employment authorization directly on the Application for Asylum and Withholding of Removal, Form I–589, and need not file a separate Application for Employment Authorization (Form I–765) following a grant of asylum. If they are requesting employment authorization based on their pending asylum application, they must file a separate request for employment authorization on Form I–765.

[85] For example, many individuals who concurrently file their Application for Employment Authorization with another application or petition, such as TPS applicants, must appear at an ASC for submission of their biometric information before DHS completes adjudication of their applications.

[86] *See* USCIS current processing times at *https://egov.uscis.gov/cris/processTimesDisplayInit.do.*

would amend DHS regulations concerning individuals applying for adjustment of status under the Haitian Refugee Immigrant Fairness Act of 1998 (HRIFA), Public Law 105–277, div. A, title IX, sections 901–904, 112 Stat. 2681–538 to 542 (codified as amended at 8 U.S.C. 1255 note (2006)). These regulations currently provide that interim employment authorization is accorded upon expiration of a 180-day waiting period or 90 days from the date the Application for Employment Authorization is filed, whichever comes later. *See* 8 CFR 245.15(n)(2). Consistent with the proposed changes to 8 CFR 274a.13(d) discussed above, DHS is proposing to delete from the regulatory text at 8 CFR 245.15(n)(2) both: (1) The cross-reference to 8 CFR 274a.13(d), and (2) the term ''interim'' modifying employment authorization. *See* proposed 8 CFR 245.15(n)(2). Pursuant to these changes, DHS would be required to issue an EAD, rather than an interim EAD, within the timeframes currently provided in 8 CFR 245.15(n)(2). DHS also proposes making technical amendments to 8 CFR 245.15(n)(2) by replacing specific references to the ''Director of the Nebraska Service Center'' and ''Service'' with broader references to USCIS and DHS. DHS believes these changes would not have wide impact, as the Department receives very few applications for adjustment of status based on HRIFA.[87] Additionally, HRIFA-based applicants for adjustment of status would be eligible for the automatic 180-day extension of expiring EADs proposed in this rule, provided they file a timely request for renewal.

Similarly, the proposed rule would amend DHS regulations at 8 CFR 214.2(h)(9)(iv) concerning H–4 nonimmigrant spouses of H–1B nonimmigrant workers. This regulation currently allows H–4 spouses to file their applications for employment authorization concurrently with their underlying requests for nonimmigrant status, but tolls the 90-day processing timeframe at 8 CFR 274a.13(d) until the underlying benefit requests are approved. *See* 8 CFR 214.2(h)(9)(iv); *see also* 80 FR 10284, 10297 (Feb. 25, 2015). Consistent with the changes described above, DHS is proposing to delete the sentence in 8 CFR 214.2(h)(9)(iv) containing the cross-reference to 8 CFR 274a.13(d), regarding the applicability of the 90-day period to the processing of EADs for certain H–4 dependent spouses. *See* proposed 8 CFR 214.2(h)(9)(iv). DHS is also proposing to move the regulatory text authorizing the concurrent filing of applications for employment authorization to 8 CFR 274a.13(a), and to apply that language to any class of employment-eligible aliens to the extent permitted by the application form instructions. This amendment to the regulations would codify current DHS policy applicable to several classes of foreign nationals, and provide clear authority to expand it to additional classes of foreign nationals.

This rule also proposes a technical amendment that would merge the current text at paragraph (a) of 8 CFR 274a.13, with similar, repetitive text at paragraph (a)(1) of that section. The text at paragraph (a) currently describes the application requirement with respect to individuals authorized for employment incident to status listed in 8 CFR 274a.12(a)(3), (4), (6) through (8), (10) through (15), and (20). Text describing the application requirement is essentially repeated at paragraph (a)(1), but with respect to aliens listed in 8 CFR 274a.12(c) (except asylum applicants at 8 CFR 274a.12(c)(8), which are covered by 8 CFR 274a.13(a)(2)). DHS has determined that listing the application requirements at both 8 CFR 274a.13(a) and (a)(1) is unnecessarily repetitive and potentially confusing. DHS proposes to describe the application requirement once in the introductory text at 8 CFR 274a.13(a), which would apply to classes of individuals described at both 8 CFR 274a.12(a) and (c). The proposed text also would clarify that the same application requirement would apply to both individuals requesting only an EAD[88] and those requesting both employment authorization and an EAD.[89] Additionally, the proposed text would identify the employment authorization document that USCIS will issue based on a grant of such application, which is Form I–766.

V. Statutory and Regulatory Requirements.

A. Executive Orders 12866 and 13563 (Regulatory Planning and Review)

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available alternatives, and if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a ''significant regulatory action'' that is economically significant, under section 3(f)(1) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget.

DHS is proposing to amend its regulations relating to certain employment-based immigrant and nonimmigrant visa programs. The proposed amendments interpret existing law as well as propose regulatory changes in order to provide various benefits to participants in those programs, including: Improved processes for U.S. employers seeking to sponsor and retain immigrant and nonimmigrant workers, greater stability and job flexibility for such workers, and increased transparency and consistency in the application of agency policy related to affected classifications. Many of these changes are primarily aimed at improving the ability of U.S. employers to retain high-skilled workers who are beneficiaries of approved employment-based immigrant visa petitions and are waiting to become lawful permanent residents (LPRs), while increasing the ability of such workers to seek promotions, accept lateral positions with current employers, change employers, or pursue other employment options.

First, DHS proposes to amend its regulations consistent with certain worker portability and other provisions in the American Competitiveness in the Twenty-first Century Act of 2000 (AC21), as amended, as well as the American Competitiveness and Workforce Improvement Act of 1998 (ACWIA). These proposed amendments would clarify and improve longstanding agency policies and procedures, previously articulated in agency memoranda and precedent decisions. These proposed amendments would also implement sections of AC21 and ACWIA relating to certain foreign workers, specifically sections on workers who have been sponsored for LPR status by their employers. In so doing, the proposed rule would provide a primary repository of governing rules for the regulated community and enhance consistency among agency adjudicators. In addition, the proposed rule would clarify several interpretive questions raised by AC21 and ACWIA.

[87] See 2013 Yearbook of Immigration Statistics at p 18 (available at *http://www.dhs.gov/publication/yearbook-2013*) showing a decrease in HRIFA adjustments from 2,451 in 2004 to 62 in 2013. During fiscal year 2015, USCIS adjudicated 8 HRIFA adjustment applications.

[88] Individuals who would file an application for an EAD alone are those aliens in 8 CFR 274a.12(a) who are authorized for employment incident to status.

[89] Individuals who would file an application for both employment authorization and an EAD are those aliens listed in 8 CFR 274a.12(c).

Second, and consistent with existing DHS authorities and the goals of AC21 and ACWIA, DHS proposes to amend its regulations governing certain employment-based immigrant and nonimmigrant visa programs to provide additional stability and flexibility to employers and workers in those programs. The proposed rule would, among other things: Improve portability for certain beneficiaries of approved employment-based immigrant visa petitions by limiting the grounds for automatic revocation of petition approval; enhance job portability for such beneficiaries by improving their ability to retain their priority dates for use with subsequently approved employment-based immigrant visa petitions; establish or extend grace periods for certain high-skilled nonimmigrant workers so that they may more easily maintain their nonimmigrant status when changing employment opportunities or preparing for departure; and provide additional stability and flexibility to certain high-skilled workers by allowing those who are working in the United States in certain nonimmigrant statuses, are the beneficiaries of approved employment-based immigrant visa petitions, are subject to immigrant visa backlogs, and demonstrate compelling circumstances to effectively apply for independent employment authorization for a limited period. These and other proposed changes would provide much needed flexibility to the beneficiaries of employment-based immigrant visa petitions, as well as the U.S. employers who employ and sponsor them for permanent residence. In addition, these changes will provide greater stability and predictability for U.S. employers and avoid potential disruptions to ongoing business operations in the United States.

Finally, consistent with providing additional certainty and stability to certain employment-authorized individuals and their U.S. employers, DHS is also proposing changes to its regulations governing the processing of applications for employment authorization to minimize the risk of any gaps in such authorization. These changes would provide for the automatic extension of the validity of certain Employment Authorization Documents (EADs or Form I–766) for an interim period upon the timely filing of an application to renew such documents. At the same time, in light of national security and fraud concerns, DHS is proposing to remove regulations that provide a 90-day processing timeline for EAD applications and that require the issuance of interim EADs if processing extends beyond the 90-day mark.

Table 1, below, provides a more detailed summary of the proposed provisions and their impacts.

TABLE 1—SUMMARY OF PROVISIONS AND IMPACTS

Provisions	Purpose	Expected impact of proposed rule
Priority Date	Clarifies priority date when a labor certification is not required by INA 203(b).	Quantitative: • None. Qualitative: • Removes ambiguity and sets consistent priority dates for affected petitioners and beneficiaries.
Priority Date Retention	Revises regulation so that the priority date attached to an employment-based immigrant visa petition is only lost when: USCIS revokes approval of the petition for error, fraud or willful misrepresentation of a material fact, or upon revocation or invalidation of the labor certification accompanying the petition.	Quantitative: • None. Qualitative: • Results in administrative efficiency and predictability by explicitly listing when priority dates are lost as these revoked petition approvals cannot be used as a basis for an immigrant visa.
Employment-Based Immigrant Visa Petition Portability Under 204(j).	Incorporates statutory portability provisions into regulation.	Quantitative: Petitioners— • Opportunity costs to petitioners for 1 year range from $128,126 to $4,678,956. DHS/USCIS— • Neutral because the proposed supplementary form to the application for adjustment of status to permanent residence will formalize the process for USCIS requests for evidence of compliance with section 204(j) porting. Qualitative: Applicants/Petitioners— • Provides stability and job flexibility to certain individuals with approved employment-based immigrant visas; • Clarifies the definition of ''same or similar occupational classifications''; • Allows certain foreign workers to advance and progress in their careers; • Potential increased employee replacement costs for employers. DHS/USCIS— • Administrative efficiency; • Standardized and streamlined process.

TABLE 1—SUMMARY OF PROVISIONS AND IMPACTS—Continued

Provisions	Purpose	Expected impact of proposed rule
Employment Authorization for Certain Nonimmigrants Based on Compelling Circumstances.	Proposes provisions allowing certain nonimmigrant principal beneficiaries, and their dependent spouses and children, to apply for unrestricted employment authorization if the principal beneficiary has an approved EB–1, EB–2, or EB–3 immigrant visa petition while waiting for his/her immigrant visa to become available. Applicants must demonstrate compelling circumstances justifying an independent grant of employment authorization.	Quantitative: Total costs over 10-year period to applicants are: • $553.2 million for undiscounted costs. • $489.5 million at a 3% discounted rate. • $423.2 million at a 7% discounted rate. Qualitative: Applicants— • Provides ability for nonimmigrants who have been sponsored for LPR status to change jobs or employers when compelling circumstances arise; • Incentivizes such skilled nonimmigrant workers contributing to the economy to continue seeking LPR status; • Nonimmigrant principal workers who take advantage of the unrestricted EAD would abandon their current nonimmigrant status and not be able to adjust to LPR status in the United States. Consular processing imposes potentially significant costs, risk and uncertainty for individuals and their families as well. Dependents— • Allows them to enter labor market earlier and can contribute to household income.
90-Day Processing Time for Employment Authorization Applications.	Eliminates regulatory requirement for 90-day adjudication timeframe and issuance of interim-EADs. Proposes an automatic extension of EADs for up to 180 days for certain workers filing renewal requests.	Quantitative: • None. Qualitative: Applicants— • Removing a regulatory timeframe and moving to one governed by processing goals could potentially lead to longer processing times whenever the agency is faced with higher than expected filing volumes. If such a situation were to occur, this could lead to potential delays in work employment start dates for first-time EAD applicants until approval is obtained. However, USCIS believes such scenarios would be rare and mitigated by the auto extension provision for renewal applications which would allow the movement of resources in such situations; • Providing the automatic continuing authorization for up to 180 days for certain renewal applicants could lead to less turnover costs for U.S. employers. DHS/USCIS— • Streamlines the application and card issuance processes; • Enhances the ability to ensure all national security verification checks are completed; • Reduces agency duplication efforts; • Reduces opportunities for fraud and better accommodates increased security measures.
Automatic Revocation With Respect to Approved Employment-Based Immigrant Visa Petitions.	Revises regulations so that a petition may continue to remain valid, despite withdrawal by the employer or termination of the employer's business after 180 days or more of approval.	Quantitative: • None. Qualitative: • Beneficiary retains priority date, has porting ability under INA 204(j), or AC21 sections 104 (c) and (b), and may be eligible for the new unrestricted compelling circumstances EAD.
Period of Admission for Certain Nonimmigrant Classifications.	Nonimmigrants in certain high-skilled, nonimmigrant classifications would be granted a grace period of up to 10 days before and after their validity period and a one-time grace period, upon cessation of employment, of up to 60 days or until the end of their authorized validity period, whichever is shorter.	Quantitative: • None.

TABLE 1—SUMMARY OF PROVISIONS AND IMPACTS—Continued

Provisions	Purpose	Expected impact of proposed rule
		Qualitative: Nonimmigrant Visa Holders— • Assists the beneficiary in getting sufficiently settled such that they are immediately able to begin working upon the start of their petition validity period; • Provides time necessary to wrap up affairs to depart the country; • Would not have to enter into non-status period or take other actions to extend, change, or otherwise maintain lawful status after the period of authorized employment ends in order to wrap up affairs to respond to sudden or unexpected changes related to their employment, or to seek a change of status to different nonimmigrant classification.
Portability of H–1B Status H–1B Licensing Requirements Calculating the H–1B Admission Period Exemptions Due to Lengthy Adjudication Delays Per Country Limitation Exemptions Employer Debarment and H–1B Whistleblower Provisions.	Updates, improves, and clarifies DHS regulations consistent with policy guidance.	Quantitative: • None. Qualitative: • Formalizes existing DHS policy in the regulations, which will give the public access to existing policy in one location.
Exemptions to the H–1B Numerical Cap and Revised Definition of ''Related and Affiliated Nonprofit Entity'' in the ACWIA Fee Context.	Codifies definition of institution of higher education and adds a broader definition of related or affiliated nonprofit entity. Also, revises the definition of related or affiliated nonprofit entity for purposes of the ACWIA fee to conform to the new proposed definition of the same term for H–1B numerical cap exemption.	Quantitative: • None. Qualitative: • Expands the numbers of petitioners that are cap exempt and thus allows greater access by certain employers to H–1B workers.

As required by OMB Circular A–4,[90] Table 2 also presents the prepared accounting statement showing the expenditures associated with the provisions of these regulations. The main benefits of this proposed regulation are to improve processes for U.S. employers seeking to sponsor and retain immigrant and nonimmigrant workers, provide greater stability and job flexibility for such workers, and increase transparency and consistency in the application of agency policy related to affected classifications.

TABLE 2—OMB A–4 ACCOUNTING STATEMENT

[$ millions, 2015]

Category	Primary estimate	Minimum estimate	Maximum estimate	Source citation (RIA, preamble, etc.)
Benefits				
Monetized Benefits	Not estimated	Not estimated	Not estimated	RIA.
Annualized quantified, but unmonetized, benefits.	0	0	0	RIA.
Unquantified Benefits	Improves processes for U.S. employers seeking to sponsor and retain immigrant and nonimmigrant workers, provides greater stability and job flexibility for such workers, and increases transparency and consistency in the application of agency policy related to affected classifications.			RIA.

[90] OMB Circular A–4 is available at *www.whitehouse.gov/sites/default/files/omb/assets/omb/circulars/a004/a-4.pdf.*

TABLE 2—OMB A–4 ACCOUNTING STATEMENT—Continued

[$ millions, 2015]

Category	Primary estimate	Minimum estimate	Maximum estimate	Source citation (RIA, preamble, etc.)
Costs				
Annualized monetized costs for 10 year period starting in 2016 to 2025 (discount rate in parenthesis).	(7%) $62.2	$60.7	$64.9	RIA.
	(3%) $59.7	$57.9	$62.1	RIA.
Annualized quantified, but unmonetized, costs.	N/A	N/A	N/A	RIA.
Qualitative (unquantified) costs	Potential turnover cost due to enhanced job mobility of beneficiaries of non-immigrant and immigrant petitions.			RIA.
Transfers				
Annualized monetized transfers: ''on budget''.	N/A	0	0	RIA.
From whom to whom?	N/A	N/A	N/A	N/A.
Annualized monetized transfers: ''off-budget''.	N/A	0	0	RIA.
From whom to whom?	N/A	N/A	N/A	N/A.
Miscellaneous Analyses/Category	*Effects*			*Source Citation (RIA, preamble, etc.).*
Effects on state, local, and/or tribal governments.	None			RIA.
Effects on small businesses	No direct costs. Indirect effects only.			RIA.
Effects on wages	None			None.
Effects on growth	None			None.

DHS has prepared a full analysis according to Executive Orders 12866 and 13563 which can be found by searching for RIN 1615–AC05 on *regulations.gov*.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121 (March 29, 1996), requires Federal agencies to consider the potential impact of regulations on small entities during the development of their rules. The term ''small entities'' comprises small businesses, not-for-profit organizations that are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. An ''individual'' is not defined by the RFA as a small entity, and costs to an individual from a rule are not considered for RFA purposes. In addition, the courts have held that the RFA requires an agency to perform a regulatory flexibility analysis of small entity impacts only when a rule directly regulates small entities.[91] Consequently, any indirect impacts from a rule to a small entity are not costs for RFA purposes.

The changes proposed by DHS have direct impacts to individual beneficiaries of employment-based nonimmigrant and immigrant visa petitions. As individual beneficiaries of employment-based immigrant visa petitions are not defined as small entities, costs to these individuals are not considered as RFA costs. However, due to the fact that the petitions are filed by a sponsoring employer, this rule has *indirect* effects on employers. The original sponsoring employer that files the petition on behalf of an employee will incur employee turnover related costs as those employees port to the same or a similar occupation with another employer. Therefore, DHS has chosen to examine the indirect impact of this proposed rule on small entities as well. The analysis of the indirect impacts of these proposed changes on small entities follows.

1. Initial Regulatory Flexibility Analysis

Small entities primarily affected by this rule that could incur additional indirect costs are those that file and pay fees for certain immigration benefit petitions, including Form I–140, Immigrant Petition for Alien Worker. DHS conducted a statistically valid sample analysis of these petition types to determine the number of small entities indirectly impacted by this rule. While DHS acknowledges that the changes engendered by these proposed rules would directly impact individuals who are beneficiaries of employment-based immigrant visa petitions, which are not small entities as defined by the RFA, DHS believes that the actions taken by such individuals as a result of these proposals will have immediate indirect impacts on U.S. employers. Employers will be indirectly impacted by employee turnover-related costs as beneficiaries of employment-based immigrant visa petitions take advantage of these proposals. Therefore, DHS is choosing to discuss these indirect impacts in this initial regulatory flexibility analysis to aid the public in commenting on the impact of the proposed requirements.

- In particular, DHS requests information and data to gain a better understanding of the potential impact of this rule on small entities. Specifically, DHS requests information on: The numbers of small entities that have filed immigrant visa petitions for high-skilled workers who are waiting to adjust status, and the potential costs to such small entities associated with employee turnover resulting from employees who port;

[91] A Guide for Government Agencies How to Comply with the Regulatory Flexibility Act, May 2012 page 22. *See* Direct versus indirect impact discussion, *https://www.sba.gov/sites/default/files/advocacy/rfaguide_0512_0.pdf*.

• the potential costs to employers that are small entities associated with employee turnover if a sponsored nonimmigrant worker pursues the option for unrestricted employment authorization based on compelling circumstances; and

• the number of small entities that would qualify for the proposed exemptions of the ACWIA fee when petitioning for H–1B nonimmigrant workers.

a. *A description of the reasons why the action by the agency is being considered.*

The purpose of this action, in part, is to amend regulations affecting certain employment-based immigrant and nonimmigrant classifications in order for DHS regulations to conform to provisions of AC21 and ACWIA. The proposed rule also seeks to permit greater job flexibility, mobility and stability to beneficiaries of employment-based nonimmigrant and immigrant visa petitions, especially when faced with long waits for immigrant visas. In many instances, the need for these individuals' employment has been demonstrated through the labor certification process. In most cases, before an employment-based immigrant visa petition can be approved, the DOL has certified that there are no U.S. workers who are ready, willing and available to fill those positions in the area of intended employment. By increasing flexibility and mobility, the worker is more likely to remain in the United States and help fill the demonstrated need for his or her services.

b. *A succinct statement of the objectives of, and legal basis for, the proposed rule.*

DHS objectives and legal authority for this proposed rule are discussed in the preamble.

c. *A description and, where feasible, an estimate of the number of small entities to which the proposed changes would apply.*

DHS conducted a statistically valid sample analysis of employment-based immigrant visa petitions to determine the maximum potential number of small entities indirectly impacted by this rule when a high-skilled worker who has an approved employment-based immigrant visa petition and a pending adjustment of status application for 180 days or more ports to another employer. DHS utilized a subscription-based online database of U.S. entities, Hoovers Online, as well as two other open-access, free databases of public and private entities, Manta and Cortera, to determine the North American Industry Classification System (NAICS) code, revenue, and employee count for each entity.[92] In order to determine a business' size, DHS first classified each entity by its NAICS code, and then used SBA guidelines to note the requisite revenue or employee count threshold for each entity. Some entities were classified as small based on their annual revenue and some by number of employees.

Using FY 2013 data on actual filings of employment-based immigrant visa petitions, DHS collected internal data for each filing organization. Each entity may make multiple filings. For instance, there were 63,953 employment-based immigrant visa petitions filed, but only 24,912 unique entities that filed petitions. DHS devised a methodology to conduct the small entity analysis based on a representative, random sample of the potentially impacted population. To achieve a 95 percent confidence level and a 5 percent confidence interval on a population of 24,912 entities, DHS used the standard statistical formula to determine that a minimum sample size of 385 entities was necessary.[93] DHS created a sample size 15 percent greater than the 385 minimum necessary in order to increase the likelihood that our matches would meet or exceed the minimum required sample. Of the 443 entities sampled, 344 instances resulted in entities defined as small. Of the 344 small entities, 185 entities were classified as small by revenue or number of employees. The remaining 159 entities were classified as small because information was not found (either no petitioner name was found or no information was found in the databases).

TABLE 1—SUMMARY STATISTICS AND RESULTS OF SMALL ENTITY ANALYSIS OF FORM I–140 PETITIONS

Parameter	Quantity	Proportion of sample (percent)
Population—petitions	63,953	.....
Population—unique entities	24,912	.....
Minimum Required Sample	385	.....
Selected Sample	443	100.0
Entities Classified as "Not Small"		
by revenue	73	16.5
by number of employees	26	5.9
Entities Classified as "Small"		
by revenue	145	32.7
by number of employees	40	9.0
because no petitioner name found	109	24.6
because no information found in databases	50	11.3
Total Number of Small Entities	344	77.7

Source: USCIS analysis.

d. *A description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirement and the types of professional skills.*

The proposed amendments in this rule do not place direct requirements on small entities that petition for workers. However, if the principal beneficiaries of employment-based immigrant visa petitions take advantage of the flexibility provisions proposed herein (including porting to a new sponsoring

[92] The Hoovers Web site can be found at *http://www.hoovers.com/;* The Manta Web site can be found at *http://www.manta.com/;* and the Cortera Web site can be found at *https://www.cortera.com/.*

[93] *See https://www.qualtrics.com/blog/determining-sample-size/.*

employer or pursuing the unrestricted employment authorization in cases involving compelling circumstances), there could be increased turnover costs (employee replacement costs) for U.S. entities sponsoring the employment of those beneficiaries, including costs of petitioning for new employees. While DHS has estimated 29,166 individuals who are eligible to port to a new employer under section 204(j) of the INA, the Department was unable to predict how many will actually do so. As mentioned earlier in the Executive Orders 12866 and 13563 analysis, a range of opportunity costs of time to petitioners who prepare Supplement J ($43.93 for a human resources specialist, $93.69 for an in-house lawyer, or $160.43 for an outsourced lawyer) are anticipated depending on the total numbers of individuals who port. However, DHS is currently unable to determine the numbers of small entities who take on immigrant sponsorship of high-skilled workers who are waiting to adjust status from the original sponsoring employer. The estimates presented also do not represent employee turnover costs to the original sponsoring employer, but only represent paperwork costs. Similarly, DHS is unable to predict the volume of principal beneficiaries of employment-based immigrant visa petitions who will pursue the option for unrestricted employment authorization based on compelling circumstances.

The proposed amendments relating to the H–1B numerical cap exemptions may impact some small entities by allowing them to qualify for exemptions of the ACWIA fee when petitioning for H–1B nonimmigrant workers. As DHS cannot predict the numbers of entities these proposed amendments would impact at this time, the exact impact on small entities is not clear, though some positive impact should be anticipated.

e. *An identification of all relevant Federal rules, to the extent practical, that may duplicate, overlap, or conflict with the proposed rule.*

DHS is unaware of any duplicative, overlapping, or conflicting Federal rules, but invites any comment and information regarding any such rules.

f. *Description of any significant alternatives to the proposed rule that accomplish the stated objectives of applicable statutes and that minimize any significant economic impact of the proposed rule on small entities.*

This rule does not impose direct costs on small entities. Rather, this rule imposes indirect cost on small entities because the proposed provisions would affect beneficiaries of employment-based immigrant visa petitions. If those beneficiaries take actions or steps in line with the proposals that provide greater flexibility and job mobility, then there would be an immediate indirect impact—an externality—to the current sponsoring U.S. employers. DHS considered whether to exclude from the flexibility and job mobility provisions those beneficiaries who were sponsored by U.S. employers that were considered small. However, because DHS so limited the eligibility for unrestricted employment authorization to beneficiaries who are able to demonstrate compelling circumstances, and restricted the portability provisions to those seeking employment within the same or similar occupational classification(s), DHS did not feel it was necessary to pursue this proposal. There are no other alternatives that DHS considered that would further limit or shield small entities from the potential of negative externalities and that would still accomplish the goals of this regulation. To reiterate, the goals of this regulation include providing increased flexibility and normal job progression for beneficiaries of approved employment-based immigrant visa petitions. To incorporate alternatives that would limit such mobility for beneficiaries that are employed or sponsored by small entities would be counterproductive to the goals of this rule. DHS welcomes public comments on significant alternatives to the proposed rule that would minimize significant economic impact to small entities.

C. Unfunded Mandates Reform Act of 1995

The Unfunded Mandate Reform Act of 1995 (UMRA) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of UMRA requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector. The value equivalent of $100,000,000 in 1995 adjusted for inflation to 2014 levels by the Consumer Price Index for All Urban Consumers is $155,000,000.

Although this rule does exceed the $100 million expenditure threshold in the first year of implementation (adjusted for inflation), this rulemaking does not contain such a mandate. Providing job flexibility through unrestricted employment authorization to a limited number of employment-authorized nonimmigrants in compelling circumstances is not a required immigration benefit, nor will use of the proposed flexibilities result in any expenditures by State, local, and tribal governments. The requirements of Title II of UMRA, therefore, do not apply, and DHS has not prepared a statement under UMRA.

D. Small Business Regulatory Enforcement Fairness Act of 1996

This proposed rule is a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will result in an annual effect on the economy of more than $100 million in the first year only. For each subsequent year, the annual effect on the economy will remain under $100 million. As small businesses may be impacted under this proposed regulation, DHS has prepared a Regulatory Flexibility Act (RFA) analysis. The RFA analysis can be found with the analysis prepared under Executive Orders 12866 and 13563 on regulations.gov.

E. Executive Order 13132 (Federalism)

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

F. Executive Order 12988 (Civil Justice Reform)

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

G. Paperwork Reduction Act

Under the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13, Departments are required to submit to the Office of Management and Budget (OMB), for review and approval, any reporting requirements inherent in a rule. This rule proposes revisions to the following information collections:

1. The Application for Employment Authorization, Form I–765; and Form I–765 Work Sheet, Form I–765WS, OMB Control Number 1615–0040. Specifically, USCIS is revising this collection by revising the instructions to Form I–765 to include information for the newly proposed group of applicants (beneficiaries of an approved Form I–140 who are in the United States in E–

3, H–1B, H–1B1, O–1, or L–1 nonimmigrant status, who are the beneficiaries of an approved employment-based immigrant visa petition, who do not have immigrant visas immediately available to them, and who demonstrate compelling circumstances justifying a grant of employment authorization) eligible to apply for employment authorization under proposed section 8 CFR 274a.12(c)(35). Their dependent spouses and children who are present in the United States in nonimmigrant status will also be eligible to obtain employment authorization under proposed section 8 CFR 274a.12(c)(36), provided that the principal alien has been granted employment authorization. USCIS is also proposing to amend Form I–765 to include Yes/No questions requiring these applicants to disclose certain criminal convictions. USCIS estimates an upper-bound average of 155,067 respondents will request employment authorization as a result of the changes proposed by this rule in the first 2 years. This average estimate is derived from a maximum estimate of 257,039 new respondents who may file applications for employment authorization documents in year 1 and a maximum estimate of 53,095 respondents in year 2. USCIS averaged this estimate for new I–765 respondents over a 2-year period of time based on its request seeking a 2-year approval of the form and its instructions from OMB.

2. USCIS is revising the form and its instructions and the estimate of total burden hours has increased due to the addition of this new population of Form I–765 filers, and the increase of burden hours associated with the collection of biometrics from these applicants.

3. The Immigrant Petition for Alien Worker, Form I–140; OMB Control Number 1615–0015. Specifically, USCIS is revising this information collection to remove ambiguity regarding whether information about the principal beneficiary's dependent family members should be entered on Form I–140, by revising the word ''requests'' to ''requires'' for clarification in the form instructions. USCIS is also revising the instructions to remove the terms ''in duplicate'' in the second paragraph under the labor certification section of the instructions because USCIS no longer requires uncertified Employment and Training Administration (ETA) Forms 9089 to be submitted in duplicate. There is no change in the data being captured on the information collection instrument, but there is a change to the estimated annual burden hours as a result of USCIS' revised estimate of the number of respondents for this collection of information.

4. The Petition for Nonimmigrant Worker, Form I–129, OMB Control Number 1615–0009. USCIS is making revisions to Form I–129, specifically the H–1B Data Collection and Filing Fee Exemption Supplement and the accompanying instructions, to correspond with revisions to the regulatory definition of ''related or affiliated nonprofit entities'' for the purposes of determining whether the petitioner is exempt from: (1) Payment of the $750/$1,500 fee associated with the American Competitiveness and Workforce Improvement Act (ACWIA) and (2) the statutory numerical limitation on H–1B visas (also known as the H–1B cap). USCIS does not estimate that new respondents would file petitions for alien workers as a result of the changes proposed by this rule.

5. The Application to Register Permanent Residence or Adjust Status, Form I–485, including new Supplement J, ''Confirmation of Bona Fide Job Offer or Request for Job Portability under INA Section 204(J),'' OMB Control Number 1615–0023. Specifically, USCIS is creating a new Supplement J to Form I–485 to allow the adjustment applicant requesting portability under section 204(j) of the INA, and the U.S. employer offering the applicant a new permanent job offer, to provide formal attestations regarding important aspects of the job offer. Providing such attestations is an essential step to establish eligibility for adjustment of status in any employment-based immigrant visa classification requiring a job offer, regardless of whether the applicant is making a portability request under section 204(j) or is seeking to adjust status based upon the same job that was offered in the underlying immigrant visa petition. Through this new supplement, USCIS will collect required information from U.S. employers offering a new permanent job offer to a specific worker under section 204(j). Moreover, Supplement J will also be used by applicants who are not porting pursuant to section 204(j) to confirm that the original job offer described in the Form I–140 petition is still bona fide and available to the applicant at the time the applicant files Form I–485. Supplement J will replace the current Form I–485 initial evidence requirement that an applicant must submit a letter on the letterhead of the petitioning U.S. employer that confirms that the job offer on which the Form I–140 petition is based is still available to the applicant.

This supplement will also serve as an important anti-fraud measure, and it will allow USCIS to validate employers extending new permanent job offers to individuals under section 204(j). USCIS estimates that approximately 29,166 new respondents would file Supplement J as a result of the changes proposed by the rule.

Additionally, USCIS is revising the instructions to Form I–485 to reflect the implementation of Supplement J. The Form I–485 instructions are also being revised to clarify that eligible applicants will need to file Supplement J to request job portability under section 204(j) of the INA. There is no change to the estimated annual burden hours as a result of this revision as a result of the changes proposed in this rule.

DHS is requesting comments on the proposed revisions to these information collections until February 29, 2016.

In accordance with the PRA, information collection notices are 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. When submitting comments on this information collection, your comments 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 Forms/Collections:

- Application for Employment Authorization Document;
- Form I–765 Work Sheet;
- Immigrant Petition for Alien Worker;

- Petition for Nonimmigrant Worker;
- Application to Register Permanent Residence or Adjust Status.

(3) Agency form number, if any, and the applicable component of the DHS sponsoring the collection: Forms I–765/I–765WS, I–140, I–129 and I–485; USCIS.

(4) Affected public who will be asked or required to respond, as well as a brief abstract:

Form I–765: Primary: Individuals or households: This form was developed for individuals to request employment authorization and evidence of that employment authorization. USCIS is revising this form to add a new class of workers eligible to apply for employment authorization as the beneficiary of a valid immigrant petition for classification under sections 203(b)(1), 203(b)(2) or 203(b)(3) of the INA. Eligible applicants must be physically present in the United States in E–3, H–1B, H–1B1, O–1, or L–1 nonimmigrant status, and must demonstrate that they face compelling circumstances while they wait for their immigrant visas to become available. Dependent spouses and children who are present in the United States in nonimmigrant status are also eligible to apply provided that the principal has been granted employment authorization. Supporting documentation demonstrating eligibility must be filed with the application. The form instructions list examples of relevant documentation.

Form I–140: Primary: Business or other for-profit organizations, as well as not-for profit organizations. USCIS will use the information furnished on this information collection to classify individuals under sections 203(b)(1), 203(b)(2) or 203(b)(3) of the INA.

Form I–129: Primary: Business: This form is used by an employer to petition for workers to come to the U.S. temporarily to perform services, labor, and training or to request extensions of stay or changes in nonimmigrant status for nonimmigrant workers. USCIS is revising Form I–129, specifically the H–1B Data Collection and Filing Fee Exemption Supplement, and the accompanying instructions, to correspond with revisions to the regulatory definition of ''related or affiliated nonprofit entities'' for the purposes of determining whether the petitioner is exempt from: (1) Payment of the $750/$1,500 fee associated with the American Competitiveness and Workforce Improvement Act (ACWIA), and (2) the statutory numerical limitation on H–1B visas (also known as the cap).

Form I–485: Primary: Individuals or households: The information collected is used to determine eligibility to adjust status under section 245 of the INA. The instructions to Form I–485, Application to Register Permanent Residence or Adjust Status, are being revised to reflect the implementation of Form I–485 Supplement J, Confirmation of Bona Fide Job Offer or Request for Job Portability under INA Section 204(j) (Supplement J). Supplement J will be used by individuals applying for adjustment of status to lawful permanent resident on the basis of being the principal beneficiary of an approved Form I–140, Immigrant Petition for Alien Worker. Applicants will use Supplement J to confirm that the job offer described in the Form I–140 petition is still bona fide and available to the applicant at the time the applicant files Form I–485. Supplement J is replacing the current Form I–485 initial evidence requirement that an applicant must submit a letter on the letterhead of the petitioning employer which confirms that the job offer on which the Form I–140 petition is based is still available to the applicant. Applicants will also use Supplement J when requesting job portability pursuant to section 204(j) of the INA. Supplement J will provide a standardized procedure along with specific evidentiary requirements for all job portability requests submitted to USCIS.

(5) An estimate of the total annual number of respondents and the amount of time estimated for an average respondent to respond:

- Form I–765/I–765WS:
  - 4,618,099 responses related to Form I–765 at 3.42 hours per response;
  - 437,070 responses related to Form I–765WS at .50 hours per response;
  - 592,137 responses related to Biometrics services at 1.17 hours; and
  - 4,618,099 responses related to Passport-Style Photographs at .50 hours per response.
- Form I–140:
  - 101,719 respondents at 1.5 hours per response.
- Form I–129:
  - Form I–129—333,891 respondents at 2.34 hours;
  - E–1/E–2 Classification to Form I–129—4,760 respondents at .67 hours;
  - Trade Agreement Supplement to Form I–129—3,057 respondents at .67 hours;
  - H Classification Supplement to Form I–129—255,872 respondents at 2 hours;
  - H–1B and H–1B1 Data Collection and Filing Fee Exemption Supplement—243,965 respondents at 1 hour;
  - L Classification Supplement to Form I–129—37,831 respondents at 1.34 hours;
  - O and P Classifications Supplement to Form I–129—22,710 respondents at 1 hour;
  - Q–1 Classification Supplement to Form I–129—155 respondents at .34 hours; and
  - R–1 Classification Supplement to Form I–129—6,635 respondents at 2.34 hours.
- Form I–485:
  - 697,811 respondents at 6.25 hours per response;
  - 697,811 respondents related to Biometrics services at 1.17 hours.

(6) An estimate of the total annual public burden (in hours) associated with these collections:

- Form I–765/I–765WS: 19,014,283.37 hours.
- Form I–140: 152,579 hours.
- Form I–129: 1,631,234 hours.
- Form I–485: 5,238,957 hours.

(7) An estimate of the annual public burden (monetized) associated with these collections:

- Form I–765/I–765WS: $1,357,721,106
- Form I–140: $42,365,964.
- Form I–129: $73,751,280.
- Form I–485: $239,349,173.

List of Subjects

8 CFR Part 204

Administrative practice and procedure, Adoption and foster care, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 205

Administrative practice and procedure, Immigration.

8 CFR Part 214

Administrative practice and procedure, Aliens, Cultural exchange programs, Employment, Foreign officials, Health professions, Reporting and recordkeeping requirements, Students.

8 CFR Part 245

Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 274a

Administrative practice and procedure, Aliens, Employment, Penalties, Reporting and recordkeeping requirements.

Accordingly, DHS proposes to amend chapter I of title 8 of the Code of Federal Regulations as follows:

PART 204—IMMIGRANT PETITIONS

■ 1. The authority citation for part 204 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1182, 1184, 1186a, 1255, 1324a, 1641; 8 CFR part 2.

■ 2. Section 204.5 is amended by:
■ a. Revising paragraph (d);
■ b. Revising paragraph (e);
■ c. Revising paragraph (n)(3);
■ d. Adding paragraph (p).

The revisions and addition read as follows:

§ 204.5 Petitions for employment-based immigrants.

* * * * *

(d) *Priority date.* The priority date of any petition filed for classification under section 203(b) of the Act which is accompanied by an individual labor certification from the Department of Labor shall be the date the labor certification application was accepted for processing by any office of the Department of Labor. The priority date of any petition filed for a classification under section 203(b) of the Act which does not require a labor certification from the Department of Labor shall be the date the completed, signed petition (including all initial evidence and the correct fee) is properly filed with USCIS. The priority date of any petition filed for classification under section 203(b) of the Act which is accompanied by an application for Schedule A designation shall be the date the completed, signed petition (including all initial evidence and the correct fee) is properly filed with USCIS. The priority date of an alien who filed for classification as a special immigrant under section 203(b)(4) of the Act prior to October 1, 1991, and who is the beneficiary of an approved petition for special immigrant status after October 1, 1991, shall be the date the alien applied for an immigrant visa or adjustment of status.

(e) *Retention of section 203(b)(1), (2), or (3) priority date.* (1) A petition approved on behalf of an alien under sections 203(b)(1), (2), or (3) of the Act accords the alien the priority date of the approved petition for any subsequently filed petition for any classification under sections 203(b)(1), (2), or (3) of the Act for which the alien may qualify. In the event that the alien is the beneficiary of multiple approved petitions under sections 203(b)(1), (2), or (3) of the Act, the alien shall be entitled to the earliest priority date.

(2) The priority date of a petition may not be retained under paragraph (e)(1) of this section if at any time USCIS revokes the approval of the petition because of:

(i) Fraud, or a willful misrepresentation of a material fact;

(ii) Revocation by the Department of Labor of the approved permanent labor certification that accompanied the petition;

(iii) Invalidation by USCIS or the Department of State of the permanent labor certification that accompanied the petition; or

(iv) A determination by USCIS that petition approval was in error.

(3) A denied petition will not establish a priority date.

(4) A priority date is not transferable to another alien.

(5) A petition filed under section 204(a)(1)(F) of the Act for an alien shall remain valid with respect to a new employment offer as determined by USCIS under section 204(j) of the Act and 8 CFR 245.25. An alien will continue to be afforded the priority date of such petition, if the requirements of paragraph (e) of this section are met.

* * * * *

(n) * * *

(3) *Validity of approved petitions.* Unless approval is revoked under section 203(g) or 205 of the Act, an employment-based petition is valid indefinitely.

* * * * *

(p) *Eligibility for employment authorization in compelling circumstances*—(1) *Eligibility of principal alien.* An individual who is the principal beneficiary of an approved immigrant petition for classification under sections 203(b)(1), 203(b)(2) or 203(b)(3) of the Act may be eligible to receive employment authorization, upon application, if:

(i) In the case of an initial request for employment authorization, the individual is in E–3, H–1B, H–1B1, O–1, or L–1 nonimmigrant status at the time the application for employment authorization is filed;

(ii) An immigrant visa is not immediately available to the principal beneficiary based on his or her priority date at the time the application for employment authorization is filed; and

(iii) USCIS determines, as a matter of discretion, that the principal beneficiary demonstrates compelling circumstances that justify the issuance of employment authorization.

(2) *Eligibility of spouses and children.* The family members, as described in section 203(d) of the Act, of a principal beneficiary, who are in nonimmigrant status at the time the principal beneficiary applies for employment authorization under paragraph (p)(1) of this section, are eligible to apply for employment authorization provided that the principal beneficiary has been granted employment authorization under paragraph (p) of this section and such employment authorization has not been terminated or revoked. Such family members may apply for employment authorization concurrently with the principal beneficiary, but cannot be granted employment authorization until the principal beneficiary is so authorized. The validity period of employment authorization granted to family members may not extend beyond the validity period of employment authorization granted to the principal beneficiary.

(3) Subject to paragraph (p)(5) of this section, an alien may be eligible to receive renewal of employment authorization under paragraph (p) of this section, upon application, if:

(i) He or she is the principal beneficiary of an approved immigrant petition for classification under sections 203(b)(1), 203(b)(2) or 203(b)(3) of the Act and either:

(A) USCIS determines, as a matter of discretion, that the principal beneficiary continues to demonstrate compelling circumstances that justify the issuance of employment authorization, or

(B) The difference between the principal beneficiary's priority date and the date upon which immigrant visas are authorized for issuance for the principal beneficiary's preference category and country of chargeability is 1 year or less according to the current Department of State Visa Bulletin; or

(ii) Is a family member, as described under paragraph (p)(2) of this section, of a principal beneficiary satisfying the requirements under paragraph (p)(3)(i) of this section, except that the family member need not be maintaining nonimmigrant status at the time the principal beneficiary applies for renewal employment authorization under paragraph (p) of this section.

(4) *Application for employment authorization.* To request employment authorization, an eligible applicant described in paragraphs (p)(1) or (2) of this section must file an application for employment authorization, or a successor form, with USCIS, in accordance with 8 CFR 274a.13(a) and the form instructions, including evidence of compelling circumstances. Such applicant is subject to the collection of his or her biometric information and the payment of any biometric services fee as provided in the form instructions. Employment authorization under this paragraph may be granted solely in 1-year increments.

(5) *Ineligibility for employment authorization.* An alien is not eligible

for employment authorization, including renewal of employment authorization, under this paragraph in the following circumstances:

(i) The individual has been convicted of any felony or two or more misdemeanors; or

(ii) The principal beneficiary's priority date is more than 1 year beyond the date immigrant visas were authorized for issuance for the principal beneficiary's preference category and country of chargeability according to the Department of State Visa Bulletin current at the time the application for employment authorization, or successor form, is filed.

PART 205—REVOCATION OF APPROVAL OF PETITIONS

■ 3. The authority citation for part 205 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1155, 1182, 1324a, and 1186a.

■ 4. Section 205.1 is amended by revising paragraphs (a)(3)(iii)(C) and (D) to read as follows:

§ 205.1 Automatic revocation.

(a) * * *

(3) * * *

(iii) * * *

(C) In employment-based preference cases, upon written notice of withdrawal filed by the petitioner to any officer of USCIS who is authorized to grant or deny petitions, where the withdrawal is filed less than 180 days after approval of the employment-based preference petition, provided that the revocation of a petition's approval under this clause will not, by itself, impact a beneficiary's ability to retain his or her priority date under 8 CFR 204.5(e). A petition that is withdrawn 180 days or more after approval remains approved unless its approval is revoked on other grounds. If an employment-based petition on behalf of an alien is withdrawn, the job offer of the petitioning employer is rescinded and the alien must obtain a new employment-based preference petition on his or her behalf in order to seek adjustment of status or issuance of an immigrant visa as an employment-based immigrant, unless eligible for adjustment of status under section 204(j) of the Act and in accordance with 8 CFR 245.25.

(D) Upon termination of the petitioning employer's business less than 180 days after petition approval in an employment-based preference case under section 203(b)(1)(B), 203(b)(1)(C), 203(b)(2), or 203(b)(3) of the Act, provided that the revocation of a petition's approval under this clause will not, by itself, impact a beneficiary's ability to retain his or her priority date under 8 CFR 204.5(e). If a petitioning employer's business terminates 180 days or more after approval, the petition remains approved unless its approval is revoked on other grounds. If a petitioning employer's business terminates, the job offer of the petitioning employer is rescinded and the beneficiary must obtain a new employment-based preference petition on his or her behalf in order to seek adjustment of status or issuance of an immigrant visa as an employment-based immigrant, unless eligible for adjustment of status under section 204(j) of the Act and in accordance with 8 CFR 245.25.

* * * * *

PART 214—NONIMMIGRANT CLASSES

■ 5. The authority citation for part 214 continues to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282, 1301–1305 and 1372; sec. 643, Pub. L. 104–208, 110 Stat. 3009–708; Pub. L. 105–277, 112 Stat. 2681–641; Pub. L. 106–313, 114 Stat. 1251–1255; Pub. L. 106–386, 114 Stat. 1477–1480; section 141 of the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands, and with the Government of Palau, 48 U.S.C. 1901 note, and 1931 note, respectively; 48 U.S.C. 1806; 8 CFR part 2.

■ 6. Section 214.1 is amended by adding a new paragraph (l) to read as follows:

§ 214.1 Requirements for admission, extension, and maintenance of status.

* * * * *

(l) *Period of stay.* (1) An alien admissible in E–1, E–2, E–3, H–1B, L–1, or TN classification and his or her dependents may be admitted to the United States for the validity period of the petition, or for a validity period otherwise authorized for the E–1, E–2, E–3, and TN classifications, plus an additional period of up to 10 days before the validity period begins and a 10-day period following the expiration of the validity period to prepare for departure from the United States or to seek an extension or change of status based on a subsequent offer of employment. Unless authorized under 8 CFR 274a.12, the alien may not work except during the validity period.

(2) An alien admitted or otherwise provided status in E–1, E–2, E–3, H–1B, H–1B1, L–1, or TN classification and his or her dependents shall not be considered to have failed to maintain nonimmigrant status solely on the basis of the cessation of the employment on which the alien's classification was based for a one-time period during any authorized validity period. Such one-time period shall last up to 60 days or until the end of the authorized validity period, whichever is shorter.

(3) An alien in any authorized period described in paragraph (l) of this section may apply for and be granted an extension of stay under paragraph (c)(4) of this section or change of status under 8 CFR 248.1, if otherwise eligible. DHS may eliminate or shorten the 60-day period described in paragraph (l)(2) of this section as a matter of discretion and, unless otherwise authorized under 8 CFR 274a.12, the alien may not work during such period.

■ 7. Section 214.2 is amended by:

■ a. Adding new paragraphs (h)(2)(i)(H), (h)(8)(ii)(F), (h)(13)(iii)(C) through (E) and (h)(20);

■ b. Revising paragraphs (h)(4)(v)(C), (h)(13)(i)(A), and (h)(19)(iii)(B); and

■ c. Removing the fifth sentence from paragraph (h)(9)(iv).

The revisions and additions read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(h) * * *

(2) * * *

(i) * * *

(H) *H–1B portability.* An eligible H–1B nonimmigrant is authorized to start concurrent or new employment under section 214(n) of the Act upon the filing, in accordance with 8 CFR 103.2(a), of a non-frivolous H–1B petition on behalf of such alien, or as of the requested start date, whichever is later.

(*1*) *Eligible H–1B nonimmigrant.* For H–1B portability purposes, an eligible H–1B nonimmigrant is defined as an alien:

(*i*) Who has been lawfully admitted into the United States;

(*ii*) On whose behalf a non-frivolous H–1B petition for new employment has been filed, including a petition for new employment with the same employer, with a request to amend or extend the H–1B nonimmigrant's stay, before the H–1B nonimmigrant's period of stay authorized by the Secretary of Homeland Security expires; and

(*iii*) Who has not been employed without authorization in the United States from the time of last admission through the filing of the petition for new employment.

(*2*) *Length of employment.* Employment authorized under paragraph (h)(2)(i)(H) of this section automatically ceases upon the adjudication of the H–1B petition described in paragraph (h)(2)(i)(H)(1)(*ii*) of this section.

(*3*) *Successive H–1B portability petitions.* (*i*) An alien maintaining authorization for employment under paragraph (h)(2)(i)(H) of this section, whose status, as indicated on the Arrival-Departure Record (Form I–94), has expired, shall be considered to be in a period of stay authorized by the Secretary of Homeland Security for purposes of paragraph (h)(2)(i)(H)(ii) of this section. If otherwise eligible under paragraph (h)(2)(i)(H) of this section, such alien may begin working in a subsequent position upon the filing of another non-frivolous H–1B petition or from the requested start date, whichever is later, notwithstanding that the previous H–1B petition upon which employment is authorized under paragraph (h)(2)(i)(H) of this section remains pending and regardless of whether the validity period of an approved H–1B petition filed on the alien's behalf expired during such pendency.

(*ii*) A request to amend the petition or for an extension of stay in any successive H–1B portability petition cannot be approved if a request to amend the petition or for an extension of stay in any preceding H–1B portability petition in the succession is denied, unless the beneficiary's previously approved period of H–1B status remains valid.

(*iii*) Denial of a successive portability petition does not affect the ability of the H–1B beneficiary to continue or resume working in accordance with the terms of an H–1B petition previously approved on behalf of the beneficiary if that petition approval remains valid and the beneficiary has maintained H–1B status or been in a period of authorized stay and has not been employed in the United States without authorization.

* * * * *

(4) * * *

(v) * * *

(C) *Duties without licensure.* (*1*) In certain occupations which generally require licensure, a State may allow an individual without licensure to fully practice the occupation under the supervision of licensed senior or supervisory personnel in that occupation. In such cases, USCIS shall examine the nature of the duties and the level at which they are performed, as well as evidence provided by the petitioner as to the identity, physical location, and credentials of the individual(s) who will supervise the alien. If the facts demonstrate that the alien under supervision will fully perform the duties of the occupation, H classification may be granted.

(*2*) An H–1B petition filed on behalf of an alien who does not have a valid State or local license, where a license is otherwise required to fully perform the duties in that occupation, may be approved for a period of up to 1 year if:

(*i*) The license would otherwise be issued provided the alien was in possession of a valid social security number or was authorized for employment in the United States, and

(*ii*) The petitioner demonstrates, through evidence from the State or local licensing authority, that the only obstacle to the issuance of licensure is the lack of a social security number, a lack of employment authorization, or both. The petitioner must demonstrate that the alien is fully qualified to receive the State or local license in all other respects, meaning that all educational, training, experience, and other requirements have been met. The alien must have filed an application for the license in accordance with applicable State or local rules and/or procedures, provided that State or local rules and/or procedures do not prohibit the alien from filing the license application without provision of a social security number or proof of employment authorization.

(*3*) An H–1B petition on behalf of an alien who has been previously accorded H–1B classification under paragraph (h)(4)(v)(C)(*2*) of this section may not be approved unless the petitioner demonstrates that the alien has obtained the required license, is seeking to employ the alien in a position requiring a different license, or the alien will be employed in that occupation in a different location which does not require a state or local license to fully perform the duties of the occupation.

* * * * *

(8) * * *

(ii) * * *

(F) *Cap-exemptions under sections 214(g)(5)(A) and (B) of the Act.* An alien is not subject to the numerical limitations identified in section 214(g)(1)(A) of the Act if the alien qualifies for an exemption under section 214(g)(5) of the Act. For purposes of section 214(g)(5)(A) and (B) of the Act:

(*1*) ''Institution of higher education'' has the same definition as described at section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)).

(*2*) A nonprofit entity shall be considered to be related to or affiliated with an institution of higher education if:

(*i*) The nonprofit entity is connected to or associated with an institution of higher education through shared ownership or control by the same board or federation;

(*ii*) The nonprofit entity is operated by an institution of higher education;

(*iii*) The nonprofit entity is attached to an institution of higher education as a member, branch, cooperative, or subsidiary; or

(*iv*) The nonprofit entity has, absent shared ownership or control, entered into a formal written affiliation agreement with an institution of higher education that establishes an active working relationship between the nonprofit entity and the institution of higher education for the purposes of research and/or education, and a primary purpose of the nonprofit entity is to directly contribute to the research or education mission of the institution of higher education.

(*3*) An entity is considered a ''nonprofit entity'' if it meets the definition described at paragraph (h)(19)(iv) of this section. ''Nonprofit research organization'' and ''governmental research organization'' have the same definitions as described at paragraph (h)(19)(iii)(C) of this section.

(*4*) An H–1B beneficiary who is not directly employed by a qualifying institution, organization or entity identified in sections 214(g)(5)(A) or (B) of the Act shall qualify for an exemption under such section if the H–1B beneficiary will spend the majority of his or her work time performing job duties at a qualifying institution, organization or entity and those job duties directly and predominately further the essential purpose, mission, objectives or functions of the qualifying institution, organization or entity, namely, either higher education, nonprofit research or government research. The burden is on the H–1B petitioner to establish that there is a nexus between the duties to be performed by the H–1B beneficiary and the essential purpose, mission, objectives or functions of the qualifying institution, organization or entity.

(*5*) If cap-exempt employment ceases, and if the alien is not the beneficiary of a new cap-exempt petition, then the alien will be subject to the cap if not previously counted within the 6-year period of authorized admission to which the cap-exempt employment applied. If cap-exempt employment converts to cap-subject employment subject to the numerical limitations in section 214(g)(1)(A) of the Act, USCIS may revoke the petition authorizing such employment consistent with paragraph (h)(11)(iii) *of this section.*

(*6*) Concurrent H–1B employment in a cap-subject position of an alien that qualifies for an exemption under section 214(g)(5)(A) or (B) of the Act shall not subject the alien to the numerical limitations in section 214(g)(1)(A) of the

Act. When petitioning for concurrent cap-subject H–1B employment, the petitioner must demonstrate that the H–1B beneficiary is employed in valid H–1B status under a cap exemption under section 214(g)(5)(A) or (B) of the Act, the beneficiary's employment with the cap exempt employer is expected to continue after the new cap-subject petition is approved, and the beneficiary can reasonably and concurrently perform the work described in each employer's respective positions.

(*i*) Validity of a petition for concurrent cap-subject H–1B employment approved under paragraph (h)(8)(ii)(F)(*6*) of this section cannot extend beyond the period of validity specified for the cap-exempt H–1B employment.

(*ii*) If H–1B employment subject to a cap exemption under section 214(g)(5)(A) or (B) of the Act is terminated by a petitioner, or otherwise ends before the end of the validity period listed on the approved petition filed on the alien's behalf, the alien who is concurrently employed in a cap-subject position becomes subject to the numerical limitations in section 214(g)(1)(A) of the Act, unless the alien was previously counted with respect to the 6-year period of authorized H–1B admission to which the petition applies or another exemption applies. If such an alien becomes subject to the numerical limitations in section 214(g)(1)(A) of the Act, USCIS may revoke the cap-subject petition described in paragraph (h)(8)(ii)(F)(*6*) of this section consistent with paragraph (h)(11)(iii) of this section.

* * * * *

(13) * * *

(i) * * *

(A) Except as set forth in 8 CFR 214.1(l) with respect to H–1B beneficiaries and their dependents and paragraph (h)(5)(viii)(B) of this section with respect to H–2A beneficiaries, a beneficiary shall be admitted to the United States for the validity period of the petition, plus a period of up to 10 days before the validity period begins and 10 days after the validity period ends. The beneficiary may not work except during the validity period of the petition.

* * * * *

(iii) * * *

(C) *Calculating the maximum H–1B Admission Period.* Time spent physically outside the United States exceeding 24 hours by an alien during the validity of an H–1B petition that was approved on the alien's behalf shall not be considered for purposes of calculating the alien's total period of authorized admission under section 214(g)(4) of the Act, regardless of whether such time is meaningfully interruptive of the alien's stay in H–1B status and the reason for the alien's absence. Accordingly, such time may be recaptured in a subsequent H–1B petition on behalf of the alien, subject to the maximum period of authorized H–1B admission described in section 214(g)(4) of the Act.

(*1*) It is the H–1B petitioner's burden to request and demonstrate the specific amount of time for recapture on behalf of the beneficiary. The beneficiary may provide appropriate evidence, such as copies of passport stamps, Arrival-Departure Records (Form I–94), and/or airline tickets, together with a chart, indicating the dates spent outside of the United States, and referencing the relevant independent documentary evidence, when seeking to recapture the alien's time spent outside the United States. Based on the evidence provided, USCIS may grant all, part, or none of the recapture period requested.

(*2*) If the beneficiary was previously counted toward the H–1B numerical cap under section 214(g)(1) of the Act with respect to the 6-year maximum period of H–1B admission from which recapture is sought, the H–1B petition seeking to recapture a period of stay as an H–1B nonimmigrant will not subject the beneficiary to the H–1B numerical cap, notwithstanding whether the alien has been physically outside the United States for 1 year or more and would be otherwise eligible for a new period of admission under such section of the Act. An H–1B petitioner may either seek such recapture on behalf of the alien or, consistent with paragraph (h)(13)(iii) of this section, seek a new period of admission on behalf of the alien under section 214(g)(1) of the Act.

(D) *Lengthy adjudication delay exemption from 214(g)(4) of the Act.* (*1*) An alien who is in H–1B status or has previously held H–1B status is eligible for H–1B status beyond the 6-year limitation under section 214(g)(4) of the Act, if, prior to the 6-year limitation being reached, at least 365 days have elapsed since:

(*i*) The filing of a labor certification with the Department of Labor on the alien's behalf, if such certification is required for the alien to obtain status under section 203(b) of the Act; or

(*ii*) The filing of an immigrant visa petition with USCIS on the alien's behalf to accord classification under section 203(b) of the Act.

(*2*) H–1B approvals under paragraph (h)(13)(iii)(D) of this section may be granted in up to 1-year increments until either the approved permanent labor certification expires or a final decision has been made to:

(*i*) Deny the application for permanent labor certification, or, if approved, to revoke or invalidate such approval;

(*ii*) Deny the immigrant visa petition, or, if approved, revoke such approval;

(*iii*) Deny or approve the alien's application for an immigrant visa or application to adjust status to lawful permanent residence; or

(*iv*) Administratively or otherwise close the application for permanent labor certification, immigrant visa petition, or application to adjust status.

(*3*) *No final decision while appeal available or pending.* A decision to deny or revoke an application for labor certification, or to deny or revoke the approval of an immigrant visa petition, will not be considered final under paragraphs (h)(13)(iii)(D)(*2*)(*i*) or (*ii*) of this section during the period authorized for filing an appeal of the decision, or while an appeal is pending.

(*4*) *Substitution of beneficiaries.* An alien who has been replaced by another alien, on or before July 16, 2007, as the beneficiary of an approved permanent labor certification may not rely on that permanent labor certification to establish eligibility for H–1B status based on this lengthy adjudication delay exemption. Except for a substitution of a beneficiary that occurred on or before July 16, 2007, an alien establishing eligibility for this lengthy adjudication delay exemption based on a pending or approved labor certification must be the named beneficiary listed on the permanent labor certification.

(*5*) *Advance filing.* A petitioner may file an H–1B petition seeking a lengthy adjudication delay exemption under paragraph (h)(13)(iii)(D) of this section within 6 months of the requested H–1B start date. The petition may be filed before 365 days have elapsed since the labor certification application or immigrant visa petition was filed with the Department of Labor or USCIS, respectively, provided that the application for labor certification or immigrant visa petition must have been filed at least 365 days prior to the last day of the alien's authorized 6-year period of H–1B admission under section 214(g)(4) of the Act. Such authorized 6-year period of H–1B status includes any prior or concurrent request to recapture unused H–1B, L–1A, or L–1B time spent outside of the United States. The petitioner may request any time remaining to the beneficiary under the maximum period of admission described at section 214(g)(4) of the Act along with the exemption request, but in no case may the approved H–1B period

of validity exceed the limits specified by paragraph (h)(9)(iii) of this section.

(*6*) *Petitioners seeking exemption.* The H–1B petitioner need not be the employer that filed the application for labor certification or immigrant visa petition that is used to qualify for this exemption. Separate requests for lengthy adjudication delay exemptions under paragraph (h)(13)(iii)(D) of this section may be based on separate, eligible labor certification applications or immigrant visa petitions on behalf of the same alien.

(*7*) *Subsequent exemption approvals after the 7th year.* Each exemption granted under paragraph (h)(13)(iii)(D) of this section affords the alien a new date at which the alien's maximum period of admission expires. A petition for any subsequent extension under paragraph (h)(13)(iii)(D) of this section must include evidence that a qualifying labor certification or immigrant visa petition was filed at least 365 days prior to the last day of the alien's authorized period of H–1B admission. Such labor certification or immigrant visa petition need not be the same as that used to qualify for the initial exemption under paragraph (h)(13)(iii)(D) of this section.

(*8*) *Aggregation of time not permitted.* A petitioner may not aggregate the number of days that have elapsed since the filing of one labor certification or immigrant visa petition with the number of days that have elapsed since the filing of another such application or petition to meet the 365-day requirement.

(*9*) *Exemption eligibility.* Only a principal beneficiary of a non-frivolous labor certification application or immigrant visa petition filed on his or her behalf may be eligible under paragraph (h)(13)(iii)(D) of this section for an exemption to the maximum period of admission under section 214(g)(4) of the Act.

(*10*) *Limits on future exemptions from the lengthy adjudication delay.* An immigrant visa petition under section 203(b) of the Act cannot support a request for the lengthy adjudication delay exemption under paragraph (h)(13)(iii)(D) of this section if the alien fails to file an adjustment of status application or make an application for an immigrant visa within 1 year of an immigrant visa becoming immediately available. If the accrual of such 1-year period is interrupted by the unavailability of an immigrant visa, a new 1-year period shall be afforded when an immigrant visa again becomes immediately available. USCIS may excuse a failure to file in its discretion if the alien establishes that the failure to apply was due to circumstances beyond his or her control. The limitations described in this paragraph apply to any approved immigrant visa petition under section 203(b) of the Act, including petitions withdrawn by the petitioner or those filed by a petitioner whose business terminates 180 days after approval.

(E) *Per-country limitation exemption from 214(g)(4) of the Act.* An alien who currently maintains or previously held H–1B status, who is the beneficiary of an approved immigrant visa petition for classification under sections 203(b)(1), (2), or (3) of the Act, and who is eligible to be granted that immigrant status but for application of the per country limitation, is eligible for H–1B status beyond the 6-year limitation under 214(g)(4) of the Act. The petitioner must demonstrate such visa unavailability as of the date the H–1B petition is filed with USCIS and the unavailability must exist at time of the petition's adjudication.

(*1*) *Validity periods.* USCIS may grant validity periods of petitions approved under this paragraph in increments of up to 3 years for as long as the alien remains eligible for this exemption.

(*2*) H–1B approvals under (h)(13)(iii)(E) of this section may be granted until a final decision has been made to:

(*i*) Revoke the approval of the immigrant visa petition; or

(*ii*) Approve or deny the alien's application for an immigrant visa or application to adjust status to lawful permanent residence.

(*3*) *Current H–1B status not required.* An alien who is not in H–1B status at the time the H–1B petition on his or her behalf is filed, including an alien who is not in the United States, may seek an exemption of the 6-year limitation under 214(g)(4) of the Act under this clause, if otherwise eligible.

(*4*) *Subsequent petitioners may seek exemptions.* The H–1B petitioner need not be the employer that filed the immigrant visa petition that is used to qualify for this exemption. An H–1B petition may be approved under paragraph (h)(13)(iii)(E) of this section with respect to any approved immigrant visa petition, and a subsequent H–1B petition may be approved with respect to a different approved immigrant visa petition on behalf of the same alien.

(*5*) *Advance filing.* A petitioner may file an H–1B petition seeking a per-country limitation exemption under paragraph (h)(13)(iii)(E) of this section within 6 months of the requested H–1B start date. The petitioner may request any time remaining to the beneficiary under the maximum period of admission described at section 214(g)(4) of the Act along with the exemption request, but in no case may the H–1B approval period exceed the limits specified by paragraph (h)(9)(iii) of this section.

(*6*) *Exemption eligibility.* Only the principal beneficiary of an approved immigrant visa petition for classification under sections 203(b)(1), (2), or (3) of the Act may be eligible under paragraph (h)(13)(iii)(E) of this section for an exemption to the maximum period of admission under section 214(g)(4) of the Act.

* * * * *

(19) * * *

(iii) * * *

(B) *An affiliated or related nonprofit entity.* A nonprofit entity shall be considered to be related to or affiliated with an institution of higher education if:

(*1*) The nonprofit entity is connected to or associated with an institution of higher education through shared ownership or control by the same board or federation;

(*2*) The nonprofit entity is operated by an institution of higher education; or

(*3*) The nonprofit entity is attached to an institution of higher education as a member, branch, cooperative, or subsidiary.

(*4*) The nonprofit entity has, absent shared ownership or control, entered into a formal written affiliation agreement with an institution of higher education that establishes an active working relationship between the nonprofit entity and the institution of higher education for the purposes of research and/or education, and a primary purpose of the nonprofit entity is to directly contribute to the research or education mission of the institution of higher education.

* * * * *

(20) *Retaliatory action claims.* If credible documentary evidence is provided in support of a petition seeking an extension of H–1B stay in or change of status to another classification indicating that the beneficiary faced retaliatory action from his or her employer based on a report regarding a violation of the employer's labor certification application obligations under section 212(n)(2)(C)(iv) of the Act, USCIS may consider a loss or failure to maintain H–1B status by the beneficiary related to such violation as due to, and commensurate with, ''extraordinary circumstances'' as defined by 8 CFR 214.1(c)(4) and 8 CFR 248.1(b).

* * * * *

PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

■ 8. The authority citation for part 245 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1255; Pub. L. 105–100, section 202, 111 Stat. 2160, 2193; Pub. L. 105–277, section 902, 112 Stat. 2681; Pub. L. 110–229, tit. VII, 122 Stat. 754; 8 CFR part 2.

■ 9. Revise § 245.15(n)(2) to read as follows:

§ 245.15 Adjustment of status of certain Haitian Nationals under the Haitian Refugee Immigrant Fairness Act of 1998 (HRIFA)

* * * * *

(n) * * *

(2) *Adjudication and issuance.* Employment authorization may not be issued to an applicant for adjustment of status under section 902 of HRIFA until the adjustment application has been pending for 180 days, unless USCIS verifies that DHS records contain evidence that the applicant meets the criteria set forth in section 902(b) or 902(d) of HRIFA, and determines that there is no indication that the applicant is clearly ineligible for adjustment of status under section 902 of HRIFA, in which case USCIS may approve the application for employment authorization, and issue the resulting document, immediately upon such verification. If USCIS fails to adjudicate the application for employment authorization upon the expiration of the 180-day waiting period, or within 90 days of the filing of application for employment authorization, whichever comes later, the applicant shall be eligible for an employment authorization document. Nothing in this section shall preclude an applicant for adjustment of status under HRIFA from being granted an initial employment authorization or an extension of employment authorization under any other provision of law or regulation for which the applicant may be eligible.

* * * * *

■ 10. Add § 245.25 to read as follows:

§ 245.25 Adjustment of status of aliens with approved employment-based immigrant visa petitions; validity of petition and offer of employment.

(a) *Validity of petition for continued eligibility for adjustment of status.* An alien who has a pending application to adjust status to that of a lawful permanent resident based on an approved employment-based immigrant visa petition filed under section 204(a)(1)(F) of the Act on the applicant's behalf must have a valid offer of employment based on a valid petition at the time the application to adjust status is filed and at the time the alien's application to adjust status is adjudicated, and the applicant must intend to accept such offer of employment. Prior to a final administrative decision on an application to adjust status, USCIS may require that the applicant demonstrate, or the applicant may affirmatively demonstrate to USCIS, on a designated form in accordance with the form instructions, or as otherwise determined by USCIS, with any required supporting documentary evidence, that:

(1) The employment offer by the petitioning employer is continuing; or

(2) Under section 204(j) of the Act, the applicant has a new offer of employment from the petitioning employer or a different U.S. employer, or a new offer based on self-employment, in the same or a similar occupational classification as the employment offer under the qualifying petition, provided that:

(i) The alien's application to adjust status based on a qualifying petition has been pending for 180 days or more; and

(ii) The approval of the qualifying petition has not been revoked.

In all cases, the applicant and his or her intended employer must demonstrate the intention for the applicant to be employed under the continuing or new employment offer (including self-employment) described in paragraphs (a)(1) and (2) of this section, as applicable, within a reasonable period upon the applicant's grant of lawful permanent resident status.

(b) *Evidence*—(1) *Continuing employment offer.* Unless otherwise specified on the form or form instructions, for purposes of paragraph (a)(1) of this section, evidence of a continuing employment offer shall be provided in the form of a written attestation, signed by such employer, attesting that the employer continues to extend the original offer of employment and intends that the applicant will commence the employment described in the offer of employment within a reasonable period upon adjustment of status.

(2) *New employment offer.* Unless otherwise specified by a form or form instructions, for purposes of paragraph (a)(2) of this section, evidence of a new offer of employment that is in the same or a similar occupational classification as the employment offer under the approved petition as required by section 204(j) of the Act must include:

(i) A written attestation signed by the new employer describing the new employment offer, including its requirements and a description of the duties in the new position, and stating that the employer intends that the applicant will commence the employment described in the new employment offer within a reasonable period upon adjustment of status;

(ii) An explanation from the new employer establishing that the new employment offer and the employment offer under the approved petition are in the same or similar occupational classification, which may include material and credible information provided by another Federal government agency, such as information from the Standard Occupational Classification (SOC) system, or similar or successor system, administered by the Department of Labor; and

(iii) A copy of the receipt notice issued by USCIS, or if unavailable, secondary evidence showing that the alien's application to adjust status based on such petition has been pending with USCIS for 180 days or more.

(3) *Intention after grant of adjustment of status application.* Evidence that the applicant intends to commence the employment described either in the continuing employment offer or, if pursuing an offer of new employment in accordance with section 204(j) of the Act, the new employment offer, within a reasonable period upon adjustment of status, including a written attestation signed by the applicant.

(c) *Definition of same or similar occupational classification.* The term ''same occupational classification'' means an occupation that resembles in every relevant respect the occupation for which the underlying employment-based immigrant visa petition was approved. The term ''similar occupational classification'' means an occupation that shares essential qualities or has a marked resemblance or likeness with the occupation for which the underlying employment-based immigrant visa petition was approved.

PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

■ 11. The authority citation for part 274a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1324a; 48 U.S.C. 1806; 8 CFR part 2.

■ 12. Amend § 274a.2 by revising paragraph (b)(1)(vii) to read as follows:

§ 274a.2 Verification of identity and employment authorization.

* * * * *

(b) * * *

(1) * * *

(vii) If an individual's employment authorization expires, the employer,

recruiter or referrer for a fee must reverify on the Form I–9 to reflect that the individual is still authorized to work in the United States; otherwise, the individual may no longer be employed, recruited, or referred. Reverification on the Form I–9 must occur not later than the date work authorization expires. If an Employment Authorization Document (Form I–766 or successor form) as described in § 274a.13(d) was presented for completion of the Form I–9 in combination with a Notice of Action (Form I–797C), or successor form, stating that the original Employment Authorization Document has been automatically extended for up to 180 days, reverification applies upon the expiration of the automatically extended validity period under § 274a.13(d) and not upon the expiration date indicated on the face of the alien's Employment Authorization Document. In order to reverify on the Form I–9, the employee or referred individual must present a document that either shows continuing employment eligibility or is a new grant of work authorization. The employer or the recruiter or referrer for a fee must review this document, and if it appears to be genuine and relate to the individual, reverify by noting the document's identification number and expiration date, if any, on the Form I–9 and signing the attestation by a handwritten signature or electronic signature in accordance with paragraph (i) of this section.

* * * * *

■ 13. Amend § 274a.12 by:

■ a. In paragraph (b)(9), removing ''; '' at the end and adding in its place ''.'', and adding a new sentence to the end of the paragraph;

■ b. Adding and reserving new paragraphs (c)(27) to (c)(34); and

■ c. Adding new paragraphs (c)(35) and (c)(36).

The additions read as follows:

§ 274a.12 Classes of aliens authorized to accept employment.

* * * * *

(b) * * *

(9) * * * In the case of a nonimmigrant with H–1B status, employment authorization will automatically continue upon the filing of a qualifying petition under 8 CFR 214.2(h)(2)(i)(H) until such petition is adjudicated, in accordance with section 214(n) of the Act and 8 CFR 214.2(h)(2)(i)(H);

* * * * *

(c) * * *

(35) An alien who is the principal beneficiary of a valid immigrant petition under section 203(b)(1), 203(b)(2) or 203(b)(3) of the Act described as eligible for employment authorization in 8 CFR 204.5(p).

(36) A spouse or child of a principal beneficiary of a valid immigrant petition under section 203(b)(1), 203(b)(2) or 203(b)(3) of the Act described as eligible for employment authorization in 8 CFR 204.5(p).

* * * * *

■ 14. Amend § 274a.13 by:

■ a. Revising the paragraph (a) introductory text;

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

■ c. Revising paragraph (d).

The revisions read as follows:

§ 274a.13 Application for employment authorization.

(a) *Application.* An alien requesting employment authorization or an Employment Authorization Document (Form I–766 or successor form), or both, may be required to apply on a form designated by USCIS with any prescribed fee(s) in accordance with the form instructions. An alien may file such request concurrently with a related benefit request that, if granted, would form the basis for eligibility for employment authorization, only to the extent permitted by the form instructions.

* * * * *

(d) *Renewal application*—(1) *Automatic extension of Employment Authorization Documents.* Except as otherwise provided in this chapter or by law, notwithstanding 8 CFR 274a.14(a)(1)(i), the validity period of an expiring Employment Authorization Document (Form I–766 or successor form) and, for aliens who are not employment authorized incident to status, also the attendant employment authorization, will be automatically extended for an additional period not to exceed 180 days from the date of such document's and such employment authorization's expiration if a request for renewal on a form designated by USCIS is:

(i) Properly filed as provided by form instructions before the expiration date shown on the face of the Employment Authorization Document;

(ii) Based on the same employment authorization category as shown on the face of the expiring Employment Authorization Document or is for an individual approved for Temporary Protected Status whose EAD was issued pursuant to 8 CFR 274a.12(c)(19); and

(iii) Based on a class of aliens whose eligibility to apply for employment authorization continues notwithstanding expiration of the Employment Authorization Document and is based on an employment authorization category that does not require adjudication of an underlying application or petition before adjudication of the renewal application, including aliens described in 8 CFR 274a.12(a)(12) granted Temporary Protected Status and pending applicants for Temporary Protected Status who are issued an EAD under 8 CFR 274a.12(c)(19), as may be announced on the USCIS Web site.

(2) *Terms and conditions.* Any extension authorized under this paragraph shall be subject to any conditions and limitations noted in the immediately preceding employment authorization.

(3) *Termination.* The period authorized by paragraph (d)(1) of this section shall automatically terminate the earlier of up to 180 days after the expiration date of the Employment Authorization Document (Form I–766, or successor form), or upon issuance of notification of a decision denying the renewal request. Nothing in paragraph (d) of this section shall affect DHS's ability to otherwise terminate any Employment Authorization Document or extension period for such document and, as applicable, employment authorization, in accordance with 8 CFR 274a.14 or otherwise in this chapter, by written notice to the applicant, or by notice to a class of aliens published in the **Federal Register**.

(4) *Unexpired Employment Authorization Documents.* An Employment Authorization Document (Form I–766, or successor form) that has expired on its face is considered unexpired when combined with a Notice of Action (Form I–797C), or successor form which demonstrates that the requirements of paragraph (d)(1) of this section have been met.

Jeh Charles Johnson,

Secretary.

[FR Doc. 2015–32666 Filed 12–30–15; 8:45 am]

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Part IV

Securities and Exchange Commission

17 CFR Part 240
Transfer Agent Regulations; Proposed Rules

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

RIN 3235–AL55

[Release No. 34–76743; File No. S7–27–15]

Transfer Agent Regulations

AGENCY: Securities and Exchange Commission.

ACTION: Advance notice of proposed rulemaking; Concept release; Request for comment.

SUMMARY: The Securities and Exchange Commission (''Commission'') is publishing this Advance Notice of Proposed Rulemaking, Concept Release, and Request for Comment on Transfer Agent Regulations (''release'') to seek public comment regarding the Commission's transfer agent rules. The first transfer agent rules were adopted in 1977 and remain essentially unchanged. At the same time, transfer agents now operate in a market structure that bears little resemblance to the structure in 1977. The release, noting the importance of transfer agents within the national market structure, includes a history of transfer agent services and applicable regulations as well as an overview of current transfer agent services and activities, and requests comment on all topics. The release includes an Advance Notice of Proposed Rulemaking in specific areas, such as transfer agent registration and reporting requirements, safeguarding of funds and securities, and revision of obsolete or outdated rules, along with requests for comment, as well as a Concept Release and Request for Comment addressing additional areas of specific Commission interest, including processing of book-entry securities, broker-dealer recordkeeping for beneficial owners, transfer agents to mutual funds, and administration of issuer plans. The Commission intends to consider the public's comments in connection with any future rulemaking, and comments to the Advance Notice of Proposed Rulemaking will be used to further consider the sufficiency and scope of the rulemaking proposals described therein.

DATES: Comments must be in writing and received by February 29, 2016.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/concept.shtml*);
- Send an email to *rule-comments@sec.gov.* Please include File Number S7–27–15 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments to: Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–27–15. This file number should be included on the subject line if email is used. To help us 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/concept.shtml*). Comments are also 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. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Moshe Rothman, Branch Chief, Thomas Etter, Special Counsel, Catherine Whiting, Special Counsel, Mark Saltzburg, Special Counsel, Lauren Sprague, Special Counsel, or Elizabeth de Boyrie, Counsel, Office of Clearance and Settlement, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–7010 at (202) 551–5710.

SUPPLEMENTARY INFORMATION:

* * * * *

I. Introduction

The United States' securities markets are indispensable to this country's and the world's economy. The Commission

believes that issuers, investors, and other participants in the securities markets must be served by a well-functioning national system for the clearance and settlement of securities transactions (''National C&S System'') that promotes safe, efficient, prompt, and accurate settlement transactions.[1] Critical to this mission is the development and maintenance of a comprehensive regulatory program that governs the functions of transfer agents and related industry segments critical to the proper functioning of the National C&S System, including entities that clear trades, provide custodial and safeguarding services, and perform other ''back-office'' functions within the securities industry.

As agents for issuers, transfer agents play a critical role with respect to securities settlement, though they rarely receive much public attention. Among their key functions, they may: (i) Track, record, and maintain on behalf of issuers the official record of ownership of each issuer's securities; (ii) cancel old certificates, issue new ones, and perform other processing and recordkeeping functions that facilitate the issuance, cancellation, and transfer of those securities; (iii) facilitate communications between issuers and registered securityholders; and (iv) make dividend, principal, interest, and other distributions to securityholders. A transfer agent's failure to perform its duties promptly, accurately, and safely can compromise the accuracy of an issuer's securityholder records, disrupt the channels of communication between issuers and securityholders, disenfranchise investors, and expose issuers, investors, securities intermediaries, and the securities markets as a whole to significant financial loss.[2]

The securities markets and the National C&S System in which transfer agents operate have changed significantly since the Commission first began regulating transfer agents in the 1970s. The changes largely reflect a decades-long evolution from a manual securities settlement process focused on the processing of physical securities certificates to a highly automated electronic environment centered on the processing and transfer of electronic book-entry securities.[3] The changes also reflect significant technological and operational developments in other areas, as well as broader changes in the securities industry and the business and regulatory environments in which transfer agents operate.

As a result, the Commission has observed over time that transfer agents now perform a more diverse array of functions and services, many of which may not be fully addressed by the Commission's transfer agent rules. In addition, the Commission has observed that the manner in which transfer agents carry out their traditional functions may no longer be adequately addressed in the rules. The Commission's consideration of these observations has led it to include two interrelated approaches in this release. Under the first approach, the Commission believes it has identified a series of new and amended rules that, based on its current understanding of transfer agents and their functions, it intends to propose. These anticipated new and amended rules, which the Commission intends to propose as soon as is practicable, either individually or in groups or phases, and irrespective of any other changes to the transfer agent rules, are discussed in detail in the Advance Notice of Proposed Rulemaking found in Section VI. The Commission is soliciting public comment on the anticipated rulemaking proposals described in Section VI. Public feedback and data would assist the Commission in further refining and calibrating the anticipated proposals as well as other potential proposals.

Under the second approach, reflected in the Concept Release and Request for Comment contained in Section VII, the Commission discusses and requests comment regarding a number of additional transfer agent issues that primarily arise from the diverse array of transfer agent functions and services which have developed over time. Public comment on these additional issues will allow the Commission to evaluate the need for, and potentially develop, additional rulemaking proposals appropriately tailored to these complex areas. In undertaking these approaches, the Commission remains sensitive to whether any distinctions between the actual activities of transfer agents and what is contemplated by the Commission's rules may create undue uncertainty or risks for the National C&S System and the market participants that rely upon it, including investors, issuers, regulators, and transfer agents. As transfer agents continue to evolve in their roles and activities, any such distinctions, and the commensurate risks associated with them, may also grow.

We begin with an overview of the antecedents, advent, and subsequent history of the National C&S System, including a discussion of the ''Paperwork Crisis'' which helped precipitate the legislative amendments that gave rise to that system. We then describe the National C&S System and transfer agents' role within that system as it functions today, followed by a discussion of the current regulatory regime and the core functions performed by transfer agents. The remainder of the release consists of the two sections noted above: The Advance Notice of Proposed Rulemaking in Section VI and the Concept Release and Request for Comment in Section VII.

We are mindful that the role of transfer agents in the National C&S System and the need to address specific risks associated with transfer agents have been topics of discussion and debate, both within and outside the Commission, for many years.[4] We intend for this release to build on those discussions and therefore invite comment on the full range of topics and issues associated with transfer agents and their activities, regardless of whether and in which section those topics and issues are specifically addressed. Thus, while we set forth specific requests for comments, we welcome comments on any concerns related to transfer agent activities, the transfer agent regulatory program, or other areas of concern that commentators may have. We specifically invite comment on any possible regulatory actions regarding the issues and concerns described, including potential new rules or rule amendments or other reasonable regulatory alternatives, as well as any related evidence, quantitative and/or qualitative, relating to a potential

[1] *See infra* Sections II and III of this release for additional discussion of the National C&S System.

[2] Maintenance of Accurate Securityholder Files and Safeguarding of Funds and Securities by Registered Transfer Agents, Exchange Act Release No. 19142, 2–3 (Oct. 15, 1982), 47 FR 47269 (Oct. 25, 1982) (''17Ad–9 through 13 Proposing Release'') (noting examples of substandard transfer agent performance presenting significant potential adverse consequences). *See also* Processing Requirements for Cancelled Security Certificates, Exchange Act Release No. 48931 (Dec. 16, 2003), 68 FR 74390, 74391 (Dec. 23, 2003) (''17Ad–19 Adopting Release'') (noting examples of substandard transfer agent performance and significant adverse consequences).

[3] Concept Release on Equity Market Structure, Exchange Act Release No. 61358, 2 (Jan. 14, 2010), 75 FR 3594, 3594 (Jan. 21, 2010). When securities are referred to as being in ''book-entry'' form, it means that the investor does not receive a certificate. Instead, a custodian, usually a broker or transfer agent, maintains electronic records showing that the investor owns the particular security. For additional discussion of book entry securities, *see infra* note 37.

[4] For example, in 2011 the Commission hosted a roundtable on the execution, clearance, and settlement of microcap securities which covered, among other topics, the role of transfer agents in the issuance and transfer of restricted securities. *See* transcript, available at *https://www.sec.gov/spotlight/microcap/microcaproundtable101711-transcript.txt.*

regulatory action. Comments received on either or both sections of the release will be considered in connection with any future rulemaking.

We are also mindful that market developments have occurred beyond the changes that are the focus of this release and that affect transfer agents. For example, transfer agents and market participants now often communicate with one another using structured data on electronic platforms. Data standardization efforts have emerged to further enhance these electronic communication methods, such as the international standards effort focusing on corporate actions, which may ultimately be used by transfer agents.[5] Although these issues are not specifically addressed herein, comments on, and specific data about, any such developments are welcome.

The Commission is sensitive to the effects that could result from any regulatory action, and accordingly we also seek input on the economic effects or tradeoffs associated with any potential regulatory action, including any costs, benefits, or burdens of such action, and any effects on efficiency, competition, and capital formation. We are also mindful that the various aspects of the transfer agent regulatory program and securities transfer process that we address in this release are interconnected, and that changes to one aspect may affect other aspects, as well as complement or frustrate other potential changes. Therefore, we encourage the public to consider these relationships when formulating comments, and invite comment on whether alternative approaches, or a combination of approaches, would better address the concerns raised.

II. The National Clearance and Settlement System: History and Background

A. Transfer of Certificated Securities

Investment securities confer certain intangible rights and benefits upon the holder.[6] For example, the rights and benefits represented by a share of stock generally include the right to share in the capital and surplus of the corporation and receive certain other benefits and specified rights. Because securities confer intangible rights, historically the transfer of investment securities from one person to another has required special rules. In the past, the most common way to transfer investment securities, such as shares of stock, was to transfer a paper certificate that represents the benefits of ownership (''certificated security'').[7] Certificated securities have been issued in the United States since the 1700s [8] and are evidence that the owner is registered on the books of the issuer (or its transfer agent) as a securityholder.[9] Although the shares themselves represent an intangible right,[10] the certificate is a negotiable instrument under state law, which allows the registered owner of the certificated security to transfer the bundle of intangible rights to a third party.[11]

This ability to transfer the rights associated with share ownership helps drive the securities markets.[12] Generally, under the UCC, ''voluntary transfer of possession'' is all that is required to effect such a transfer.[13] But in order to qualify as a ''protected purchaser'' under the UCC, and therefore acquire an interest in the security free of any adverse claim, the buyer must give value, not have notice of any adverse claim to the security, and obtain control of it.[14] Thus, for a buyer of registered certificated securities to achieve protected purchaser status, the voluntary transfer of possession could involve a significant amount of paperwork and manual processing, even in a direct transaction between a seller and a buyer:

> [E]ither the certificate or a stock power must be indorsed, the signature guaranteed, authority to transfer title documented, and the stock certificate and the other documentation delivered, not to mention the registration of transfer on the stockholders list, the destruction of the old certificate and the issue of a new one.[15]

Historically, transactions involving certificated securities effected on securities exchanges could be significantly more complex:

> In sales and purchases by persons other than brokers and specialists, the owner of the security will instruct a broker to sell, the broker will transfer the order to the exchange floor/system or a market maker, where it will be matched wholly or partially with one or more buy orders. Once the order is executed, the seller will have to deliver the executed certificate(s) to his broker so that the selling broker can deliver it to the buying broker, market maker, specialist, or central counterparty. Once the buying broker receives delivery, she will have to deliver to the issuer's transfer agent with a request for registration of transfer on the stockholder list. The latter, after inspecting all necessary documentation, will register the transfer, cancel the old certificate, and issue a new certificate to the buyer. Thus, beyond indorsement of the certificate and its delivery, each stage of the transaction will demand the documents, guarantees and assurances that constitute ''good delivery'' on the respective exchange.[16]

B. Transfer Agent Processes for Transferring Certificated Securities

Historically, from the transfer agent's perspective, the transfer of certificated securities held by registered owners was a time-consuming manual process. First, the transfer agent would receive from the broker a bundle of documents (the ''transfer bundle'') that typically included the following: (i) A ''ticket'' pinned to the bundle of documents that served as a transmittal letter and receipt; [17] (ii) transfer instructions telling the transfer agent what action to take; (iii) the security certificates of the selling securityholder; (iv) a power of attorney; [18] and (v) a ''guarantee,''

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[5] *See, e.g.,* XBLR: The Business Reporting Standards, *https://www.xbrl.org/the-consortium/get-involved/corporate-actions-working-group/.*

[6] Egon Guttman, Modern Securities Transfers § 1:5 (4th ed. 2010).

[7] The Uniform Commercial Code (''UCC'') defines a ''certificated security'' as ''a security that is represented by a certificate.'' U.C.C. 8–102(a)(4). The UCC, which was first published in 1952, is a uniform act designed to standardize the law of sales and other commercial transactions in all 50 states. The UCC has the effect of law only when adopted by a state, and while it has been adopted by all 50 states, there are numerous state-by-state variations in the adopted texts.

[8] The first major American issue of publicly traded securities occurred in 1790 when the federal government issued $80 million of bonds to refinance federal and state Revolutionary War debt. In 1792, five securities—two bank stocks and three government bonds—began trading on what was to become the New York Stock Exchange. For a historical discussion of the development of trading on the exchange, *see* Teweles and Bradley, The Stock Market 95–119 (6th ed. 1992).

[9] Guttman, *supra* note 6.

[10] *Id.*

[11] *Id.* at § 1:12.

[12] Generally, the UCC governs the transfer of securities. For further discussion of the UCC, *see* Section IV.D.

[13] Guttman, *supra* note 6, at § 1.11, U.C.C. 1–201(b)(14).

[14] U.C.C. 8–303. ''Control'' over a registered security is achieved by obtaining control of the security indorsed to the holder or in blank, or if the issuer registers the holder in the securityholder list. *See* U.C.C. 8–106(b), off. cmts. 2–3.

[15] David C. Donald, The Rise and Effects of the Indirect Holding System: How Corporate America Ceded Its Shareholders to Intermediaries 7 (Sept. 27, 2007), *available at http://ssrn.com/abstract=1017206.*

[16] *Id.* at 7–8.

[17] Historically, the term ''ticket'' referred to a broker-originated window ticket, which indicated the identity of the delivering broker, the securities, and the quantity. It would be prepared by a broker in triplicate and accompanied the transfer instructions and stock certificates when presented by the broker to the transfer agent for transfer. SEC, Study of Unsafe and Unsound Practices of Brokers and Dealers, H.R. Doc. No. 92–231, at 182 n.32 (Dec. 1971) (''Unsafe Practices Study''). Today, a ticket may provide similar information, either in electronic form, or in a highly structured and standardized paper form capable of being scanned and converted to electronic form.

[18] A power of attorney may also be referred to as a ''stock power'' (or ''bond power'' with respect to debt securities) and grants legal authority to the registered securityholder's broker, to a transfer agent, or to another intermediary to transfer the

typically affixed to the power of attorney or certificate, guaranteeing the genuineness of the signature of the selling securityholder indorsing the certificate over for transfer.[19]

As an example of the extensive process for transferring certificated securities, prior to 1975, for New York City transfer agents, nearly 90 percent of these transfer bundles were received from messengers at the transfer agent's ''window,'' which was a physical drop-off location at the transfer agent's offices, rather than through the mail, in which case the transfer bundles would be routed to the mail room.[20] Upon receipt at the window, the transfer agent would perform a visual reconciliation to confirm that the number of securities shown on the ticket matched the number on the certificates. If the transfer agent found a difference, the transfer would be rejected as ''out of balance'' and returned to the broker, a process known as a ''window rejection.'' [21] If no difference was found, the transfer agent would continue the process with a more detailed inspection, starting with a detailed review of signature guarantees, indorsements,[22] and attachments in order to determine if the certificates were in ''good order'' for transfer.[23] If the transfer agent found a deficiency, it would attach a rejection sheet to the certificate in question and return it to the broker, a process referred to as an ''examination rejection.'' [24] If the certificates were found to be in good order, the transfer agent would perform ''stop checking,'' the process of verifying each certificate number against a file it maintained listing certificates reported stolen, missing,[25] or with ''stop transfers'' or legal holds.[26]

The next step was to prepare the transfer journal entries documenting the cancellation of the old certificate and the issuance of the new certificate.[27] Entering information into the transfer journal was considered the most time consuming part of the transfer process because it was a manual process, requiring gathering discrete pieces of information from different documents in the transfer bundle.[28] Concurrently, the transfer agent would cancel the old certificate and prepare a new certificate from the supply of blank certificates the transfer agent kept on hand.[29]

Prior to sending certificates to a registrar, the transfer agent's staff would perform several audits to verify the accuracy of the transfer journal and new certificate.[30] After completion of these audits, the transfer agent would send the certificates to a registrar, which would perform an additional audit or quality control check primarily focused on verification that the share quantities on the cancelled certificates and newly issued certificates matched and that the new certificates were not issued in a manner resulting in an overissuance.[31] If the registrar was independent of the transfer agent, as historically required by certain stock exchange rules, the transfer agent would remove the window tickets from batches of securities to be sent to the registrar, sequence the batches of old and new certificates separately by security issue, and send the bundles by messenger to the registrar, typically overnight.[32] The registrar would perform the audit described above, countersign the new certificates,[33] and then return them to the transfer agent.[34] The transfer agent would then need to reorganize the certificates and reattach them to their window tickets before sending the new certificates and accompanying documents to the designated receiving party, usually by messenger.[35]

In 1977, the concept of the ''uncertificated security'' was introduced in Article 8 of the UCC.[36] This innovation allowed issuers to issue uncertificated (*i.e.,* certificateless) book-entry securities, the transfer of which is

securityholder's securities ownership on behalf of the securityholder. A seller may use a power of attorney rather than indorse the assignment and transfer form on the back of the security certificate. For examples of forms of transfer and assignment (i) by stock power; (ii) by bond power; and (iii) by execution of the transfer and assignment form on the back of a security certificate, *see* Mark S. Rhodes, Transfer of Stock app. A § 678.3041 at forms 1–3 (7th ed. Apr. 2015).

[19] North American Rockwell Information Systems Company, Securities Industry Overview, Final Report to the American Stock Exchange 47 (1969) (''Rockwell Study'').

[20] It was estimated at the time that New York transfer agents only received approximately 10 percent of certificates by U.S. mail. The pattern was the opposite for transfer agents outside of New York, which were estimated to receive the vast majority of certificates for transfer through the mail. *Id.* at 51.

[21] *Id.* at 47–52.

[22] Transfer agents may have reviewed indorsements but generally did not maintain signature cards for each registered securityholder or otherwise verify authenticity of the signature by comparing it to specimen signatures. Rather, the signature guarantee provided by the broker was intended to provide assurance concerning the authenticity of the seller's signature. Today, the signature guarantee process has been enhanced and standardized through non-governmental Medallion guarantee programs. For additional information regarding Medallion guarantees, *see infra* note 267.

[23] Rockwell Study, *supra* note 19, at 53.

[24] It was estimated that, in the mid- to late-1960s, window rejections were as high as 20 percent and examination rejections were as high as 30 percent. *Id.*

[25] *Id.* Today, there is a national system operated by the Securities Information Center (''SIC'') as the Commission's designee for maintaining a database concerning missing, lost, counterfeit, and stolen securities that ''reporting institutions'' (brokers, dealers, registered transfer agents, certain types of banks, and others) report information to and inquire into concerning the status of securities certificates. *See* Exchange Act Rule 17f–1, 17 CFR 240.17f–1. However, transfer agents still maintain their own lists of securities subject to stop transfers. For additional discussion of reporting requirements for lost and stolen securities, *see infra* Sections IV.A.1 and IV.A.2.

[26] A ''stop transfer'' or a ''stop order'' is a demand made by a registered securityholder to an issuer that a security should not be transferred without the securityholder having an opportunity to assert a claim to the security, typically because the security has been destroyed, lost, or stolen. *See* U.C.C. 8–403; Guttman, *supra* note 6, at § B:11, form 62 (providing a form of stop transfer notice). Under U.C.C. 8–403, an owner's notification that a security certificate has been lost constitutes a demand that the issuer not register transfer. U.C.C. 8–403, cmt. 2 (2005). If, after a stop transfer demand has become effective, a certificated security in registered form is presented to an issuer with a request to register transfer (or an instruction is presented to an issuer with a request to register transfer of an uncertificated security), the issuer must promptly provide a notice with certain information to both the person who made the stop transfer demand and the person seeking to transfer the security. *See* U.C.C. 8–403(b). When a security has been destroyed, lost, stolen, or is otherwise missing, in addition to providing a stop transfer notice, a registered securityholder commonly will seek to replace the security. The process of replacement is described in detail *infra* in Section IV.A.2.

[27] This record may also be referred to as a ''transfer blotter,'' or a ''transfer log,'' among other terms. As used throughout this release, we refer to it as a ''transfer journal.'' A transfer journal is a continuous record of the transfer of ownership of securities, including the identity of the party presenting the item for transfer, whether the transfer was completed, and to whom the securities were made available

[28] Rockwell Study, *supra* note 19, at 53.

[29] *Id.* at 53–54, 57. These blank certificates typically would have been ordered by a corporate officer of the issuer and been engraved by a bank note company before being delivered to the transfer agent. The engraving was both aesthetic and a security feature designed to prevent counterfeiting. *Id.* at 100. To avoid trading interruptions caused by running out of certificates, transfer agents had to carefully forecast certificate demand and monitor their inventory of blank certificates. *Id.* Today, it is the understanding of the Commission's staff that some certificates may not be engraved but are produced by transfer agents through ''print-on-demand'' services.

[30] *Id.* at 53. For additional discussion of the registrar function, *see, e.g., infra* Section II.C.1

[31] *Id.* at 53–54. For more information regarding overissuances, *see infra* note 235 and accompanying text.

[32] *Id.* at 53.

[33] Before the new certificate would be sent out to the designated receiving party, the transfer agent would also countersign the new certificate. Thus, new certificates typically would include the signature of an officer of the issuer and countersignatures by the transfer agent and registrar.

[34] Rockwell Study, *supra* note 19, at 53.

[35] *Id.*

[36] *See* U.C.C. 8–102(a)(18) (defining new term uncertificated security as ''a security that is not represented by a certificate''); U.C.C. 8–101 (citing ''Reasons for 1977 Change,'' and introducing the subject of uncertificated securities). *See also* Egon Guttman, *Toward the Uncertificated Security: A Congressional Leap for States to Follow,* 37 Wash. & Lee L. Rev. 717, 729–32 (1980).

greatly simplified compared to the transfer of certificated securities because transfer can be effected and protected purchaser status can be achieved by simply registering the transferee's name on the books of the issuer.[37]

C. Paperwork Crisis of the 1960s

Prior to 1968, individual clearing brokers [38] found it necessary to maintain a relationship with a separate clearing agency for each securities exchange.[39] In the over-the-counter (''OTC'') market,[40] most securities transactions were settled without going through a clearing agency or were cleared by small user-owned clearing corporations. In either instance, brokers had to settle most transactions by physical delivery or receipt of certificates, and had to maintain an office or establish a correspondent relationship with an entity with an office near the clearing agency.

As trading volume increased throughout the 1960s and early 1970s, the burdensome manual process associated with transferring certificated securities created what came to be known as the Paperwork Crisis. It was, at the time, ''the most prolonged and severe crisis in the securities industry'' [41] since the Great Depression and to this day is one of the largest challenges the U.S. securities markets have faced. The manual settlement processes for certificated securities could not keep up with increasing trading volumes, deliveries to customers of both cash and securities were frequently late, and stock certificates were lost in the rising tide of paper. The substandard performance of transfer agents was ''a significant contributing factor'' to the Paperwork Crisis.[42] At times during 1967 and 1968, the New York Stock Exchange (''NYSE'') closed early on some days and during a substantial portion of 1968 closed entirely on Wednesdays to attempt to allow the brokerages and other firms to keep up with the volume.[43]

In the immediate aftermath of the Paperwork Crisis, more than 100 broker-dealers went bankrupt or were acquired by other firms and ''[t]he inability of the securities industry to deal with its serious operational problems . . . contributed greatly to the loss of investor confidence in the efficiency and safety of [the U.S.] capital markets.'' [44] However, other consequences of the Paperwork Crisis were deeper and longer lasting. As discussed below, over the next years and decades, Congress, federal and state regulators, and industry participants, including brokers, dealers, banks, and securities exchanges, worked together to drastically reshape critical operational aspects of the securities industry, ultimately leading to major revisions to both federal and state securities laws, and the advent of the modern national market system and National C&S System as they exist today.

1. Industry Responses (1968–1970)

Formation of the Central Certificate Service (1968)

In immediate response to the Paperwork Crisis, regulators and industry participants studied and adopted alternative settlement systems and other potential options which might reduce or eliminate the problems associated with the traditional process for transferring certificated securities. First, in June 1968, the NYSE established the Central Certificate Service (''CCS'') as a division of the Stock Clearing Corporation. Broker-dealers and banks who were members of the NYSE were permitted to deposit their certificated securities with CCS, which would hold the certificates in custody and transfer them into the name of a CCS nominee.[45] The certificated securities deposited by that member would be represented by an appropriate book-entry credit reflected in that member's account at CCS. Because all securities held by CCS were registered in its nominee's name, deliveries of securities between CCS members could be effected by appropriate credits and debits to the members' securities accounts rather than by physical delivery of certificates. In this manner members' accounts would be debited and credited to reflect transactions among them, but the registered owner of the securities—CCS's nominee—would never change. Movement of certificates was thus eliminated, resulting in their ''immobilization.'' [46] At the time, CCS was the most prominent example of the central securities depository model discussed below in Section II.B.2. In 1970, CCS opened its services to members of the American Stock Exchange,[47] and in 1973 CCS changed its name to the Depository Trust Company (''DTC'').[48]

Rockwell Study (1969)

Around the same time, the American Stock Exchange hired the North American Rockwell Information

[37] Guttman, *supra* note 6, at § 6:4. Book-entry securities are discussed in more detail throughout the release, including in Sections III.A and VII.A.

[38] For further information on introducing and clearing brokers, *see* Figure 1 and accompanying text, *infra.*

[39] A clearing agency may be referred to as a clearing corporation or a depository, depending on its functions. Clearing corporations typically compare member transactions, clear, net and settle trades, and provide risk management services, such as trade guarantees. Depositories immobilize securities by holding them on deposit for their participants and effect transfers of interests in those securities through book-entry credits and debits of participants' accounts at the depository. For additional discussion, *see infra* Section III. *See also, e.g.,* Exchange Act Section 3(a)(23)(A), 15 U.S.C. 78c(a)(23)(A) (defining the term ''clearing agency''); Clearing Agencies, SEC, *https://www.sec.gov/divisions/marketreg/mrclearing.shtml (last visited Nov. 25, 2015).* Currently, DTC is both the only CSD in the United States and the only CSD registered with the Commission as a clearing agency. *See* Exchange Act Section 3(a)(23)(A), 15 U.S.C. 78c(a)(23)(A) (requiring CSDs to register with the Commission as a clearing agency).

[40] The term ''OTC'' refers generally to securities that are not listed on a national securities exchange. Many equity securities, corporate bonds, municipal securities, government securities, and certain derivative products are traded in the OTC market. The OTC Bulletin Board (''OTCBB''), which is a facility of FINRA, for example, is an electronic inter-dealer quotation system that displays quotes, last-sale prices, and volume information for many securities that are not listed on a national securities exchange, including domestic, foreign and American depository receipts (ADRs). For additional discussion, *see, e.g.,* Over the Counter Market, SEC, *https://www.sec.gov/divisions/marketreg/mrotc.shtml* (last visited Nov. 20, 2015).

[41] Unsafe Practices Study, *supra* note 17 at 1.

[42] *Id.* at 37–8.

[43] *Id.* at 219, n. 4. *See also* New York Stock Exchange, Inc., *Crisis in the Securities Industry, A Chronology: 1967–1970* 10–16 (1971) (report prepared for the Subcommittee on Commerce and Finance of the Committee on Interstate and Foreign Commerce of the U.S. House of Representatives).

[44] S. Rep. No. 94–75, at 3–4 (1975) (''Senate Report on Securities Act Amendments of 1975'') (report prepared by the Senate Committee on Banking, Housing, and Urban Affairs on the Securities Act Amendments of 1975). For additional information about the Paperwork Crisis, *see also* Unsafe Practices Study, *supra* note 17, at 13–30; Securities Transaction Settlement Concept Release, Exchange Act Release No. 49405 (Mar. 11, 2004), 69 FR 12922 (Mar. 18, 2004).

[45] Unsafe Practices Study, *supra* note 17, at 184. The registration of securities into the name of a nominee rather than the name of the investor is commonly referred to as ''street name'' registration, which stands for ''Wall Street name.'' *See* The Stock Market, *supra* note 8, at 249–251, 307. A nominee is usually a partnership formed exclusively to act as the record holder of securities and thereby to facilitate their transfer. *See* Preliminary Report of the Securities and Exchange Commission on the Practice of Recording the Ownership of Securities in the Records of the Issuer in Other than the Name of the Beneficial Owner of Such Securities 2–15 (Dec. 4, 1975) (''Preliminary Street Name Study'') (providing extensive discussion of the history of the practice of nominees and street name ownership, the scope of the practice, the concept of beneficial ownership and then-current practices). For further discussion of registered ownership and street name ownership (or beneficial ownership), *see infra* Section III.A. *See also infra* note 87, regarding DTC's nominee, Cede & Co.

[46] Unsafe Practices Study, *supra* note 17, at 184.

[47] The American Stock Exchange, a major New York securities exchange founded in 1908, operated for a century before being acquired by the New York Stock Exchange and ceasing operations as an independent entity in 2008.

[48] For further discussion of DTC, *see infra* Sections II.C.3, III.B, IV.C.2.

Systems Company to study and appraise the securities industry's operations. In 1969, it produced the Rockwell Study. Among other things, the Rockwell Study found that the securities industry's operations were unnecessarily complicated and had not kept pace with technology and recommended that the actual physical movement of securities be reduced.[49]

To address unnecessary complexity, for example, the Rockwell Study focused on whether more efficient clearance and settlement of securities could be achieved by allowing single entities to perform both registrar and transfer agent functions. If so, the entity would need to function in a way that still would preserve the independent audit and shareholder protection function that a registrar historically was viewed, by many participants in the securities industry, as providing.[50] However, at the time when the Commission adopted the majority of its transfer agent rules in 1977 and 1983, independent registrars were still present in the marketplace and indeed were required by the NYSE until 1984.[51]

To reduce the physical movement of securities, the Rockwell Study recommended the establishment of individual transfer agent depositories (''TADs''), which was, at the time, a theoretical proposal that had not been implemented in any market.[52] As proposed, the TAD model would have established a national clearing system together with a decentralized network of individual transfer agent depositories. Securityholders would immobilize their certificated securities by depositing them for custody with the transfer agent for the issuer, effectively making each transfer agent an independent depository for its respective issuers. The transfer agent would maintain the issuer's register, or records of registered shareholders, in electronic form on behalf of the issuer and would settle transactions by debiting and crediting the securities accounts of the respective parties to the transaction on the issuer's register instead of delivering physical certificates.[53] Thus, the account on which transfers took place would also be the issuer's register, which would allow transfers to be effected by simply removing the seller's name from the register (*i.e.,* debiting the seller's securities account) and adding the buyer's name (*i.e.,* crediting the buyer's securities account). The national clearing system proposed under the TAD model would settle all securities transactions, both exchange and OTC trades, by receiving the compared trades[54] directly from the floor of the exchange and receiving OTC trades by messenger or other delivery service.[55] Compared trades would then be transmitted to the appropriate TAD, where, as noted above, the respective accounts of the parties would be credited and debited.[56] As with the CCS system established by the NYSE, the movement of certificates would be eliminated, resulting in their immobilization.

Arthur Little Study (1969)

From July 1968 to April 1969, Arthur D. Little & Co. conducted a study for the National Association of Securities Dealers (''NASD'') on the problem of settlement fails,[57] titled, ''The Multiple Causes of Fails in Stock Clearing in the United States With Particular Emphasis in Over-The-Counter Securities'' (''Arthur Little Study''). Among other things, the Arthur Little Study compared the performance of two different types of clearing systems: (a) The ''balance order system'' used by the New York, American, and National OTC Clearing Corporations, and (b) the ''net by net'' or ''continuous netting system'' used by the Pacific Coast Stock Clearing Corporation and the Midwest Stock Exchange Clearing Corporation.[58] The study showed that the balance order system could reduce securities movement by approximately 25 percent and the continuous netting system could result in a 50 percent reduction.[59] The Arthur Little Study, along with the NASD, concluded that the best nationwide clearance and settlement system would be one consisting of interconnected regional clearing centers, each using the net by net (or continuous net settlement) system.[60]

Formation of the National Clearing Corporation (1969)

In December 1969, the NASD formed the National Clearing Corporation (''NCC'') as the vehicle for developing and implementing a nationwide system of interconnected regional clearinghouses that would form a national OTC clearing system utilizing continuous net settlement. NCC took over the operations of the National Over-the-Counter Clearing Corporation and eventually grew to include OTC transactions in all issues listed on exchanges or included on the NASDAQ system.[61] In 1977, NCC merged with the clearing facilities of both the NYSE and the American Stock Exchange to form the National Securities Clearing Corporation (''NSCC''). The new entity provided clearing, settlement, risk management, and other services, including continuous net settlement of trades and payments, to its participants.

BASIC Study (1970)

In early 1970, around the same time that CCS extended its services to the American Stock Exchange, the Banking and Securities Industry Committee (''BASIC'') was formed by banking and

[49] Rockwell Study, *supra* note 19.

[50] *See, e.g.,* Rockwell Study, *supra* note 19, at 101.

[51] However, at that time, the American Stock Exchange did not require an independent registrar. Rockwell Study, *supra* note 19, at 101. In 1984, the Commission issued an order that approved an NYSE rule change that eliminated the requirement to use a separate transfer agent and registrar, subject to certain conditions. Securities Exchange Act Release No. 21499 (Nov. 19, 1984) (File No. SR–NYSE–84–33).

[52] Rockwell Study, *supra* note 19, at 3, 9, 14, 31, 39, 43, 77, 98.

[53] Rockwell Study, *supra* note 19, at 39–43.

[54] Trade comparison, resulting in a compared trade, is the post-execution act of matching the two sides of a trade and confirming the existence of a contract and the trade's exact terms (security, parties, time of trade, number of units, and price), usually by the exchange. It is generally regarded as the first step in the clearance and settlement process. *See* The October 1987 Market Break, A Report by the Division of Market Regulation, 10–2, 10–4 (1988) (''October 1987 Market Break Report'').

[55] Unsafe Practices Study, *supra* note 17, at 180.

[56] *Id.*

[57] A settlement fail occurs if a seller does not deliver securities or a buyer does not deliver funds owed by the settlement date.

[58] *See* Arthur D. Little, Inc., The Multiple Causes of Fails in Stock Clearing in the United States 2414, 21–22 (''Arthur Little Study''). In the balance order system, after comparing the trades completed for the day by each clearing corporation participant, the clearing corporation would net each participant's trades in each security and issue orders for the net sellers to deliver, and the net buyers to receive, specific amounts of securities at the established settlement price directly from other participants. The duty to deliver and the duty to receive would be allocated in such a way that, for each issue traded, the net seller would have to make only one delivery and the net buyer would receive only one delivery, which could result in participants receiving from or delivering to other participants with whom they did not transact that day. In the net by net (or continuous net settlement system), each of the participant's trades in every security were netted for that day, so that each participant would be either a net seller or a net buyer for a particular security, and the duty to deliver the net sales or receive the net purchase would be added to any outstanding deliver or receive obligations of that participant in that security. In addition, all deliveries and receipts would be made to or from the clearing corporation, rather than between other participants, as in the balance order system. Unsafe Practices Study, *supra* note 17, at 167 n.6.

[59] Unsafe Practices Study, *supra* note 17, at 167 n.6, 172.

[60] *Id.* at 174–5.

[61] NASDAQ stands for National Association of Securities Dealers Automated Quotations and was founded in 1971 by the NASD as an electronic quotation system. It later developed into an electronic stock market, primarily focused on the OTC market and today is registered with the Commission as a national securities exchange under Section 6 of the Exchange Act. *See* Exchange Act Section 6, 15 U.S.C. 78f; Teweles, *supra* note 8, at 4–5, 371–2.

securities industry participants to find solutions to problems affecting both those industries.[62] After more than a year of review and analysis, BASIC advocated the immobilization of securities certificates through a ''Central Securities Depository System for the entire securities industry comprised of regional depositories with an inter-connection between the depositories.'' [63] There was also agreement that ''the certificate must be eliminated, but that this will take time.'' [64]

2. Regulatory and Industry Responses (1971–1975)

Unsafe Practices Study (1971)

In 1970, Congress enacted the Securities Investor Protection Act of 1970 which established the Securities Investor Protection Corporation for the broad purpose of affording financial protection for the customers of registered brokers and dealers.[65] The act also directed the Commission to conduct a study into the causes and potential responses to the Paperwork Crisis.[66] In response, the Commission held meetings, a conference, and hearings that included participation by market participants and federal bank regulators to identify and correct operational and financial problems in the securities industry, and then produced the Unsafe Practices Study.[67] The Unsafe Practices Study in part concluded that the inherent inefficiencies and risks associated with the processing of physical securities certificates contributed to the Paperwork Crisis, and it was therefore necessary to reduce the amount of paperwork connected with securities transfers.[68] There was disagreement, however, regarding the best way to accomplish this goal.

Although it was generally recognized at the time that the complete elimination of certificated securities, known as ''dematerialization,'' was the best approach to eliminating the risks associated with the processing of physical securities, due to technological and legal impediments, dematerialization was viewed as a ''utopian solution'' that ''would require very extensive legal work and lead time to implement.'' [69] Indeed, as noted above, two of the leading proposed securities settlement models designed to reduce the amount of paperwork being discussed at that time—the central depository system represented by CCS and the TAD system—would have resulted in the immobilization of securities rather than dematerialization, and therefore were viewed as ''interim measures for efficient operations'' that could be taken immediately but would also ''serve as building blocks for that ultimate objective'' of dematerialization.[70]

While there was widespread industry support for the TAD model, there were legal and technological impediments to its immediate implementation.[71] In contrast, the central depository system model had already been established on a limited basis as the CCS established by NYSE, although it had not been implemented on a national basis. The proposal being discussed at the time would use CCS as a starting point and gradually expand it into a New York central securities depository that would link to similar regional depositories of other major financial centers, thus resulting in each depository having an account at the others.[72] This would allow members of one depository to transact with members of, and effect the delivery of securities via, the other depositories.[73] Under this approach, no one depository would be restricted solely to the specific members or securities listed on a particular exchange. Like the TAD, this approach resulted in immobilization rather than dematerialization, but instead of a decentralized network of transfer agents acting as individual depositories for issuers, all paper securities certificates for all issuers would be deposited into one or more central pools and kept in custody by such central depositories. Under this model, the more certificates deposited into a central depository, the more efficient the system would be.

Securities Industry Study (1973)

Following publication of the Commission's Unsafe Practices Study, the Senate Subcommittee on Securities conducted its own 18-month study, which resulted in the Securities Industry Study of 1973 Report (''Securities Industry Study'').[74] The Securities Industry Study found ''two primary functional causes'' for the Paperwork Crisis: (i) The securities industry had failed to develop a nationwide system for clearance and settlement of securities transactions; and (ii) there existed a lack of uniformity and coordination among the various methods of clearing and settlement in use. The Securities Industry Study's recommendations included the following: (i) That the Securities Exchange Act of 1934 (''Exchange Act'') be amended to ''make it clear'' that the Commission has the ''power and the responsibility to direct the evolution of clearance and settlement methods employed by the national securities associations and by broker-dealers engaged in interstate commerce;'' (ii) that legislation should ''requir[e] clearing agencies and depositories to register with and report to the SEC and empower the Commission to review and amend the rules of such entities;'' (iii) that ''the Commission be directed to proceed with dispatch toward elimination of the stock certificate as a means of settlement between broker-dealers. . .''; and (iv) that ''the Commission be directed to consider the practice of registering securities in 'street name. . . .'''[75]

1975 Amendments

The Securities Industry Study ultimately led to Congress enacting the Securities Act Amendments of 1975 (''1975 Amendments''),[76] which made sweeping changes to the federal securities laws, implemented many of the principal recommendations from the Securities Industry Study, and established both the national market system [77] and the National C&S System

[62] BASIC was formed in March 1970 as an outgrowth of a joint committee established between representatives of the securities and banking industries in 1968. BASIC was sponsored by the NYSE and American Stock Exchange, the NASD, and the 11 New York Clearing House banks. Securities Industry Study, H.R. Rep. No. 92–1519, 64 (1972) (''Securities Industry Study'').

[63] Unsafe Practices Study, *supra* note 17, at 171. *See also id.* at 184–188.

[64] *Id.* at 173.

[65] The Securities Investor Protection Act of 1970, Pub. L. 91–598, 84 Stat. 1636 (Dec. 30, 1970), 15 U.S.C. 78aaa; S. Rep. No. 91–1218 (1970) (Report to Accompany S. 2348).

[66] 15 U.S.C. 78kkk(g). *See also* Unsafe Practices Study, *supra* note 17, at 11.

[67] *See* Unsafe Practices Study, *supra* note 17, at 31 (discussing a meeting of major SROs to discuss operational capacity in the securities industry, a conference on the stock certificate, a series of meetings with federal bank regulators regarding the regulation and performance of transfer agents, and hearings concerning restructuring of the securities markets).

[68] *Id. at 28.*

[69] *Id.* at 173, 194–95. For example, Delaware did not permit the issuance of ''certificateless stock'' until Section 158 of the Delaware General Corporation Law was amended in 1983. *See* Welch, Turezyn, and Saunders, Folk on the Delaware General Corporation Law § 158.4 (5th ed. 2013).

[70] Unsafe Practices Study, *supra* note 17, at 173.

[71] Unsafe Practices Study, *supra* note 17, at 173, 183–4, 194–5.

[72] Unsafe Practices Study, *supra* note 17, at 184–5.

[73] *Id.* at 185.

[74] Securities Industry Study, *supra* note 62.

[75] *Id.* at 40.

[76] Securities Acts Amendments of 1975, Pub. L. 94–29, 89 Stat. 97 (1975). *See also* S. Rep. No. 75, at 7 (1975).

[77] Section 11A of the Exchange Act directed the Commission to facilitate the establishment of a national market system to link together the multiple individual markets that trade securities and achieve

as they exist today.[78] In particular, in the new statute, Congress directed the Commission to, among other things: (i) ''facilitate the establishment of a national system for the prompt and accurate clearance and settlement of transactions in securities;''[79] (ii) ''end the physical movement of securities certificates in connection with the settlement among brokers and dealers of transactions in securities;''[80] and (iii) establish a system for reporting missing, lost, counterfeit, and stolen securities.[81]

3. Advent of the Modern Clearance and Settlement System (1975–Present)

Early Proliferation of Clearing Agencies

Between 1968 and 1975, in addition to CCS (now known as DTC), several other securities depositories were established, including by the Midwest Stock Exchange, Inc., the Pacific Stock Exchange, and TAD Depository Corporation. The number of shares evidenced by certificates immobilized in depositories increased between 1968 and 1976 from approximately 400 million to over 4 billion.[82] On November 3, 1975, pursuant to its new authority and directives under the 1975 Amendments, the Commission adopted Rule 17Ab2–1(c)(1) and Form CA–1 for the registration of clearing agencies, including central securities depositories.[83] Later in 1975, the Commission granted temporary registrations as clearing agencies to nine entities, that were either clearing corporations or securities depositories.[84] Shortly after NSCC was formed in 1977 through the merger of NCC and the clearing facilities of the NYSE and American Stock Exchange, NSCC also sought, and was granted, temporary registration as a clearing corporation. The Commission also granted temporary registrations as a clearing corporation to the New England Securities Depository Trust Company and the Philadelphia Depository Trust Company in 1976 and 1979, respectively.[85]

Advances in Technology (1976–Present)

Over the next several decades, factors such as technology enhancements and regulatory changes led to the increased prevalence of securities depositories, and many of them substantially expanded their services and participant base, especially DTC. Of particular note, in 1975, DTC introduced the Fast Automated Securities Transfer (''FAST'') Program, which was approved by the Commission in 1976.[86] Among other things, it reduced the costs and risks associated with moving street name securities between DTC and participants.

Prior to FAST, transferring securities to or from DTC on behalf of its participants required moving certificated securities back and forth between DTC and transfer agents. For securities being deposited with DTC, participants would send certificates to DTC, which would then send the certificates to the transfer agent for re-registration into the name of DTC's partnership nominee, Cede & Co.,[87] before returning the reregistered certificates to DTC. For securities being withdrawn from DTC, DTC would send the certificates registered in the name of Cede & Co. to the transfer agent for re-registration into the name designated by the withdrawing participant, and the transfer agent then returned to DTC both the reregistered certificate (which DTC would then deliver to the withdrawing participant or other entity designated by the participant) and a separate certificate registered in the name of Cede & Co. representing the remainder of DTC's position.[88]

The FAST Program substantially reduced the movement of paper certificates by permitting transfer agents to become custodians for balance certificates registered in the name of Cede & Co. The balance certificate represents on the transfer agent's books the sum total of shares for that issue held by all of DTC's participants.[89] Participants maintain corresponding books representing their securityholder accounts held in street name. Then, when securities are deposited into or withdrawn from DTC, FAST transfer agents adjust the denomination of the balance certificates and electronically confirm the changes with DTC on a daily basis, with the corresponding participant accounts adjusted accordingly by DTC.[90]

In 1983, DTC adopted technological enhancements to its Participant Terminal System which allowed participants to automatically match book-entry receive notifications and facilitate redelivery to other participants.[91] DTC also partnered with NSCC to provide an Institutional Delivery System which, through an interface with NSCC's continuous net settlement system (''CNS''), allowed brokers to net the often very large trades made for institutional customers instead of settling trade-for-trade at DTC. In 1996, the Direct Registration System (''DRS'') was implemented, which allowed investors to hold uncertificated securities in registered form directly on the books of the issuer's transfer agent.[92]

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the objectives of efficient, competitive, fair, and orderly markets, that are in the public interest, and protect investors. *See* Exchange Act Section 11A(a)(2), 15 U.S.C. 78k–1(a)(2).

[78] *See* Exchange Act Section 17A(a)(2), 15 U.S.C. 78q–1(a)(2). For legislative history concerning Section 17A, *see, e.g.,* S. Rep. No. 75, at 4 (1975); H.R. Rep. No. 229, at 102 (1975).

[79] Exchange Act Section 17A(a)(2)(A)(1), 15 U.S.C. 78q–1(a)(2)(A)(1). For legislative history concerning Section 17A, *see supra* note 80.

[80] Exchange Act Section 17A(e), 15 U.S.C. 78q–1(e).

[81] Exchange Act Section 17(f)(1), 15 U.S.C. 78q(f)(1).

[82] Final Report of the Securities and Exchange Commission on the Practice of Recording the Ownership of Securities in the Records of the Issuer in Other than the Name of the Beneficial Owner of Such Securities 55 (Dec. 3, 1976) (''Final Street Name Study'').

[83] *See* Exchange Act Rule 17Ab2–1(c)(1), 17 CFR 240.17Ab2–1(c)(1); Exchange Act Form CA–1, 17 CFR 249b.200.

[84] The nine entities granted temporary registrations as clearing agencies were: (i) DTC; (ii) Bradford Securities Processing Services; (iii) Stock Clearing Corporation of Philadelphia; (iv) Midwest Securities Trust Company; (v) Options Clearing Corporation; (vi) Midwest Clearing Corporation; (vii) Pacific Securities Depository Trust Company; (viii) Boston Stock Exchange Clearing Corporation; and (ix) TAD Depository.

[85] For more information regarding clearing agency registration standards and the history of those standards, *see* Regulation of Clearing Agencies, Exchange Act Release No. 16900 (June 17, 1980), 45 FR 41920 (June 23, 1980).

[86] Securities Exchange Act Release No. 12353 (Apr. 20, 1976), 41 FR 17823 (Apr. 28, 1976) (File No. SR–DTC–76–3). The FAST Program was introduced in 1976 with ten transfer agents and 400 securities issues. *See* Securities Exchange Act Release No. 55816, 3 n.5 (May 25, 2007), 71 FR 30648 (June 1, 2007) (File No. SR–DTC–2006–16). By the end of 1984, 64 transfer agents held balance certificates valued at $580 billion in 11,442 securities issues. *See* The Depository Trust Company Annual Report 1984, at 16 (''DTC Annual Report'').

[87] The name Cede & Co. was drawn from the term ''certificate depository'' and it was formed as a partnership partly because it was considered simpler to effect a transfer of securities registered in the name of a partnership nominee than in the name of a corporation. For more information about Cede & Co., including regarding the terms of its partnership agreement, *see* S. Rep. No. 93–62 (1974) (''*Disclosure of Corporate Ownership''*).

[88] Securities Exchange Act Release No. 60196 (June 30, 2009), 74 FR 33496 (July 13, 2009) (File No. SR–DTC–2006–16).

[89] *Id.* at 2–3.

[90] *Id.* For a description of early DTC rules relating to FAST, *see* Securities Exchange Act Release No. 13342 (Mar. 8, 1977) (File No. SR–DTC–76–3); Securities Exchange Act Release No. 14997 (July 26, 1978) (File No. SR–DTC–84–4); Securities Exchange Act Release No. 21401 (Oct. 16, 1984) (File No. SR–DTC–84–8; Securities Exchange Act Release No. 31941 (Mar. 3, 1993) (File No. SR–DTC–92–15); Securities Exchange Act Release No. 46956 (Dec. 6, 2002) (File No. SR–DTC–2002–15).

[91] For discussion of ''Dual Host PTS,'' *see* DTC Annual Report, *supra* note 86, at 24–5.

[92] *See, e.g.,* Securities Exchange Act Release No. 37931 (Nov. 7, 1996), 61 FR 58600 (Nov. 15, 1996) (File No. SR–DTC–96–15) (approving establishment of DRS). Prior to the advent of DRS, unless they were held on a transfer agent's books through a direct stock purchase plan or dividend reinvestment plan, book-entry shares generally could only be held by beneficial owners in street

Continued

DRS also allowed investors to transfer the shares to and from a brokerage account through FAST when they choose to sell or transfer the stock.[93]

A number of legal and regulatory changes also led to increased participation at securities depositories among banks and broker-dealers. For example, in 1978, the UCC was revised to substitute the concept of delivery of securities specific to the physical delivery of certificated securities with the concept of ''transfer'' by book-entry on the books of a central depository.[94] As a result, the only book-entry transfers that qualified the transferee for protected purchaser rights under the UCC, as discussed above in Section II.A, were those made on the books of a clearing corporation.

In 1982 and 1983, the NASD and five stock exchanges, including the NYSE and American Stock Exchange, amended their rules to require their members to use a Commission-registered securities depository for the confirmation, affirmation and settlement of transactions in depository eligible securities if the member provides its customer with delivery-versus-payment privileges.[95] Delivery versus payment privileges allow payments to be made prior to or simultaneously with delivery of the securities. Because customers typically wanted those privileges, the rules had the effect of requiring the use of a registered securities depository to clear and settle institutional trades. As a result, DTC participation soared. In 1995 and 1996, several exchanges adopted uniform depository eligibility requirements, paving the way for an industry standard for depository eligibility determinations.[96] Finally, 1997 revisions to UCC Article 8 modernized securities holding rules by allowing depositories to make eligible additional foreign securities that are held through foreign custodians as well as other financial instruments.[97] New York's adoption of these revisions enabled DTC to use foreign banks as custodians. This increased DTC's ability to maintain custody of securities abroad,[98] which resulted in additional foreign securities and other financial products and instruments becoming depository eligible.[99]

Clearing Agency Consolidation (1980s–present)

Throughout the late 1980s and mid-1990s, DTC merged with or absorbed business from several other depositories, leading to its further growth. First, in April 1987, the Pacific Stock Exchange Board of Governors closed the Pacific Securities Depository Trust Company. Virtually all eligible securities in its custody were moved to DTC. Then, in 1995, DTC and NSCC worked together to absorb the business of Midwest Securities Trust Company and Midwest Clearing Corporation in light of the Chicago Stock Exchange's decision to exit the clearing and settlement business.

By the late 1990s, DTC had become the largest depository in the United States, and NSCC was the largest clearing agency.[100] On June 15, 1999, the Commission issued an order approving DTC's integration with NSCC.[101] The Commission's order authorized DTC and NSCC to restructure their boards of directors so that one board served both corporations.[102] The Depository Trust & Clearing Corporation (''DTCC''), a holding company, was subsequently formed with DTC and NSCC as its subsidiaries.

Today, DTC provides depository and book-entry settlement services for substantially all corporate and municipal debt, equity securities, asset-backed securities, and money market instruments available for trading in the United States.[103] It provides custody and asset services for securities valued at over $37 trillion.[104] Approximately 1.4 million settlement-related transactions, with a value of approximately $600 billion, are completed at DTC each day.[105] DTC provides three primary services: (i) Custody services; (ii) asset services, such as dividend and interest payment, reorganizations, and proxy services; and (iii) settlement services (through its interface with NSCC), all of which help facilitate the National C&S System mandated by the 1975 Amendments.

III. Transfer Agent Role in Clearance and Settlement Processes

Because transfer agents operate within the National C&S System, it is important to understand that system, especially concerning the services transfer agents provide by maintaining accurate ownership records on behalf of issuers, facilitating the issuance or cancellation of securities, and distributing dividends within that system. Accordingly, this section provides a general overview of transfer agents' operations and processes within the National C&S System.

A. Types of Security Ownership

Under the current centralized depository model in the United States, there are two types of securities owners: (a) Registered and (b) beneficial.

1. Registered Securityholders

Under state corporation law, certain securityholder rights commonly accrue only to those registered on the securityholder list and not to persons who may have an ultimate economic interest in the shares but who are not registered securityholders.[106] Registered securityholders (who may also be referred to as ''holders of record'') [107] own and hold securities in ''registered form.'' [108] The UCC provides that an

name through FAST. For more detail on DRS, *see infra* Section IV.C.2. *See also infra* note 144 (dividend reinvestment plan).

[93] If the securityholder wants to sell the shares, they are transferred into a broker's account by means of an ''Electronic Participant Instruction'' through DTC's proprietary communication network, the Profile Modification System (''Profile''), through which the shares are re-registered in the name of Cede & Co. *See* Securities Exchange Act Release No. 60304 (June 30, 2009), 74 FR 33496 (July 13, 2009) (File No. SR–DTC–2009–11). For additional information, *see infra* note 309.

[94] *See* U.C.C. 8–320.

[95] Securities Exchange Act Release No. 25120 (Nov. 13, 1987), 52 FR 44506 (Nov. 19, 1987) (File No. SR–NYSE–87–04).

[96] *See, e.g.,* Securities Exchange Act Release No. 35798 (June 1, 1995), 60 FR 30909 (June 12, 1995) (File Nos. SR–Amex–95–17, SR–BSE–95–09, SR–CHX–95–12, SR–NASD–95–24, SR–NYSE–95–19, SR–PSE–95–14, SR–PHLX–95–34); Securities Exchange Act Release No. 36788 (Jan. 26, 1996), 61 FR 3741 (Feb. 1, 1996) (File No. SR–CBOE–95–62).

[97] *See, e.g.,* U.C.C. 8–102(a)(7), (9), (17), 501, 506.

[98] *See* The Depository Trust Company 1998 Annual Report, *available at http://www.sechistorical.org/collection/papers/1990/1998_0101_DTCAR_1.pdf.*

[99] For example, DTC was able to expand eligible issues to include State of Israel bonds and Bankers' Acceptances, short-term debt instruments that are guaranteed by commercial banks. *See* The Depository Trust Company 1997 Annual Report, *available at http://www.sechistorical.org/collection/papers/1990/1997_0101_DTCAR.pdf.*

[100] SEC Annual Report, 1997, tbl.3 (Clearing Agencies), at 179 and tbl.9 (Depositories), at 180.

[101] Securities Exchange Act Release No. 41800 (Aug. 27, 1999), 64 FR 48694 (Sept. 7, 1999) (File No. SR–NSCC–99–10).

[102] *Id.*

[103] *See* DTCC: Settlement & Asset Services, available at *http://www.dtcc.com/asset-services.aspx* (last visited December 11, 2015). *See also* DTCC, *Our Capabilities* 17 (2014), available at *http://www.dtcc.com/~/media/Files/Downloads/About/DTCC_Capabilities.pdf.*

[104] *Id.*

[105] *Id.*

[106] *See, e.g.,* Del. Code Ann. tit. 8, § 219(c) (right to examine the stockholder list or to vote in person or by proxy at any meeting of stockholders limited to registered securityholders).

[107] *See* Exchange Act Rule 17Ad–9(a)(3), 17 CFR 240.17Ad–9(a)(3) (referring to ''securityholder's registration''); Exchange Act Rule17Ad–9(a)(4), 17 CFR 240.17Ad–9(a)(4) (referring to ''registered securityholder''); Exchange Act Rule 12g5–1, 17 CFR 240.12g5–1 (''securities shall be deemed to be 'held of record' by each person who is identified as the owner of such securities on records of security holders maintained by or on behalf of the issuer'').

[108] *See* U.C.C. 8–102(a)(13). (''Registered form,' as applied to a certificated security, means a form in which: (i) The security certificate specifies a person entitled to the security; and (ii) a transfer of the

''issuer . . . may treat the registered owner as the person exclusively entitled to vote, receive notifications, and otherwise exercise all the rights and powers of an owner.'' [109] Registered securityholders are listed directly on the records of the issuer or the issuer's transfer agent under their own names.[110] The issuer or its transfer agent may have direct contact with the registered securityholder, keep the records that reflect the ownership interest of the registered securityholder, and provide services directly to the registered securityholder. These services may include issuing, cancelling and transferring shares, making distributions, providing communications and mailings from the issuer, and answering securityholder inquiries. Registered owners can hold their securities either in certificated form or in uncertificated (*i.e.,* book-entry) form, such as uncertificated securities held through DRS.[111]

2. Beneficial Owners

The vast majority of securityholders in the U.S. are beneficial owners rather than registered owners.[112] Beneficial owners do not own the securities directly but generally have purchased them through an intermediary, such as a broker or a bank, and determined to hold them in street name through a book-entry account with that intermediary. The intermediary, rather than the transfer agent, maintains and updates the securityholder records, facilitates or executes transfers, and provides other services for the securityholder.[113]

When securities are held in street name, there is a legal distinction between the nominee, who has legal status as the registered securityholder, and the person with economic or beneficial ownership of the security.[114] Securities held in street name are legally owned by and registered in the name of the depository's nominee (most often DTC's nominee, Cede & Co.). The individual investor's broker (or other intermediary) who is a member or participant of the depository will be identified on the books of the depository as having a ''securities entitlement'' [115] to a pro rata share of the fungible bulk of that security held by the depository.[116] Correspondingly, the individual investor will be identified on the books of the depository participant (his or her broker or other intermediary) as having a securities entitlement to a pro rata share of the securities in which the participant has an interest. At each level, the intermediary will be obligated to provide the entitlement holder with payments and distributions with respect to the financial asset and to exercise rights as directed by the entitlement holder.[117] A securities intermediary satisfies such duties where the intermediary acts as required by any agreement between the intermediary and entitlement holder.[118] The entitlement holder will be permitted to look only to the intermediary for performance of the obligations.[119] Other rights and interests that a beneficial owner has against a securities intermediary's property are created by agreements between the beneficial owner and the securities intermediary.

B. Clearance and Settlement Process

The clearance and settlement process differs depending on the type of security being traded, how the security is held by the investor (*i.e.,* registered or beneficial form), the market or exchange on which it is traded, and the specific entities and institutions involved. Yet, regardless of the specific variables involved, the basic clearance and settlement processes are substantially similar. For illustration purposes, this section describes generally the clearance and settlement process for exchange-based equity trades held in street name.

All securities trades involve a legally binding agreement that sets forth the terms of the trade. In general, the ''clearing'' of those trades is the process of comparing and confirming the material terms of the agreement: (i) The identity of the buyer and seller; (ii) the identity and quantity of the securities being traded; and (iii) the price, date, and other material details of the trade.[120] Clearing can be ''bilateral,'' where the parties to the transaction work directly with each other to take the steps necessary to clear the transaction, or ''central,'' where a third party, such as a clearing agency, undertakes the steps necessary to clear the transaction.[121]

security may be registered upon books maintained for that purpose by or on behalf of the issuer, or the security certificate so states.'')

[109] U.C.C. 8–207.

[110] Because a registered securityholder may be either a natural person or a legal entity, such as a partnership, trust, or corporation, transfer agents generally are familiar with issues that may arise with respect to a registered securityholder's legal status in connection with securities processing transactions. *See* Guttman, *supra* note 6, at § 5:19–5:28 (discussing different ''aggregate'' and corporate types of registered securityholders).

[111] A registered securityholder's options for holding uncertificated securities, through DRS or otherwise, will be subject to the issuer's governing documents and the law of its jurisdiction of organization, as well as to other legal requirements that may apply to the issuer, such as rules of SROs such as DTC and national securities exchanges. For additional discussion of DRS, *see supra* note 92 and *infra* Section IV.

[112] For more information regarding beneficial ownership, *see, e.g.,* Final Street Name Study, *supra* note 82; Concept Release On The U.S. Proxy System, Exchange Act Release No. 62495 (July 14, 2010), 75 FR 42982 (July 22, 2010) (''Proxy Concept Release''); Holding Your Securities—Get the Facts, SEC, *available at http://www.sec.gov/investor/pubs/holdsec.htm.*

[113] These transfer and recordkeeping services provided to beneficial owners by intermediaries may be referred to as ''sub-transfer agent'' services. For more information, *see infra* Section VII.B.

[114] For additional detail concerning aspects of beneficial ownership, *see* Preliminary Street Name Study, *supra* note 45, at 9–11. For an example of reference in a rule of the Commission to ''beneficial owner[s],'' *see, e.g.,* Exchange Act Rule 13d–3, 17 CFR 240.13d–3 (determination of beneficial owner).

[115] *See* U.C.C. 8–102(a)(7) (defining ''entitlement holder'' as a person identified in the records of a securities intermediary as the person having a security entitlement against the securities intermediary); U.C.C 8–102(a)(17) (defining ''security entitlement''); U.C.C. 8–102(a)(14) (defining ''securities intermediary'' as (i) a clearing corporation or (ii) a person, including a bank or broker, that in the ordinary course of its business maintains securities accounts for others and is acting in that capacity); U.C.C. 8–503(b) (providing that an entitlement holder's property interest with respect to a particular financial asset under [U.C.C. 8–503(a)] is a pro rata property interest in all interests in that financial asset held by the securities intermediary).

[116] For securities held in ''fungible bulk,'' there are no specifically identifiable shares directly owned by DTC participants. Rather, each participant owns a pro rata interest in the aggregate number of shares of a particular issuer held at DTC. In turn, each customer, such as an individual investor of a DTC participant, owns a pro rata interest in the shares in which the DTC participant has an interest. *See* Processing of Tender Offers Within the National Clearance and Settlement System, Exchange Act Release No. 19678, n.5 (Apr. 15, 1983), 48 FR 17603, 17605, n.5 (Apr. 25, 1983) (describing fungible bulk) (''Rule 17Ad–14 Proposing Release''); Office of Investor Education and Advocacy, Investor Bulletin: DTC Chills and Freezes, SEC (May 2012), *available at https://www.sec.gov/investor/alerts/dtcfreezes.pdf* (discussing fungible bulk).

[117] U.C.C. 8–505, 506.

[118] U.C.C. 8–505(a)(1), 506(1). In the absence of an agreement covering payments and distributions, the securities intermediary must exercise due care in accordance with reasonable commercial standards. In the absence of an agreement with respect to the exercise of rights as directed by the entitlement holder, the securities intermediary either must place the entitlement holder in a position to exercise the rights directly or exercise due care in accordance with reasonable commercial standards to follow the direction of the entitlement holder. U.C.C. 8–505(a)(2), 506(2).

[119] U.C.C. 8–503(c) (referring only to ''securities intermediar[ies]'' with respect to enforcement rights that may be exercised by an entitlement holder).

[120] October 1987 Market Break Report, *supra* note 54, at 10–2 through 10–5; Teweles, *supra* note 8, at 302–3.

[121] Prior to the 1980s, central clearing predominantly involved a two-sided matching process conducted mainly by the exchanges, where an exchange collected trade data and passed that information to the clearing agency. After the October 1987 Market Break led to significant numbers of unmatched trades, the Commission recommended that automated systems should be used to facilitate comparison at or near the time of trade execution. *See* Securities and Exchange Commission Recommendations regarding the

Continued

Settlement is the fulfillment by the parties to the transaction of their respective obligations for the trade, usually by exchanging funds for the delivery of securities. For equities, settlement generally occurs three business days after the trade date (*i.e.,* ''T+3''),[122] although other arrangements may be available by private agreement.[123] Delivery currently is far more likely to be by book-entry than by exchange of physical certificates. As previously discussed, the brokers' certificates in DTC's depository are held in fungible bulk and registered in the name of Cede & Co. to facilitate book-entry transactions involving electronic debits (on the seller's side) and credits (on the buyer's side) to the brokers' securities accounts at the depository rather than the movement of physical securities certificates. Because these shares are held in street name, DTC knows the names of the brokers who are DTC participants (often referred to as clearing brokers) but not the names of brokers who are not DTC participants (often referred to as introducing brokers) or either type of brokers' customers.[124] The brokers track the holdings of their customers who are the ultimate beneficial owners of the securities. For securities held in fungible bulk, rights are passed from record owner Cede & Co. through securities intermediaries to the ultimate beneficial owner.

Equity trades that are cleared and settled through DTC's facilities are generally processed in NSCC's CNS system, with final settlement on the third business day after the trade is executed. NSCC has approximately 1,000 members, made up of brokers, dealers, banks, and other intermediaries. Using CNS, NSCC nets multilaterally all of the clearing participants' purchases and sales in each security to one security position per participant per day in order to arrive at a daily net settlement obligation for each participant. NSCC then makes deliveries only on the remaining net positions through settlement accounts that the participants hold with DTC (for securities) and the Federal Reserve System (for cash).[125] Because NSCC interposes itself between trading brokers on each trade and guarantees the settlement as each broker's counterparty,[126] each broker's settlement is with NSCC and DTC, not with the other clearing participant, which reduces the brokers' exposure to risk of default by other brokers (*i.e.,* counterparty risk). A broker can either settle each day or carry open commitments forward to net against the next business day's settlement (hence the continuous nature of CNS).[127] On the cash side of the trade, all money owed to or from a particular DTC participant will be netted down each day by NSCC to a single dollar amount, which reduces the amount of money firms need to have on hand to settle their obligations.

The goal of netting is to minimize the number and value of transactions required for buyers and sellers (or the firms acting on their behalf) to settle their transactions. For example, if a broker purchases 100 shares of XYZ stock for a customer and sold 50 shares of XYZ stock for another customer, at the end of the day the broker's securities account at DTC would be credited with 50 shares of XYZ (the net difference between buying 100 shares and selling 50 shares). If the broker paid $25 per share to buy the 100 shares of XYZ and sold the 50 shares for the same price on the same day, at the end of the day the broker's cash account would be debited $1,250. The vast majority of equity trades handled by DTC clear and settle through NSCC's CNS, which, on average, results in an reduction of the volume of settlement transactions by approximately 98%.[128] As a result, on average, 99% of all trade obligations that occur in U.S. equity markets do not require the exchange of money.[129]

For illustration purposes only, Figure 1 below depicts one possible example of how an equity trade effected on a national securities exchange is cleared and settled, beginning with the buyer conveying an order to an executing broker. If the executing broker is a member of NSCC it may be referred to as a ''clearing broker.'' If it is not a member of NSCC, it may be referred to as an ''introducing broker'' or ''correspondent broker,'' depending on whether the broker carries and is responsible for the customer's account. Where the executing broker is a member of NSCC (*i.e.,* a clearing broker) it routes the order for execution to a national securities exchange. Where the executing broker is not a member of NSCC (*i.e.,* an introducing or correspondent broker) it routes the order to a clearing broker who will then route the order for execution to a national securities exchange. The national securities exchange matches the order with a corresponding sell order and then sends matched trade data to NSCC. NSCC nets these orders using its CNS system. If the securities are held in street name, there will be no change to the master securityholder file [130] maintained by the transfer agent and settlement will be effected by crediting and debiting the securities entitlement accounts of the buyer and seller, respectively. Thus, final settlement of the securities leg of the transaction will involve the following sequential steps: (i) The DTC securities account of the seller's clearing broker will be debited with the securities being purchased; (ii) NSCC's securities account at DTC will be credited with the securities purchased; (iii) the DTC securities account of the buyer's clearing broker will also be credited; and (iv) each broker will credit or debit their respective customers' securities accounts held with the broker. On the cash side, final settlement will involve the following sequential steps: (i) The Federal Reserve bank account of the buyer's clearing broker will be debited for the sale price of the securities; (ii) DTC's Federal Reserve bank account will credited for the sale price of the

October 1987 Market Break, contained in Testimony delivered by David S. Ruder, Chairman, Securities and Exchange Commission, before the Senate Committee on Banking, Housing and Urban Affairs, p. 23 (Feb. 3, 1988). The recommendation was subsequently adopted in stages. *See, e.g.,* New York Stock Exchange, Inc. ''Overnight Trade Comparison,'' adopted Aug. 14, 1989, Exchange Act Release No. 27096 (Aug. 3, 1989), 54 FR 33299 (Aug. 14, 1989).

[122] *See* Exchange Act Rule 15c6–1, 17 CFR 240.15c6–1. T (or T+0) is the day the trade is executed. The first business day following the trade date is T+1, and so on. Thus, assuming there are no non-business days in the week, a trade that is executed on a Monday (T or T+0) would settle on Thursday (T+3). A trade executed on Friday would settle on the following Wednesday (Saturday and Sunday are not business days, so T+1 is Monday, T+2 is Tuesday, etc.).

[123] *See, e.g.,* NYSE Rule 64 (2009).

[124] For further information on introducing and clearing brokers, *see* fig.1 and accompanying text, *infra.*

[125] NSCC Rule 11, 68–74 (May 4, 2015), *available at www.NSCC.com* (''Continuous Net Settlement''). The Federal Reserve System refers to the central bank of the United States, and is commonly referred to as the ''Federal Reserve.'' The Federal Reserve Board is the governing body for the Federal Reserve System. *See generally,* Federal Reserve, *http://www.federalreserve.gov/aboutthefed/default.htm.*

[126] NSCC Rule 11,68–74 (May 4, 2015), *available at www.dtcc.com; see also* Becker and Etter, *International Clearance and Settlement,* 14 Brook. J. Int'l L. 275, note 15 (1988); David M. Weiss, After the Trade is Made—Processing Securities Transactions 245–49 (2006) (''After the Trade is Made'').

[127] *See* October 1987 Market Break Report, *supra* note 54, at ch. 10, 1–12; Teweles, *supra* note 8, at 312–26.

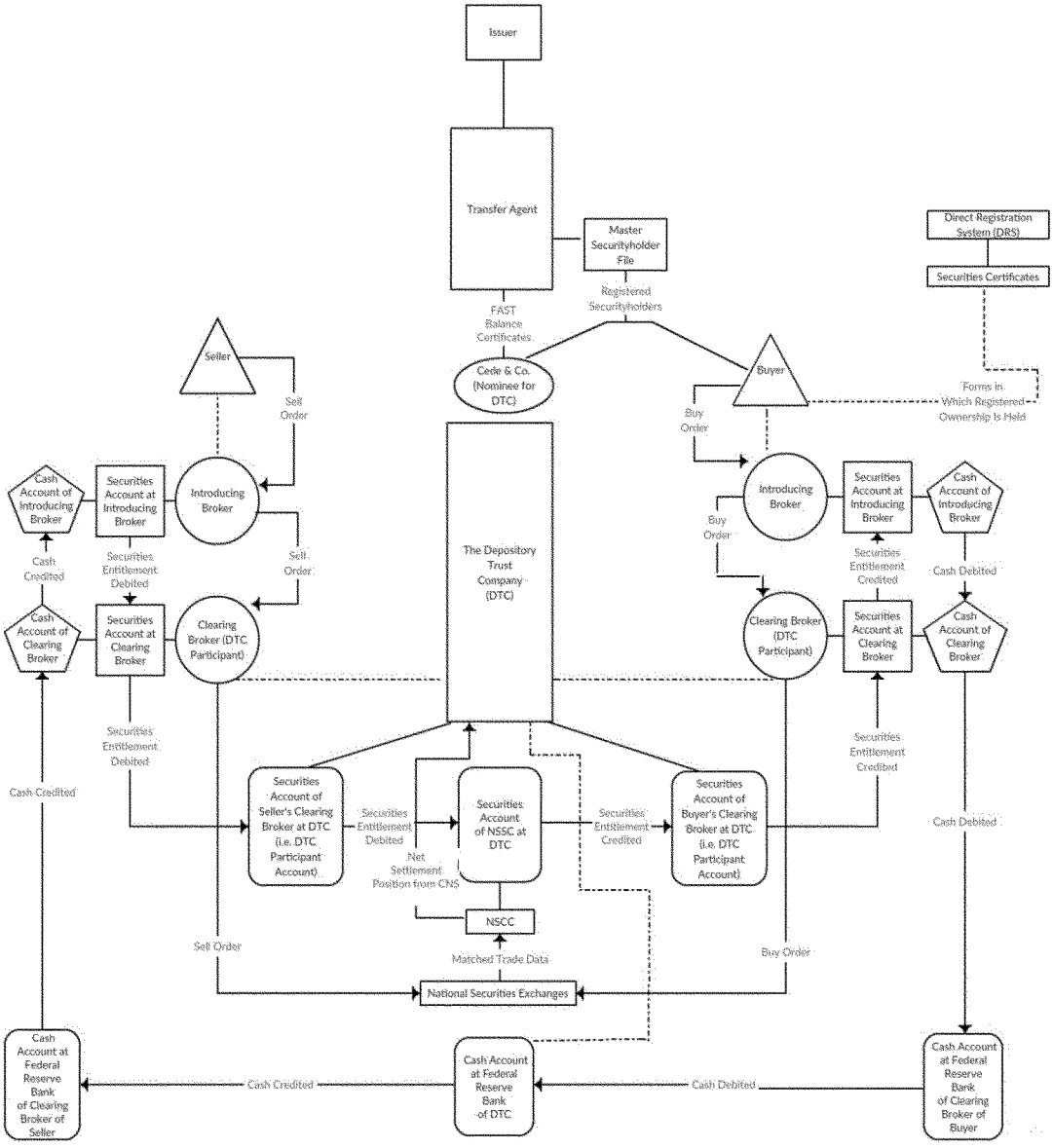
[128] *See* DTCC's overview of NSCC, stating that NSCC's netting system results in ''reducing the value of securities and payments that need to be exchanged by an average of 98% each day,'' *available at http://www.dtcc.com/about/businesses-and-subsidiaries/nscc.*

[129] Virginia B. Morris and Stuart Z. Goldstein, Guide to Clearance and Settlement: An Introduction to DTCC, 8 (2009).

[130] *See infra* Sections IV.A.3 and V.A. for additional description and discussion of transfer agents' role and responsibilities with respect to the master securityholder file.

securities; (iii) DTC will transfer this cash to the Federal Reserve bank account of the seller's Clearing Broker; and (iv) each broker will credit or debit its respective customers' cash accounts held with the broker.

Figure 1:



IV. Transfer Agent Regulation: Origins and Current Status

This section provides a general overview of the federal and state law and other requirements, such as those of self-regulatory organizations (''SRO''), that apply to transfer agents and their activities. We begin with a review and discussion of each of the Commission's current transfer agent rules, then briefly discuss banking regulations and taxation-related requirements that may apply to transfer agents.[131] We then review the requirements of SROs that apply to transfer agents, particularly DTC and NYSE rules. Finally, we discuss the regulation of transfer agents under state law. Later, in Sections V, VI, and VII of the release, we discuss issues and concerns related to modern transfer agent activities and seek comment on the best approach to addressing them.

A. Federal Transfer Agent Rules

Prior to 1975, most transfer agents were banks or trusts.[132] There was no federal regulation of transfer agents and transfer agents were subject to state law, generally pursuant to UCC

[131] *See* Section IV.B, *supra,* for discussion of bank transfer agents. Transfer agents that are not banks may be referred to as non-bank transfer agents.

[132] Unsafe Practices Study, *supra* note 17, at 38.

provisions.[133] Transfer agents were also subject to stock exchange requirements regarding securities processing. For example, in 1869, the NYSE adopted a requirement that all shares of NYSE-listed companies must be registered at a bank or other agency.[134] As another example, the ''Chambers Street Rule'' of the NYSE required transfer agents to maintain offices for transfer south of Chambers Street in New York City.[135] The American Stock Exchange had similar requirements in its Rule 891.[136]

The 1975 Amendments gave the Commission regulatory authority for the first time over transfer agents.[137] Section 3(a)(25) of the Exchange Act defines a ''transfer agent'' as any person who engages on behalf of an issuer of securities or on behalf of itself as an issuer of securities in:

(A) Countersigning such securities upon issuance;

(B) monitoring the issuance of such securities with a view to preventing unauthorized issuance (*i.e.,* a registrar); [138]

(C) registering the transfer of such securities;

(D) exchanging or converting such securities; or

(E) transferring record ownership of securities by bookkeeping entry without the physical issuance of securities certificates.[139]

Section 17A(c)(1) of the Exchange Act requires any person performing any of these functions with respect to any security registered pursuant to Section 12 of the Exchange Act or with respect to any security which would be required to be registered except for the exemption contained in subsection (g)(2)(B) or (g)(2)(G) of Section 12 (''Qualifying Security'') to register with the Commission or other Appropriate Regulatory Agency (''ARA'').[140] With respect to any transfer agent so registered, Section 17A(d)(1) of the Exchange Act authorizes the Commission to prescribe such rules and regulations as may be necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act.[141] Once a transfer agent is registered, either compulsorily or voluntarily,[142] the Commission ''is empowered with broad rulemaking authority over *all* aspects of a transfer agent's activities as a transfer agent.'' [143]

Beginning in the late 1970s and early 1980s, the Commission adopted a series of transfer agent rules designed to regulate the basic recordkeeping and processing functions performed by transfer agents. The rules primarily related to routine transfers of certificated equity and debt securities and generally covered three areas: (i) Registration and annual reporting requirements; (ii) timing and certain notice and reporting requirements related to securities transaction processing (referred to as ''turnaround rules''); and (iii) recordkeeping and record retention rules and safeguarding requirements for securities and funds.

As discussed more fully below, processing obligations related to mutual funds, dividend reinvestment plans (''DRIPs''),[144] and limited partnerships were expressly exempted from most of the processing and recordkeeping rules because at the time, the Commission believed that the activities required for the redemption of investment company shares and shares purchased or sold through a DRIP were significantly different from those required for the transfer of stocks and bonds.[145] Although the Commission has made modest revisions to the initial transfer agent rules and has added several new rules since the adoption of those earlier rules, the core registration, processing, recordkeeping, and safeguarding rules remain substantially unchanged, and the exemptions for mutual funds, DRIPs, and limited partnerships have not been revisited.

1. Registration and Annual Reporting Requirements

The rules setting forth the registration, annual reporting, and withdrawal requirements for transfer agents are found in Exchange Act Rules 17Ac2–1 (application for registration), 17Ac2–2 (annual reporting), and 17Ac3–1 (withdrawal from registration).

Rule 17Ac2–1 and Form TA–1

Before a transfer agent may perform any of the statutory transfer agent functions defined in Section 3(a)(25) of the Exchange Act for a Qualifying Security, it must apply for registration by submitting Form TA–1 (Uniform Form of Registration as a Transfer Agent and for Amendment to Registration) to its ARA and its registration as a transfer agent with its ARA must have become effective.[146] Form TA–1 requires a

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[133] For a discussion of state law requirements impacting transfer agent processes, *see supra* Sections II and III.

[134] *See* Facts and Figures, Historical, Chronology of New York Stock Exchange (1792–1929), *available at http://www.nyxdata.com/nysedata/asp/factbook/viewer_edition.asp?mode=table&key=2169&category=4*.

[135] *See* Jerry W. Markham, A Financial History of the United States: From Christopher Columbus to the Robber Barons (1492–1900) 288 (2002).

[136] *See, e.g.,* Securities Exchange Act Release No. 37562 (Apr. 25, 1996), 61 FR 43283 (Aug. 13, 1996) (File No. SR–DTC–96–09) (mentioning American Stock Exchange Rule 891 requirements). These requirements were criticized by non-New York banks providing transfer agent services as many banks viewed providing transfer agent services as an important part of providing the full-service relationship it was believed was desired by corporate borrower clients. *See* Charles Welles, *The Great Paper Fight: Who Will Control the Machinery?,* Institutional Investor (May 1973), Hearings on S.2058 before S. Comm. on Banking, Hous. and Urban Affairs, Subcomm. on Securities, 93rd Cong. 334 (1973). The NYSE amended the Chambers Street Rule in 1971, permitting out-of-town transfer agents to act as listed company transfer agents, subject to certain conditions including that they maintain a ''drop'' office in lower Manhattan. In 2005, the Commission issued an order that approved an NYSE rule change that eliminated the Chambers Street Rule. Securities Exchange Act Release No. 51973 (July 5, 2005), 70 FR 40094 (July 12, 2015) (File No. SR–NYSE–2004–62).

[137] *See* S. Rep. No. 75, 57–58 (1975) (to accompany report S. 249). S. 249 is the principal legislative history of the Securities Acts Amendments of 1975 of which the transfer agent legislation was a part.

[138] For additional information regarding ''registrars,'' *see supra* note 51 and Sections II.B and II.C.1 and *infra* notes 298, 299, 320, 341 and Section IV.C.1.

[139] Exchange Act Section 3(a)(25), 15 U.S.C. 78c(a)(25). Note that any insurance company or separate account which performs such functions solely with respect to variable annuity contracts or variable life policies which it issues or any registered clearing agency which performs such functions solely with respect to options contracts which it issues is excluded from the definition of ''transfer agent'' under the Exchange Act. *Id.*

[140] Exchange Act Section 17A(c)(1), 15 U.S.C. 78q–1(c)(1). Additionally, *see infra* Section IV.B for discussion of bank ARAs.

[141] As noted in the Committee Report which accompanied Section 17A(d)(1) of S. 249, the precursor to Section 17A(d)(1) of the 1975 Amendments, Congress intended to ''. . . empower[ ] [the Commission] with broad rulemaking authority over all aspects of a transfer agents' activities as transfer agent.'' Senate Report on Securities Act Amendments of 1975, *supra* note 44, at 57.

[142] There is no statutory or other prohibition on voluntary registration as a transfer agent, although it is relatively uncommon. *See generally,* Exchange Act Section 17A(c), 15 U.S.C. 78q–1(c). *See also infra* Section VII.B.1, discussing the practice of voluntary registration as transfer agents by certain third party administrators (''TPA'').

[143] *See* Senate Report on Securities Act Amendments of 1975, *supra* note 44. The Committee Report elaborated that it expected the Commission's regulations ''to include, among other matters, minimum standards of performance, the prompt and accurate processing of securities transactions, and operational compatibility of and cooperation by transfer agents with other facilities and participants in the securities handling process.'' *Id.*

[144] DRIPs allow investors who already own an issuer's stock to reinvest their cash dividends by purchasing additional shares or fractional shares directly from the issuer or the issuer's transfer agent, without going through a broker. Most DRIPs require the investor to become a registered securityholder, as opposed to a street name holder.

[145] *See* Regulation of Transfer Agents, Exchange Act Release No. 13636 (June 16, 1977), 42 FR 32404, 32408 (June 24, 1977) (''Rule 17Ad–1 through 17Ad–7 Adopting Release'').

[146] Exchange Act Section 17A(c)(1), 15 U.S.C. 78q–1(c)(1); 17 CFR 240.17Ac2–1; SEC Form TA–1, 17 CFR 249b.100. Once registration has become

transfer agent seeking to register to disclose information including the following: (a) General identification information [147] about the transfer agent and whether it is part of any service company arrangements; [148] (b) the identity of its direct and indirect owners and other control persons; [149] and (c) whether it or any of its control affiliates has been subject to investment-related criminal prosecutions, regulatory actions, or civil actions.[150] The registration automatically becomes effective 30 days after the Form TA–1 is filed, unless the ARA takes affirmative action to accelerate, deny, or postpone registration in accordance with the provisions of Section 17A(c) of the Exchange Act.[151] A registrant must amend its Form TA–1 within 60 days following the date on which information reported therein becomes inaccurate, incomplete, or misleading.[152] For transfer agents for whom the Commission is their ARA, they must file Form TA–1 and amendments thereto electronically on the Commission's EDGAR system and each answer provided by the transfer agent is required to be formatted as an XML data tag.[153]

Rule 17Ac2–2 and Form TA–2

All registered transfer agents, regardless of their ARA, must file an annual report with the Commission using Form TA–2 (Form for Reporting Activities of Transfer Agents Registered Pursuant to Section 17A of the Securities Exchange Act of 1934).[154] Form TA–2 covers a calendar year reporting period that ends on December 31 [155] and must be filed by March 31 of the year following the end of the reporting period. Form TA–2 must be filed electronically on the Commission's EDGAR system and each answer provided by the transfer agent is required to be formatted as an XML data tag.[156]

Form TA–2 requires transfer agents to identify and report on the use of service companies, or other transfer agents, in connection with their transfer agent activities. It also requires transfer agents to provide annual data regarding the transfer agent's compliance with the turnaround rules. Additionally, the form requires transfer agents to provide the Commission with updated information about their business activities, including accounts administered, items received,[157] turnaround performance, total amounts of funds distributed, and lost securityholder accounts.[158]

Rule 17Ac2–2 provides exemptions from completing certain sections of Form TA–2 for small transfer agents and for transfer agents that outsource their work completely to service companies. If a registered transfer agent received fewer than 1,000 items for transfer in the reporting period and did not maintain master securityholder files for more than 1,000 individual securityholder accounts as of December 31 of the reporting period, it is only required to complete Questions 1 through 5, 11, and the signature section of Form TA–2.[159] A named transfer agent that engaged a service company to perform all of its transfer agent functions during the reporting period is only required to complete Questions 1 through 3 and the signature section of Form TA–2.[160]

The Commission, other ARAs and members of the public (including issuers and investors) use information on Forms TA–1 and TA–2. The Commission's EDGAR database provides a means through which information on these forms can be searched and retrieved. The Commission uses the information on Form TA–1 to review an entity's application for registration as a transfer agent and to maintain current information about transfer agents. The Commission uses information on Form TA–2, as well as information on Form TA–1 and amendments thereto, for several purposes, including: (i) To determine the nature of the business conducted by a transfer agent, (ii) to monitor transfer agent activities and to evaluate compliance with Commission rules, and (iii) to inform Commission transfer agent policymaking.[161] In connection with monitoring of and checking regulatory compliance by transfer agents, the Commission's examination and inspections program may use the information on Forms TA–1 and TA–2 to plan their site visits in connection with an exam. The examination staff of the Commission may also use the information on Forms TA–1 and TA–2 to identify particular issues to focus on during an exam or to analyze industry trends and to provide basic census information concerning registered transfer agents. In addition, Form TA–1 and TA–2 data provide the Commission with information about securities processing issues that may need to be addressed by Commission rulemaking. Form TA–1 and TA–2 data is also used by the Commission to assist it in evaluating the costs and benefits of potential rulemaking.

Rule 17Ac3–1 and Form TA–W

Pursuant to Rule 17Ac3–1, a registered transfer agent may voluntarily withdraw its registration by filing Form TA–W (Notice of Withdrawal from Registration as a Transfer Agent) with

effective, a transfer agent may be subject to censure, suspension, limitation, or revocation of its registration if the transfer agent or any person associated with the transfer agent fails to obey Commission rules or violates certain of the securities laws. Exchange Act Section 17A(c)(3), 15 U.S.C. 78q–1(c)(3); Exchange Act Section 17A(c)(4)(C), 15 U.S.C. 78q–1(c)(4)(C).

[147] SEC Form TA–1, Items 1–7 (concerning basic identification information (such as name, contact person, phone number, address and email address), identification numbers including the transfer agent's file number and FINS number, and information concerning service company arrangements in which the registrant may be involved). The file number for a transfer agent registered with the Commission would be the file number assigned by the Commission. A FINS number, short for Financial Industry Number Standard, is a unique five digit number issued by DTC and used by the securities industry as a means of identifying financial institutions in automated data processing systems. *See* Notice of Assumption or Termination of Transfer Agent Services, Exchange Act Release No. 35039 n.12 (Dec. 1, 1994), 59 FR 63656 (Dec. 8, 1994) (''Adopting Release for Rule 17Ad–16''); *See* Becoming a DTC-Eligible Agent, DTCC, *http://www.dtcc.com/asset-services/agent-services/dtc-eligible-agent* (information provided by DTCC, the parent company of DTC, including a form for authorizing DTC to issue a FINS number).

[148] For definition of ''service company,'' *see infra* note 241 and accompanying text.

[149] SEC Form TA–1, Items 8 and 9, 17 CFR 249b.100.

[150] SEC Form TA–1, Item 10, 17 CFR 249b.100.

[151] Exchange Act Rule 17Ac2–1(a), 17 CFR 240.17Ac2–1(a); SEC Form TA–1, General Instruction G, 17 CFR 249b.100. Note that the 30-day time period in Exchange Act Rule 17Ac2–1(a), 17 CFR 240.17Ac2–1(a), is shorter than the Exchange Act's 45-day time period for applications to be effective. Exchange Act Section 17A(c)(2), 15 U.S.C. 78q–1(c)(2).

[152] Exchange Act Rule 17Ac2–1(c), 17 CFR 240.17Ac2–1(c); SEC Form TA–1, General Instruction H, 17 CFR 249b.100.

[153] Exchange Act Rule 17Ac2–1(d), 17 CFR 240.17Ac2–1(d); Electronic Filing of Transfer Agent Forms, Exchange Act Release No. 54864, 5 (Dec. 4, 2006), 71 FR 74698 (Dec. 12, 2006) (''Electronic Filing of Transfer Agent Forms Release'').

[154] Exchange Act Rule 17Ac2–2(a), 17 CFR 240.17Ac2–2(a); SEC Form TA–2, 17 CFR 249b.102 (Form for Reporting Activities of Transfer Agents Registered Pursuant to Section 17A of the Securities Exchange Act of 1934).

[155] Exchange Act Rule 17Ac–2–2(b), 17 CFR 240.17Ac2–2(b).

[156] Exchange Act Rule 17Ac2–2(c), 17 CFR 240.17Ac2–2(c); Electronic Filing of Transfer Agent Forms Release, *supra* note 153, at 5.

[157] *See generally,* Section IV.A.2 for discussion of ''item.''

[158] *See generally,* SEC Form TA–2, 17 CFR 249b.102.

[159] Exchange Act Rule 17Ac2–2(a)(1), 17 CFR 240.17Ac2–2(a)(1).

[160] Exchange Act Rule 17 Ac2–2(a)(2), 17 CFR 240.17Ac2–2(a)(2).

[161] *See* Adoption of Revised Transfer Agent Forms and Related Rules, Exchange Act Release No. 23084 (Mar. 27, 1986), 51 FR 12124 (Apr. 9, 1986) (''Revised Transfer Agent Forms and Related Rules''); Electronic Filing of Transfer Agent Forms Release, *supra* note 153, at 5.

the relevant ARA, disclosing, among other things, any actual or potential claims or legal proceedings against the transfer agent, its reasons for withdrawing or ceasing to function as a transfer agent, and whether one or more successor transfer agents will take over the maintenance of its transfer books.[162] Withdrawal from registration automatically becomes effective 60 days after filing Form TA–W, unless the Commission or applicable ARA finds it in the public interest to take affirmative action to accelerate, deny, or postpone the request.[163]

2. Processing, Reporting, Recordkeeping, and Exemptions: Rules 17Ad–1 Through 17Ad–7 and Rules 17f–1 and 17f–2

On June 16, 1977, the Commission adopted Rules 17Ad–1 through 17Ad–7 as a set of performance standards for transfer agents.[164] These turnaround and processing rules were ''designed to protect investors . . . and to contribute to the establishment of the national system for the prompt and accurate clearance and settlement of transactions in securities by,'' among other things, ''assuring that the transfer agent community performs its functions in a prompt, accurate and more predictable manner.'' The rules primarily focused on establishing minimum performance and recordkeeping standards for routine transfers of certificated equity and debt securities and the prompt and accurate cancellation and issuance of certificated securities.[165] The rules were also designed to provide an early warning system to alert issuers and regulatory agencies when the performance standards are not being met, prohibit under-performing transfer agents from expanding their operations, require transfer agents to respond promptly to certain written inquiries regarding items presented for transfer, and require the maintenance and preservation of certain records necessary for regulatory authorities to monitor and enforce transfer agent compliance with the turnaround rules.[166] The specific processing, reporting, and retention requirements were metrics-based and, at the time, considered to be those necessary to ensure that transfer agents adequately performed their functions and that the Commission and other ARAs would be able to monitor transfer agents' compliance with the turnaround rules.[167] Further, the new transfer agent rules established by the Commission were designed not only to ensure that transfer agents meet prescribed performance standards for their core recordkeeping and transfer activities, but to ensure they would be regulated appropriately in the context of the National C&S System and that any problems meeting these performance standards would not negatively impact individual investors or the clearance and settlement system as a whole.[168] Each rule is discussed in detail below.

Rule 17Ad–1 defines the relevant terms used throughout the rules. One of the most important is ''item,'' which is defined as the certificates of a single issue of securities presented under one ticket,[169] and is the basic unit for which the turnaround and other processing requirements apply.[170] The other key definitions in Rule 17Ad–1 are ''transfer'' and ''turnaround.'' ''Transfer'' of a certificated security (where an outside registrar is not involved) is the completion of all acts necessary to cancel the certificate, issue a new one, and make it available to the presentor, and ''turnaround'' for an item (where an outside registrar is not involved) is completed when transfer is accomplished.[171]

Rule 17Ad–2 sets the basic performance standards for transfer agents.[172] Transfer agents who are not acting as a registrar must turnaround within three business days of receipt at least 90% of all ''routine items'' [173] received by the transfer agent during any month.[174] Non-routine items must receive ''diligent and continuous attention'' and must be ''turned around as soon as possible.'' [175] Routine items that are not turned around within three business days nevertheless must be ''turned around promptly.'' [176] Registered transfer agents acting as a registrar must ''process'' at least 90% of all items received during any given month no later than noon of the next business day for any item received after noon and no later than the opening of business on the next business day for those items received at or before noon.[177] If a transfer agent fails to meet the performance standards for turnaround set forth in Rule 17Ad–2 with respect to any month, it must notify the Commission and the transfer agent's ARA if it is not the Commission within 10 business days of the end of the month, provide certain turnaround data regarding specific numbers and percentages of items, explain the reasons for the failure, identify what steps have been taken to prevent future failures, and provide certain data regarding routine items that have not been turned around and have been in the transfer agent's possession for ''more than four business days.'' [178] Similar notification requirements apply where a transfer agent acting as a registrar fails to meet the processing performance standards.[179]

Rule 17Ad–3 provides limitations on the expansion of transfer agent activities if a transfer agent is unable to meet the minimum performance standards established by Rule 17Ad–2. Any transfer agent that is required pursuant to Rule 17Ad–2 to provide notice for failure to meet the performance standards for three consecutive months is prohibited from taking on new issues or providing new services for existing

[162] Exchange Act Rule 17 Ac3–1, 17 CFR 240.17Ac3–1; Exchange Act Section 17A(c)(3)(a), 15 U.S.C. 78q–1(c)(3)(A); SEC Form TA–W, 17 CFR 249b.101 (Notice of Withdrawal from Registration as a Transfer Agent).

[163] Exchange Act Rule 17Ac3–1(b), 17 CFR 240.17Ac3–1(b).

[164] Exchange Act Rules 17Ad1–7, 17 CFR 240.17Ad–1–7.

[165] *See* Rule 17Ad–1 through 17Ad–7 Adopting Release, *supra* note 145, at 32404.

[166] *Id. See also* Exchange Act Rules 17Ad–1–7, 17 CFR 240.17Ad–1–7.

[167] Rule 17Ad–1 through 17Ad–7 Adopting Release, *supra* note 145, at 32410.

[168] Rule 17Ad–1 through 17Ad–7 Adopting Release, *supra* note 145, at 32407 (noting the importance of avoiding impediments to ''the Commission's efforts to provide necessary or appropriate regulations for transfer agents in the broader context of the establishment of a national system for the prompt and accurate clearance and settlement of securities transactions.'').

[169] Exchange Act Rule 17Ad–1(a)(1), 17 CFR 240.17Ad–1(a)(1) (definition of ''item''). *See supra* note 17 (describing tickets).

[170] Rule 17Ad–1 through 17Ad– Adopting Release, *supra* note 145, at 32404.

[171] Exchange Act Rule 17Ad–1(d), (e), 17 CFR 240.17Ad–1(d), (e).

[172] As discussed in more detail *infra* in Section IV.C.1, the NYSE imposes a 48 hour turnaround requirement.

[173] Routine items are defined by Rule 17Ad–1(i), 17 CFR 240.17Ad–1(i). They are generally defined in the negative such that most items are considered routine so long as they do not require the requisition of a new certificate that the transfer agent does not have on hand, are not subject to a stop order, adverse claim, or other restriction on transfer, do not require certain additional documentation or review to complete the transfer, do not involve a transfer in connection with certain types of corporate actions, do not include a security of an issue which within the previous 15 business days was offered to the public pursuant to a Securities Act registration statement in an offering of a non-continuing nature, and do not include a warrant, right or convertible security either presented for transfer within five business days before rights expire or change or presented for exercise or conversion.

[174] Exchange Act Rule 17Ad–2(a), 17 CFR 240.17Ad–2(a). We note that with automation, these standards are substantially easier to meet than when the rule was adopted in 1977.

[175] Exchange Act Rule 17Ad–2(e), 17 CFR 240.17Ad–2(e).

[176] *Id.*

[177] Exchange Act Rule 17Ad–2(e), 17 CFR 240.17Ad–2(b).

[178] Exchange Act Rule 17Ad–2(c), 17 CFR 240.17Ad–2(c).

[179] Exchange Act Rule 17Ad–2(d), 17 CFR 240.17Ad–2(d).

issues.[180] Further, if a transfer agent fails to turnaround or process at least 75% of all routine items, it must notify the chief executive officer of each issuer for which the transfer agent acts.[181] Thus, Rules 17Ad–2 and 17Ad–3, taken together, provide an early warning system to alert issuers, the Commission and other ARAs of untimely performance and potential problems.

Rule 17Ad–4 provides certain exemptions from the turnaround, processing, and recordkeeping rules.[182] Rule 17Ad–4(a) creates an exemption from Rules 17Ad–2, 17Ad–3, and 17Ad–6(a)(1)–(7) for the processing of interests in limited partnerships, DRIPs, and redeemable securities issued by investment companies registered under Section 8 of the Investment Company Act of 1940 (''Investment Company Act''), which are also known as open-end funds.[183] In 1977, the rationale for providing the exemption for interests in limited partnerships was ''the low volume of transfers of such interests,'' [184] while the rationale for providing the exemption for DRIPs was the Commission's view at the time that transfer agents' processing for DRIPs ''require[s] procedures significantly different from the procedures required to transfer ownership of stocks and bonds.'' [185]

The Commission expressed the same rationale with respect to redeemable securities of registered investment companies, stating that transactions in these securities were ''significantly different from the transfer of ownership of stocks and bonds on issuer's records.'' [186] In addition, the Commission noted that such activity ''is subject to Section 22(e) of the Investment Company Act of 1940, 15 U.S.C. 80a–22(e),'' [187] and that ''[t]he amount of certificated fund shares is relatively small, and the amount of transfer agent activity in connection with transferring ownership of certificated shares represents a very small part of a transfer agent's activity with regard to an open-end investment company.'' [188] For these reasons, the Commission believed at the time that ''it would be desirable to study further the need for, and the nature of, minimum performance standards for the transfer of securities effected by open-end investment companies registered under Section 8 of the Investment Company Act, 15 U.S.C. 80a–8.'' [189]

Rule 17Ad–4(b) provides a similar exemption for certain small transfer agents by exempting a registered transfer agent from the turnaround, processing, recordkeeping, and other provisions of Rules 17Ad–2(a), (b), (c), (d) and (h), 17Ad–3, and 17Ad–6(a)(2)–(7) and (11), provided the transfer agent has received fewer than 500 items for transfer and fewer than 500 items for processing within a consecutive six month period, and provided that the transfer agent has filed proper notice of its exempt status with its ARA or has prepared a document certifying that the transfer agent qualifies as exempt (with respect to those ARAs where filing is not required).[190] The rationale behind this exemption was that, because the number of transfers performed by these smaller transfer agents was relatively small and involved issues which are not traded actively, it was not necessary or appropriate at that time to require those smaller transfer agents to comply with the minimum performance standards, recordkeeping provisions, and other requirements in those rules.[191]

Rule 17Ad–5 generally requires a registered transfer agent to respond within prescribed timeframes to certain types of written inquiries.[192] Rule 17Ad–5(a) requires a registered transfer agent to respond within five business days following the receipt of an inquiry from any ''person'' concerning the status of an item presented for transfer by such person or their agent during the preceding six months, provided the inquirer provides specific information concerning the item.[193] Rule 17Ad–5(b) requires a registered transfer agent to respond to any ''broker-dealer'' inquiry within five business days confirming or denying whether it has possession of a security presented for transfer and, if it has possession, acknowledging the transfer instructions or revalidating the window ticket,[194] provided the broker-dealer provides certain identifying information.[195] Rule 17Ad–5(c) requires a registered transfer agent to respond within 10 business days confirming or denying possession of a security where any person or their agent has requested that the transfer agent confirm possession as of a given date of a certificate presented by such person during the preceding 30 days [196] and provides information similar to that which is required under Rules 17Ad–5(a) and (b).[197] If required by the transfer agent, the inquirer must also provide assurance of payment.[198] Rule 17Ad–5(d) requires a registered transfer agent to respond within 20 business

[180] Exchange Act Rule 17Ad–3(a), 17 CFR 240.17Ad–3(a). Such limitations on the business of the transfer agent continue until there has been a period of three successive months in which no notices have been required.

[181] Exchange Act Rule 17Ad–3(b), 17 CFR 240.17Ad–3(b).

[182] Exchange Act Rule 17Ad–4, 17 CFR 240.17Ad–4.

[183] Investment Company Act Section 8, 15 U.S.C. 80a–8. *See generally,* Section VII.C for discussion of transfer agents for investment companies and the handling of redeemable securities issued by investment companies.

[184] Regulation of Transfer Agents, Exchange Act Release No. 13293 (Feb. 24, 1977) (''Rule 17Ad–1 through 17Ad–7 Re-Proposing Release'') (''From the information provided in SEC Form TA–1, 17 CFR 249b.100, the low volume of transfers of such [limited partnership] interests suggests that they may appropriately be exempted from revised [Rules 17Ad–2, 17Ad–3, and 17Ad–6(a)(1) through (a)(7)].'').

[185] Rule 17Ad–1 through 17Ad–7 Adopting Release, *supra* note 45 (''Lastly, the exemptions of paragraph 17Ad–4(a) have been expanded to include the transfers and withdrawals of shares from dividend reinvestment plans which . . . require procedures significantly different from the procedures required to transfer ownership of stocks and bonds.'')

[186] Rule 17Ad–1 through 17Ad–7 Adopting Release, *supra* note 145, at n.13. As originally proposed, the exemption would have been for ''securities of open-end investment companies,'' rather than ''redeemable securities of investment companies.'' *See* Rule 17Ad–1 through 17Ad–7 Re-Proposing Release, *supra* note 184. By adding the word ''redeemable,'' redeemable securities of registered unit investment trusts (''UIT'') were included within the exemption. However, because closed-end investment companies do not issue redeemable securities, transfer agents servicing closed-end fund securities are not within the exemption. Rule 17Ad–1 through 17Ad–7 Adopting Release, *supra* note 145, at n.14 (''The turnaround rules *do* apply to registered transfer agents performing transfer agent functions for securities issued by closed-end investment companies.'') (emphasis added).

[187] Rule 17Ad–1 through 17Ad–7 Adopting Release, *supra* note 145, at 32408.

[188] Rule 17Ad–1 through 17Ad–7 Adopting Release, *supra* note 145, at n.13.

[189] Rule 17Ad–1 through 17Ad–7 Re-Proposing Release, *supra* note 184.

[190] The filing of notices of exempt status for these small transfer agents is required where the ARA is the Federal Deposit Insurance Corporation (''FDIC'') or the Federal Reserve. Where the ARA is the Commission or the Office of the Comptroller of the Currency, the exempt transfer agent is not required to file a notice but must prepare a document certifying that the transfer agent qualifies as exempt and retain it in its records. *See* Exchange Act Rule 17Ad–4(b)(3), 17 CFR 240.17Ad–4(b)(3).

[191] Rule 17Ad–1 through 17Ad–7 Adopting Release, *supra* note 145, at 32408.

[192] Exchange Act Rule 17Ad–5, 17 CFR 240.17Ad–5. The response must generally be in writing, however, Rule 17Ad–5(f)(1) permits a telephone response if (i) the telephone response resolves the inquiry and (ii) the inquirer does not request a written response. Exchange Act Rule 17Ad–5(f)(1), 17 CFR 240.17Ad–5(f)(1).

[193] Exchange Act Rule 17Ad–5(a), 17 CFR 240.17Ad–5(a) (requiring inquirer to provide: (i) The issue, (ii) the number of shares or units (or principal amount of debt securities), (iii) the approximate date of presentation, and (iv) the name in which the item is registered).

[194] Exchange Act Rule 17Ad–5(b), 17 CFR 240.17Ad–5(b).

[195] *Id. See also supra* note 193 (concerning information to be provided by inquirers).

[196] Exchange Act Rule 17Ad–5(c), 17 CFR 240.17Ad–5(c).

[197] *Id. See also supra* note 193 (concerning information to be provided by inquirers).

[198] *Id.*

days where any person requests a transcript of such person's account with respect to a particular securities issue as of a certain date not more than six months prior to the request.[199] If required by the transfer agent, the inquirer must provide the transfer agent assurance of payment of a reasonable fee for this service.[200]

Rules 17Ad–6 and 17Ad–7, taken together, address some of the basic aspects of the records that transfer agents must maintain and for how long.[201] Rule 17Ad–6 generally details what records every registered transfer agent shall make and keep. Rule 17Ad–6(a)(1) requires every registered transfer to make and keep receipts, tickets, logs, schedules, journals, and other records showing the number of routine and non-routine items received and made available each business day.[202] Rules 17Ad–6(a)(2) through (4) require maintenance of records that generally relate to the monitoring of performance standards for turnaround and for processing under Rule 17Ad–2 for each month and notices required to be filed under Rule 17Ad–2 [203] and any written inquiries or requests, including those inquiries to transfer agents where the inquiries were not subject to Rule 17Ad–5 or inquiries which were answered orally or where no response was made. Rule 17Ad–6(a)(8) requires maintenance of any contracts and certain related documentation showing the appointment or termination of the registered transfer agent to serve in any capacity on behalf of an issuer.[204] Rule 17Ad–6(a)(9) requires records of: (i) Currently active stop orders; [205] (ii) adverse claims; [206] and (iii) restrictions on transfer.[207]

Rule 17Ad–7 specifies the particular lengths of time for which the various records described in Rule 17Ad–6 shall be maintained.[208] While the records listed in Paragraph (a)(1) of this rule were generally, at the time of its adoption in 1977, paper records such as receipts, tickets, schedules, they now are likely to be electronic records. Rule 17Ad–7(f), was updated in 2001 and 2003 to authorize the use of electronic recordkeeping, electronic storage media, and micrographic storage media, such as microfilm records.[209] Paragraph (g) of Rule 17Ad–7 regulates transfer agent records maintained by an outside service bureau, other recordkeeping service or the issuer.'' [210] Paragraph (h) states that when a registered transfer agent ceases to perform transfer agent functions, its responsibilities under this provision ''shall end upon the delivery of such records to the successor transfer agent,'' a provision that was originally included to clarify when a transfer agent is relieved of such recordkeeping responsibilities.[211]

Rule 17f–1 [212] was adopted in 1976 pursuant to Section 17(f)(1) of the Exchange Act in order to curtail trafficking in lost, stolen, missing, and counterfeit securities certificates.[213] It requires reporting institutions, which are defined as national securities exchanges, brokers, dealers, registered transfer agents, and others, to report missing, lost, counterfeit, or stolen securities to the Commission or its designee. This led to the Commission's implementation in 1977 of the Lost and Stolen Securities Program and also led to subsequent Commission releases addressing in detail the structure of the program.[214] The program became fully operational on January 2, 1978 and consists mainly of an electronic database for securities certificates that have been reported lost, stolen, missing, or counterfeit.[215] The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (''Dodd-Frank Act'') expanded Section 17(f)(1)'s statutory coverage to add securities certificates that are cancelled to the categories that must be reported to the Commission or its designee.[216]

Rule 17f–2 was adopted in 1976 and requires the fingerprinting of certain securities industry personnel.[217] In accordance with its governing statute, Section 17(f)(2) of the Exchange Act,[218] Rule 17f–2 requires, with certain exemptions, the fingerprinting of all partners, directors, officers, and employees of brokers, dealers, registered transfer agents, and registered clearing agencies. The Dodd-Frank Act expanded Section 17(f)(2)'s statutory coverage to include the personnel of national securities exchanges, national securities associations, and registered securities information processors.[219]

3. Recordkeeping and Safeguarding Rules: Rules 17Ad–8 Through 17Ad–13

The new regulatory regime established by the turnaround rules provided the Commission with visibility into the transfer agent industry and a way to review and analyze it. The first six years of monitoring transfer agent performance under the new regulatory regime highlighted some of the significant adverse operational and financial consequences for the securities industry, securities markets, issuer community, and investing public that could occur when a transfer agent's operations collapse, when records maintained by a transfer agent contain significant inaccuracies, or when a transfer agent's internal accounting controls are inadequate.[220] The Commission therefore determined that

[199] Exchange Act Rule 17Ad–5(d), 17 CFR 240.17Ad–5(d).

[200] *Id.*

[201] Exchange Act Rule 17Ad–6, 17 CFR 240.17Ad–6.

[202] Exchange Act Rule 17Ad–6(a)(1), 17 CFR 240.17Ad–6(a)(1).

[203] Exchange Act Rule 17Ad–6(a)(2)–(4), 17 CFR 240.17Ad–6(a)(2)–(4).

[204] Exchange Act Rule 17Ad–6(a)(8), 17 CFR 240.17Ad–6(a)(8).

[205] For discussion of stop orders as a general matter, *see supra* notes 25 and 26.

[206] For discussion of an adverse claim in connection with protected purchaser status under the UCC, *see supra* note 14 and accompanying text. Regarding the existence of an adverse claim as a factor resulting in classification of an item as non-routine under the Commission's transfer agent rules, *see supra* note 173, Exchange Act Rule 17Ad–1(i), 17 CFR 240.17Ad–1(i).

[207] For discussion of securities subject to restrictions on transfer and of restrictive legends, *see infra* Section VI.D.

[208] Exchange Act Rule 17Ad–7, 17 CFR 240.17Ad–7.

[209] *See* Recordkeeping Requirements for Transfer Agents, Exchange Act Release No. 44227 (Apr. 27, 2001), 66 FR 21659 (May 1, 2001); Recordkeeping Requirements for Registered Transfer Agents, Exchange Act Release No. 48949 (Dec. 18, 2003), 68 FR 75050 (Dec. 29, 2003) (''Recordkeeping Requirements for Transfer Agents'').

[210] Exchange Act Rule 17Ad–7(g), 17 CFR 240.17Ad–7(g).

[211] Rule 17Ad–1 through 17Ad–7 Adopting Release, *supra* note 145, at 32411.

[212] Exchange Act Section 17(f)(1), 15 U.S.C. 78q(f)(1); Exchange Act Rule 17f–1, 17 CFR 240.17f–1. *See also* Adoption of Reporting and Inquiry Requirements with Respect to Missing, Lost, Stolen and Counterfeit Securities, Exchange Act Release No. 13053 (Dec. 15, 1976), 41 FR 54923 (Dec. 16, 1976) (order adopting Rule 17f–1).

[213] *See* Senate Report on Securities Act Amendments of 1975, *supra* note 44 at 103–4; *see also* Hearings before the Permanent Subcomm. on Investigations of the S. Comm. on Gov't Operations, 93rd Cong., 1st Sess. (1973), 2nd Sess. (1974).

[214] *See, e.g.,* Implementation of program for reporting and inquiry with respect to missing, lost counterfeit or stolen securities, Exchange Act Release No. 13832 (Aug. 5, 1977), 42 FR 41022 (Aug. 12, 1977) (order adopting Release implementing the Lost and Stolen Securities Program); U.C.C. 8–405 (''Replacement of Lost, Destroyed, or Wrongfully Taken Security Certificate'').

[215] *See supra* note 25. Lost and Stolen Securities Program Amendments, Exchange Act Release No. 15867 (May 23, 1979), 44 FR 31500 (May 31, 1979).

[216] Pub. L. 111–203, 124 Stat. 1376, § 929D (2010).

[217] Exchange Act Rule 17f–2, 17 CFR 240.17f–2; Lost and Stolen Securities Program Amendments, Exchange Act Release No. 12214 (Mar. 16, 1976), 41 FR 13594 (Mar. 31, 1976) (order adopting Rule 17f–2).

[218] Exchange Act Rule 17(f)(2), 15 U.S.C. 78q(f)(2).

[219] Pub. L. 111–203, 124 Stat. 1376, § 929S.

[220] *See* 17Ad–9 through 13 Proposing Release, *supra* note 2. In its release proposing Rules 17Ad–9 to 17Ad–13, the Commission cited examples of substandard transfer agent performance in the areas of recordkeeping and safeguarding and noted the significant adverse operational and financial problems caused by poor transfer agent performance or operations.

additional rulemaking was necessary and appropriate to supplement the turnaround rules.

The impetus for Rule 17Ad–8 was the recommendation in the Final Street Name Study that ''each depository be required to transmit periodically to each issuer whose securities the depository holds of record a list of the persons on whose behalf the depository holds the securities.'' [221] The rule, which was adopted in 1980, requires every registered clearing agency to provide promptly to each issuer or transfer agent acting on its behalf, upon request, a securities position listing which identifies the participants on whose behalf the clearing agency holds the issuer's securities in the name of the clearing agency or its nominee and the respective positions in such securities as of a specified date.[222] The clearing agency may charge issuers who request this service with fees designed to recover its reasonable costs.[223]

On June 10, 1983, the Commission adopted Rules 17Ad–9 through 17Ad–13.[224] These new rules established various requirements and exemptions designed to ensure that transfer agents maintain appropriate internal controls, meet adequate levels of service and performance, and avoid adverse operational and financial problems that could harm investors, issuers, or other securities industry participants. Most notably, the new rules established additional minimum standards for recordkeeping and codified minimum requirements for the safeguarding of funds and securities.[225] The Commission believed that these additional minimum standards were critical to addressing seriously deficient transfer agent performance.[226]

Rule 17Ad–9 [227] defines 12 principal terms with respect to transfer agents as used especially in Rules 17Ad–10 through 17Ad–13, consisting of the terms ''certificate detail,'' ''master securityholder file,'' ''subsidiary file,'' ''control book,'' ''credit,'' ''debit,'' ''record difference,'' ''record keeping transfer agent,'' ''co-transfer agent,'' ''named transfer agent,'' ''service company transfer agent,'' and ''file.'' [228]

Rule 17Ad–9's certificate detail,[229] with respect to certificated securities, includes, at a minimum, all of the following (and with respect to uncertificated securities, includes only items (ii) through (viii)): (i) The certificate number, meaning the unique serial number of each certificate of an issue of securities, as distinct from the CUSIP number [230] which is the same number for all certificates of the same issue; (ii) the number of shares (for equity securities) or principal dollar amount (for debt securities) designated by the certificate; (iii) the securityholder's registration, which is the name of the individual, partnership, or corporation in which a securities certificate is held and which registration appears on the face of the certificate; (iv) the address of the registered owner, which also appears on the face of the certificate; (v) the date the certificate was issued, which likewise appears on the face of the certificate; (vi) the ''cancellation date of the securities certificate,'' which, if and when the certificate is cancelled will appear on the face of a certificate along with the word ''cancelled'' to evidence that the certificate no longer has any market value and that it no longer represents a claim against the issuer; (vii) in the case of redeemable securities of investment companies (*e.g.,* securities issued by open-end management companies and other investment companies registered under Section 8 of the Investment Company Act), an appropriate description of each debit and credit (*i.e.,* designation indicating purchase, redemption, or transfer); and (viii) ''[a]ny other identifiable information about securities and securityholders'' that the transfer agent reasonably deems essential to its recordkeeping system for the efficient and effective research of record differences.[231]

''Master securityholder file'' is defined as the official list of individual securityholder accounts. With respect to uncertificated securities of investment companies registered under the Investment Company Act, the master securityholder file may consist of multiple, but linked, automated files.[232]

A ''subsidiary file'' is any list of record of accounts, securityholders, or certificates that evidences debits or credits that have not been posted to the master securityholder file.[233]

A ''control book'' is the record or other document that shows the total number of shares (in the case of equity securities) or the principal dollar amount (in the case of debt securities) authorized and issued by the issuer.[234] The control book may be referred to in the industry as a registrar journal, and is one of the mechanisms transfer agents use to monitor against overissuance.[235]

A ''credit'' is an addition of appropriate certificate detail to the master securityholder file, and a ''debit'' is a cancellation of appropriate certificate detail to the master securityholder file.[236]

A ''record difference'' occurs when either: (i) The total number of shares or total principal dollar amount of securities in the master securityholder file does not equal the number of shares or principal dollar amount in the control book; or (ii) the security transferred or redeemed contains certificate detail different from the certificate detail currently on the master

[221] Securities Position Listing Rule, Exchange Act Release No. 16443 (Dec. 20, 1979), 44 FR 76774, 76775 (Dec. 28, 1979) (''Adopting Release for Rule 17Ad–8''); Final Street Name Study, *supra* note 82, at 55.

[222] *See* Exchange Act Rule 17Ad–8, 17 CFR 240.17Ad–8; Adopting Release for Rule 17Ad–8, *supra* note 221.

[223] Exchange Act Rule 17Ad–8(b), 17 CFR 240.17Ad–8(b).

[224] Exchange Act Rules 17Ad–9–13, 17 CFR 240.17Ad–9–13.

[225] *See* 17Ad–9 through 13 Proposing Release, *supra* note 2.

[226] *Id.* The Commission was particularly concerned with reducing the potential for transfer agent failure, which inevitably imposes substantial potential liabilities and costs on issuers, securities firms, and securityholders, as well as improving generally transfer agent performance, thereby reducing the broker-dealers' costs associated with fails to settle and extended transfer delays.

[227] Exchange Act Rule 17Ad–9, 17 CFR 240.17Ad–9.

[228] *See* 17Ad–9 through 13 Proposing Release, *supra* note 2.

[229] For ''certificate detail,'' *see also* Exchange Act Rule 17f–1(c)(6), 17 CFR 240.17f–1(c)(6).

[230] CUSIP stands for Committee on Uniform Security Identification Procedures. A CUSIP number is assigned to most financial instruments. *See* CUSIP Number, SEC, *http://www.sec.gov/answers/cusip.htm.*

[231] Exchange Act Rule 17Ad–9(a), 17 CFR 240.17Ad–9(a).

[232] Exchange Act Rule 17Ad–9(b), 17 CFR 240.17Ad–9(b). In other contexts, the master securityholder file may be referred to as a ''stockholder register,'' ''stockholder list,'' ''shareholder ledger,'' or some other designation. As used throughout this release, we refer to it as the master securityholder file. *See, e.g.,* Del. Code Ann. tit. 8 § 220 (referring to a corporation's ''stock ledger'' as well as its ''list of its stockholders'').

[233] Exchange Act Rule 17Ad–9(c), 17 CFR 240.17Ad–9(c).

[234] Exchange Act Rule 17Ad–9(d), 17 CFR 240.17Ad–9(d).

[235] The Commission's transfer agent rules do not provide a definition of ''overissuance'' or explicitly import a definition from other authorities that have defined this term. The UCC provides a definition of this term which has been amended over the years and currently provides: ''In this section 'overissue' means the issue of securities in excess of the amount the issuer has corporate power to issue, but an overissue does not occur if appropriate action has cured the overissue.'' U.C.C. 8–210(a). One way in which an overissue can occur is when a corporation issues more shares than are authorized under its charter, such as its articles of incorporation. Under state law, shares over issued in such a manner may be deemed void. *See, e.g.,* Del. Gen. Corp. L. §§ 161, 242(a)(3). For more information concerning the general concept of ''overissuances'' and types of transactions in which overissuances can occur, *see* Guttman, *supra* note 6, at § 11:7; Rhodes, *supra* note 18, at § 22:3.

[236] Exchange Act Rule 17Ad–9(e), (f), 17 CFR 240.17Ad–9(e), (f).

securityholder file, which difference cannot be immediately resolved.[237]

A ''recordkeeping transfer agent'' is the registered transfer agent that maintains and updates a security's master securityholder file.[238] All other transfer agents associated with a given issue of securities are defined as ''co-transfer agents,'' which are registered transfer agents that transfer securities but do not maintain and update the master securityholder file.[239] A co-transfer agent may include an outside registrar that keeps only the control book as defined in Rule 17Ad–1(b). A ''named transfer agent'' is the registered transfer agent that is engaged by an issuer to perform transfer agent functions for an issue of securities but has engaged a service company to perform some or all of those functions.[240] And a ''service company'' is the registered transfer agent engaged by a named transfer agent to perform transfer agent functions for that named transfer agent.[241]

Finally, Rule 17Ad–9(l) clarifies that the term ''file'' includes both automated and manual records.[242]

Rule 17Ad–10[243] requires each recordkeeping transfer agent to post promptly certificate detail to its master securityholder file after a security is transferred, purchased, or redeemed. The meaning of the term ''promptly'' varies with the relevant transaction but generally is five business days, although for exempt transfer agents under Rule 17Ad–4(b) promptly means 30 calendar days and for transfer agents functioning solely for their own or their affiliated companies' securities and using batch processing promptly means ten business days.[244] Timely updating of the master securityholder file is required because delayed posting or the failure to post would promote the proliferation of record inaccuracies that could impede the accurate payment of dividends and the processing of proxy solicitations.[245] Rule 17Ad–10(g) requires, with certain exceptions, that any transfer agent that erroneously issues securities that result in an overissuance[246] must ''buy-in'' (*i.e.,* purchase securities in the open market) securities equal to the number of shares (in the case of equity securities) or principal dollar amount (in the case of debt securities) of the overissuance.[247] The buy-in requirement is designed to deter transfer agents from permitting record differences to accrue and encourages them to maintain complete and accurate records that assure that securityholders will receive all appropriate corporate distributions and communications.[248]

Rule 17Ad–11[249] requires that within ten business days following the end of each month, registered recordkeeping transfer agents report to issuers and the ARA certain information regarding aged record differences[250] when the dollar amount or the number of shares regarding those shares reach certain preset levels.[251] The reports required by 17Ad–11 must set forth the amount of aged record differences, the reasons for any difference, and the steps being taken to resolve any difference.

Rule 17Ad–12[252] requires registered transfer agents to safeguard funds and securities of which they have custody or possession in a manner reasonably free from theft, loss, destruction, or misuse, in light of all the facts and circumstances including the cost of particular safeguards and procedures that might be employed. A reasonable level of safeguarding is necessary due to various duties of transfer agents which may include, for example: (i) Holding balance certificates as transfer agent custodians; (ii) administering DRIPs which involves the holding of funds and securities; (iii) making distributions, including of principal, interest and dividends, as paying agents of issuers;[253] and (iv) maintaining working inventories of unissued securities certificates.[254]

Rule 17Ad–13[255] requires registered transfer agents, with certain exceptions, to file annually with the Commission a report prepared by an independent accountant concerning the transfer agent's system of internal controls and related procedures for the transfer of record ownership and the safeguarding of related securities and funds based on an annual study and evaluation made in accordance with generally accepted auditing standards. The purpose of the rule is to ensure that transfer agents have a system of internal controls adequate to provide reasonable assurances that securities and funds held by transfer agents—for example, when a transfer agent facilitates a dividend or interest payment for an issuer—are safeguarded against loss from unauthorized use or disposition and that transfer agent activities are performed promptly and accurately. The rule requires that the independent accountant's report state whether the annual study and evaluation was made in accordance with generally accepted auditing standards using the criteria set forth in the rule and describe and comment upon any material inadequacies found to exist in the system of internal accounting control as of the date of the evaluation and any corrective action taken, or state that no material inadequacy exists.[256] An accountant preparing reports under this rule is expected to use the general standards established by the American Institute of Certified Public Accountants (''AICPA'').[257]

4. Issue-Specific Rules: Rules 17Ad–14 Through 17Ad–21T

After the adoption of Rules 17Ad–8 through 17Ad–13, between 1983 and 2013 the Commission continued to adopt new rules to address specific issues. Specifically, Rules 17Ad–14 through 17Ad–20, as well as 17Ad–21T, address issues such as tender agent services, signature guarantee programs, notifications when transfer agents begin or cease acting for specific issues, lost shareholder searches, processes for cancelling certificates, transfer of restricted securities, and anticipated risks associated with Year 2000 compliance.

[237] Exchange Act Rule 17Ad–9(g), 17 CFR 240.17Ad–9(g).

[238] Exchange Act Rule 17Ad–9(h), 17 CFR 240.17Ad–9(h).

[239] Exchange Act Rule 17Ad–9(i), 17 CFR 240.17Ad–9(i).

[240] Exchange Act Rule 17Ad–9(j), 17 CFR 240.17Ad–9(j).

[241] Exchange Act Rule 17Ad–9(k), 17 CFR 240.17Ad–9(k).

[242] Exchange Act Rule 17Ad–9(l), 17 CFR 240.17Ad–9(l).

[243] Exchange Act Rule 17Ad–10, 17 CFR 240.17Ad–10.

[244] *See* 17Ad–9 through 13 Proposing Release, *supra* note 2.

[245] *See infra* Section V.B. for further discussion of proxy services.

[246] *See supra* note 235.

[247] Exchange Act Rule 17Ad–10(g)(1), 17 CFR 240.17Ad–10(g)(1).

[248] *See* Maintenance of Accurate Securityholder Files and Safeguarding of Funds and Securities by Registered Transfer Agents, Exchange Act Release No. 19860 (June 10, 1983), 48 FR 28231 (June 21, 1983) (''Adopting Release for Rule 17Ad–10'').

[249] Exchange Act Rule 17Ad–11, 17 CFR 240.17Ad–11.

[250] Exchange Act Rule 17Ad–11(a)(2), 17 CFR 240.17Ad–11(a)(2). A record difference becomes an aged record difference if it exists for ''more than thirty calendar days.''

[251] Exchange Act Rule 17Ad–11(b)(1), 17 CFR 240.17Ad–11(b)(1). The dollar amounts and share thresholds reflected in the table set forth in Rule 17Ad–11(b)(1) have not been modified since Rule 17Ad–11 was first adopted in 1983.

[252] Exchange Act Rule 17Ad–12, 17 CFR 240.17Ad–12.

[253] *See generally,* Section VI.C for discussion of paying agent services.

[254] *Id.*

[255] Exchange Act Rule 17Ad–13, 17 CFR 240.17Ad–13.

[256] *See* Adopting Release for Rule 17Ad–10, *supra* note 248.

[257] *Id.*

Rule 17Ad–14 [258] requires a registered transfer agent that acts as a tender agent or a depositary for a party making a tender or exchange offer to establish and maintain special accounts with all qualified registered securities depositories that hold the subject company's securities, thereby enabling depository participants to move securities to and from the tender agent by book-entry.[259] Unless a bidder's depositary establishes an account with a securities depository, all the subject securities must be tendered in physical certificate form, rather than by book-entry, which causes inefficiencies and other problems for securityholders, broker-dealers, bidders, tender agents, and others.[260] The purpose of this rule is to reduce the processing costs and trading inefficiencies that occur when tender offers are processed in a physical certificate environment and to make the benefits of processing tender offers by book-entry available to the investing public and the securities industry.[261]

For example, securityholders sometimes have difficulty obtaining properly denominated physical certificates for tender to the bidder's depository prior to the offer's expiration date. Also, instances where there is unavailability of book-entry settlement have resulted in a substantially higher number of fails-to-deliver between broker-dealers. As a result, broker-dealers who are unable to satisfy tender obligations may have to buy securities in the cash market for same-day delivery (*i.e.,* delivery on the day of the contract), which may create significant price disparities between the cash market and the regular-way market (*i.e.,* delivery on the third business day following the day of the contract).[262] Prior to the adoption of Rule 17Ad–14, bidders could insist upon the tender of physical securities certificates outside of securities depositories (such as to the bidder's broker or local bank), even if the delivering entities were depository participants and even if the securities themselves were depository eligible. Doing so not only increased the number of fails, but increased brokerage firms' financing expenses and made it more difficult to settle transactions in a timely way.[263]

Rule 17Ad–15 [264] prohibits inequitable treatment of eligible guarantor institutions (*e.g.,* banks, brokers, and other financial institutions) that provide signature guarantee programs. The rule implements Section 17A(d)(5) of the Exchange Act which expressly bars transfer agents from exercising inequitable treatment of financial institutions with respect to security guarantees.[265] The signature guarantee program requires that a securities certificate bear a signature by a guarantor institution with a medallion stamp backed by a surety bond before the transfer agent will accept the certificate for transfer. The guarantee program allows the high-speed processing of a large volume of securities certificates that would be impossible if transfer agents had to examine the creditworthiness of the person behind each certificate being presented. Specifically, the program establishes requirements for its members with respect to guaranteeing and accepting securities certificates. The indorsing signature on a securities certificate is guaranteed, typically by a financial institution, by the placement of a signature of the guarantor or its representative and a medallion stamp backed by a surety bond which, in effect, states that in event of mishap, the surety will pay for any damages incurred as a result of a forged signature if the guarantor does not pay.[266] With these assurances of financial safety, a transfer agent is able to accept a securities certificate without further examination or delay, as is required by the terms of the program.[267] Rule 17Ad–15 requires transfer agents to establish written standards for the acceptance of signature guarantees, and it authorizes signature guarantee programs. It also enables transfer agents to reject a request for transfer where a securities certificate is not guaranteed and bears no medallion stamp or where the guarantor is neither a member nor a participant in a signature guarantee program.[268]

Rule 17Ad–16 requires a registered transfer agent to provide written notice to an ''appropriate qualified registered security depository'' (*i.e.,* DTC) [269] when terminating or assuming transfer agent services on behalf of an issuer or when changing its name or address.[270] The rule is intended to address the problem of unannounced transfer agent changes that adversely affect the prompt transfer of securities certificates by causing needless delays, costs, and risks.[271] Depositories and other entities in the marketplace must have the correct information in order to send transfer instructions to the appropriate transfer agent at the correct address. In addition to causing delay in execution of the instructions, certificates sent to the wrong address may result in a loss of certificates.

Rule 17Ad–17 is designed to ensure that the transfer agents, brokers, dealers, and other financial intermediaries make adequate efforts to find lost securityholders.[272] It was first adopted in 1997 [273] and later amended at the beginning of 2013.[274] The rule defines

[258] Exchange Act Rule 17Ad–14, 17 CFR 240.17Ad–14.

[259] *See* discussion *infra* at p. 104 for definition of ''tender agent.''

[260] Processing of Tender Offers Within the National Clearance and Settlement System, Exchange Act Release No. 20581 (Jan. 19, 1984), 48 FR 17603 (Apr. 25, 1983).

[261] *Id.*

[262] Regular way settlement generally refers to settlement that occurs on a T+3 basis as required pursuant to Exchange Act Rule 15c6–1. Exchange Act Rule 15c6–1, 17 CFR 240.15c6–1. For additional information on cash, regular way, and other delivery schedules, *see* NYSE Rule 64 (2009).

[263] For a discussion of tender offers and trade processing problems that arise when depository book-entry services are not used during tender offers, *see* Rule 17Ad–14 Proposing Release, *supra* note 116.

[264] Exchange Act Rule 17Ad–15, 17 CFR 240.17Ad–15.

[265] Exchange Act Section 17A(d)(5), 15 U.S.C. 17q–1(d)(5).

[266] The UCC provides: ''A person who guarantees a signature of an indorser of a securities certificate warrants that at the time of signing: (1) The signature was genuine; (2) the signer was an appropriate person to indorse, or if the signature is by an agent, the agent had actual authority to act on behalf of the appropriate person; and (3) the signer had legal capacity to sign.'' U.C.C. 8–306.

[267] There are currently three organizations that provide signature guarantee programs to their members: Securities Transfer Agent Medallion Program, Stock Exchange Medallion Program, and New York Stock Exchange Medallion Program. *See, e.g.,* Signature Guarantees: Preventing the Unauthorized Transfer of Securities, SEC, *http://www.sec.gov/answers/sigguar.htm.*

[268] *See* Acceptance of Signature Guarantees from Eligible Guarantor Institutions, Exchange Act Release No. 30146 (Jan. 6, 1992), 57 FR 1082 (Jan. 10, 1992) (adopting release for Rule 17Ad–15).

[269] Rule 17Ad–16 defines an ''appropriate qualified registered securities depository'' as the ''qualified registered securities depository'' that the Commission so designates by order or, in the absence of such designation, the qualified registered securities depository that is the largest holder of record of all qualified registered securities depositories as of the most recent record date. In 1995, the Commission issued an order approving a DTC rule filing in which DTC was designated as the ''appropriate qualified registered securities depository'' to receive notices of transfer agent changes pursuant to Rule 17Ad–16 in order to eliminate uncertainty about where registered transfer agents should direct Rule 17Ad–16 notices, and to reduce unnecessary costs and administrative burdens for transfer agents and registered securities depositories. *See* Securities Exchange Act Release No. 35378 (Feb. 15, 1995), 60 FR 9875 (Feb. 22, 1995) (File No. SR–DTC–95–02).

[270] Exchange Act Rule 17Ad–16, 17 CFR 240.17Ad–16.

[271] Adopting Release for Rule 17Ad–16, *supra* note 147.

[272] Exchange Act Rule 17Ad–17, 17 CFR 204.17Ad–17.

[273] Lost Securityholders, Exchange Act Release No. 39176 (Oct. 1, 1997), 62 FR 52229 (Oct. 7, 1997).

[274] Lost Securityholders and Unresponsive Payees, Exchange Act Release No. 68668 (Jan. 16, 2013), 78 FR 4768 (Jan. 23, 2013) (''Adopting Release for 17Ad–17 Amendments'').

''lost securityholder'' as a securityholder for whom an item of correspondence sent to his or her last known address was ''returned as undeliverable'' and requires transfer agents, brokers, and dealers to conduct two database searches in their efforts to locate a lost securityholder. It defines ''unresponsive payee'' to mean a securityholder to whom a paying agent has sent a regularly scheduled check which was not cashed or otherwise negotiated before the earlier of either the paying agent's sending the next regularly scheduled check or of 6 months after the sending of the not yet negotiated check.[275] Any ''paying agent,'' defined for purposes of Rule 17Ad–17 as ''any broker, dealer, investment advisor, indenture trustee, custodian, or any other person that accepts payments from the issuer of a security and distributes the payments to the holders of the security,'' shall provide to each unresponsive payee not less than one written notice stating that such payee has been sent a check that has not yet been negotiated.

Rule 17Ad–19 was adopted in 2003 and requires every transfer agent to establish and implement written procedures for the cancellation, storage, transportation, destruction, or other disposition of securities certificates.[276] Specifically, it requires transfer agents to mark each cancelled securities certificate with the word ''cancelled,'' to maintain a secure storage area for cancelled certificates, to maintain a retrievable data base for of all its cancelled, destroyed, or otherwise disposed of certificates, and to have specific procedures for the destruction of cancelled certificates. The rule was adopted in response to a series of major thefts of cancelled certificates from transfer agent facilities, after which the stolen certificates were recirculated into the marketplace on a massive scale and fraudulently sold or used as loan collateral.[277]

Rule 17Ad–20 prohibits registered transfer agents from effecting the transfer of any equity security registered pursuant to Section 12 or that subjects an issuer to reporting under Section 15(d) of the Exchange Act if such security is subject to any restriction or prohibition on transfer to or from a securities intermediary in its capacity as such.[278] In the 2004 adopting release for the rule, the Commission observed that issuers imposing such restrictions on transfer to intermediaries believe that ''precluding ownership by certain securities intermediaries forces broker-dealers to deliver certificates on each transaction and eliminates the ability of naked short sellers to maintain a naked short sale position.'' [279] The Commission believed Rule 17Ad–20 was necessary to prevent transfer agent facilitation of the transfer of securities subject to such restrictions, because these types of restrictions disrupted prompt and efficient clearing and settlement in the U.S. securities markets.

Two rules relate to Year 2000 compliance. *Rule 17Ad–18* (Year 2000 Reports to be Made by Certain Transfer Agents) was adopted by the Commission on July 13, 1998 and required non-bank transfer agents to, among other things, file a report attesting to the Y2K compliance of their mission critical computer systems by August 31, 1998.[280] The rule also required non-bank transfer agents to notify the SEC of any material Y2K problems that would affect the millennium transition. Similarly, Rule *17Ad–21T* required non-bank transfer agents to ensure that their mission critical computer systems were Year 2000 compliant by August 31, 1999 or to fix any non-compliant systems by November 5, 1999.[281] The purpose was to reduce risk to investors and the securities markets that were posed by non-bank transfer agents that had not adequately prepared their computer systems for millennium transition.

B. Bank and Internal Revenue Service Regulations

There are approximately 95 registered transfer agents that are banks or subsidiaries of banks. For national banks and banks operating under the Code of Law for the District of Columbia, the ARA is the Office of the Comptroller of the Currency (''OCC''); for State member banks, subsidiaries thereof, bank holding companies, and bank subsidiaries thereof the ARA is the Federal Reserve Board; and for banks insured by the FDIC (non-members of the Federal Reserve), the ARA is the FDIC. Collectively, we refer to transfer agents registered with the OCC, FDIC, or Federal Reserve Board as ''bank transfer agents.'' For non-bank transfer agents (*i.e.,* all other transfer agents), the ARA is the Commission.[282]

Prior to the 1975 Amendments and the adoption of the Commission's transfer agent rules discussed in Section IV.A above, many of the organizations performing transfer agent services were banks or trust companies regulated by bank regulators. As noted in the Unsafe Practices Study, at that time, ''[t]he power of the bank regulatory officials over the transfer function [was] not specific. Rather their concern [was] whether the performance of the transfer function may endanger the financial stability of the bank.'' [283] Today, pursuant to the 1975 Amendments and the Commission's transfer agent rules enacted thereunder, bank transfer agents must comply with both the Commission's transfer agent rules and any applicable rules promulgated by their ARA. Accordingly, bank transfer agents who are required to register as a transfer agent under the Exchange Act initially register with their appropriate ARA, but must file an annual Form TA–2 with the Commission.[284] The bank ARAs have not promulgated separate rules designed to address specifically the transfer functions of bank transfer agents, but instead generally require bank transfer agents to comply with the Commission's transfer agent rules. OCC, for example, explicitly applies the Commission's transfer agent rules to the ''domestic activities of registered national bank transfer agents.'' [285] Similarly, the Federal Reserve Board's rules provide that the Commission's transfer agent rules ''apply to member bank transfer agents.'' [286] The FDIC has stand-alone registration requirements for transfer agents and may examine transfer agents for both safety and soundness considerations under applicable banking regulations and for

[275] *Id.*

[276] Exchange Act Rule 17Ad–19, 17 CFR 240.17Ad–19.

[277] See 17Ad–19 Adopting Release, *supra* note 2. We note that in more than a decade since the adoption of Rule 17Ad–19, we are not aware of any major thefts of cancelled securities certificates or their unlawful recirculation back into the marketplace.

[278] Exchange Act Rule 17Ad–20, 17 CFR 240.17Ad–20.

[279] *See* Issuer Restrictions or Prohibitions on Ownership by Securities Intermediaries, Exchange Act Release No. 50758, text following n.41 (Nov. 30, 2004), 70 FR 70852 (Dec. 9, 2004) (adopting release for Rule 17Ad–20). *See also* U.C.C. 8–501 *et seq.*

[280] Exchange Act Rule 17Ad–18, 17 CFR 240.17Ad–18.

[281] Exchange Act Rule 17Ad–21T, 17 CFR 240.17Ad–21T.

[282] Exchange Act Section 3(a)(34), 15 U.S.C. 78c(a)(34).

[283] *See* Unsafe Practices Study, *supra* note 17, at 38. In contrast, the Exchange Act and the rules and regulations promulgated thereunder, including the Commission's transfer agent rules, are focused on protecting investors and the securities markets. *See* Rule 17Ad–1 through 17Ad–7 Adopting Release, *supra* note 145 (noting the importance of avoiding impediments to ''the Commission's efforts to provide necessary or appropriate regulations for transfer agents in the broader context of the establishment of a national system for the prompt and accurate clearance and settlement of securities transactions.'').

[284] *See supra* Section IV.A.1.

[285] 12 CFR 9.20.

[286] 12 CFR 208.31.

compliance with the Commission's transfer agent rules.[287]

With respect to examination and enforcement, both the ARA and the Commission have examinations powers over bank transfer agents, however, the Commission must provide notice to the appropriate ARA prior to conducting an examination and to arrange for a joint examination where desired.[288] In addition, both the Commission and the ARA have enforcement authority over bank transfer agents.[289]

In addition to complying with the Commission's transfer agent rules, bank transfer agents must also comply with their ARA's rules and standards. Those may supplement or exceed the Commission's rules. In part, this may be due to the fact that a bank transfer agent's activities could impact the proper functioning of the bank itself. As the FDIC explains in Section 11 of its Trust Examination Manual, one rationale for its transfer agent examination program is to ''to detect and prevent situations which might threaten the viability of banks through diminution of their capital accounts.'' [290] It further notes that ''to the extent that a registered transfer agent fails to conduct transfer agent operations in a safe and efficient manner . . . the transfer agent function could incur contingent liabilities or estimated losses which could adversely impact the bank's capital accounts.'' [291]

As a result, for example, the FDIC examines its transfer agents for internal control and risk management policies and procedures that are similar to what is required for banks.[292] With respect to internal controls, the FDIC specifies not only what it expects from the agent in order to demonstrate compliance with the Commission's rules, but additional standards as well. These standards apply whether the transfer agent is housed within the bank's trust department, is its own operating unit, or if the transfer agent activities are outsourced. The FDIC specifies suggested means for ensuring control over physical security, such as controlled access, secure safes and cabinets, and maintenance of access logs, and generally expects to see management oversight of operations consistent with bank management oversight. Supervision of the transfer agent operations may be delegated, but ultimately rests with the bank's Board and senior management.[293]

Separately, depending on its duties, an OCC-registered transfer agent also may have to comply with statutory requirements for the treatment of ''assets held in any fiduciary capacity.'' [294] For example, entities servicing in a fiduciary capacity may be required to segregate the fiduciary funds from the ''general assets'' of the bank and have a separate accounting for transactions involving the segregated funds.[295]

In addition, depending on the nature and scope of the services that transfer agents provide, they must comply with certain regulations and other guidance issued by the U.S. Department of the Treasury (''Treasury'') and the Internal Revenue Service. For example, transfer agents track and report to the Internal Revenue Service the dividend income and share sale activity they facilitate on behalf of issuers via Form 1099 reporting,[296] and follow federal law requirements concerning tax withholding, where appropriate.[297]

C. SRO Rules and Requirements Applicable to Transfer Agents

This section discusses some of the SRO rules and requirements applicable to transfer agents. While we focus here on NYSE and DTC requirements, we do so by way of example only. Other SROs may have additional rules which could apply to transfer agents in different contexts.

1. NYSE Requirements

Transfer agents for NYSE listed securities are also subject to NYSE requirements. The requirements focus on (i) dual registrars and transfer agents; (ii) turnaround times; (iii) capitalization; and (iv) insurance coverage. The requirements also address transfer agent personnel, safeguarding, and co-transfer agents.

First, the NYSE Listed Company Manual (''NYSE LCM''), Section 601.01(B), provides that one person may serve as both registrar and transfer agent subject to compliance with the following conditions: (i) Meeting insurance and net capital requirements (discussed in more detail below); (ii) maintaining the functions separately and distinctly with appropriate internal controls; (iii) annual review of such internal controls by the transfer agent's independent auditors; (iv) submitting financial statements to the exchange; and (v) obtaining a certification from the transfer agent's insurer that NSYE insurance requirements have been met. This provision is less restrictive than stock exchange prohibitions on serving as a dual registrar and transfer agent that existed in earlier eras.[298] It is the understanding of the Commission staff that outside or independent registrars are rarely used today.[299]

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[287] *See* FDIC Trust Examination Manual, sec. 11.B.1.b (Statutory Framework), *available at https://www.fdic.gov/regulations/examinations/trustmanual/section_11/section11toc.html* (''Registered Transfer Agent Examination Manual'').

[288] *See* Exchange Act Section 17(b), 15 U.S.C. 78q(b).

[289] *See generally,* Exchange Act Section 17A(d), 15 U.S.C. 78q–1(d).

[290] *See* Registered Transfer Agent Examination Manual, *supra* note 287, at sec. 11.B (Introduction discussing the rationale for transfer agent examinations).

[291] *Id.* at sec. 11.B.1.b (The Statutory Framework).

[292] *Id.* at sec. 11.G (Management), sec. 11.H (Internal Controls).

[293] *Id.*

[294] 12 U.S.C. 92a(c). *See also* 12 CFR 9.2 (''Fiduciary capacity'' includes transfer agents and registrars of stocks and bonds).

[295] 12 U.S.C. 92a(c).

[296] *See* 2016 Instructions for Form 1099–DIV, *available at http://www.irs.gov/pub/irs-pdf/i1099div.pdf* (last visited November 20, 2015) (generally for information regarding disclosure of dividend payments).

[297] For example, the Foreign Account Tax Compliance Act (''FATCA''), enacted in 2010, is intended to reduce tax evasion by U.S. individuals with respect to income from financial assets held outside the United States by requiring foreign financial institutions to, among other things, report directly to the Internal Revenue Service certain information about financial accounts held by U.S. taxpayers, or by foreign entities in which U.S. taxpayers hold a substantial ownership interest. *See* Hiring Incentives to Restore Employment Act, Pub. L. 111–147, §§ 501–541 (1986). Under FATCA, foreign financial institutions such as investment funds domiciled outside the United States are permitted to contract with their transfer agents or other agents to perform certain due diligence and other FATCA obligations on their behalf. A transfer agent's service agreement may take into account these new responsibilities, under which the transfer agent may be required to perform due diligence on all investors listed in the investor record, report on U.S. individuals and institutions investing in the fund, and apply FATCA withholding to certain payments. For more information on regulations, rulings, notices, announcements, and other FATCA-related guidance or requirements for financial institutions, *see, e.g.,* FATCA- Regulations and Other Guidance, IRS, *http://www.irs.gov/Businesses/Corporations/FATCA-Regulations-and-Other-Guidance.*

[298] *See* Rockwell Study, *supra* note 19, at 101 (1969 study discussing NYSE prohibition on serving as dual registrar and transfer agent); Securities Exchange Act Release No. 21499, File No. SR–NYSE–84–33 (Nov. 19, 1984) (discussing prior 1971 NYSE rule change permitting banks and trusts to serve as dual registrar and transfer agent and approving NYSE rule change to eliminate prohibition on acting as dual transfer agent and registrar that had applied to transfer agents other than banks and trusts, subject to certain conditions).

[299] Separate registrars and transfer agents still were common between 1977 and 1983, when the Commission adopted the majority of its transfer agent rules. Although even by that point, stock exchanges had relaxed certain prohibitions on serving as dual transfer agent and registrar, the practice often was followed because many securities industry participants believed that the independent registrar served an audit function that protected investors. *See* Study of the Securities Industry: Hearings Before the Subcomm. on Commerce and Fin. of the H. Comm. on Interstate and Foreign Commerce, 92nd Cong. app. DD 2391 (1971) (''1971 Study of the Securities Industry Hearings'') (Statement of Herman W. Bevis, Executive Director of BASIC).

Second, as noted above, NYSE also imposes turnaround time requirements. NYSE LCM Section 601.01(A)(2) requires that routine transfers (as defined in Exchange Act Rule 17Ad–1) ''must be processed under normal conditions within 48 hours of receipt of the securities by the transfer agent at its address designated for registration of transfers.'' The 48 hour turnaround requirement was adopted by the NYSE in 1971 (originally as Rule 496) in the immediate wake of the transfer agent problems during the Paperwork Crisis.[300] The Commission adopted its Rule 17Ad–2 turnaround requirement (providing for three day turnaround) approximately six years later in 1977. In the adopting release for Rule 17Ad–2, the Commission stated ''The adopted rules are not intended to and do not supersede any rules of self-regulatory organizations which impose more stringent performance standards.'' [301]

Third, NYSE LCM Section 601.01(A)(1)(i) requires that a transfer agent must have at least $10 million in ''capital, surplus (both capital and earned), undivided profits, and capital reserves.'' Where a transfer agent is unable to meet this capital requirement, NYSE LCM Section 601.01(A)(12) provides for a lower alternative capital standard of $2 million that the transfer agent may meet if it maintains certain additional insurance coverage.[302] The requirements may also be satisfied by a parent company.[303] Fourth, NYSE LCM Section 601.01(A)(1)(ii) requires that a transfer agent maintain insurance coverage of at least $25 million ''to protect securities while in process.'' [304]

The NYSE also requires transfer agents to be staffed with ''experienced personnel qualified to handle so-called 'legal terms' and to advise on and handle other transfer problems.'' [305] A transfer agent is also required to assume responsibility and liability for securities in its possession and must ''provide adequate facilities for the safekeeping of securities in its possession or under its control.'' [306] Additional provisions address other items specific to the NYSE, co-transfer agents, and independent registrars.[307]

2. DTC Requirements

Transfer agents who participate in DRS must comply with DTC rules and regulations. Many transfer agents participate in DRS, especially because national U.S. securities exchanges, including NYSE and NASDAQ, require newly listed securities to be DRS eligible.[308]

DTC requires transfer agents to satisfy four primary requirements before being eligible to process DRS transactions, including the following:

- Because DRS is integrated for communication purposes into DTC's Profile system, transfer agents must become ''Limited Participants'' in DTC by submitting an application to the DRS Program Administration for DTC approval.[309]
- Participate in DTC's FAST program by becoming a FAST agent and agreeing to DTC's Operational Criteria for FAST Transfer Agent Processing (''FAST criteria''). The FAST criteria outline rules for securities transfers through FAST, DTC's Operational Arrangements, and DTC's Balance Certificate Agreement. The Operational Arrangements include, among other things, DTC's requirements for issues to be DTC-eligible, additional transfer requirements for FAST agents, record date requirements, and dividend and income notification procedures. By signing the Balance Certificate Agreement with DTC, transfer agents agree to maintain DTC-eligible inventory in the form of jumbo certificates registered in the name of DTC's nominee, Cede & Co., and that they will electronically reconcile DTC participants' daily deposit and withdrawal activities.
- Establish and maintain electronic communication links with DTC through Profile so that DTC participants (*e.g.,* broker-dealers) and limited participants (*e.g.,* transfer agents) can communicate investors' instructions electronically. DTC requires transfer agents to complete DRS and Profile training before using Profile. Profile includes data fields that would be included in a traditional paper transaction, including the investor's broker-dealer account number, investor's DRS account number, Tax I.D./Social Security number, and CUSIP numbers of the securities. Once those instructions are transmitted, the actual movement of securities ownership takes place in DRS.
- Participate in DTC's Profile Surety Program, which functions similarly to the medallion guarantee programs for paper based transactions by providing for a surety bond to back the representations made by the transacting parties.[310]

Additionally, DTC criteria that must be met by a securities issuer to ensure its securities are eligible for DRS and Profile may indirectly apply to transfer agents acting on behalf of the issuer. For example, DTC requires issuers to mail DRS book-entry statements to registered owners evidencing their holdings at least once a year.[311] Transfer agents acting on behalf of issuers wishing to participate in DRS may therefore be asked by their issuer clients to handle this statement mailing function.

D. Regulation of Transfer Agents Under State Law

Transfer agents are subject indirectly to state corporation law when acting as agents of corporate issuers, and they are directly subject to state commercial law, principal-agent law, and other laws, many of which are focused on corporate governance and the rights and obligations of issuers and securityholders.[312] While a full discussion of all state laws applicable to transfer agents is beyond the scope of this release, the transfer of investment securities is primarily governed by UCC Article 8, which has been adopted by the legislatures of all 50 states,[313] the District of Columbia, Puerto Rico, and the Virgin Islands. Article 8 was most

[300] *See* Securities Exchange Act Release No. 21499, File No. SR–NYSE–84–33 n.16 (Nov. 19, 1984) (noting the NYSE adopted the 48 hour turnaround policy in 1971); 2011 NYSE Rule Archives, Rule 496.

[301] Rule 17Ad–1 through 17Ad–7 Adopting Release, *supra* note 145, at 32404 n.4.

[302] *See* NYSE Listed Co. Manual § 601.01(A)(12) (2013) (making the lower capital standard conditional on the maintenance by the transfer agent of ''errors and omissions insurance coverage in an amount which, taken together with its capital, surplus (both capital and earned), undivided profits, and capital reserves, equals at least $10,000,000 and, provided further, that such transfer agent maintains the insurance required by Para.601.01(A)(1)(ii).'').

[303] NYSE Listed Co. Manual § 601.01(A)(10) (2013).

[304] NYSE Listed Co. Manual § 601.01(A)(1) (2013).

[305] NYSE Listed Co. Manual § 601.01(A)(6) (2013).

[306] NYSE Listed Co. Manual § 601.01(A)(4),(7) (2013).

[307] *See generally,* NYSE Listed Co. Manual § 601.01(A)–(D) (2013).

[308] *See* NYSE Listed Co. Manual § 501.00 (2013) (requiring ''all securities listed on the Exchange [to] be eligible for a direct registration system operated by a securities depository''); NASDAQ Rule 5210(c) (requiring ''all securities initially listing on Nasdaq, except securities which are book-entry only, [to] be eligible for a Direct Registration Program operated by a clearing agency registered under Section 17A of the [Exchange] Act.'').

[309] Profile was implemented by DTC in 2000 to ''electronically convey an investor's request to move from one form of securities ownership to another. Profile takes the place of the paper transaction advice for electronic movement of securities positions between street-name positions and direct registration book-entry positions. Profile includes all the data fields listed on the paper transaction advice, including the investor's broker-dealer account number, investor's DRS account number, Tax I.D./Social Security number, full registration, and CUSIP.'' DTC, An Overview, *available at http://www.dtc.org/dtcpublic/html/lob2/prod6/drsdetail.htm.* In addition, since 2001, the Profile Surety Program has provided for a surety bond to help mitigate the risks for parties using DRS and Profile, similar to a medallion stamp on a certificated security.

[310] *See* Securities Exchange Act Release No. 41862 (Sept. 10, 1999), 64 FR 51162, 51163 (Sept. 21, 1999) (File No. SR–DTC–99–16). *See also supra* note 86 (regarding FAST requirements).

[311] DTC requirements for DRS and Profile eligible transfer agents and issuers are discussed in greater detail at Direct Registration System, DTCC, *http://www.dtc.org/dtcpublic/html/lob2/prod6/drsdetail.htm* (last visited November 20, 2015).

[312] *See, e.g.,* Del. Code Ann. tit. 8 (Delaware General Corporation Law), Del. Code Ann. tit. 6, art. 8 (Investment Securities), Restatement (Third) of Agency (2006).

[313] Louisiana has enacted the provisions of Article 8 into the body of its law, among others, but has not adopted the UCC as a whole.

recently revised in 1994 to introduce the concept of a securities entitlement as a way to simplify and clarify the rules for the modern street name system.[314] Although UCC Article 8 is intended to provide a uniform and practical definition of the responsibilities of issuers and their agents in issuing and transferring securities, it does not encompass or preempt the complete body of state laws that may relate to transfer agent activity.[315] Transfer agents may also be subject to the laws of the states of incorporation for both issuers and their securityholders that apply to specific services provided by the transfer agent, such as data privacy.[316]

V. Evolution of Recordkeeping, Transfer, and Related Transfer Agent Activities

This section discusses some of the core recordkeeping, transfer, and other activities that transfer agents engage in, the manner in which the current transfer agent rules apply to those activities, and how those activities have evolved over time. The world looks very different today than it did in 1977, when the first transfer agent rules were adopted. Since then, the increased use and decreased cost of technology, the expansion of corporate actions to bring securities into the public market, the continued dematerialization of securities, and other changes have resulted in significant evolution and changes to the types of services transfer agents provide and the manner in which they provide them. At the same time, with limited exceptions, the Commission's transfer agent rules have not been updated. As a result, there may be divergence between modern transfer agents' activities and the activities that the Commission's rules are designed to regulate.

A. Recordkeeping, Transfer, Issuance, and Corporate Actions

All transfer agents perform a number of core recordkeeping, transfer, and other services related to their primary function of facilitating the transfer of securities. This section discusses some of the activities transfer agents engage in with respect to these services and the relevant transfer agent rules applicable to them.

1. Recordkeeping: Rules 17Ad–9, 10, and 11

Transfer agents have direct responsibility for maintaining on behalf of the issuer the currency and integrity of the official list of the registered owners of an issuer's stocks and bonds, how those stocks and bonds are held, and how many shares or bonds each investor owns. This list is defined by Rule 17Ad–9(b) as the master securityholder file.[317] Without the master securityholder file, registered owners of an issuer's securities cannot be assured that they are recognized as such by the issuer and that they will receive corporate distributions, communications, and the other rights of security ownership to which they are entitled.[318]

Transfer agents also maintain and keep current the control book which is defined by Rule 17Ad–9(d) as the record of the total number of shares of equity securities or the principal dollar amount of debt securities authorized and issued by the issuer for each issue the transfer agent services.[319] As discussed above in Section IV.A.3, one of the main purposes of the control book is to allow the transfer agent to monitor the number of securities outstanding to prevent overissuance because the total number of shares reflected in the aggregate on the master securityholder file should match the number of shares authorized in the control book.[320]

Finally, pursuant to Rule 17Ad–6, transfer agents maintain the transfer journal.[321] The transfer journal can be a useful tool for transfer agents and issuers. For example, when reviewed in conjunction with the master securityholder file, the transfer journal may provide historical information regarding the issuance and transfer of a specific security or the holdings of a specific securityholder. The transfer agent rules do not define transfer journal nor codify requirements with respect to the transfer journal.

The primary recordkeeping rules that apply to the core records discussed above include Rules 17Ad–9, 17Ad–10, and 17Ad–11. These recordkeeping requirements are supplemented and reinforced by the recordkeeping and record retention and preservation requirements found in Rules 17Ad–6 and 17Ad–7. Rules 17Ad–9 and 17Ad–10 define the term master securityholder file, provide the specific information regarding a securityholder that must be maintained on the master securityholder file, defined in the rules as certificate detail,[322] and set specific timing deadlines for recording this information.[323] In addition, Rule 17Ad–10 imposes obligations on transfer agents to carry over any existing certificate detail where they succeed to the maintenance of a master securityholder file that was maintained in an earlier format or by a predecessor transfer agent.[324]

The Commission's transfer agent rules seek to promote accurate recordkeeping by transfer agents by establishing specific requirements when a transfer agent identifies a specific type of discrepancy in its records referred to in Rule 17Ad–9(g) as a record difference.[325] Rule 17Ad–10(b) requires transfer agents to ''exercise diligent and continuous attention to resolve all record differences.'' Further, Rule 17Ad–10(b) requires that every recordkeeping transfer agent maintain and keep current an accurate master securityholder file and subsidiary files, and if a record difference is identified,

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[314] U.C.C. 8–501 *et seq.* (1994).

[315] For example, in addition to UCC Article 8, various state laws relating to contracts, principal agent relationships, estoppel, fraud, bankruptcy, escheatment (or abandoned property) and other areas may apply to a specific transaction or situation.

[316] For example, California's privacy statute which became effective in 2003, was the first significant effort by a state to assert substantive regulation of privacy of customer data. *See* Cal. Civ. Code §§ 1798.80–1798.84. While state regulations vary across jurisdictions, other states have followed suit with similar regulatory initiatives. *See, e.g.,* Minn. Stat. § 325E.61, Neb. Rev. Stat. §§ 87–801–807.

[317] *See* Exchange Act Rule 17Ad–9(b), 17 CFR 240.17Ad–9(b).

[318] *See generally, e.g.,* Del. Code Ann. tit. 8 §§ 170, 173 (authorizing a corporation to pay cash and stock dividends under certain circumstances); Exchange Act Rule 14c–3, 17 CFR 240.14c–3 (requirement to furnish an annual report to securityholders); Del. Code Ann. tit. 8 § 212 (providing for voting rights of stockholders and permitting them to vote by proxy); Del. Code Ann. tit. 8 § 222 (requirement to send stockholder notice in advance of stockholder meeting).

[319] Exchange Act Rule 17Ad–9(d), 17 CFR 240.17Ad–9(d).

[320] When acting in this capacity, a transfer agent may be referred to as a ''registrar.'' *See* Exchange Act Section 3(a)(25), 15 U.S.C. 78c(a)(25).

[321] Exchange Act Rule 17Ad–6, 17 CFR 240.17Ad–6.

[322] *See supra* Section IV.A.3. We note that the ''certificate detail'' requirements in Rule 17Ad–9 apply to both certificated securities and book-entry positions. Further, while we focus here on Rule 17Ad–9's certificate detail requirements, Rule 17Ad–9(a)(4) is relevant to other rules that depend on obtaining securityholders' address information such as Rules 17Ad–12 and 17Ad–17. We also note that Rule 17Ad–9(b) permits registered investment companies to maintain multiple, but linked, automated files with respect to book-entry securities.

[323] With certain exceptions, certificate details must be posted within five business days, unless a transfer agent is an ''exempt transfer agent'' under Rule 17Ad–4(b) or an issuer acting as its own transfer agent for its own securities. Exchange Act Rule 17Ad–10(a)(2)(i)–(ii), 17 CFR 240.17Ad–10(a)(2)(i)–(ii).

[324] *See* Exchange Act Rule 17Ad–10(h), 17 CFR 240.17Ad–10(h). As discussed below in Section VI.B, the rule does not require predecessor transfer agents to turn over such information to the issuer or to a successor transfer agent.

[325] Exchange Act Rule 17Ad–9(g), 17 CFR 240.17Ad–9(g). For additional discussion of the goals and objectives of the Commission's transfer agent rules, *see supra* Section IV.

then both the master securityholder file and subsidiary files must accurately represent all relevant debits and credits until the record difference is resolved.[326]

As discussed above, if a record difference exists for ''more than thirty calendar days,'' it becomes an aged record difference under Rule 17Ad–11(a)(2).[327] Depending upon the aggregate market value of the aged record differences for a particular issuer and the capitalization of the issuer, Rule 17Ad–11(b) may require the transfer agent to send a monthly report to the affected issuer.[328] Depending on the total number of issuers serviced and the aggregate market value of all record differences across all issuers serviced, the transfer agent may also need to make reports to its ARA pursuant to Rule 17Ad–11(c).[329]

2. Securities Transfers, Exchanges, and Conversions: Rules 17Ad–9, 10, 12, and 19

Transfer agents are integrally involved in effecting transfers of ownership of securities, as well as exchanging and converting securities.[330] For example, an equity sale would usually involve a transfer. In contrast, a stock-for-stock merger, where the equity security of Company A is exchanged for an equity security of Company B (and Company B is the disappearing company) would involve an exchange. Finally, a securityholder's election to convert a convertible debt security into an equity security would usually involve a conversion. While these transfer agent services vary in terms of definition, the transfer agent rules apply to all of them in substantially similar ways. Therefore, for the purposes of describing all of these services in the discussion that follows, we will focus on the activities and rules applicable to transfers.

In connection with transfers of certificated securities, the first steps in the transfer process are to match the certificate detail with the master securityholder file, verify the signature guarantee, and then cancel the negotiable certificate that has been presented for transfer. With respect to verifying the signature, presentation by the transferor typically involves providing the transfer agent an indorsed security certificate bearing a medallion stamp. In some cases, the indorsement and assignment may be made not on the certificate itself but by an executed power of attorney authorizing the transfer of ownership on the books of the issuer.[331]

Rule 17Ad–19 governs certificate cancellation and requires that ''every transfer agent involved in the handling, processing, or storage of securities certificates shall establish and implement written procedures for the cancellation, storage, transportation, destruction, or other disposition of securities certificates.'' [332] The rule grants transfer agents flexibility to develop their own procedures, but depending on which procedures they adopt (*i.e.,* cancellation, destruction, or other disposition), they must comply with minimum requirements regarding three general areas: (i) The manner of cancellation and destruction of certificates; (ii) the storage and transport of cancelled certificates; and (iii) recordkeeping with respect to cancelled certificates.[333]

Rule 17Ad–12 governs the safeguarding of cancelled certificates. First, certificates that are cancelled generally must be stamped or perforated with the word ''CANCELLED'' and, for any cancelled certificate that is subsequently destroyed, the destruction of certificates must be witnessed by authorized personnel of the transfer agent or its designee.[334] Second, transfer agents must control access to the location where cancelled certificates are kept and transport of cancelled certificates must be made in a ''secure manner.'' [335] If cancelled certificates are not destroyed, they must be retained for six years pursuant to Rule 17Ad–7(d).[336] Furthermore, Rule 17Ad–12 requires that cancelled certificates be ''held in safekeeping and . . . handled, in light of all facts and circumstances, in a manner reasonably free from risk of theft, loss or destruction (other than by a transfer agent's certificate destruction procedures pursuant to § 240.17Ad–19).'' Third, transfer agents must keep a record regarding each cancelled certificate that is in transit and records for each cancelled certificate and destroyed certificate that in both cases are ''indexed and retrievable by CUSIP and certificate number.'' [337] These records must be kept for three years.

Once the old certificate has been cancelled, the next step in the transfer of a certificated security will generally involve recording the change of record ownership of the relevant securities on the master securityholder file. In the context of certificated securities, this is done by debiting the securities account of the transferor. Rule 17Ad–9(f) defines the term ''debit'' as ''a cancellation of appropriate certificate detail from the master securityholder file.'' Because the cancellation date is one of the defined elements of certificate detail under Rule 17Ad–9, together Rules 17Ad–9(a)(6)

[326] Exchange Act Rule 17Ad–10(b), 17 CFR 240.17Ad–10(b). We also note that, as part of a transfer agent's obligation to monitor against overissuances, Rule 17Ad–10(g) imposes buy-in obligations when an actual physical overissuance has occurred that was caused by the transfer agent. Exchange Act Rule 17Ad–10(g), 17 CFR 240.17Ad–10(g). There are limited exceptions to this requirement. *See* Exchange Act Rules 17Ad–10(g)(2)–(3), 17 CFR 240.17Ad–10(g)(2)–(3).

[327] Exchange Act Rule 17Ad–11(a)(2), 17 CFR 240.17Ad–11(a)(2).

[328] Exchange Act Rule 17Ad–11(b), 17 CFR 240.17Ad–11(b). Rule 17Ad–11(b) also requires, without imposing any minimum threshold as with the amount of aged record differences, that the transfer agent report to issuers concerning any securities bought-in pursuant to Rule 17Ad–10(g) or reported as bought-in pursuant to Rule 17Ad–10(c) during the preceding month.

[329] Exchange Act Rule 17Ad–11(c), 17 CFR 240.17Ad–11(c). The report to the ARA must also include information concerning buy-ins required by Rule 17Ad–10(g) when the aggregate market value of all buy-ins during a calendar quarter exceeds $100,000. *Id.*

[330] The terms ''exchange'' and ''conversion'' are used in Exchange Act Section 3(a)(25) and in the Commission's transfer agent rules but are not defined in the Commission's transfer agent rules. The term ''exchange'' is commonly used to refer to the trading of specific securities for another asset, usually without an accompanying change in ownership. The term ''conversion'' is commonly used to refer to the changing into or substitution of one security for another security or asset under specific conditions, also without an accompanying change in ownership.

[331] *See supra* note 18 (regarding powers of attorney).

[332] Exchange Act Rule 17Ad–19(b), 17 CFR 240.17Ad–19(b).

[333] *Id.*

[334] Exchange Act Rules 17Ad–19(c)(2), (6), 17 CFR 17.24017Ad–19(c)(2), (6). The requirement to stamp or perforate the certificate as cancelled does not apply where ''the transfer agent has procedures adopted pursuant to this rule for the destruction of cancelled certificates within three business days of their cancellation.'' In addition, a certificate may be marked ''cancelled'' and stored for a period of time before being destroyed.

[335] Exchange Act Rules 17Ad–19(c)(1), (5), 17 CFR 240.17Ad–19(c)(1), (5).

[336] We note that when the Commission adopted Rule 17Ad–19 in 2003 addressing among other things the destruction of certificates, it did not amend Rule 17Ad–7(d) to delete the requirement to retain cancelled security certificates for six years. But concurrently in 2003, the Commission amended Rule 17Ad–7(f) such that ''the records required to be maintained pursuant to § 240.17Ad–6 may be retained using electronic or micrographic media. . . .'' *See* Exchange Act Rule 17Ad–7(f), 17 CFR 240.17Ad–7(f); Recordkeeping Requirements for Transfer Agents, *supra* note 215. We understand that many transfer agents today follow a practice of destroying certificates after a period of time in accordance with their individual policies and in compliance with Rule 17Ad–19 but keep electronic copies of the cancelled certificate by imaging it to comply with Rule 17Ad–7 as well as keeping the records required by Rule 17Ad–19(c)(4) for destroyed certificates.

[337] Exchange Act Rule 17Ad–9(c)(5), 17 CFR 240.17Ad–9(c)(5). The record regarding cancelled certificates in transit must show the certificate numbers and CUSIP numbers. The records regarding both cancelled certificates and destroyed certificates must include ''the CUSIP number, certificate number with any prefix or suffix, denomination, registration, issue date, and cancellation date.'' Exchange Act Rules 17Ad–9(c)(3)–(4), 17 CFR 240.17Ad–9(c)(3)–(4).

and 17Ad–10 have the effect of requiring that the cancellation date be posted to the master securityholder file, generally within five business days.[338]

The final step in the process of completing a transfer for a certificated security is for the transfer agent to issue (on behalf of the issuer) a new security to the transferee. The transfer agent's role in connection with the issuance stage of transfer is discussed in more detail in the next section below.

For uncertificated securities, transfer agents do not issue or cancel physical securities certificates when transferring securities. Instead, they effect book-entry transfers by registering the change in ownership on the master securityholder file, which does not involve the physical issuance and cancelling of securities certificates. The term ''registering'' means an official form of recording by a person charged with that function, which is accomplished under Exchange Act Rules 17Ad–9(h) and 17Ad–10(e) by updating the master securityholder file, as discussed above. Book-entry transfer may be accomplished through DTC's DRS using DTC's Profile system.[339] Once the transfer has been effected, the investor would receive from the transfer agent a statement of ownership that acknowledges his or her new DRS position.

3. Securities Issuance: Rules 17Ad–1 and 2

Transfer agents are also involved in the issuance of securities, which may be one of the final stages before completing a transfer, as discussed above, or could involve a primary offering of securities such as an initial public offering. Generally, from the perspective of the transfer agent facilitating a transfer, issuance will involve a credit to the transferee's securities account, as compared to the cancellation and transfer processes discussed above, which involve debiting the securities account of the transferor.

The clock for turnaround under Rules 17Ad–1 and 17Ad–2 begins when a transfer agent receives an item and ends when a transfer agent issues the new security. Thus, from the transfer agent's perspective, issuance is what stops the clock. Rule 17Ad–2(a) generally has the effect of imposing a three day deadline on turnaround of transfer of a routine item.[340] Rule 17Ad–1 provides in general terms that turnaround is achieved ''when transfer is accomplished.'' [341] In turn, ''transfer is accomplished'' when ''all acts necessary to cancel the certificate or certificates presented for transfer and to issue a new certificate or certificates . . . are completed and the item is made available to the presentor by the transfer agent . . .'' [342] Thus, with certain exceptions, the ''made available'' standard [343] functions similar to a ''mailbox'' rule because the item is considered to have been made available when the transfer agent mails the new certificate to the transferee (or otherwise makes it available).

Upon issuing the new security to the transferee, the transfer agent must credit the securities account of the transferee receiving the new security. This is accomplished by posting to the master securityholder file all of the certificate detail information set forth in Rule 17Ad–9(a), generally within five business days.[344]

In the case of an uncertificated security, there is no certificate to cancel and no new certificate to be issued. Under Rule 17Ad–1(d), posting the new ownership information to the master securityholder file changes the ownership information of the securities account and ''completes registration of change in ownership of all or a portion of those securities.''

Transfer agents are also responsible for countersigning securities upon issuance, which provides critical authentication of a security by an independent, outside actor. In general, ''countersigning'' means a signature added to a document previously signed by another person for authentication or confirmation. The second signature confirms the first signature, and the two signatures together are intended to show the certificate's legitimacy. In the case of certificated securities, the first signer is typically an officer of the issuing corporation, and the countersigner is typically an independent officer of the issuer's transfer agent. The procedures involved in countersignature of physical certificates are not mandated by the Exchange Act,[345] but are generally the product of other sources of law that either require them or otherwise address them in certain respects, such as by permitting them to be made by facsimile.[346]

In the case of DRS shares, where no certificate exists, an investor has the option of having his or her ownership of securities registered in book-entry form on the issuer's records or on the books of the issuer's transfer agent, and in either case the investor receives a ''statement of ownership.'' [347] In either event, it is an important verification step in the issuance of a security and highlights the important role that transfer agents play as intermediaries for the public interest.

4. Corporate Actions and Related Services: Rules 17Ad–1, 6, 10, 12, and 13

A corporate action is an event in the life of a security, typically instigated by the issuer, which affects a position in that security.[348] Examples of common corporate actions include changes that affect capital structure, such as a merger or acquisition, and distributions to securityholders, such as a dividend distribution or principal or interest payment on a debt security. Corporate actions may also include bankruptcy or liquidation proceedings, conversions, warrants, exchange offers, subscription

[338] Exchange Act Rules 17Ad–9–10, 17 CFR 240.17Ad–9–10. Moreover, Congress in the Dodd-Frank Act has taken another step to tighten recordkeeping of cancelled securities by adding ''cancelled'' securities as a category of securities that must be reported to the Commission or its designee. *See* Exchange Act Section 17(f)(1), 78 U.S.C. 187(f)(1).

[339] *See supra* note 93.

[340] If a transfer agent fails to turnaround 90% of routine items received during a month within three business days of receipt, certain sanctions apply. *See* discussion *supra* Section IV.B for additional details on the turnaround requirements and requirements in the event of failure to meet the turnaround requirements.

[341] Rule 17Ad–1(c)(2) applies a different measurement of when turnaround is achieved when an outside registrar is involved: instead of the clock stopping when the new certificate is presented to the transferee, it stops when the item is ''made available'' to the outside registrar. Thus, turnaround will be accomplished when the transfer agent ''completes all acts necessary to cancel the certificate or certificates presented for transfer and to issue a new certificate or certificates, and the item is made available to an outside registrar.'' Exchange Act Rule 17Ad–1(c)(2), 17 CFR 240.17Ad–1(c)(2).

[342] If the presentor has given special instructions, the timing is measured differently. *See* Exchange Act Rule 17Ad–1(d), 17 CFR 240.17Ad–1(d).

[343] *See* Exchange Act Rule 17Ad–1(c)(1), 17 CFR 240.17Ad–1(c)(1).

[344] *See* Exchange Act Rules 17Ad–9(a), 17Ad–10, 17 CFR 240.17Ad–9(a), 17Ad–10. We note that, in the case of a cancellation, which involves a ''debit'' to the master securityholder file under Rule 17Ad–9, the cancellation date would be the only portion of the ''certificate detail'' required to be posted to the master securityholder file. *See* Exchange Act Rule 17Ad–9, 17 CFR 240.17Ad–9.

[345] As discussed in Section IV.A, the Exchange Act, however, includes countersigning certificates as one element of the definition of transfer agent in Section 3(a)(25).

[346] *See, e.g.,* Del. Code Ann. tit. 8 § 158 (''Any or all the signatures on the certificate may be a facsimile.'').

[347] *See* Concept Release, Transfer Agents Operating Direct Registration System, Exchange Act Release No. 35038 (Dec. 1, 1994), 59 FR 63652 (Dec. 8, 1994) (''Investors who choose to participate in a direct registration system could have their securities registered in book-entry form directly on the books of the issuer and could receive a statement of ownership in lieu of a securities certificate.'').

[348] Simmons and Dalgleish, Corporate Actions: A Guide to Securities Event Management 3–5 (2006).

rights, tender offers, and other events.[349] Generally, corporate actions can be divided into two broad categories: Mandatory and voluntary (sometimes referred to as ''elective.'') Mandatory corporate actions usually affect all securityholders equally and the securityholder does not have different options from which to choose; voluntary corporate actions usually allow securityholders to choose among one or more different elections they can make.

Transfer agents may perform a variety of roles and provide a variety of services, depending on the type and nature of the corporate action. For example, a transfer agent may take on the role of exchange agent in a mandatory corporate action, such as a stock-for-stock merger or a cash-for-stock merger. In a stock-for-stock merger the exchange agent might facilitate the surrender of outstanding securities for new securities, and in a cash-for-stock merger the exchange agent might facilitate the exchange of outstanding securities for cash.

In both of these examples, under Rule 17Ad–10, the transfer agent performing exchange agent services generally must update the master securityholder file with certificate details within five business days. But because the transfer associated with some of the most common corporate actions qualify as non-routine items under Rule 17Ad–1, including transfers ''in connection with a reorganization, tender offer, exchange, redemption, or liquidation,'' [350] the general three business day deadline for turnaround of routine items under Rule 17Ad–2 may not apply. However, if a transfer agent makes a determination that a transfer does fall within Rule 17Ad–1(i)(5) and therefore is non-routine, Rule 17Ad–6(a)(11) requires the transfer agent to maintain records documenting the basis for this determination.[351] Other aspects of the processing of the corporate action may cause the corporate action to be classified as non-routine as well. For example, if a transfer associated with a corporate action involves a need to review ''explanations, or opinions of counsel before transfer may be effected,'' requires ''review of supporting documentation'' other than routine documentation, or includes a warrant, right, or convertible security ''presented for exercise or conversion'' or ''presented for transfer . . . within five business days'' before expiry it will be considered non-routine under Rule 17Ad–1.[352]

Voluntary corporate actions, which permit securityholders to choose among different options, may result in the need for additional tasks and systems for transfer agents to process them. For example, in addition to the ordinary recordkeeping tasks, the transfer agent may be responsible for monitoring whether elections have been made by deadlines and for tracking such elections.

In addition to the examples discussed above, transfer agent roles in connection with corporate actions may also include serving as: (i) Tender agent, when the transfer agent collects shares surrendered from securityholders and makes payments for the shares at a predetermined price; (ii) exchange agent, when the transfer agent collects shares surrendered from securityholders and issues, registers, and/or distributes shares of the bidding company's securities as compensation for tendered securities of the subject company; (iii) subscription agent, when the transfer agent invites existing equity securityholders of an issuer to subscribe to a new issuance of additional debt or equity of the issuer; (iv) conversion agent, for example when the transfer agent converts debt securities into equity securities; and (v) escrow agent, when the transfer agent holds an asset on behalf of one party for delivery to another party upon specified conditions or events.

Finally, transfer agents providing corporate action services may be subject to Rule 17Ad–12 and 17Ad–13, regarding safeguarding requirements for funds and securities and an annual audit of internal control of safeguarding procedures. As discussed above, corporate actions may involve transfer agents making distributions on behalf of issuers to securityholders of cash and stock dividends as well as principal and interest payments on debt securities. Rule 17Ad–12(a) requires that:

> Any registered transfer agent that has custody or possession of any funds or securities related to its transfer agent activities shall assure that: (1) All such securities are held in safekeeping and are handled, in light of all facts and circumstances, in a manner reasonably free from risk of theft, loss or destruction . . .; and (2) All such funds are protected, in light of all facts and circumstances, against misuse.

Rule 17Ad–13 requires every registered transfer agent to file an annual report with the Commission and the transfer agent's ARA prepared by an independent accountant concerning the transfer agent's system of internal accounting controls and procedures for, among other things, safeguarding of securities and funds. Specifically, Rule 17Ad–13(a)(2)(iii) requires the report to cover ''[t]ransferring record ownership as a result of corporate actions'' and Rule 17Ad–13(a)(2)(iv) requires the report to cover ''[d]ividend disbursement or interest paying-agent activities.''

B. Annual Meeting, Proxy-Related Services, and Securityholder Services and Communications

One of the key rights of securityholders is the right to vote their shares on important matters that affect the companies they own. Pursuant to state corporate law, registered securityholders may either attend a meeting to vote shares in person or authorize an agent to act as their ''proxy'' at the meeting to vote their shares pursuant to their voting instructions.[353] Because most securityholders do not physically attend public company securityholder meetings, the corporate proxy is the principal means by which they exercise their voting rights.

The process in the United States for distributing proxy materials and soliciting, tabulating, and verifying votes by securityholders is complex, especially with respect to beneficial securityholders.[354] Most corporate issuers and securities intermediaries such as banks and brokers rely on a proxy service firm to perform these functions, which may include distributing and forwarding the proxy materials and collecting and tabulating voting instructions. Alternatively, some

[349] *See id.* (categorizing major types of corporate actions).

[350] Exchange Act Rule 17Ad–1(i)(5), 17 CFR 240.17Ad–1(i)(5).

[351] A large portion of specific records that transfer agents are required to maintain under Rule 17Ad–6 and to retain for different periods of time under Rule 17Ad–7 relate to: (i) The classification of an item as routine or non-routine; (ii) tracking the compliance of the transfer agent with the performance standards for turnaround of routine items under Rule 17Ad–2(a); and (iii) the performance standards for processing of all items pursuant to Rule 17Ad–2(b).

[352] Exchange Act Rule 17Ad–1(i), 17 CFR 17Ad–1(i).

[353] *See* Del. Code Ann. tit. 8, § 212(b), (c). A full discussion of the proxy system is beyond the scope. For more information on the proxy system, *see* Proxy Concept Release, *supra* note 112.

[354] Beneficial owners holding securities in street name are not technically entitled to vote shares or grant proxy authority. Rather, the voting rights reside with Cede & Co. as the record owner of all street name shares. However, because Cede & Co.'s role is only that of nominee for DTC as custodian and it has no beneficial interest in the shares, mechanisms have been developed in order to pass the legal rights it holds as the record owner to the beneficial owners, enabling them to vote. For a more comprehensive discussion of these and other issues relating to the U.S. proxy and indirect holding systems, *see* Proxy Concept Release, *supra* note 112.

issuers choose to engage their transfer agents for certain parts of the proxy distribution process, such as printing and distributing proxy materials either directly to registered securityholders or to intermediaries, which will then distribute them to beneficial owners either through the mail or electronically.[355] Providing these services may be a natural extension of a transfer agent's core functions because most transfer agents will already possess and maintain the master securityholder file listing the issuer's registered securityholders, will have the infrastructure in place to communicate with registered securityholders, and will be in a position to reconcile the identity of registered voters and the number of votes against the official records of the issuer.[356] Typical transfer agent proxy services might include mailing or electronically transmitting notices of meetings,[357] proxy statements, and proxy cards [358] to securityholders.

In addition, under many state statutes, an issuer must appoint a vote tabulator (sometimes referred to as the ''inspector of elections'' or ''proxy tabulator'') to collect and tabulate the proxy votes as well as ballot votes cast in person by registered owners at a securityholder meeting.[359] As with proxy distribution services, some issuers hire their transfer agent to create sophisticated voting platforms for securityholders or to act as the vote tabulator.[360] The vote tabulator is ultimately responsible for determining whether shares are represented at the meeting, the validity of proxies received, and tallying the votes.[361] The tabulator must determine that the correct number of votes has been submitted by each registered owner and determine that proxies submitted by securities intermediaries that are not registered owners are reconciled with DTC's securities position listing for that intermediary (*i.e.,* determining that the number of nominee shares voted equals the number of shares that DTC indicates are held in nominee name).[362] Although the Commission does regulate transfer agents, which often serve as vote tabulators, it does not regulate the function of tabulating proxies by transfer agents.

All transfer agents also provide some level of securityholder communications services. The level of services may depend on the type or size of the issuer, but at a minimum, most transfer agents facilitate the mailing of quarterly and annual statements with details of holdings, transaction confirmations, and letters or communications confirming other transactions, such as address-change confirmations. Many transfer agents also provide tax reporting services, including sending tax forms such as W–9, W–8BEN, 1099–DIV, and 1099–B.

Most transfer agents also receive and respond to inquiries and requests by securityholders and non-securityholders,[363] often through interactive Web sites, call centers, and the like. Requests may involve a transfer (for example, a gift of fund shares from one family member to another) or a change in the securityholder's account, such as an address change or different election regarding dividend reinvestment. For transfer agents to open-end mutual funds, transfers may involve a purchase (*i.e.,* a ''subscription'') or sale (*i.e.,* a ''redemption'') of the fund's shares.[364] Transfer agents may receive inquiries as well, which may not require processing a transaction or account change, but may involve merely answering questions about the securityholder's account or regarding the issuer generally.[365] Requests and inquiries are transmitted to transfer agents through various methods, including by telephone, mail, facsimile, email, internet, mobile communication device, and in-person. The predominance of telephone and other forms of electronic communication as favored methods for securityholders to communicate with issuers and their transfer agents, including the use of standardized protocols over the internet, means that managing sizable call centers and other customer service departments, with many representatives fielding calls and other message-traffic, has become a critical aspect of the transfer agent-issuer relationship.

One aspect of these securityholder services is lost certificate replacement. If a securityholder loses a certificate, the old certificate must be cancelled and new shares issued, either in certificated or book-entry form. Transfer agents facilitate this process by processing the request and replacing the lost or missing certificate. Generally, the securityholder will be required to fill out a declaration, affidavit, or other form with identifying information and a description of the circumstances giving rise to the loss and pay a fee to the transfer agent for processing the request. Most transfer agents will also require a surety bond to indemnify the issuer and transfer agent against any potential losses in connection with the missing or replacement certificate in the event it is later presented for transfer or conversion. The transfer agent will then report the lost or missing certificate to SIC pursuant to Rule 17f–1, as described above in Section II.B.

C. Regulatory Compliance and Reporting

Although not addressed directly in the transfer agent rules, most transfer agents today provide assistance with issuers' obligations to comply with various state and federal laws, including the federal securities laws, because many issuer compliance obligations fall directly into areas in which the transfer

[355] See, *e.g.,* Broadridge Annual Report 2015 (2015), *available at http://www.broadridge-ir.com/~/media/Files/B/Broadridge-IR/annual-reports/ar-2015.pdf.*

[356] *See* Proxy Concept Release, *supra* note 112. *See* Proxy Tabulation and Solicitation, AST, *http://www.amstock.com/corporate/corporate_proxy.asp* (last visited November 20, 2015).

[357] *See, e.g.,* Del. Code Ann. tit. 8, § 222 (2001). *See also* Del. Code Ann. tit. 8, § 232 (2001).

[358] In cases where the issuer is relying upon the notice and access model of proxy statement distribution, the proxy card must be mailed even if the proxy statement is not mailed by the issuer. *See* Final Rule: Internet Availability of Proxy Materials, Exchange Act Release No. 55146, 10 (Jan. 22, 2007), 72 FR 4148 (Jan. 29, 2007).

[359] *See, e.g.,* Del. Code Ann. tit. 8, § 231(a)–(c)(2001) (inspectors must be appointed in advance of all stockholder meetings of publicly held corporations and have responsibility for ascertaining the number of shares outstanding and the voting power of each, determining the shares represented at the meeting and the validity of proxies and ballots, counting all votes and ballots, creating and retaining a record of the disposition of any challenges made to any determination of the inspectors, and certifying their determination of the number of shares represented at the meeting and the count of all votes and ballots).

[360] Sometimes the issuer will hire an independent third party other than the transfer agent to perform the proxy tabulation function, such as to certify important votes. In such cases, the issuer or its transfer agent typically will provide the third party vote tabulator with the list of record owners so the vote tabulator can make this determination. Additionally, in contested votes, the issuer will commonly retain an independent inspector to count the proxies. *See, e.g., www.ivsassociates.com/html/index2.htm.*

[361] *See, e.g.,* Del. Code Ann. tit. 8, § 231(2001); *see also* Marcel Kahan & Edward B. Rock, *The Hanging Chads of Corporate Voting,* 96 Geo. L.J. 1227, 1235 (2008) (''Where more than one valid proxy is given for a share, the later proxy revokes the earlier proxy. Determining the validity of proxies and the tally of votes is the responsibility of the inspector, appointed by the corporation.''), *available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1007065.*

[362] *See* Proxy Concept Release, *supra* note 112. *See, e.g., http://www.amstock.com/corporate/corporate_proxy.asp.*

[363] As discussed *supra* Section IV.A, several Commission rules address securityholder inquiries. *See* Exchange Act Rule 17Ad–5, 17 CFR 240.17Ad–5 (written inquiries and requests); Exchange Act Rules 17Ad–6, 7, 17 U.S.C. 240.17Ad–6, 7 (recordkeeping and retention requirements regarding inquiries and requests).

[364] For additional discussion of ''transfers,'' *see supra* Section IV.A.2.

[365] Inquiries about the securityholder's account may relate, for example, to matters such as dividend reinvestment or other account options.

agent is already providing services to the issuer. For example, transfer agents may use their mailing and fulfillment services to help issuers meet their obligations to deliver certain documents to securityholders.[366] Transfer agents may also use their existing recordkeeping capabilities to help issuers meet obligations regarding disclosure of securityholders owning more than a certain threshold of ownership.[367] Further, investment company issuers subject to anti-money laundering responsibilities under federal law may rely on transfer agents to assist their compliance since this function is closely related to the new account processing services and securityholder recordkeeping services transfer agents provide to these issuers.

Finally, transfer agents spend a much greater amount of time and resources on assisting issuers with their escheatment obligations under state law than they have done historically. Escheatment is the process of transferring abandoned property to the state or territory. All 50 states, Washington, DC, Puerto Rico, and all U.S. territories have abandoned property laws which apply to any type of holding, including stock and associated payments made to securityholders, such as dividend payments. When a property owner fails to demonstrate ownership of property—for example, by not cashing dividend checks or responding to mailings—for a period of time, that property is deemed abandoned and is turned over to the state. The state then converts the property to cash within 30 days to two years. A securityholder who is holding securities that have been escheated will only be able to reclaim the sale price the state received, without interest, not the securities themselves.[368]

Pursuant to these abandoned property laws, issuers, through their transfer agents, are required to report when property is deemed to be abandoned based on the applicable abandoned property statute. Thus, issuers are required to file abandoned property reports annually with the individual states and U.S. territories, and to turn over abandoned property according to individual state laws. Failure to file on time can result in significant penalties and interest fees per year.

Transfer agents typically assist issuers with initial escheatment filings with the states in which securityholders have abandoned property, and then an annual filing every year after that with those states. In addition to fulfilling reporting requirements, typical activities may include attempted communications with the securityholder, maintaining up-to-date knowledge of federal and state escheatment requirements, proper accounting and handling of property prior to escheatment, and appropriate transfer of property.

VI. Advance Notice of Proposed Rulemaking

An advance notice of proposed rulemaking provides notice to the public that the agency is considering rulemaking in an area so that the public can participate in the formulation of potential future rules and can help shape a future notice of proposed rulemaking. Through this advance notice of proposed rulemaking, the Commission is requesting comment on specific areas and topics with respect to transfer agent regulation. As noted earlier, the Commission then intends to review comments and to then propose new rules, as soon as is practicable, either individually or in groups or phases to expedite the rulemaking process.

In particular, based on our current understanding of transfer agents and their functions, the Commission intends to propose new or amended rules to: (1) Expand the scope of information collected by Forms TA–1 and TA–2 and capture all such information in a structured, electronic format as needed to enhance aggregation, comparison, and analysis; (2) require that any arrangement for transfer agent services between a registered transfer agent and an issuer be set forth in a written agreement that addresses topics such as the transfer agent services to be provided, the fee schedule, and requirements for the handing over of transfer agent records to the successor transfer agent; (3) enhance transfer agents' requirements for the safeguarding of issuer and securityholder funds and securities; (4) apply an anti-fraud provision to specific activities of transfer agents; (5) require transfer agents to establish business continuity and disaster recovery plans; (6) require transfer agents to establish basic procedures regarding the use of information technology, including methods of safeguarding personally identifiable information; (7) revise the recordkeeping requirements to more fully capture the scope of a transfer agent's business activities; and (8) conform and update various terms and definitions to reflect modern systems and usage, as well as the elimination of obsolete rules, such as those addressing Y2K issues.

In addition to the specific requests for comments in each section below, we also seek comment on the following:

1. For all regulatory issues discussed below, please comment on the need for revisions to the current regulatory framework, including the proposals described above, and the benefits they could provide for transfer agents, investors, issuers, and the capital markets. In particular, please comment on whether the proposals will increase the prompt and accurate clearance and settlement of securities transactions or have other benefits, such as reducing the potential for fraudulent activity. Please also comment on the potential effects on efficiency, competition, and capital formation of potential revisions to the current regulatory framework, if any. If you wish to comment on such potential benefits and effects, please explain the implications of any impact on competition, economic efficiency, capital formation, and the behavior of affected market participants, including transfer agents, issuers, and investors. For each benefit, effect and implication, provide supporting evidence and/or explain how such evidence may be obtained. Also please describe the current competitive landscape for each such affected transfer agent service. For example, to the extent possible, provide evidence on the identities of current providers, their market shares, their ease or cost of entry and exit, the cost to issuers of switching transfer agents, and the frequency of any such switching. Are there any other issues that are not discussed below but that should be addressed? If so, what are they and how should they be addressed?

2. For all regulatory issues discussed below, please comment on any potential interplay between applicable SRO rules and the potential revisions to the current regulatory framework for transfer agents discussed herein, including any potential conflicts that should be considered or resolved. Please provide a full explanation.

3. Are there specific areas where transfer agents need additional guidance or regulatory clarity regarding the applicability of current rules? How could such guidance best be provided? Would rule modification, staff guidance, or an industry roundtable be helpful?

4. Should the Commission prioritize certain of the proposed rule changes discussed in this Advance Notice of Proposed Rulemaking over others? If so, which ones and why? Are there other rule changes besides those discussed in this Advance Notice of Proposed Rulemaking that the Commission should prioritize? Please explain.

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[366] *See, e.g.,* Exchange Act Rule 14c–3, 17 CFR 240.14c–3 (annual report to be furnished securityholders); Investment Company Act Rule 30e–1, 17 CFR 270.30e–1 (reports to stockholders of management companies); Investment Company Act Rule 30e–2, 17 CFR 270.30e–2 (reports to shareholders of unit investment trusts).

[367] *See, e.g.,* SEC Form N–1A, Item 18 (Control Persons and Principal Holders of Securities), SEC Form 10–K, Item 12 (Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters).

[368] *See, e.g.,* Cal. Civ. Proc. Code §§ 1500 et. seq. (California's requirements); Tex. Prop. Code Ann. §§ 72–76 (Texas' requirements). We note also that Rule 17Ad–17 requires transfer agents to make certain efforts to locate lost securityholders.

A. Registration and Annual Reporting Requirements

As discussed generally above in Section IV.A, Forms TA–1 and TA–2 are used to: (i) Help regulators, issuers, investors, and other interested parties determine whether a transfer agent is and will continue to be able to perform its functions properly; (ii) help regulators, issuers, investors, and other interested parties determine the nature of the business conducted by a particular transfer agent; (iii) permit the Commission to effectively target its transfer agent inspection program, including assisting examiners in preparing for and conducting transfer agent examinations; (iv) monitor transfer agent activity generally; (v) enable Commission staff to evaluate particular burdens and benefits that would be placed on the industry in potential rulemaking endeavors; and (vi) assist the Commission and Commission staff in assuring that rules are properly focused and refined.[369] Form TA–1 was developed and first adopted in 1975 [370] and Form TA–2 was first adopted in 1986.[371] The information provided by these forms serves, among others, the vital regulatory goals of informing the Commission's oversight and examination programs and informing the public about the nature and scope of transfer agents' activities. The Commissions believes the usefulness and utility of both forms in serving these important goals might be enhanced if they captured certain additional information, such as financial information, potential conflicts of interest, and detailed information about the types of services being provided and to whom.

To assure that Forms TA–1 and TA–2 continue to serve the regulatory goals described above, especially in light of the expanded scope of transfer agents' activities as discussed throughout this release, the Commission intends to propose amendments to the forms to include disclosure requirements with respect to certain financial information, such as the financial reports discussed below in Section VI.C (*e.g.,* statements of financial condition, income, and cash flows), all direct or indirect conflicts of interest, the issuers and securities for which a transfer agent is providing transfer agent and other services, and the specific services being provided or expected to be provided for each issuer or security, regardless of the nature of those services. These anticipated amendments are intended to facilitate disclosure that is more closely targeted at risks associated with contemporary transfer agent activities.

A requirement that transfer agents and their officers and directors disclose any past or present affiliation with issuers serviced by, or broker-dealers affiliated with, the transfer agent could reveal instances where a transfer agent or its officers and directors have an ownership interest in such issuers and broker-dealers, including details about how the interest was obtained. Such disclosures could provide transparency about the existence of possible financial interests or other potential conflicts of interest that could incentivize a transfer agent to facilitate an improper transfer or engage in other improper conduct.

Financial disclosures may include annual financial statements using a data-tagged format, such as XBRL, broken out by the asset classes serviced by the transfer agent, such as equities, debt, and investment companies.

The Commission seeks comment on the following:

5. Should the Commission require any of the registration and disclosure items discussed above? Why or why not? Should the Commission consider other requirements? Please explain. What would be the benefits and costs associated with any such requirements? Please provide empirical data. If the Commission were to require transfer agents to disclose financial information, what information should be required, and why? Would requiring such information to be disclosed on Forms TA–1 and/or TA–2 be an effective and appropriate measure? What would be the benefits and costs associated with any such requirement?

6. Should the Commission consider amending the registration process to allow for the issuance of an order approving a transfer agent's TA–1 application before that application becomes effective, rather than having such applications become effective automatically after 30 days? Should the Commission consider making certain findings before approving a transfer agent's application? If so, what should those findings be? Should the Commission impose threshold requirements that transfer agents must satisfy before their applications can become effective? If so, what would they be?

7. The Commission intends to propose to require transfer agents to submit annual financial statements. Should these statements be required to be audited? Why or why not?

8. Should the Commission require that annual financial statements be submitted using a data-tagged format such as XML or XBRL? Would such a requirement require changes to the U.S. GAAP Taxonomy in order to capture the information included in transfer agents' financial statements? Why or why not? Should some other electronic format be required or permitted?

9. Does the receipt of securities as payment for services create conflicts of interest for transfer agents, and if so, should the Commission require that such payments be disclosed? The Commission intends to propose to amend Forms TA–1 and/or TA–2 to require transfer agents to disclose all actual and potential conflicts of interest. Should it do so? Why or why not? Should the Commission provide any guidance as to what constitutes a conflict of interest? Why or why not? Has the proliferation of the types of services offered by transfer agents in recent years created new conflicts of interest? How might transfer agents' conflicts of interest differ depending upon whether the transfer agent is paid by the issuer, the shareholder, or some combination thereof? Is disclosure of conflicts of interest a sufficient safeguard for investors? Should the Commission ban certain conflicts of interest entirely? For example, should the Commission prohibit transfer agents from having certain affiliations with issuers or broker-dealers, or from providing certain services if they have such affiliations? Please provide a full explanation.

10. Should the Commission amend Forms TA–1 and/or TA–2 to require transfer agents to disclose information regarding the fees imposed or charged by the transfer agent for various services or activities? If so, what type of information or level of detail should be required? Should the Commission require that fee disclosures be standardized to facilitate comparison? Should fees charged to both issuers and directly to shareholders be required to be disclosed? Please provide a full explanation.

11. To increase the ability of the Commission to monitor trends, gather data and address emerging regulatory issues, should the Commission require registered transfer agents to file material contracts with the Commission as exhibits to Form TA–2? What costs, benefits and burdens, if any, would this create for issuers or transfer agents? Should the Commission establish a materiality threshold or provide guidance on materiality were it to propose such a rule? Please provide a full explanation.

12. Should the Commission amend Forms TA–1 and/or TA–2 beyond any changes discussed above? If so, what amendments should the Commission consider in making that determination and why? Please provide a full explanation.

13. What costs, benefits, and burdens, if any, would the potential requirements discussed above create for issuers or transfer agents?

B. Written Agreements Between Transfer Agents and Issuers

Transfer agency agreements between transfer agents and issuers are mainly governed by state contract law.[372] It is

[369] *See, e.g.,* Adoption of Revised Transfer Agent Forms and Related Rules, *supra* note 161.

[370] *See* Notice of Adoption of Rule 17Ac2–1 and Related Form TA–1 under the Securities Exchange Act of 1934 Providing for the Registration of Transfer Agents for which the Commission is the Appropriate Regulatory Agency, Exchange Act Release No. 11759 (Oct. 22, 1975), 40 FR 51181 (Nov. 4, 1975).

[371] *See* Adoption of Revised Transfer Agent Forms and Related Rules, *supra* note 161.

[372] At present, no UCC or Commission rule requires that transfer agent service agreements with issuers be set down in writing or governs the terms

Continued

the Commission staff's understanding, based on information collected during examination of registered transfer agents and review of a number of written agreements between transfer agents and issuers, that many transfer agents enter into written contracts with their issuers that cover some or all of the following subjects: (1) The services to be provided by the transfer agent and performance metrics and standards; (2) the responsibilities of the parties; (3) the duration of the agreement, including termination fees; (4) the fees and terms of payment; (5) the terms that govern termination of the agreement; (6) the disposition of securityholder records after the agreement's termination; (7) the use and protection of data, such as privacy and business continuity requirements; and (8) indemnification.

However, some transfer agents, often smaller transfer agents that may primarily service smaller issuers, may not document their arrangements with issuers in a written agreement or, even if they do enter into a written agreement, it may not cover all of the subjects identified above. Based on the Commission staff's experience administering the Commission's transfer agent rules and examination program, it appears that such undocumented or under-documented arrangements may be more likely than written agreements to lead to protracted disputes, especially with respect to: (1) The duration of the arrangement; (2) the conditions of the arrangement's termination; (3) the disposition of the securityholder records after termination or notice of termination; and (4) the fees charged by the transfer agent. Such disputes may interfere with the operations of the markets and the protection of investors by disrupting or otherwise hindering transfer agent processing, recordkeeping, and safeguarding. For example, it is the Commission staff's understanding that some transfer agents, after having been terminated by the issuer, have substantially delayed the handing over of securityholder records to successor transfer agents by demanding that the issuer pay a substantial ''termination'' fee before the transfer agent would agree to hand over the securityholder records it had been maintaining, even though the issuer claimed there was no written agreement in place or it had otherwise not agreed to such a fee.[373] In such cases, the issuer may be unable to retain a new transfer agent if the old transfer agent will not make the records available to the new transfer agent. The inability to retain a new transfer agent could lead to inaccuracies in the master securityholder file and other records or impede trading in the issuer's securities. Commission staff is also aware of instances in which a termination dispute between an issuer and a transfer agent has resulted in two transfer agents each maintaining separate records, which could be inconsistent with each other.

The Commission believes that the existence of a written agreement that describes the ongoing relationship under which a transfer agent and an issuer will operate, including the terms under which the agreement between them may be terminated, could help to avoid such disputes, including disputes over agreed-upon fees, and could help ensure the timely and appropriate turnover of an issuer's shareholder records upon the termination of the written agreements. If the relationship between an issuer and a transfer agent is terminated and the issuer engages a new transfer agent, it is essential to the issuer, its securityholders, and the market participants who may seek to trade the issuer's securities, that the issuer's records are promptly delivered to the new transfer agent to provide an orderly continuity of services.

Among the issuer's records and related documents typically in the possession of its transfer agent are: (1) The master securityholder file with the names and addresses of current securityholders and the amount of securities owned by each holder; [374] (2) the control book showing the total units outstanding of each securities issue; [375] (3) the logs showing items transferred and processed for each issue; (4) the records of each issue's distributions (*e.g.,* interest and dividends) to securityholders; (5) an inventory of blank (unissued) securities certificates for each issue; and (6) the records of cancelled securities certificates for each issue.[376] Such records are critical to issuers' routine operations as a stock corporation and to ensuring that investors' rights are protected. Without these records it would be challenging to: (1) Establish the identities of its own securityholders or the number of units of securities each investor holds; (2) determine whether the number of its shares outstanding is within the bounds of its corporate charter or whether there has been an overissuance; (3) distribute interest and dividend payments to its investors; or (4) provide to investors periodic reports and proxy statements.

The Commission therefore intends to propose amendments to the transfer agent rules to require that any arrangement for transfer agent services between a registered transfer agent and an issuer be set forth in a written agreement that covers certain basic topics, such as the transfer agent services to be provided, the terms of payment and fees to be imposed, particularly any termination fees, and requirements for the turnover of transfer agent records to the successor transfer agent. The Commission further intends to propose new or amended rules requiring transfer agents to pass through certain records to newly appointed or successor transfer agents in a prompt, complete, and uniform manner.

The Commission seeks comment on the following:

14. Should the Commission require that any arrangement for transfer agent services between a registered transfer agent and an issuer be set forth in a written agreement? Why or why not? What are the alternative means of achieving similar objectives, and are they as effective or efficient? If the Commission were to require a written agreement, should it cover certain topics? If so, what topics? For any such provisions or topics, are there asymmetries in information or other areas between transfer agents and issuers that the Commission should consider in connection with such contractual provisions? For what types of transfer agents, or in what types of such relationships, do these asymmetries most frequently arise, and where are they most acute? Please provide a full explanation and supporting evidence.

15. How are fees set out in transfer agent agreements today? Do issuers find it difficult to fully understand the fee structures offered by transfer agents, and how do those fee structures work in practice? Should the Commission require that all fee arrangements between an issuer and a transfer agent be set forth and specified in a written agreement? Why or why not? Should the Commission require that transfer agents disclose their fee arrangements in their filings with the Commission? If so, should transfer agents be required to utilize a standardized framework

of such agreements. Rule 17Ad–16 requires a registered transfer agent to notify an appropriate qualified registered securities depository under certain circumstances, including when the transfer agent assumes or ceases transfer agent services for an issuer, but does not address the terms of transfer agent service agreements with issuers nor require that they be set forth in writing. Exchange Act Rule 17Ad–16, 17 CFR 240.17Ad–16. *See also* Adopting Release for Rule 17Ad–16, *supra* note 147.

[373] It is the Commission staff's understanding that typical termination fees may range from about $1,000 to $5,000, though disputes like those described herein may involve a transfer agent's demand for fees as high as $30,000.

[374] *See* Exchange Act Rule 17Ad–9(b), 17 CFR 240.17Ad–9(b).

[375] *See* Exchange Act Rule 17Ad–9(d), 17 CFR 240.17Ad–9(d) (defining ''control book'').

[376] *See* Exchange Act Rule 17Ad–19, 17 CFR 240.17Ad–19 (cancellation of certificates); Exchange Act Rules 17Ad–6(c), 7(d), 17 CFR 240.17Ad–6(c), 7(d) (requiring that such cancelled certificates ''be maintained for a period of not less than six years.'').

or terminology when disclosing their fee structures? Should the Commission exempt fees which may be negotiated on a case-by-case basis, such as corporate action fees? Why or why not? Would requiring disclosure of fees affect competition, or the form of competition, among transfer agents or between transfer agents and other entities? Please provide a full explanation and supporting evidence.

16. Currently, transfer agents are not required by rule to pass through specified records to successor transfer agents. Are issuers or transfer agents aware of instances where records have not been passed from one agent to the next, or agents have not done so in a prompt manner? Are commenters aware of disputes between transfer agents and their issuer clients or successor transfer agents with respect to the transfer of records to a successor transfer agent? How was the situation resolved? Have transfer agents demanded previously undisclosed termination fees, or fees inconsistent with what those parties previously agreed to, in exchange for turning over records to a successor? Would the anticipated proposed rules described above help avoid or resolve any disputes between transfer agents and issuers or successor-transfer agents with respect to the transfer of records? Please provide a full explanation and supporting evidence.

17. What costs, benefits, and burdens, if any, would a written agreement create for issuers or transfer agents?

C. Safeguarding Funds and Securities

Because transfer agents already facilitate securities transfers and maintain securityholder records, approximately one-third of them are engaged by issuers to provide administrative, recordkeeping, and processing services related to the distribution of cash and stock dividends, bond principal and interest, mutual fund redemptions, and other payments to securityholders.[377] These services, which are generally referred to in this release as ''paying agent'' services,[378] often require the transfer agent to receive and accept funds or securities from issuers or securityholders and hold them for periods generally ranging from less than one day to 30 days before distributing the funds or securities to the intended recipients.[379] Transfer agents' activities with respect to paying agent services are significant. In 2014, transfer agents distributed over $2.4 trillion in securityholder dividends, bond principal and interest, and mutual fund redemption payments.[380]

Additionally, the Commission's staff understands that transfer agents may hold residual funds from thousands to millions of dollars and securities for long periods of time ranging from over a month to several years, before distributing the funds or securities either to the intended recipients or escheating the funds or securities to a state or territory.[381] Residual funds or securities include those which cannot be successfully delivered to the intended recipient because the transfer agent has lost contact with the intended recipient (*e.g.,* lost securityholder funds),[382] as well as those which are transmitted or delivered, but the intended recipient nonetheless does not demonstrate ownership of the property (*e.g.,* unresponsive payee funds, which may ultimately be escheated).[383]

As demonstrated by the Paperwork Crisis, the financial crisis of 2008, the 2012 flooding of the DTCC securities vault in New York during Superstorm Sandy,[384] and many other incidents, the safe, accurate, and efficient delivery of funds and securities, whether in certificated or uncertificated form, is vital to the integrity and smooth functioning of the National C&S System. Given their significant role in providing paying agent and custody services for funds and securities,[385] and the risk of loss from fraud, theft, or other misappropriation,[386] the funds and securities held in a transfer agent's custody in either physical or electronic form could present significant custody or delivery risks to issuers, securityholders, and the financial system as a whole. In addition, funds and securities in custody of transfer agents could also be subject to risk of loss from recordkeeping errors (*e.g.,* where the transfer agent is unable to reconcile the origin and ownership of funds or securities held), attachment (*e.g.,* in the event of a judgment against the transfer agent), and insolvency (*e.g.,* securityholder or issuer funds could be commingled with transfer agent funds and therefore, in the event of bankruptcy, treated as general assets of the transfer agent and not as separately identifiable investor or issuer funds).[387]

Further, even routine paying agent activity, such as dividend distribution processing, may be complex. For example, after determining record date eligibility, the paying agent (who may be a transfer agent) will calculate and balance the cash dividend amount or, in the case of a stock dividend, the equivalent number of shares, which the transfer agent will issue, register, and deliver, either in certificated or book-entry form. The paying agent may then

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[377] This data is based on transfer agent annual reports filed with the Commission on Form TA–2 on or before March 31, 2015, which are publicly available once filed. *See generally,* Exchange Act Rule 17Ac2–2(a), 17 CFR 240.17Ac2–2(a); SEC Form TA–2, 17 CFR 249b.102.

[378] Entities other than transfer agents may also provide paying agent services. For example, recently amended Rule 17Ad–17(c)(2) defines ''paying agent'' to include ''any issuer, transfer agent, broker, dealer, investment adviser, indenture trustee, custodian, or any other person that accepts payments from the issuer of a security and distributes the payments to the holders of the security.'' 17 CFR 240.17Ad–17(c)(2). *See supra* Section IV.A.4 for additional discussion of Rule 17Ad–17.

[379] Certain corporate actions may require the transfer agent to hold funds for extended periods of time beyond 30 days. For example, where a tender offer is extended beyond 30 days, the transfer agent may maintain possession or control over investor funds until the offer expires. The Commission notes that when transfer agents have custody of funds or securities, they have a duty to safeguard that property. *See* Exchange Act Rule 17Ad–12, 17 CFR 240.17Ad–12.

[380] This figure is based on transfer agent annual reports filed with the Commission on Form TA–2 under the Exchange Act on or before Mar. 31, 2015, which are publicly available once filed. *See generally,* Exchange Act Rule 17Ac2–2(a), 17 CFR 240.17Ac2–2(a); SEC Form TA–2, 17 CFR 249b.102.

[381] As noted above in Section V.C, when a property owner fails to demonstrate ownership of property for a specified period of time by, for example, cashing a dividend check, that property will likely be deemed by the relevant state to be abandoned and will be escheated to the state's unclaimed property administrator pursuant to the state's applicable escheatment laws. *See, e.g.,* Adopting Release for 17Ad–17 Amendments, *supra* note 274.

[382] *See* Exchange Act Rule 17Ad–17(b)(2), 17 CFR 240.17Ad–17(b)(2) (defining ''lost securityholder''). As noted above in Section IV.A.4, the requirement to conduct database searches for lost securityholders has been extended to brokers and dealers. *See* Adopting Release for 17Ad–17 Amendments, *supra* note 274.

[383] *See* Exchange Act Rule 17Ad–17(c)(3), 17 CFR 240.17ad–17(c)(3) (defining ''unresponsive payee''). Rule 17Ad–17(c)(1) generally requires paying agents to provide within certain time periods written notification to each unresponsive payee that the securityholder has been sent a check (or checks) that has not yet been negotiated. Exchange Act Rule 17Ad–17(c)(1), 17 CFR 240.17Ad–17(c)(1).

[384] *See* DTCC 2013 Annual Report (2013), *available at http://www.dtcc.com/annuals/2013/index.php* (discussing DTC vault flood and security certificate recovery process after Superstorm Sandy).

[385] *See supra* note 380 (data on distributions made in 2014 by registered transfer agents on behalf of issuers).

[386] *See, e.g., SEC* v. *Robert G. Pearson and Illinois Stock Transfer Company,* Civ. Action No. 1:14–cv–03875 (N.D. Ill. May 22, 2014); SEC Litigation Release No. 23007 (May 28, 2014) (announcing fraud charges against Illinois Stock Transfer Company and its owner, alleging misappropriation of money belonging to their corporate clients and the clients' securityholders in order to fund their own payroll and business); In the Matter of Securities Transfer Corporation and Kevin Halter, Jr., Exchange Act Release No. 64030 (Mar. 3, 2011) (settled action) (finding that transfer agent and its president failed to ensure that transfer agent had adequate supervisory procedures and a system for applying such procedures to safeguard client funds held in its custody or possession from internal employee abuse perpetrated by the transfer agent's former bookkeeper).

[387] As noted in Section I, a transfer agent's failure to perform its recordkeeping duties can create significant risks. These risks may be heightened where a transfer agent maintains the only electronic record of ownership of an issuer's securities, such as when facilitating an issuer's DRS program whereby the transfer agent, not DTC, maintains electronic book-entry custody and records of shares.

handle the printing, posting, and distribution [388] of dividend payments to the issuer's registered securityholders,[389] either directly or through a third-party service provider. The paying agent may also reconcile all checks and disbursements from the dividend account, and thereafter may also offer ancillary payment services to securityholders, such as: (i) Corresponding with securityholders regarding uncashed or stale-dated distribution payments or distribution payments declared lost or stolen; (ii) placing stops on checks or certificates that are certified to be lost or stolen; (iii) reissuing replacement checks and securities where necessary; (iv) providing photocopies of paid checks; and (v) preparing and mailing dividend tax reporting forms required by the Internal Revenue Service.

Other distributions, like those arising from lawsuits or settlements, may require special attention. For example, to ensure that only investors who held shares between specific dates or meet other detailed tests are compensated for a specific settlement, transfer agents who are engaged to perform distribution activities must carefully review ownership records to determine who is entitled to receive a payment and in what amount. Any processing errors at any point in this complex process could present substantial risks for both issuers and securityholders. For example, if there is a substantial positive adjustment to the share price following the payment date, a transfer agent's failure to calculate or distribute the correct amounts to securityholders could create risk of loss of funds or securities for investors, as well as risk of liability for the issuer, transfer agent, and others involved in the processing. A transfer agent's inadvertent failure to reinvest a dividend payment or an erroneous distribution of a cash payment could create similar risks.

Despite the amounts involved and risks posed, only one of the existing transfer agent rules—recently amended Rule 17Ad–17—specifically refers to and directly addresses certain limited conduct of paying agents.[390] Other Commission rules indirectly address activity implicated by the paying agent role, but do not specifically address the complex administrative, recordkeeping, and processing activities associated with transfer agents' activities as paying agents, nor do they provide definitive standards to determine the adequacy of the transfer agent's safeguards or prescribe specific requirements for how transfer agents in such instances should protect funds and securities from misappropriation, theft, or other risk of loss. In particular, Rule 17Ad–12 requires transfer agents to assure that funds and securities in their possession or control are ''protected, in light of all facts and circumstances, against misuse,'' and that all such securities ''are held in safekeeping and are handled, in light of all facts and circumstances, in a manner reasonably free from risk of theft, loss or destruction.'' [391] Rule 17Ad–13 requires transfer agents to file an annual report prepared by an independent accountant concerning the transfer agents' systems of internal accounting control and related procedures for the safeguarding of related funds.

More specificity and a more robust set of standards against which paying agent activities can be measured may be necessary to better protect investors, facilitate the prompt and accurate clearance and settlement of securities transactions, and keep pace with the evolving roles transfer agents occupy in this space. We intend to propose new rules or rule amendments to address transfer agents' expanded role in handling investor funds and securities, as well as the increase in the number and types of transactions currently facilitated by transfer agents. In particular, the Commission intends to propose new rules or amend Rule 17Ad–12 to require transfer agents to comply with specific minimum best practices requirements related to safeguarding funds and securities, such as: (i) Maintaining secure vaults; (ii) installing theft and fire alarms; (iii) developing specific written procedures for access and control over securityholder accounts and information; (iv) enhanced recordkeeping requirements; and (v) specific unclaimed property procedures. The Commission also intends to propose a rule requiring transfer agents to segregate client funds to ensure that bank accounts are appropriately designated to protect client funds from being counted as transfer agent funds in the event of insolvency, and to obtain written notification from banks holding the funds that the funds are for the exclusive benefit of the customers, not the transfer agent.

In addition, the Commission intends to propose new rules for transfer agents similar to those recently adopted for registered broker-dealers regarding amended annual reporting, independent audit, and notification requirements, which are designed to, among other things, increase broker-dealers' focus on compliance and internal controls.[392] In light of the activities and risks associated with their paying agent activities discussed above, the Commission preliminarily believes it would be appropriate to implement similar rules for transfer agents, including rules requiring transfer agents to prepare and file annual financial reports consisting of a statement of financial condition, a statement of income, a statement of cash flows, and certain other financial statements, similar to those discussed above in Section VI.A in connection with new registration and annual reporting requirements. The Commission intends to propose new rules to require transfer agents acting as paying agents or custodians to prepare and maintain current and detailed policies and procedures reasonably designed to comply with any new or amended possession and control requirements for the safeguarding of customer funds and securities. In connection with these proposals, the Commission also intends to propose certain amendments to Form TA–2 requiring transfer agents to disclose the number and/or dollar value of residual and unclaimed funds. Finally, the Commission intends to propose amendments to Rule 17Ad–12 to provide specific requirements for the safeguarding of uncertificated securities, including appropriate controls and limitations on access to a transfer agent's electronic records.

The Commission seeks comment on the following:

18. Would the anticipated proposals described immediately above appropriately

[388] Disbursements may be by check, electronic deposit into a securityholder bank account, or reinvestment in additional shares of the company through a DRIP or a Direct Stock Purchase Plan (''DSPP''). Additionally, some larger transfer agents may provide currency exchange services to international investors, allowing them to select the currency in which they want their dividend payments or sale proceeds to be calculated and paid.

[389] Where securities are held in street name registered to DTC's nominee, Cede & Co., rather than issuing thousands of individual checks or securities directly to registered securityholders, the paying agent will deliver funds (or newly issued securities generated by certain corporate actions) to DTC. DTC then electronically credits the accounts of the appropriate banks and brokers, which in turn credit the payments and/or securities to the accounts of the beneficial owners. For additional information about DTC's Corporate Actions Processing Service for distributions, *see* Corporate Actions Processing, DTCC, *http://www.dtcc.com/asset-services/corporate-actions-processing.aspx*.

[390] *See supra* Section IV.A.4 for additional discussion of Rule 17Ad–17.

[391] Exchange Act Rule 17Ad–12, 17 CFR 240.17Ad–12.

[392] For a discussion of the recent amendments to the requirements for broker-dealers, *see* Broker-Dealer Reports, Exchange Act Release No. 70073 (July 30, 2013), 78 FR 51910 (Aug. 21, 2013).

strengthen practices and procedures involving the safeguarding of funds and securities by transfer agents? Are there other areas that the Commission should consider? If so, what regulatory or other action to address any areas of weakness or risk should the Commission consider? Please provide a full explanation.

19. Should the Commission require transfer agents to file on a periodic basis information disclosing whether and how a transfer agent maintains custody of issuer and securityholder funds and securities, similar to the information broker-dealers are required to report quarterly? Why or why not? What benefits, costs, and burdens would result? Please provide a full explanation.

20. In addition or as an alternative to the anticipated proposals described above, should the Commission provide specific guidelines or requirements for transfer agents' paying agent and custody services? Why or why not? What should those guidelines or requirements be? Do commenters believe the lack of such guidelines or requirements results in varying practices and standards among transfer agents, or specific areas of weakness or risk? Why or why not? Please provide a full explanation.

21. What are the current best practices with respect to the safeguarding of funds and securities (*e.g.,* segregation of accounts, written procedures, specific internal controls, limits on employee access to physical items and records, and to computer systems, as well as other access controls)? Do commenters believe that Rules 17Ad–12, 17Ad–13, and 17Ad–17 are effective in encouraging those best practices? Are there differences in how funds are safeguarded between smaller and larger transfer agent firms? Please provide a full explanation.

22. What are the current best practices with respect to the creation, maintenance, and reconciliation (or other use) of financial or other records that might bear upon the safety of customer funds and securities? Should the Commission require any such best practices, such as: (i) Monitoring the financial position of the transfer agent by preparing, maintaining, and reconciling financial books and records, including a statement of financial condition, a statement of income, a statement of cash flows, and certain other financial statements; and (ii) adopting internal written procedures or specific internal controls requiring the monthly reconciliation of all bank accounts used in a transfer agent's business, and requiring audits of the effectiveness of these internal controls by independent public accountants? Why or why not? Please provide a full explanation.

23. Should the Commission require transfer agents to file certain additional reports prepared by an independent public accountant on the transfer agent's compliance and internal controls? Why or why not? In connection with any such requirement, should the Commission require transfer agents to allow representatives of the Commission or other ARA to review the documentation associated with certain reports of the transfer agent's independent public accountant and to allow the accountant to discuss with representatives of the Commission or ARA the accountant's findings associated with those reports when requested in connection with an examination of the transfer agent? Why or why not? Please provide a full explanation.

24. Do commenters believe that there are different risks associated with transfer agents maintaining issuer or securityholder funds at banks that are part of the same holding company structure as the transfer agent, as opposed to a wholly unaffiliated bank? Why or why not? If there are distinct risks, should the Commission act to mitigate those risks, and if so, how? Should the Commission prohibit a transfer agent from maintaining issuer and securityholder funds at a bank that is affiliated with the transfer agent? If so, how should ''affiliated bank'' be defined? Should transfer agents that are also custodian banks be required to maintain a segregated special account or accounts at an unaffiliated bank or other approved location? Why or why not? Please provide a full explanation.

25. If transfer agents were to be required to deposit or transmit issuer and securityholder funds into a special bank account, should the Commission also limit the amount of funds that could be deposited in special accounts at a bank to reasonably safe amounts, whether the bank is affiliated or non-affiliated? Why or why not? If so, what amounts should the Commission consider reasonably safe? Should such amounts be measured against the capitalization of the transfer agent and/or the bank? Why or why not? Please provide a full explanation.

26. What are the current insurance requirements and/or practices among transfer agents, and what is the source of those requirements and/or practices? Would different or additional insurance requirements address current paying agent risks, such as loss or misuse of funds? Why or why not? If so, what types and amounts of insurance would be sufficient to address current paying agent risks? Why? If the Commission proposes specific insurance requirements for transfer agents, should it also require transfer agents to establish and maintain written policies and procedures describing their process for evaluating and procuring insurance (such as fidelity, professional indemnity, cybersecurity, errors and omissions and surety coverage) and for determining the coverage amounts? Should the transfer agent's annual accountant's report on internal controls required by Rule 17Ad–13 include verification that the transfer agent has fulfilled these requirements? Please provide a full explanation.

27. What are the industry best practices with respect to safeguarding procedures specific to residual or unclaimed funds and securities remaining in the transfer agent's possession or control post-payment but prior to the successful distribution to securityholders or escheatment to a state or territory?

28. If the Commission were to require transfer agents to disclose information pertaining to residual or unclaimed funds, what type of information and level of detail should be required, and how frequently should it be required to be reported? What would be the cost, burdens or benefits, if any, of such disclosure for issuers or transfer agents?

29. Currently, Rule 17Ad–5 only requires a transfer agent who has not handled disbursements or dividends for at least three years to respond to inquiries by simply indicating the agent is no longer the paying agent. What volume of such requests do paying agents typically receive annually? Do paying agents typically know who the current agent is? What would be the costs, burdens or benefits if paying agents were required to provide such information? Please provide a full explanation.

30. What would be the costs, benefits, and burdens, if any, of the proposals described above?

D. Restricted Securities and Compliance With Federal Securities Laws

Transfer agents play a particularly important role in the securities industry with respect to the issuance and transfer of restricted securities. Restricted securities cannot be resold legally unless there is an effective registration statement for their resale, or there is an available exemption from registration for the resale. Typically, these securities bear restrictive legends indicating that their sale or transfer may be subject to a restriction or limitation and intermediaries will not effectuate their transfer until restrictive legends are removed. Because transfer agents are often the party responsible for affixing, tracking, and removing restrictive legends, they play an important role in helping to prevent unregistered securities distributions that violate Section 5 of the Securities Act of 1933 (''Securities Act'').[393] The need to prevent unregistered securities distributions is particularly acute in the microcap market, where OTC issuers may not be subject to certain of the Commission's disclosure requirements and there is an increased potential for fraud and abuse because potential investors have few, if any, resources for obtaining meaningful disclosure or conducting independent research on microcap issuers.

The Commission's experience in investigating abuses in the microcap market and bringing enforcement actions charging violations of the federal securities laws demonstrates how the removal of restrictive legends can often be a central element contributing to illegal, unregistered distributions of securities. While these actions typically involve misconduct by persons other than the transfer agent, the Commission has charged transfer agents as culpable participants in a variety of circumstances. Transfer agents may face potential liability for aiding and abetting

[393] *See* Securities Act Section 5, 15 U.S.C. 77e.

or causing a violation of Section 5 of the Securities Act for an act or omission that contributes to or helps effectuate an illegal unregistered distribution.[394] In some cases, we have brought an action against the transfer agent for violating Section 5 on the theory that the transfer agent was a ''necessary participant'' and ''substantial factor'' in the unregistered distribution or sale.[395] Depending on the facts and circumstances, a transfer agent also could incur liability pursuant to the anti-fraud provisions of the federal securities laws,[396] such as Section 10(b) of the Exchange Act,[397] Rule 10b–5 thereunder,[398] and Section 17(a) of the Securities Act.[399]

Some transfer agents have expressed concern, however, that they perceive a conflict in some instances between their obligation to take appropriate steps to forestall an illegal distribution, and their obligation under state law to comply with a valid request to issue a security or facilitate a transfer, which may require removal of a restrictive legend.[400] Nonetheless, if a transfer would be unlawful under the federal securities laws, the transfer agent is not required by state law to comply with a request for transfer.[401] We note that the person or entity requesting a transfer of restricted securities based on an exemption from the registration requirements of the Securities Act bears the burden of proving entitlement to that exemption.[402] Further, it appears that issuers (and their transfer agents) may reasonably withhold consent to register a transfer until they can determine that the request ''is in fact rightful'' under Section 8–401(a)(7) of the UCC.[403] Because the relevant determinations can involve the assessment of legal issues that are fact-dependent,[404] transfer agents typically may seek to rely on representations or opinions provided by the issuer or securityholder and their counsels, usually in the form of an ''attorney opinion letter,'' to determine whether an exemption from registration under Section 5 of the Securities Act is applicable. As our enforcement experience demonstrates, however, this process is also susceptible to abuse, as many illegal distributions are facilitated by the improper issuance of such opinion letters.[405]

More specificity around transfer agents' responsibilities with respect to illegal distributions may help to better protect investors, facilitate the prompt and accurate clearance and settlement of securities transactions, and combat fraud and manipulation in the microcap market. We therefore intend to propose new rules or rule amendments to address transfer agents' role in facilitating transfers of securities that result in illegal distributions of securities. In particular, the Commission intends to propose a new rule prohibiting any registered transfer agent or any of its officers, directors, or employees from directly or indirectly taking any action to facilitate a transfer of securities if such person knows or has reason to know that an illegal distribution of securities would occur in connection with such transfer.

We also intend to propose a new rule prohibiting any registered transfer agent or any of its officers, directors, or employees from making any materially false statements or omissions or engaging in any other fraudulent activity in connection with the transfer agent's performance of its duties and obligations under the Exchange Act and the rules promulgated thereunder, including any new or amended rules the Commission may promulgate in the future, such as those dealing with transfer agents' safeguarding, paying agent, and other activities discussed above in Section VI.C and throughout this release. We also intend to propose a new rule requiring each registered transfer agent to adopt policies and procedures reasonably designed to achieve compliance with applicable securities laws and applicable rules and regulations thereunder, and to designate and specifically identify to the Commission on Form TA–1 one or more principals to serve as chief compliance officer.

The Commission seeks comment on the following:

31. Is there a need for Commission rules clarifying transfer agent liability for participating in or facilitating an unlawful distribution of securities in violation of Section 5 of the Securities Act? Why or why not? If so, what rules should be considered?

32. Currently, there are no specific Commission rules regarding the placement or removal of restrictive legends by transfer agents. Is there a need for Commission rules governing the role of transfer agents in

[394] *See, e.g., National Stock Transfer, Inc.,* A.P. File No. 3–9949, Sec. Act Rel. No. 7924 (Dec. 4, 2000) (settled proceeding against transfer agent and an officer of the transfer agent for willfully aiding and abetting and causing Section 5 violations by issuing shares in reliance on an issuer's representation of an S–8 transaction that had been purportedly registered with the Commission when no such registration existed); *Holladay Stock Transfer, Inc.,* A.P. No. 3–9567, Sec. Act Rel. No. 7519 (Mar. 25, 1998) (settled cease and desist proceeding against transfer agent and president for, among other charges, willfully aiding and abetting and causing Section 5 violations by an issuer client).

[395] *See, e.g., Registrar and Transfer Company, A.P.,* Exchange Act Rel. No. 73189, para. 21 (Sep. 23, 2014) (settled action against transfer agent and its chief executive officer for, respectively, willfully violating Sections 5(a) and 5(c) and causing the transfer agents' violations); *SEC* v. *CMKM Diamonds, Inc.,* 2011 WL 3047476 (granting summary judgment for violations of Section 5 against transfer agent and its principal as necessary participants and substantial factors in unlawful distribution), rev'd, 729 F.3d 1248, 1259 (9th Cir. 2013) (holding that ''undisputed facts do not establish that [transfer agent and its principal] were substantial participants . . . as a matter of law''); *SEC* v. *CIBC Mellon Trust Co.,* Civ. Action No. 1:05-cv-0333 (PLF) (D.D.C. Feb. 16, 2005) (settled action charging a transfer agent with primary violations of Section 5 in addition to primary and aiding and abetting liability in a 10b-5 fraud to promote, distribute, and sell the stock of issuer Pay Pop, Inc. where Pay Pop officers paid a senior manager at the transfer agent bribes in the form of Pay Pop shares to obtain transfer agent services).

[396] *See, e.g., id.*

[397] Exchange Act Section 10, 15 U.S.C. 78j.

[398] Exchange Act Rule 10b–5, 17 CFR 240.10b–5.

[399] Securities Act Section 17(a), 15 U.S.C. 77q(a).

[400] *See, e.g.,* Robert Feyder, Transfer Agents Beware: A Request to Remove a Restrictive Legend May be the Equivalent of a Request to Register Transfer, The Securities Transfer Association, Inc. Newsletter, Issue 2 (2002).

[401] *See Campbell* v. *Liberty Transfer Co.,* 2006 U.S. Dist. LEXIS 91568 (E.D.N.Y. Dec. 19, 2006) (holding that transfer agent could not be found liable for requiring that certificate be legended and refusing to honor transfer absent attorney opinion letter; federal law precluded the transfer agent from treating the shares as if they were freely tradable; to conclude that plaintiff's request for transfer required action by the transfer agent would be inconsistent with the Supremacy Clause); *Catizone* v. *Memry Corp.,* 897 F. Supp. 732 (S.D.N.Y. 1995) (holding that since the transfer violated the Securities Act, it cannot be considered rightful under Section 8–401 of the U.C.C. and transfer agent was under no duty to register the transfer); *Charter Oak Bank & Trust Co.* v. *Registrar & Transfer Co.,* 358 A.2d 505 (N.J. Sup. Ct. 1976) (holding that a transfer agent cannot be required by state law to transfer stock in violation of the Securities Act, therefore, when a transfer agent has reasonable cause to believe that a transfer will be in violation of the Securities Act, it has the right to refuse to make the transfer until it has received an explanation or showing that the proposed transfer would not violate the Securities Act).

[402] *See, e.g., SEC* v. *Ralston Purina Co.,* 346 U.S. 119 (1953); *Gilligan, Will & Co.* v. *SEC,* 257 F.2d 461 (2d Cir. 1959); *SEC* v. *Culpepper,* 270 F.2d 241 (2d Cir. 1959); *Edwards* v. *United States,* 312 U.S. 473 (1941).

[403] If any of the preconditions enumerated in UCC Section 8–401 do not exist, such as where a transfer is wrongful, the issuer is under no duty to register the transfer. *See* U.C.C. 8–401, cmt. 1.

[404] These issues can include determining a securityholder's affiliate status with the issuer or identifying the holding period during which an individual held restricted securities. *See* Securities Act Rule 144(b)(2), 17 CFR 230.144(b)(2) (providing for different conditions for use of the rule on affiliates than on non-affiliates); Securities Act Rule 144(d)(1), 17 CFR 230.144(d)(1) (providing for a holding period for restricted securities).

[405] *See, e.g., SEC* v. *Gendarme Capital Corp.,* 2012 WL 346457 (E.D. Cal. Jan. 31, 2012) (denying defendant's motion to dismiss Section 5 claims, where Commission's complaint alleged that attorney issued more than 50 opinion letters to transfer agents containing false statements); *SEC* v. *Czarnik,* 2010 WL 4860678 (S.D.N.Y. Nov. 29, 2010) (denying defendant's motion to dismiss Section 5 charges where complaint alleged, among other things, that attorney drafted false opinion letters provided to transfer agents).

placing or removing restrictive legends? Why or why not? If so, what are the specific issues that should be addressed by Commission rulemaking?

33. Should the Commission provide specific guidelines and requirements for registered transfer agents in connection with removing a restrictive legend and in connection with issuing any security without a restrictive legend, such as: (1) Obtaining an attorney opinion letter; (2) obtaining approval of the issuer; (3) requiring evidence of an applicable registration statement or evidence of an exemption; and/or (4) conducting some level of minimum due diligence (with respect to the issuer of the securities, the shareholder and/or the attorney providing a legal opinion)? Why or why not? Should the Commission also consider specific recordkeeping and retention requirements related to the issuance of share certificates without restrictive legends? Why or why not? How should book-entry securities be addressed? Are there other guidelines or requirements the Commission should consider with respect to the issuance of share certificates or book-entry securities without restrictive legends?

34. If the Commission were to issue any standards for restrictive legend removal, what would be an appropriate level of due diligence? Should any due diligence requirements be compatible with current state law governing the issuance and transfer of securities? Should the Commission consider specific guidelines and requirements for the review of representations that a shareholder is not an affiliate of the issuer or is not acting in coordination with other shareholders? Why or why not? If so, what guidelines or requirements should be considered? Should the Commission consider specific guidelines and requirements regarding transfer agents' obligations to review or determine the ultimate beneficial ownership of shares, identification of control persons of the shareholders, and relationship of shareholders to the issuer, officers or each other?

35. Do transfer agents currently possess detailed and accurate information regarding the ownership history of the securities they process? For example, do transfer agents know whether the securities they process were ever owned by a control person or other affiliate of the issuer, and for how long? If so, how do they know this? If transfer agents possess such information, do they provide it to other market intermediaries, such as broker-dealers and securities depositories? If not, should transfer agents be required to do so? Has the inability of broker-dealers and other market intermediaries to obtain detailed and accurate securities ownership information facilitated the unlawful distribution of securities? Has it impaired secondary market liquidity, such as by making other market intermediaries unwilling or less willing to handle certain securities? If so, how can the Commission address these issues?

36. Should transfer agents be permitted to rely on the written legal opinion of an attorney under certain circumstances? If so, what should those circumstances be? For example, should there be requirements regarding the attorney's qualifications or the attorney's relation to the issuer or investor? Is it appropriate for transfer agents to rely on attorney opinion letters to the extent the letters are based on representations of the issuer or third parties without the attorney's review of relevant documentation or independent verification of the representations?

37. Should the Commission obligate transfer agents to: (i) Confirm the existence and legitimacy of an issuer's business (for example by reviewing leases for corporate offices, etc.); (ii) obtain names and signature specimens for persons the issuer authorizes to give issuance or cancellation instructions, together with any documents establishing such authorization; (iii) conduct credit and criminal background checks for issuers' officers and directors and shareholders requesting legend removal; (iv) obtain and confirm identifying information for shareholders requesting legend removal (*e.g.,* legal name, address, citizenship); and/or (v) obtain and review publicly-available news articles or information on issuers or principals? Why or why not?

38. Should the Commission enumerate a non-exhaustive list of ''red flags'' or other specific factors which would trigger a duty of inquiry by the transfer agent? Why or why not? If so, which ''red flags'' should be included?

39. Are there types of securities or categories of transactions commenters believe should require a heightened level of scrutiny or review by transfer agents before removing a restrictive legend or processing a transfer? If so, which ones and why? What should any such heightened scrutiny or review entail? For example, should the Commission require additional diligence requirements for securities offered by issuers that are not required to file financials with the Commission? Why or why not?

40. The Commission is aware that industry participants have suggested that the Commission provide a safe harbor for transfer agents from direct liability or secondary liability (*e.g.* aiding and abetting) in connection with an unregistered distribution of securities if the transfer agent follows the procedures set out in the safe harbor concerning legend removal.[406] Should the Commission impose such a safe harbor? Why or why not? If so, what should be the specific conditions of the safe harbor?

41. Other than ensuring that the removal of restrictive legends is appropriate and not a means to sidestepping registration requirements, what requirements or prohibitions, if any, should the Commission consider as additional protections against the unlawful distribution of unregistered securities? For example, should transfer agents be required to deliver securities certificates directly to registered securityholders or be prohibited from delivering securities certificates to third parties that are not registered as owners of the certificates on the transfer agents' books? Why or why not?

42. In what form (*e.g.* certificate form or book-entry form) are restricted securities held and issued today? Please provide specific data and examples and, where available, breakdowns by asset class. To what extent, if any, do holders of restricted securities own those securities in street name today? To the extent restricted securities are held in book-entry form, what practices are used in the marketplace today with respect to sending securityholders account statements generally and, specifically, sending account statements bearing restrictive legends? Are any special issues created by intermediation, such as by broker-dealers, of any restricted securities held in street name? Should the Commission consider rules governing the display of legends on account statements of shareholders who hold restricted securities in book-entry form? Are there are any technological or regulatory barriers to the application of restrictive legends to securities held in DRS form? Should the Commission regulate transfer agent processing of securities that are held in DRS form?

43. The Commission's staff understands that transfer agents may receive compensation in-kind in the form of securities of the issuer that hired the agent to remove restrictive legends. Does this create additional or different risks than if the transfer agent were paid in cash? If so, should the Commission limit transfer agents' acceptance of securities as payment for services related to penny-stock securities or small issuers, or acquiring shares of the issuers they are servicing through other means, such as gift or purchase? Why or why not?

44. What costs, benefits, and burdens, if any, would the potential requirements discussed above create for issuers or transfer agents?

45. Should the Commission require transfer agents to maintain, implement, and enforce written compliance and/or supervisory policies and procedures, similar to those required of broker-dealers? Why or why not? If so, what policies and procedures should be required? Should the Commission require transfer agents to disseminate written policies and procedures to all employees of the transfer agent on an annual or semi-annual basis? Why or why not? Please explain.

46. Should the Commission adopt rules requiring registered transfer agents to designate and identify a chief compliance officer? Why or why not? If so, should the Commission adopt rules governing the reporting lines and relationships of the chief compliance officer? Should the chief compliance officer be required to file an annual compliance report with the Commission? Why or why not? If so, what information should be included in the annual compliance report?

47. Should the Commission require transfer agents to undertake security checks or confirm regulatory and employment history for employees, certain third-party service providers, and associated persons,

[406] *See* Rhodes, *supra* note 18, at § 6:12 (''Attempts are now being made to persuade the SEC to adopt a procedure and a form which, when presented to a transfer agent, would free the transfer agent from liability in making the transfer in reliance on the form.'').

and to require certain employees of registered transfer agents to register with the Commission? Why or why not? What would be the costs, benefits, and burdens associated with such a requirement? What challenges does the trend toward the outsourcing and offshoring of certain aspects of transfer agents' functions pose for ensuring compliance with such a requirement? Please provide a full explanation.

48. Should the Commission require transfer agents to obtain certain information concerning their issuer clients, clients' securityholders and their accounts, and securities transactions? Why or why not? Please explain and provide supporting evidence where applicable. Should transfer agents be required to perform a form of due diligence on their clients and the transactions they are asked to facilitate, similar to the know-your-customer requirements applicable to broker-dealers? Should transfer agents be required to obtain a list of all affiliates of their issuer clients—including current and former control persons, promoters, and employees—and to take special precautionary steps whenever they are asked to process transactions for these affiliates?

49. Should the Commission require transfer agents to maintain originals of all communications received and copies of all communications sent (including both paper and electronic communications) to or from the transfer agent related to its business? Why or why not? Please explain.

E. Cybersecurity, Information Technology, and Related Issues

Cybersecurity risk is a specific type of operational risk and includes risks related to the security of data stored on computers, networks, and similar systems, and technology-related disruptions of operational capacity. Given the increased use of and reliance on computers, networks, and similar systems throughout society, cybersecurity threats are omnipresent today. They come from many sources and present a significant risk to a wide range of American interests, including critical governmental and commercial infrastructures, the national securities markets, and financial institutions and other entities that are involved in the National C&S System. In 2012, a single group targeted and attacked more than a dozen financial institutions with a sustained Distributed Denial of Service attack on those institutions' public Web sites.[407] That same year, 89% of global securities exchanges identified cyber-crime as a potential systemic risk and 53% reported experiencing a cyber-attack in the previous year.[408]

Cybersecurity risks faced by the capital markets and Commission-regulated entities are of particular concern to the Commission. Given the highly-dependent, interconnected nature of the U.S. capital markets and financial infrastructure, including the National C&S System, as well as the prevalence of electronic book-entry securities holdings in that system, the Commission has a significant interest in addressing the substantial risks of market disruptions and investor harm posed by cybersecurity issues.

Transfer agents are subject to many of the same risks of data system breach or failure that other market participants face. With advances in technology and the enormous expansion of book-entry ownership of securities, transfer agents today rely more heavily than ever on technology and automation for their core recordkeeping, processing, and transfer services, especially the use of computers and networks to store, access, and manipulate data, records, and other information. As a result, modern transfer agents are vulnerable to a variety of software, hardware, and information security risks which could threaten the ownership interest of securityholders or disrupt trading not only among registered securityholders but, because of transfer agents' electronic linkages to DTC, also among street name owners. For example, a software or hardware glitch, technological failure, or processing error by a transfer agent could result in the corruption or loss of securityholder information, erroneous securities transfers, or the release of confidential securityholder information to unauthorized individuals. A concerted cyber-attack or other breach could have the same consequences, or result in the theft of securities and other crimes.[409]

Cybersecurity issues have been analyzed and discussed in detail over the last several years in a variety of fora.[410] For example, the Commission has adopted a number of rules in recent years to address cybersecurity and related issues, although most of them either do not apply to registered transfer agents or do not address transfer agents' specific activities. In 2015, the Commission adopted Regulation SDR (''Reg SDR''), which addresses registration requirements, duties, and core principles for security-based swap data repositories (''SDRs'') and includes a requirement that every SDR adopt written policies and procedures reasonably designed to ensure that its core systems provide ''adequate levels of capacity, integrity, resiliency, availability, and security.''[411] However, unless it qualifies as an SDR, a registered transfer agent would not otherwise be subject to these requirements.

In 2014, the Commission adopted Regulation Systems, Compliance and Integrity (''Reg SCI''), which requires entities covered by the rule to test their automated systems for vulnerabilities, test their business continuity and disaster recovery plans, notify the Commission of cyber intrusions, and recover their clearing and trading operations within specified time frames.[412] While Reg SCI covers registered clearing agencies and other entities, it does not apply to transfer agents.[413]

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[407] FSOC Annual Report 2013, sec. 7.2, p. 136. The attacks began in September and ''were targeted, persistent, and recurring.''

[408] *See* Rohini Tendulkar, *Cyber-crime, securities markets and systemic risk,* Joint Staff Working Paper of the IOSCO Research Department and World Federation of Exchanges (July 16, 2013), *available at http://www.iosco.org/research/pdf/swp/Cyber-Crime-Securities-Markets-and-Systemic-Risk.pdf.* Forty-six securities exchanges responded to the survey.

[409] *See generally,* SEC Cybersecurity Roundtable transcript (Mar. 26, 2014), *available at https://www.sec.gov/spotlight/cybersecurity-roundtable/cybersecurity-roundtable-transcript.txt.*

[410] *See, e.g., id.; see also* OCIE Risk Alert, ''OCIE's 2015 Cybersecurity Exam Initiative,'' Vol IV, Issue 8 (Sept. 15, 2015); OCIE Risk Alert, ''Cybersecurity Examination Sweep Summary,'' Vol IV, Issue 4 (Feb. 3, 2015); Luis A. Aguilar, Comm'r, SEC, Speech at ''Cyber Risks and the Boardroom'' Conference of the New York Stock Exchange (June 10, 2014), *available at http://www.sec.gov/News/Speech/Detail/Speech/1370542057946 (Boards of Directors, Corporate Governance and Cyber-Risks: Sharpening the Focus);* Luis A. Aguilar, Comm'r, SEC, Speech at SINET Innovation Summit (June 25, 2015), *available at http://www.sec.gov/news/speech/threefold-cord-challenge-of-cyber-crime.html.*) (A Threefold Cord—Working Together to Meet the Pervasive Challenge of Cyber-Crime); Michael S. Piwowar, Comm'r, Interview at The World Today (Sept. 17, 2014), *available at http://www.abc.net.au/worldtoday/content/2014/s4150439.htm* (last visited Dec. 11, 2015).

[411] Exchange Act Rule 13n-6, 17 CFR 240.13n-6. Security-Based Swap Data Repository Registration, Duties, and Core Principles, Exchange Act Release No. 74246 (Feb. 11, 2011), 80 FR 14437 (Mar. 19, 2015).

[412] *See* Regulation Systems Compliance and Integrity, Exchange Act Release No. 73639 (Nov. 19, 2014), 79 FR 72252 (Dec. 5, 2014).

[413] *Id.* at 439–40 (discussing commenters views on whether or not transfer agents and other types of entities should be subject to Reg SCI and noting ''should the Commission decide to propose to apply the requirements of Regulation SCI to these entities, the Commission would issue a separate release discussing such a proposal and would take these comments into account.''). *See also* comment letters in response to Regulation Systems Compliance and Integrity (Proposing Release), Exchange Act Release No. 69077 (Mar. 8, 2013): The Securities Transfer Association, Inc. at 2 (Apr. 3, 2013) (commenting that transfer agents should not be subject to Reg SCI because they were not part of the Automation Review Policy (ARP Program) of the Commission existing prior to the proposal of Reg SCI and only large transfer agents have direct connectivity to entities proposed to be covered by Reg SCI); The Investment Company Institute at 3 (July 12, 2013) (transfer agents should not be subject to SCI); Fidelity Investments at 4 (July 8, 2013) (transfer agents should not be subject to SCI because they do not engage in real-time trading and they were not included in ARP Program).

To address cybersecurity risk issues faced by financial institutions (as defined in the Fair Credit Reporting Act) that are registered with the Commission, in 2013 the Commission adopted Regulation S–ID, which requires these entities to adopt and implement identity theft programs.[414] Unless it meets the definition of a financial institution as defined in the Fair Credit Reporting Act, a registered transfer agent would not otherwise be required to comply with Regulation S–ID.[415]

Finally, Regulation S–P was adopted in 2000 and requires certain Commission-registered entities to adopt measures to protect sensitive consumer financial information.[416] Although Regulation S–P primarily covers registered brokers, dealers, investment companies, and investment advisers, it also covers transfer agents in a limited way.[417] In addition, Commission staff has published guidance and other documents addressing cybersecurity risks faced by specific types of Commission registrants, such as corporate issuers, broker-dealers, investment advisers, and investment companies.[418]

Further, as discussed above, the Commission's efforts to address transfer agents' safeguarding obligations, including the adoption and application of Rule 17Ad–12,[419] have focused primarily on funds and securities rather than information systems or cybersecurity. Rule 17Ad–12 requires transfer agents to exercise reasonable discretion in adopting safeguards appropriate for their own operations and risks, and a transfer agent can adopt the safeguards and procedures that are most suitable and cost-effective in light of its potential exposure to risk since the reasonableness of safeguards and procedures are tested ''in light of all facts and circumstances.'' [420] The existing rule, however, prescribes no specific requirements for safeguarding additional items of potential value in a transfer agent's possession which potentially could be used to gain access to funds or securities, such as securityholder and account information and data in either physical or electronic form. Based on its experience administering the Commission's transfer agent examination program, the Commission staff is aware that some transfer agents have identified risks related to information and data directly or tangentially related to funds and securities used in their operations, such as securityholder and account information stored on systems and in records, and as a result, have developed policies, procedures, controls, or best practices to mitigate risk. However, the Commission is concerned that widely varying safeguarding procedures and controls among transfer agents could create uncertainty and risk in the market. The Commission is further concerned that insufficient safeguarding of information and data, such as securityholder personal and account information stored in computer systems and in records, could lead to the loss of information, theft of securities or funds, fraudulent securities transfers, or the misappropriation or release of private securityholder information to unauthorized individuals.

In light of the foregoing, the Commission intends to propose certain amendments to the transfer agent rules to address how technology in general and cybersecurity risks in particular affect transfer agents and their activities, and how transfer agents' technology and information systems, including securityholders' data and personal information, may be related to their safeguarding activities. In particular, the Commission intends to propose new or amended rules requiring registered transfer agents to, among other things: (i) Create and maintain a written business continuity plan, tailored to the size and activities of the transfer agent, identifying procedures relating to an emergency or significant business disruption, including provisions such as data back-up and recovery protocols; (ii) create and maintain basic procedures and guidelines governing the transfer agent's use of information technology, including methods of safeguarding securityholders' data and personally identifiable information; and (iii) create and maintain appropriate procedures and guidelines related to a transfer agent's operational capacity, such as IT governance and management, capacity planning, computer operations, development and acquisition of software and hardware, and information security.

The Commission seeks comment on the following:

Safeguarding of Securityholder Information and Data

50. How do commentators understand transfer agents' safeguarding obligations as applied to uncertificated securities? Please be specific.

51. How have transfer agents' data gathering and retention practices evolved in recent years? Do transfer agents collect more or different types of information than in the past? What new risks, if any, have arisen as a result of these changes? Are there some types of information collected by transfer agents that are more valuable to cyber-attackers than others, or that could cause more harm to investors or the markets if disclosed? If so, please specify. Do transfer agents currently have special protocols to protect their most sensitive information? If not, should the Commission require them to do so?

52. Have transfer agents experienced internal or external access breaches, internal or external fraud or abuse, or other issues associated with creating, accessing, controlling, altering, or securely storing issuer or investor information or data, including securityholders' private account information and other private personal information, whether electronic or otherwise? If so, please describe the nature, extent, and resolution of such problems.

53. What are the most significant risks or threats with respect to such information and data and what challenges do transfer agents face when attempting to assure that it is created, accessed, altered, controlled, and securely stored and retained in a manner reasonably free from identified risks? What policies, procedures, or controls may be employed to mitigate these risks or threats

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[414] *See* 17 CFR 248.201.

[415] *See* 17 CFR 248.201(a)(1); 15 U.S.C. 1681 (defining ''financial institution'' to include certain banks, credit unions, and ''any other person that, directly or indirectly, holds a transaction account (as defined in Section 19(b) of the Federal Reserve Act) belonging to a consumer.''); *see also* Identity Theft Red Flags Rules, Exchange Act Release No. 69359, 69 n.182 (Apr. 10, 2013), 78 FR 23637 (Apr. 19, 2013) (''SEC staff expects that other SEC-regulated entities described in the scope section of Regulation S–ID, such as . . . transfer agents . . . may be less likely to be financial institutions or creditors as defined in the rules, and therefore we do not include these entities in our [cost/benefit] estimates.'').

[416] *See* Final Rule: Privacy of Consumer Financial Information (Regulation S–P), Exchange Act Release No. 42974 (June 22, 2000), 65 FR 40334 (June 29, 2000); Disposal of Consumer Report Information, Exchange Act Release No. 50781 (Dec. 2, 2004), 69 FR 71322 (Dec. 8, 2004) (amending rule to require policies and procedures be written).

[417] *See* 17 CFR 248.30(b)(1)(v) (''Every . . . transfer agent registered with the Commission, that maintains or otherwise possesses consumer report information for a business purpose must properly dispose of the information by taking reasonable measures to protect against unauthorized access to or use of the information in connection with its disposal.''); *see also* Final Rule: Privacy of Consumer Financial Information (Regulation S–P), Exchange Act Release No. 42974 (June 22, 2000), 65 FR 40334 (June 29, 2000).

[418] *See, e.g., Disclosure Guidance: Topic No. 2,* Cybersecurity of the Division of Corporation Finance of the Commission (Oct. 13, 2011), *available at https://www.sec.gov/divisions/corpfin/guidance/cfguidance-topic2.htm;* OCIE Cybersecurity Initiative, National Exam Program Risk Alert Volume IV, Issue 2 (Apr. 15, 2014), *available at http://www.sec.gov/ocie/announcement/Cybersecurity-Risk-Alert-Appendix-4.15.14.pdf;* Cybersecurity Examination Sweep Summary, National Exam Program Risk Alert Volume IV, Issue 4 (Feb. 3, 2015), *available at https://www.sec.gov/about/offices/ocie/cybersecurity-examination-sweep-summary.pdf;* Cybersecurity Guidance, Division of Investment Management Guidance Update No. 2015–02 (Apr. 2015), *available at http://www.sec.gov/investment/im-guidance-2015-02.pdf.*

[419] Exchange Act Rule 17Ad–12, 17 CFR 240.17Ad–12.

[420] *See id.*

and address these challenges? What is the evidence on the beneficial impact of these practices and does it vary across transfer agents? How and why?

54. Have transfer agents identified risks related to information and data directly or tangentially related to funds and securities used in their operations, such as securityholder and account information stored on systems and in records, electronic or otherwise? Please describe the nature and scope of any such identified risks, as well as any challenges transfer agents face when attempting to mitigate them.

55. Do commenters believe that insufficient safeguarding of information and data, such as securityholder personal and account information stored in computer systems and in records, could lead to the loss of information, theft of securities or funds, fraudulent securities transfers, or the misappropriation or release of private securityholder information to unauthorized individuals? Why or why not? Are commenters aware of any such occurrences or incidents resulting from insufficient safeguarding of information? If so, please describe the nature, extent, and resolution thereof, including any steps perceived as necessary to be taken to prevent a reoccurrence.

56. What are the current industry best practices for protecting issuer or investor information or data in physical or printable records? What minimum standards, if any, should the Commission require for the safeguarding of such information or data?

57. To ensure that data, records, and other types of information stored on computers, networks, and similar systems used by various participants in the National C&S System are safeguarded in a manner that protects investors and promotes the prompt and accurate clearance and settlement of transactions in securities, should Commission requirements apply to certain types of data, records, or other information, rather than to a particular type of entity? For example, should the Commission impose specific safeguarding, recordkeeping, or other requirements on registered transfer agents and other entities registered or required to be registered with the Commission that possess or control securityholder and account information (electronic or otherwise)? Why or why not? What would be the costs, benefits, and burdens associated with such an approach? Please provide empirical data if available.

Operational Risk, Cybersecurity, and Other Technology-Related Issues

58. Should the Commission impose specific cybersecurity standards for transfer agents? If so, what should they be, and what standard would be appropriate? Should these standards vary depending on the size of the transfer agent or the nature and scope of the services it provides? Do commenters believe Reg SCI or Reg SDR provide an appropriate model for potential transfer agent rules addressing cybersecurity issues? Why or why not? If so, which aspects of Reg SCI or Reg SDR might be most appropriate given the activities of transfer agents? Are there other models that might be appropriate for the Commission to consider when developing cybersecurity rules for transfer agents? Regardless of the framework utilized, should the Commission consider requiring certain minimum cybersecurity protocols, such as practicing good cyber hygiene, patching critical software vulnerabilities, and using multi-factor authentication? Should the Commission require transfer agents to implement heightened security protocols for their most sensitive data? If so, which data would merit special protection, and what form should that protection take? Please provide a full explanation.

59. Should the Commission require transfer agents to demonstrate a certain level of operational capacity, such as IT governance and management, capacity planning, computer operations, development and acquisition of software and hardware, and information security? Why or why not? If so, what requirements should the Commission consider? For example, would it be appropriate to require transfer agents to adopt written procedures concerning all business services performed by, and IT and other systems used by, the transfer agent? Should the requirements be different depending on whether the transfer agent uses proprietary systems or contracts with outside parties for some or all of their services or IT and other systems? Should the requirements be different depending on the size of the transfer agent or the scope of its activities? Please provide a full explanation.

60. If the Commission proposes a rule requiring transfer agents to maintain a written business continuity or disaster recovery plan, what, if any, items should be required to be included in the plans in order to accomplish business continuity and disaster recovery objectives? Please provide a full explanation.

61. What risks do transfer agents face from internal or external cyber attacks? What costs, challenges, or issues do transfer agents face in dealing with those risks (*e.g.,* costs and resources, government and industry cooperation, and information sharing)? Are there different cybersecurity risks, or different best practices and procedures for addressing such risks, for transfer agents, depending on the size, activities, business lines, or technology infrastructure of the transfer agent? How often do transfer agents review operations and compliance policies and procedures related to cybersecurity?

62. What tradeoffs should the Commission consider in addressing cybersecurity issues with respect to transfer agents? What evidence should it consider in evaluating those tradeoffs, including any benefits, burdens, or costs of specific rule proposals? Please provide a full explanation.

63. Are transfer agents who have offices or do business in multiple jurisdictions subject to different standards or requirements with respect to cybersecurity, data privacy or business continuity? Do those standards or requirements conflict with one another? If so, how and to what extent do those standards conflict?

64. What are the industry best practices with respect to identifying and addressing cybersecurity risk? What are the costs associated with any such best practices? Do commenters believe these costs are reasonable in light of relevant risks?

65. What are industry best practices with respect to protecting electronic communications between and among transfer agents and other market participants using standardized communication protocols and standards? Should the Commission require standards for message encryption? Why or why not? Please provide a full explanation.

66. What consequences for shareholders and issuers could result if the privacy of transfer agent records is compromised? Are there standards to which transfer agents should be required to adhere to reduce the possibility or likelihood of such an occurrence? Similarly, what consequences for shareholders and issuers could result from actions taken by impersonators due to inadequate authentication and/or attempts to cancel or repudiate previously executed instructions? Do the current processes and requirements for signature guarantees apply adequately in an electronic environment?

67. How often do transfer agents review operations and compliance policies and procedures related to cybersecurity? Are third–party vendors utilized and, if so, to what extent? Where third–party vendors are utilized, how do transfer agents conduct oversight of such vendors?

68. Should the Commission require transfer agents to have a minimum level of cybersecurity protection, and if so, what should those levels be? Should the Commission prohibit indemnification of transfer agents by issuers for liability for losses due to the agents' cybersecurity weaknesses? Why or why not?

69. Should the Commission require transfer agents to maintain minimum insurance coverage for operational risks associated with transfer agent operations and services, including cybersecurity losses? Why or why not? Should the level and type of coverage be based on the transfer agent's particular circumstances? If so, what requirements and level of coverage would be appropriate for what circumstances?

70. A new technology, the blockchain or distributed ledger system, is being tested in a variety of settings, to determine whether it has utility in the securities industry.[421] What utility, if any, would a distributed public ledger system have for transfer agents, and how would it be used? What regulatory actions, if any, would facilitate that utility? How would transfer agents ensure their use of or interaction with such a system would comply and be consistent with federal securities laws and regulations, including the transfer agent rules? Please explain.

71. What costs, benefits, and burdens, if any, would the potential requirements

[421] *See generally, Nasdaq Announces Inaugural Clients for Initial Blockchain-Enabled Platform ''Nasdaq Linq'', Nasdaq (Oct. 27, 2015), http://www.nasdaq.com/press-release/nasdaq-announces-inaugural-clients-for-initial-blockchainenabled-platform-nasdaq-linq-20151027-00986* (announcement regarding Nasdaq's use of blockchain technology to create a platform for trading shares of privately-held trading); Matthew Leising, *Blockchain Potential for Markets Grabs Exchange CEOs' Attention,* Bloomberg Business (Nov. 4, 2015), *http://www.bloomberg.com/news/articles/2015-11-04/futures-market-ceos-says-blockchain-shows-serious-potential* (discussing financial services industry's interest in blockchain technology).

discussed above create for issuers or transfer agents?

F. Definitions, Application, and Scope of Current Rules

The Commission intends to propose certain amendments to Rules 17Ad–1 through 17Ad–20 designed to modernize, streamline, and simplify the overall regulatory regime for transfer agents and bring greater clarity, consistency, and regulatory certainty to the area, as well as mitigate any unnecessary costs or other burdens resulting from now obsolete or outdated requirements. In particular, the Commission intends to propose to: (i) Rescind Rules 17Ad–18 and 17Ad–21T; (ii) consolidate all definitions, including those in Rule 17Ad–1 and 17Ad–9, as well as specific definitions embedded in Rules 17Ad–5 (written inquiries), 17Ad–15 (signature guarantees), 17Ad–17 (lost securityholders), and 17Ad–19 (cancellation of securities certificates) into a single rule; (iii) update various definitions and references throughout the rules to correspond more accurately to the prevailing industry practices and standards, including clarifying that Rule 17Ad–2's turnaround provisions apply with equal force to book-entry securities and clarifying, where appropriate, that other references to ''certificates'' include book-entry securities, defining the terms ''promptly, ''as soon as possible,'' and ''non-routine'' in Rule 17Ad–2, and other clarifications; (iv) update the current turnaround, recordkeeping, and retention requirements to correspond more closely to the operations and capabilities of modern transfer agents; (v) amend the recordkeeping and retention requirements in Rules 17Ad–7 (record retention), 17Ad–10 (prompt posting of certificate detail, etc.), 17Ad–11 (aged record differences), and 17Ad–16 (notice of assumption and termination) and consolidate them into a single rule; (vi) update the dollar and share thresholds reflected in Rule 17Ad–11 (aged record differences); (vii) amend Rule 17Ad–13 to provide additional and more useful information regarding transfer agents' internal controls; (viii) amend Rule 17Ad–15 to require transfer agents to document in writing their procedures and requirements for accepting signature guarantees; and (ix) propose other new rules and amendments designed to address certain TA activities not currently addressed by the rules, as discussed throughout this release.

Further, the Commission's core books and records rules for transfer agents, Exchange Act Rules 17Ad–6 and 17Ad–7, prescribe minimum recordkeeping requirements with respect to the records that transfer agents must make and record retention requirements specifying how long those records and other documents relating to a transfer agent's business must be kept.[422] These requirements, adopted in 1977, were intended to serve a dual purpose: (1) To assure that transfer agents are maintaining the minimum records necessary to monitor and keep adequate control over their own activities and performance; and (2) to permit the appropriate regulatory authorities to examine transfer agents for compliance with applicable rules.[423] The Commission is concerned that the scope of the recordkeeping and record retention rules may no longer be broad enough to serve this dual purpose relative to the expanded scope of the activities and services that transfer agents provide today as discussed throughout this release. Accordingly, the Commission intends to propose certain amendments to Rules 17Ad–6 and 17Ad–7 to ensure they adequately address: (i) Any new or amended registration, reporting, and disclosure requirements adopted by the Commission; (ii) any new or amended contract rules adopted by the Commission; (iii) any new or amended safeguarding requirements adopted by the Commission, including amendments to Rule 17Ad–12; (iv) any new or amended business recovery, information security, operational, or cybersecurity requirements proposed by the Commission; and (v) any conforming or other changes or additions to the Commission's transfer agent rules. The Commission seeks comment on the following:

72. Are any of the current transfer agent rules outdated or obsolete? If so, which ones and why? Do commenters believe that any such outdated or obsolete portions of the transfer agent rules create confusion or inefficiency among transfer agents, issuers, investors, and other market participants? Why or why not? Please provide a full explanation.

73. Should the Commission eliminate or amend any of the definitions in the transfer agent rules? If so, which ones and why? For example, should the Commission eliminate references to ''control book,'' ''processing,'' ''process'' deadlines, and ''outside registrar''? Are there any other definitions which should be amended? Why and how? Please provide a full explanation.

74. Should the Commission eliminate the current exemption in Rule 17Ad–4 for small transfer agents? Why or why not? Have circumstances in the industry changed such that the original rationale for this exemption should be reconsidered? Should the Commission take into account the size of a transfer agent, or any other measure, in determining whether the current exemption is appropriate? Why or why not? Please provide a full explanation.

75. Currently, Rule 17Ad–5 (written inquiries and requests) permits transfer agents to respond to certain instructions and inquiries ''promptly'' rather than within a specified time period unless the requestor provides specific detailed information, such as a certificate number, number of shares, and name in which the certificate was received. In commenters' experience, is the detailed information specified in Rule 17Ad–5 an accurate description of the minimum information necessary to permit a transfer agent to identify the subject of an inquiry or instruction and respond? If not, what other information would allow a transfer agent to identify the subject of the inquiry and respond?

76. Does Rule 17Ad–5 address the full scope of inquiries received by transfer agents? If not, what additional types of inquiries and requests do transfer agents receive, and in what volume? How are those inquiries received (*e.g.,* letter, email, phone, fax, internet)? Should the Commission include additional inquiries within the scope of Rule 17Ad–5? Why or why not? If so, what types of inquiries should be included and what types should be excluded? Please provide a full explanation.

77. Should the Commission update Rule 17Ad–6 to expand the categories and types of records required to be maintained by registered transfer agents? Why or why not? If so, what requirements should the Commission consider? Please provide a full explanation.

78. Should the Commission eliminate or amend the requirement to escrow ''source code'' in Rule 17Ad–7 (record retention)? Why or why not? How do transfer agents comply with this requirement, and what are the benefits, costs, burdens, and tradeoffs associated with those efforts? If the Commission amends rather than eliminate the requirement, what amendments should the Commission consider? Please provide a full explanation.

79. Rule 17Ad–7(g) requires certain records to be made available to the Commission. What records do commenters believe should be covered by the rule? Are there electronic communication standards in use by the industry to transfer such records and, if so, should the Commission require their use? Why or why not?

80. Are the different record retention requirements in Rules 17Ad–7 (record retentions), 17Ad–10 (prompt posting of certificate detail, etc.), 17Ad–11 (aged record differences), and 17Ad–16 (notice of assumption and termination) still appropriate in light of transfer agents' operational and technological capabilities? Why or why not? Particularly in light of the prevalence of electronic records, should retention periods for all documents be similar? Why or why not? For the records that transfer agents are

[422] Exchange Act Rule 17Ad–6, 17 CFR 240.17Ad–6; Exchange Act Rule 17Ad–7, 17 CFR 240.17Ad–7. For a more detailed description of the recordkeeping and record retention requirements for transfer agents, *see supra* Section IV.A.2.

[423] *See* Rule 17Ad–1 through 17Ad–7 Adopting Release, *supra* note 145.

required to maintain, should the Commission require a longer or shorter retention period? Why or why not? Please provide a full explanation.

81. Does the current definition of certificate detail in Rule 17Ad–9 (definitions) reflect current processes? Why or why not? For example, should the Commission amend the definition to include additional information relevant to identifying the specific security, such as CUSIP number or a unique product identifier if available, or additional information relevant to identifying the investor, such as investor email address and phone number? Why or why not? Do commenters believe such information would help transfer agents identify lost securityholders or improve securityholder communications? Please provide a full explanation.

82. With respect to Rule 17Ad–11 (aged record differences), which requires reports for actual overissuances, should the Commission require transfer agents to provide issuers with information about all aged differences, rather than just differences that lead to overissuance? Why or why not? Are the current dollar and share thresholds reflected in Rule 17Ad–11 appropriate indicators of current or impending problems? Should the thresholds be amended? If so, what thresholds would be more appropriate? Are commenters aware of instances where impending problems were not reported because the dollar or share threshold did not apply to the situation? Please provide a full explanation.

83. Should the Commission again consider expanding Rule 17Ad–14 (tender agents) to include reorganization events such as conversions, maturities, redemptions, and warrants, as it proposed in 1998?[424] Why or why not? Please provide a full explanation.

84. What are the current best practices with regard to accepting signature guarantees, if any? Should the Commission amend Rule 17Ad–15 to require transfer agents to document in writing their procedures and requirements for accepting signature guarantees? Why or why not? Should the Commission require transfer agents to establish and comply with certain minimum procedures and requirements related to accepting signature guarantees? Why or why not? If so, what procedures and requirements should be required, and why? Please provide a full explanation.

85. Should the Commission amend Rule 17Ad–16 (notice of assumption)? Why or why not? If so, what amendments should be considered, and why? Is the information required by Rule 17Ad–16 already provided to the industry, including DTC? If yes, how is that information being provided to the industry? Is there an industry standard for electronic communications of these changes? Please provide a full explanation.

86. Are there other amendments to the rules that commenters believe would be appropriate or beneficial that the Commission should consider? Please provide a full explanation.

87. What costs, benefits, and burdens, if any, would the potential requirements discussed above create for issuers or transfer agents?

G. Conforming Amendments

In connection with the potential new rules and rule amendments discussed above, the Commission also intends to propose rules for conforming and other revisions to Forms TA–1 and TA–2 and to Rules 17Ad–1 through 17Ad–20, as appropriate. For example, the Commission may propose to amend Section 8(a)(iv) of Form TA–1 to require disclosure of employees' actual percentage ownership of the transfer agent, rather than whether their percentage ownership falls within a broad range. The Commission also intends to propose defining or clarifying certain terms and definitions used in the forms, such as ''independent, non-issuer'' and ''control,'' which are not currently defined in Form TA–1, and to clarify the type of disciplinary history required to be disclosed by Question 10. The Commission preliminarily believes that such clarifications would help ensure that transfer agents are interpreting, completing, and filing the requisite forms in a consistent manner. The Commission requests comment on all aspects of the conforming and other amendments described above.

VII. Concept Release and Additional Request for Comment

This section discusses additional regulatory, policy, and other issues associated with transfer agents beyond those discussed above in Section VI and seeks comment to identify, where appropriate, possible regulatory actions to address those issues. In particular, we discuss: (i) The processing of book-entry securities by transfer agents; (ii) differences between transfer agent recordkeeping for registered securityholders and broker-dealer recordkeeping for beneficial owners; (iii) characteristics of and issues associated with transfer agents to mutual funds; (iv) crowdfunding; (v) services provided by transfer agents and other entities that act as ''third party administrators'' for issuer-sponsored investment plans; and (vi) issues associated with outside entities engaged by transfer agents to perform certain services. Throughout, we seek comment regarding the issues raised, and conclude with a series of requests for comment on potential broad changes to the overall regulatory regime for transfer agents that may be appropriate in light of the issues discussed throughout this release.

A. Processing of Book-Entry Securities

Most municipal and corporate bonds, U.S. government and mortgage-backed securities, commercial paper, and mutual fund securities, are offered almost exclusively in book-entry form (*i.e.,* certificates are not available).[425] While equities have lagged behind this trend, they too have been moving closer to full dematerialization.[426] At the same time, much of the terminology and definitions found in the Commission's transfer agent rules were written, and therefore reflect, a time when most securities were certificated. For example, the definitions of ''item'' and ''transfer'' in Rules 17Ad–1, 17Ad–2, and 17Ad–4 primarily reference certificated securities.[427] Likewise, Rule 17Ad–10, which addresses a transfer agent's buy-in requirement in the event of physical overissuance of securities, refers only to ''certificates.'' [428]

Although many of the transfer agent rules refer only to certificated securities, it has long been the Commission's position that, absent an explicit exemption, all of the transfer agent rules apply equally to both certificated and uncertificated securities, particularly in cases where the rules impose time limits within which a transfer agent must turn around or process a transfer. For example, when adopting Rules 17Ad–9 through 17Ad–13 in 1983, the Commission clarified in its response to public comments that the definition of certificate detail in Rule 17Ad–9 applies with equal force to both certificated and uncertificated securities and related account details.[429] In that same adopting release, the Commission noted that exemptions respecting uncertificated securities are inappropriate in regulations regarding registered transfer agents' accurate creation and maintenance of issuer securityholder records and safeguarding of funds and securities in their operations.[430]

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[424] Processing of Reorganization Events, Tender Offers, and Exchange Offers, Exchange Act Release No. 40386 (Aug. 31, 1998), 63 FR 47209 (Sept. 4, 1998).

[425] *See generally, Strengthening the U.S Financial Markets, A Proposal to Fully Dematerialize Physical Securities, Eliminating the Cost and Risks They Incur, A White Paper to the Industry,* DTCC 1, 3–6 (July 2012), *available at http://www.dtcc.com/~/media/Files/Downloads/WhitePapers/Dematerialize_Securities_Jul._2012.pdf.*

[426] *Id.*

[427] *See, e.g.,* Exchange Act Rules 17Ad–1(a)(1)(i), (d), 17 CFR 240.17Ad–1(a)(1)(i), (d).

[428] *See* Exchange Act Rule 17Ad–10(g)(1), 17 CFR 240.17Ad–10(g)(1).

[429] *See* 17Ad–9 through 13 Proposing Release, *supra* note 2 (noting that the reference to ''certificate detail'' does not necessarily require the existence of a ''certificated security.'' Rather, it reflects the items of information regarding the registered owner and of the security, regardless of the form of the security.).

[430] *Id.*

At the same time, the Commission is aware that differences of interpretation among transfer agents may result in widely varying compliance practices, procedures, and controls among transfer agents. For example, because Rule 17Ad–10(g) refers specifically to certificates,[431] Commission staff have received questions regarding the rule's applicability to overissuances that did not involve certificated securities, indicating that, in applying that rule, some transfer agents may buy-in securities if an overissuance involved certificated securities, but not if it involved book-entry securities.

The Commission believes it is appropriate to consider possible amendments to address the applicability of the transfer agent rules to uncertificated or book-entry securities, including those held in DRS or issued by investment companies such as mutual funds.[432] Accordingly, the Commission seeks comment on the following:

88. Should the Commission amend the existing rules in light of the significant increase in book-entry securities? If so, what approach should the Commission take? For example, although a significant percentage of transfer instructions are categorized as non-routine items under the current rules (such as investor requests for certificates, to close accounts, and to act in certain types of corporate actions), there are no specific processing requirements for non-routine items. Should the same processing obligations apply to all instructions, thereby dispensing with the current routine and non-routine distinctions in Exchange Act Rule 17Ad–1? Alternatively, or in conjunction with that approach, should the existing rules be amended to explicitly apply transfer agents' processing obligations, not only to ''transfers'' as defined in Rule 17Ad–1, but also to the entire range of instructions a transfer agent may receive, including those related to uncertificated securities, such as purchase and sale orders, balance certificates, establishment and movement of book-entry positions, corporate actions, and updates of securityholder book-entry account information? Why or why not? Are there other approaches that would be appropriate? If so, please describe.

89. What policies, concerns, factors, and other considerations do commenters believe should inform any approach the Commission might take to ensure the transfer agent rules apply appropriately to book-entry securities? For example, in determining whether a specific rule or requirement is appropriate, should the focus of the Commission's consideration be on the physical nature of the security (whether certificated or uncertificated), or market-based factors, such as whether there is a potential for backlog to occur based on trading volume in the particular type of asset, or both and why? Are there other appropriate considerations? If so, please describe.

90. Given that transfer and other requests now often involve the highly automated processing of book-entry securities rather than manual processing of certificates, should the Commission modify or eliminate the turnaround and processing requirements of Rules 17Ad–1 and 17Ad–2? Why or why not? For example, is the distinction between items received before noon and items received after noon still relevant given that the vast majority of requests are now received and responded to electronically? Should the Commission shorten the timeframe for fulfilling instructions and/or increase the percentage of transfer instructions that must be fulfilled within those timeframes each month? Why or why not?

91. Should the Commission shorten Rule 17Ad–9's permitted timeframes for posting credits and debits to the master securityholder file? Should the Commission require that certificate details be dispatched daily? Why or why not?

92. Are commenters aware of instances where securityholders or broker-dealers cannot determine whether their securities have been processed by transfer agents, despite the requirements of Rule 17Ad–5? If so, please describe any such instances and indicate what requirements, if any, the Commission should consider to address such instances. For example, should the Commission expand the definition of ''item'' to include presentation by both individual investors and broker-dealers or other intermediaries acting on behalf of individual investors and require transfer agents to report to the presentor of an item the status of any item for transfer not processed within the required timeframes? Why or why not?

93. It is the Commission staff's understanding that investors have brought legal actions against transfer agents under state law to require the transfer agent to effect a transfer, including when the transfer agent claimed the securityholder's instructions were not in good order and therefore the relevant securities were not transferred, or were delayed for a long period of time.[433] Are commenters aware of these or other problems or issues associated with transfer agents failing to effect a securityholder's transfer instructions within a reasonable period of time? If so, please describe the relevant facts and circumstances. For example, what factors might have led to such a situation and how was it resolved? What types of securityholders were directly involved? What were the adverse consequences, if any?

94. Do commenters believe there are problems associated with transfer agents failing to effect or reject transfer instructions within a reasonable time? Should the Commission amend the rules to define what information or documentation is required and from whom it must be received to constitute good order? Should the Commission amend the rules to define the terms ''reject'' or ''rejection'' in connection with transfer instructions? Why or why not? Should transfer agents be required to communicate the specific reasons why an instruction was not a good order? Should transfer agents be required to buy-in securities (or take other corrective action to satisfy transfer instructions that were received in good order but not completed after a specific period of time)? If so, should the requirement apply broadly or be limited to specific conditions? Please explain.

95. Are commenters aware of delays in processing incomplete or improper requests for DRS transactions? If so, what caused these delays, and would they be eliminated or reduced if transfer agents were to provide to securityholders the information the securityholder would need to prepare complete instructions for shares held in DRS? Please explain.

96. Given that most securityholders no longer receive paper certificates evidencing their holdings, should the Commission require transfer agents to provide securityholders with an account statement with specific details for each transaction that occurred with respect to each securityholder's account? If so, how and how often should such statements be provided and what information should be included? Please describe.

B. Bank and Broker-Dealer Recordkeeping for Beneficial Owners

Although transfer agents provide critical recordkeeping and transfer services to registered owners, they generally do not have visibility beyond the master securityholder file and therefore rarely provide recordkeeping and transfer services to beneficial owners who hold in street name. Instead, recordkeeping and transfer services usually are provided to beneficial owners by the intermediary through whom the beneficial owner purchased the securities, usually a broker-dealer or bank.[434] Because many

[431] Exchange Act Rule 17Ad–10(g), 17 CFR 240.17Ad–10(g).

[432] Exchange Act Rule 17Ad–4(a) exempts from the application of Exchange Act Rule 17Ad–2, among other rules from which it provides exemption, securities held in a DRIP, redeemable securities of registered investment companies (which include open-end investment management companies (*i.e.,* mutual funds)) and limited partnership interests. Consequently, the provisions of Rule 17Ad–2 which are a fundamental part of Commission regulation of transfer agent processing of securities do not apply to mutual fund shares or securities held in Issuer Plans that are DRIPs.

[433] *See, e.g., Kanton* v. *United States Plastics, Inc.,* 248 F. Supp. 353 (D.N.J. 1965) (involving common law claims); *Bender* v. *Memory Metals, Inc.,* 514 A.2d 1109 (Del. Ch. 1986) (involving claim under UCC that transfer was rightful); *Mackinder* v. *Schawk, Inc.,* No. 00 Civ. 6098 (DAB), 2005 WL 1832385, at *16 (S.D.N.Y. Aug. 2, 2005) (involving shareholder claim under Delaware law to require the removal of restrictive legend reflecting restrictions imposed by stock purchase agreement).

[434] Commission staff understands that some industry participants may refer to the recordkeeping and transfer services provided to beneficial owners by brokers and banks discussed herein as ''sub-accounting'' or ''sub-transfer agent'' services. We note that the term sub-transfer agent in this context is not meant to imply a contractual relationship between the registered transfer agent who provides recordkeeping and transfer services for registered

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securityholders elect to hold exchange-traded securities in street name, many issuers have significantly more beneficial owners than registered owners. As a result, broker-dealers, banks, and other intermediaries may provide recordkeeping and transfer services to a larger portion of a given issuer's shareholder base—the intermediaries' customers—than the registered transfer agent for that issuer.

The transfer and recordkeeping services provided to beneficial owners by banks and brokers are largely identical to the recordkeeping and transfer services provided with respect to registered owners by registered transfer agents. For example, banks and brokers often maintain accountholder information details, process transfers and other changes to accounts, provide securityholder services such as call center support, and provide account statements showing ownership positions for their beneficial owner customers. Yet although these services may be nearly identical to the services provided to registered owners by transfer agents, banks and brokers are typically not required to register as transfer agents under the Exchange Act solely for providing these services to beneficial owners. This is because the positions serviced are ''securities entitlements'' under the UCC rather than ''Qualifying Securities'' that trigger transfer agent registration.[435]

As street name registration has become more prevalent and the number of registered holders has decreased, more banks and brokers are providing to more investors critical transfer, processing, and recordkeeping services, but are not required to register with the Commission or other ARA as a transfer agent.[436] This raises potential issues regarding the Commission's regulation of securities processing as it pertains to the processing of equity securities by banks, brokers, and other intermediaries.[437] Specifically, if a bank or broker providing transfer and recordkeeping services to beneficial owners is not required to register as a transfer agent with the Commission or other ARA, it will not be required to comply with the Commission's transfer agent rules, including the specific recordkeeping, processing, transfer, and other investor protection requirements imposed by those rules. While some banks and brokers may be subject to certain regulatory requirements depending on their specific activities, those regulations may not specifically address securities processing or provide the same investor protections as do the Commission's transfer agent rules. For example, registered broker-dealers are subject to extensive books and records requirements pursuant to Exchange Act Rule 17a–3, but that rule does not impose the same ownership and transfer recordkeeping requirements as the transfer agent rules such as Exchange Act Rule 17Ad–10, which imposes detailed information requirements with respect to every securityholder account position.[438] Further, some third party administrators[439] and other intermediaries who provide recordkeeping, administrative, and other services for retirement and issuer plans may not be regulated directly at all by any federal financial regulator. Any risks or other issues associated with these intermediaries' activities become more acute as street name ownership, and the resulting volume of processing of street name book-entry positions by brokers, banks, and other intermediaries providing transfer and recordkeeping services to beneficial owners, continues to increase.[440]

The Commission seeks comment on the following:

97. Are there regulatory discrepancies among transfer agents and banks and brokers who provide similar services for beneficial owners? If so, what are they and do they present risks or raise competition issues in the market for these services? If so, what are the competition issues or risks associated with any such discrepancies, and what approach, if any, should the Commission consider to address them? Please provide a full explanation.

98. Are there reasons why the Commission should regulate transfer agent processing of registered owner securities held in book-entry positions differently than bank and broker processing of street name positions held in book-entry form? If so, please describe them. Please provide a full explanation.

99. In light of increased obligations under federal law for certain issuers to ascertain their securityholders' identities and the barriers to doing so created by the street name system, as discussed above in Section III.B, should the Commission require entities that are regulated by the Commission, including brokers, banks, or others who provide transfer and recordkeeping services to beneficial owners, to provide or ''pass through'' securityholder information to transfer agents? If so, what type of information should be provided and how should it be transmitted? What would be the effect on the actions and choices of affected parties, including transfer agents, banks and brokers, issuers, registered owners, and beneficial owners? Please provide a full explanation.

100. If the Commission were to require certain registrants to pass through securityholder information regarding beneficial owners to transfer agents, should the Commission prohibit transfer agents from using such information for other than certain prescribed purposes? If so, for what purposes should such information be allowed to be used, and why? For example, should the information be used solely for the transfer agent's legal/compliance purposes, or should it be permitted to be used for other purposes, such as securityholder communications? Should transfer agents' ability to share information be limited, particularly where information is shared in return for compensation or where information sharing is not fully disclosed to parties such as the issuer or the securityholder? Why or why not? Should such information be permitted to be shared only with the securityholder's consent? Please provide a full explanation.

C. Transfer Agents to Mutual Funds

U.S. registered investment companies managed $18.7 trillion in assets at year-end 2014.[441] This figure is primarily comprised of mutual funds (*i.e.,* open-end management investment companies or ''open-end funds''), but also includes closed-end management investment companies (''closed-end funds'') of $289

owners and the broker or bank that provides the same services for their own beneficial owner customers. Although brokers and banks who act as sub-transfer agents could contract with registered transfer agents to provide recordkeeping and transfer services for their beneficial owner customers, they rarely do so, choosing instead to provide these services themselves.

[435] *See supra* note 115 (UCC definition of ''securities entitlement''), Section IV.A (discussing provisions of the Exchange Act regarding Qualifying Securities).

[436] *Id.*

[437] There are of course other issues raised by the increasing prevalence of bank and broker recordkeeping for beneficial owners, including complexity in the proxy distribution and voting systems and barriers to communication between securityholders and issuers. These issues are beyond the scope of this release but have been discussed in other Commission releases. *See, e.g.,* Final Street Name Study, *supra* note 82; Proxy Concept Release, *supra* note 112. We discuss certain issues concerning bank and broker processing of investment company securities below in Section VII.C.4.

[438] We note, however, that Rule 17a–3 does contain several requirements related to securityholder accounts, such as a ''blotter'' that shows ''the account for which each such transaction was effected'' as well as other details, and an ''account record'' with detailed identifying information for each customer or owner, such as their name, address, and date of birth, as well as their annual income, net worth, and the account's investment objectives.

[439] Third party administrators are discussed in more detail below in Section VII.E.

[440] For example, Professor Egon Guttman identified the lack of regulation of broker-dealer street name ownership processing as a key regulatory gap and advocated closing it as one of his key recommendations for regulatory improvement. *See* Egon Guttman, *Federal Regulation of Transfer Agents,* 34 a.m. U. L. Rev. 281, 327–8 (1985), *available at http://www.americanuniversitylawreview.org/pdfs/34/34-2/Guttman.pdf.*

[441] *See* Testimony of David W. Grim, Director, Division of Investment Management, before the House subcommittee on Capital Markets and Government Sponsored Enterprises (Oct. 23, 2015) (''Grim Testimony'').

billion, unit investment trusts (''UITs'') [442] of $101 billion, and exchange-traded funds (''ETFs'') [443] of approximately $2 trillion, which have seen considerable growth in recent years.[444] While the discussion on transfer agents to mutual funds is focused on open-end funds, the Commission also seeks comment on transfer agents to other registered investment companies as discussed in Section 5 below.

Open-end funds [445] have become one of the main investment vehicles for retail investors [446] in the United States and play a major role in the U.S. economy and financial markets. When the first transfer agent rules were adopted in 1977, there were approximately 477 mutual funds with $48 billion in assets for shareholders in just under 8.7 million accounts.[447] By the end of 2014, there were approximately 7,900 mutual funds with approximately $16 trillion in assets [448] held on behalf of hundreds of millions of investors.[449]

By mid-2014, 53.2 million households, approximately 43 percent of all U.S. households, owned mutual funds.[450] Today, the typical investor has $103,000 invested in mutual funds, which, for approximately 68 percent of investors, represents more than half of their household financial assets.[451] For many of these investors, mutual funds are their primary source of investing for retirement, higher education, and other financial goals.[452] Historically, many mutual fund investors purchased their shares ''direct'' from the fund or through the fund's transfer agent.[453] However, today many investors engage an investment professional (also referred to as an ''intermediary'' for beneficial owners of fund shares), such as a broker-dealer or investment adviser [454] who provides many services, such as helping them identify their financial goals, analyzing an existing financial portfolio, determining an appropriate asset allocation, and (depending on the type of investment professional) providing investment advice or recommendations.[455] In addition, many intermediaries have arrangements with the mutual fund or the mutual fund's transfer agent to perform the underlying shareholder recordkeeping and servicing for their customers' mutual fund positions.[456] Under such arrangements, the intermediary performs recordkeeping on their own books and other services with respect to the beneficial owner, and in many cases aggregates their customer records into a single or a few ''omnibus'' [457] accounts registered in the intermediary's name on the Mutual Fund Transfer Agent's recordkeeping system.[458]

We understand that the shift to omnibus account arrangements for mutual fund shareholders [459] has altered the landscape of recordkeeping and other services provided to fund investors. This fundamental shift in the roles and responsibilities of traditional shareholder servicing and recordkeeping, however, has resulted in a lack of transparency of beneficial owners, their trading activities and related records.[460]

The complexity of recordkeeping for mutual fund shares also has increased significantly over the last several decades. The total number of mutual fund share classes offered increased from 1,243 share classes in 1984 to over 24,000 share classes in 2014.[461] Historically, as products and share classes evolved, shareholders and their investment professionals looked for diversification by focusing on a mutual fund complex with a broad lineup of funds taking advantage of breakpoint discounts offered on their suite of mutual fund products.[462] In recent

[442] UITs are funds that offer a fixed, unmanaged portfolio, generally of stocks and bonds, as redeemable ''units'' to investors for a specific period of time, each of which represents an undivided interest in a unit of specified securities. *See* Investment Company Act Section 4(2), 15 U.S.C. 80a–4(2).

[443] ETFs may be formed as either open-end funds or UITs.

[444] *See* Grim Testimony, *supra* note 441.

[445] Open-end management investment companies are a type of registered investment company under Section 8 of the Investment Company Act that issue redeemable securities. Other types of investment companies include, but are not limited to, closed-end funds and UITs. *See* Investment Company Act Sections 4(2), 15 U.S.C. 80a–4(2) (definition of unit investment trust) and 5(a) (definition of open and closed-end 1940 Act companies). ETFs are typically organized as open-end funds or UITs.

[446] *See* Grim Testimony, *supra* note 441; *see also* Investment Company Institute, *2015 Investment Company Fact Book,* 29 (2015), *available at http://www.ici.org/pdf/2015_factbook.pdf* (''2015 ICI Factbook''). At year-end 2014, retail investors (*i.e.,* households) held the vast majority (89 percent) of the nearly $16 trillion in mutual fund assets, whereas institutions held about 11 percent.

[447] 2015 ICI Factbook, *supra* note 446, at 173 (Data sec. 1, tbl. 1).

[448] *Id.*

[449] The number of shareholder accounts last reported by the Investment Company Institute (''ICI'') was approximately 265 million in 2013 and includes a mix of individual and omnibus accounts (excluding certain underlying beneficial owner accounts), thus understating the total number of shareholder accounts for funds. *See* ICI, *2014 Investment Company Fact Book,* 168 (2014), *available at http://www.ici.org/pdf/2014_factbook.pdf.*

[450] 2015 ICI Factbook, *supra* note 446, at 114 (fig. 6.2).

[451] *Id.*

[452] *Id.*

[453] In this section, when discussing transfer agents providing services to mutual funds, we refer to ''Mutual Fund Transfer Agents,'' and when discussing transfer agents to operating company issuers, or issuers whose business is not primarily investing in securities, we refer to ''Operating Company Transfer Agents.''

[454] Also, the 2015 ICI Factbook notes that among households owning mutual fund shares outside employer-sponsored retirement plans, 80 percent own fund shares through investment professionals. *Id.* at 104.

[455] *Id.* at 104 (''The investment professional also may provide ongoing services, such as responding to investors' inquiries or periodically reviewing and rebalancing their portfolios.'').

[456] Examples of these services include communicating with their customers about their fund holdings; maintaining their financial records; processing changes in customer accounts and trade orders; recordkeeping for customers; answering customer inquiries regarding account status and the procedures for the purchase and redemption of fund shares; providing account balances and providing account statements, tax documents, and confirmations of transactions in a customer's account; transmitting proxy statements, annual reports and other communications from a fund; and receiving, tabulating and transmitting proxies executed by customers.

[457] Omnibus accounts are held by and registered in the name of a single intermediary, such as a broker, and the holdings in the account represent the aggregated positions of multiple beneficial owner customers of the intermediary. Typically, the issuer will not have information regarding the intermediary's underlying beneficial owners. *See* ICI, *Navigating Intermediary Relationships,* 3, 6–7 (2009), *available at https://www.ici.org/pdf/ppr_09_nav_relationships.pdf.* Regarding omnibus relationships generally, *see also The Stock Market, supra* note 8, at 542.

[458] The growth in retirement plan assets also has resulted in a significant increase in the number of third party administrators that perform retirement plan recordkeeping on behalf of mutual fund investors that are plan participants, whose mutual fund positions are held in omnibus accounts on the fund's transfer agent recordkeeping system. Third Party Administrators are discussed further in Section VII.E.

[459] *See generally,* Deloitte, Mutual Fund Directors Digest, *The Omnibus Revolution: Managing risk across an increasingly complex service model* (2012), *available at http://www2.deloitte.com/content/dam/Deloitte/us/Documents/financial-services/us-fsi-fund-director-digest-1-090412.pdf* (''Deloitte Digest on Omnibus Revolution'').

[460] *See generally,* PricewaterhouseCoopers LLP, *Evolution of the Mutual fund Transfer Agent: Embracing the Challenges and Opportunities,* 9 (July 2015), *available at https://www.pwc.com/us/en/asset-management/investment-management/publications/assets/pwc-mutual-fund-transfer-agent-evolution.pdf* (''PWC Evolution of the Mutual Fund Transfer Agent'').

[461] 2015 ICI Factbook, *supra* note 446, at 173 (Data sec. 1, tbl. 1).

[462] *See generally,* ICI Research Perspective, Vol. 20, No.2, *Mutual Fund Load Fees* (May 2014), *available at https://www.ici.org/pdf/per20-02.pdf* (''Thirty years ago, fund shareholders usually compensated financial professionals through a front-end load—a one-time, up-front payment for current and future services. That distribution structure has changed significantly.''). The report notes that there has been a marked reduction in load fees paid by mutual fund investors, from nearly 4 percent in 1990 to roughly 1 percent in 2013. It also notes that funds often waive load fees on purchases made through retirement plans, as well as waive or reduce load fees for large initial or cumulative purchases.

years, however, many intermediaries are managing clients' mutual fund investments using advisory type models, where typically a wide range of mutual fund investments from many different fund companies are utilized.[463]

The Commission understands that the growth in both mutual fund products and share classes offered has added complexity and requires Mutual Fund Transfer Agents to maintain, in addition to the master securityholder file, extensive CUSIP databases that define the characteristics and processing rules for each fund share class to ensure prospectus compliance and accurate processing and recordkeeping of mutual fund transactions.[464] As a result, Mutual Fund Transfer Agents have made significant investments in technology advancements to manage more frequent and diverse transaction processing and shareholder communications through different channels. The industry also has relied heavily on the automation developed through NSCC for processing and settling mutual fund transactions [465] and exchanging and reconciling customer account information, whether held in direct or omnibus accounts.[466]

The growth of the mutual fund industry since 1977, the attendant growth of the portion of the transfer agent community specifically focused on servicing that industry, the proliferation of fund share classes, the growth in intermediary omnibus account arrangements and the Mutual Fund Transfer Agent community, and the complexity of fund processing and reliance on NSCC's systems (discussed below), are among the factors informing the Commission's examination of its transfer agent rules.

[463] *Id.* In these advisory arrangements, the investment professional who sells mutual funds is assessing an asset based-fee (a percentage of the net assets managed for an investor), rather than a percentage of the dollars initially invested (a front-end load), utilizing newer free or low-fee share classes designed for advisory type programs. The report also notes that because of the recent trend toward asset-based fees the market share of traditional front-end and back-end load shares has fallen, while the market share of newer share classes that are no-load has increased substantially.

[464] We note that, generally, many of the recordkeeping and processing tasks discussed in this section may be performed by either the Mutual Fund Transfer Agent or the intermediary, depending on whether the investor holds his or her mutual fund shares directly with the mutual fund or through an intermediary. We focus herein primarily on transfer agents.

[465] *See* DTCC, 2014 Annual Report (2014), *available at http://dtcc.com/annuals/2014/wealth-management-services/index.php*. The value of mutual fund (Fund/SERV) transactions reported was $4.9 trillion.

[466] *See* PWC Evolution of the Mutual fund Transfer Agent, *supra* note 460.

1. Key Characteristics of Mutual Fund Transfer Agents

If any person performs for a mutual fund any services listed in Exchange Act Section 3(a)(25), such as registering transfers and transferring registered investment company securities, the person must register with the Commission as a transfer agent pursuant to Exchange Act Section 17A(c)(1).[467] When mutual funds were first introduced, many transfer agents provided these services because the traditional services they offered to operating company issuers (*i.e.,* issuers whose business is not primarily investing in securities), such as maintaining records of stock ownership, paying dividends, sending securityholder communications, and transferring stock ownership, were easily adapted to the particularities of mutual funds.[468] But as mutual fund processing and operations came to involve greater numbers of investors and intermediaries, greater numbers of products, and a broader array of services, some transfer agents evolved with the industry to specialize in the increasingly unique needs of mutual funds, creating a segment of the transfer agent industry that focuses, often exclusively, on servicing mutual funds.[469]

Today, these specialized Mutual Fund Transfer Agents provide many of the same transfer and account maintenance services that other transfer agents perform for operating companies, including the recordkeeping, transfer, and related activities discussed above in Section V.[470] They also commonly provide recordkeeping and other services related to the mutual funds' recordkeeping obligations under the Investment Company Act.[471] However, instead of processing exchange or OTC-traded equity or debt securities, like other transfer agents, Mutual Fund Transfer Agents process redeemable securities of investment companies registered under Section 8 of the Investment Company Act,[472] which under Rule 17Ad–4, are exempt from: (i) The turnaround and processing requirements of Rule 17Ad–2; (ii) the limitations on expansion under Rule 17Ad–3; and (iii) key recordkeeping requirements related to the transfer agent's processing and performance obligations under Rules 17Ad–6(a)(1)–(7) and (11).[473] Thus, although they provide many services identical to those provided by Operating Company Transfer Agents, Mutual Fund Transfer Agents are exempt from the key turnaround, processing, performance, and recordkeeping requirements.

Although many of the core services Mutual Fund Transfer Agents provide are similar to the core services provided by Operating Company Transfer Agents, there are differences. One is the degree to which the securities typically serviced by Mutual Fund Transfer Agents are dematerialized.[474] The mutual fund industry was an early adopter of the practice of issuing shares in book-entry form. By the time the first Commission transfer agent rules were adopted in 1977, registered ownership of mutual fund shares already had been

[467] Exchange Act Section 17A(c)(1), 15 U.S.C. 78q–1(c)(1).

[468] Lee Gremillion, *Mutual Fund Industry Handbook: A Comprehensive Guide for Investment Professionals* (Sept. 2005) (''Mutual Fund Industry Handbook'').

[469] *Id.* Today, there is no overlap among the Mutual Fund Transfer Agents with the largest market share and the Operating Company Transfer Agents with the largest market share. *Compare* SourceMedia, *Mutual Fund Service Guide,* 41 (2015), *available at http://www.mmexecutive.com/mutual-fund-guide/ranking-stats/?service=transfer-agent* (providing tables listing the ten largest Mutual Fund Transfer Agents by number of accounts and the eleven largest Mutual Fund Transfer Agents by number of clients) *with* Jessica Fritz, Audit Analytics, *2013 Transfer Agent Market Share: AST Still On the Rise* (Oct. 14, 2013), *available at http://www.auditanalytics.com/blog/2013-transfer-agent-market-share-ast-still-on-the-rise/* (providing charts showing the five largest Operating Company Transfer Agents by market share and the six largest Operating Company Transfer Agents by market share of initial public offerings).

[470] For example, Mutual Fund Transfer Agents effect transfers in ownership of fund securities, which usually involves making changes to the master securityholder file but not cancelling or issuing certificates because almost all mutual fund securities are issued and held in book-entry form. They also facilitate communications between issuers and securityholders, including by sending to securityholders mutual fund prospectuses, confirmations, periodic account statements, semi-annual and annual reports, and proxy statements. *See, e.g.,* Robert Pozen & Theresa Hamacher, *The Fund Industry: How Your Money is Managed,* 348 (2nd ed. 2015) (''Pozen & Hamacher'') (discussing transfer agent distribution of such materials). Mutual Fund Transfer Agents also distribute to securityholders tax information, such as estimates of fund distributions, Form 1099–DIV and Form 1099B. *Id.* at 349. They also process cash distributions by the fund, ensuring that cash from distributions is properly credited to securityholder accounts. *Id.* at 348. In addition, where securityholders elect to reinvest cash distributions by the fund by purchasing additional shares of the fund, Mutual Fund Transfer Agents help facilitate execution of the purchase and calculate and record the number of additional shares purchased. *Id.*

[471] *See* Investment Company Act Rule 31a–1(b)(1), 17 CFR 270.31a–1(b(1) (requiring current journals detailing sales and redemptions of the investment company's own securities and the trade date).

[472] *See supra* note 183.

[473] Exchange Act Rule 17Ad–4(a), 17 CFR 240.17Ad–4(a).

[474] For discussion of dematerialization, *see supra* note 69 and accompanying text.

predominantly dematerialized.[475] In contrast, the trend towards dematerialization of registered ownership positions of operating companies evolved over a much longer period of time through some of the incremental developments discussed in this release, such as DRS and issuer plans (*e.g.,* DRIPs). And, for beneficial owners, equity securities issued by operating companies have largely been immobilized in central securities depositories, as discussed above in Sections II and III. Thus, while both Mutual Fund Transfer Agents and Operating Company Transfer Agents today process large numbers of dematerialized securities, Mutual Fund Transfer Agents process them in larger numbers and have been doing so for a longer period of time.

There are also important differences in how Mutual Fund Transfer Agents are organized and compensated compared to Operating Company Transfer Agents generally. For example, there are, in general, three types of Mutual Fund Transfer Agent arrangements: (i) Internal (which may also be referred to as ''captive,'' ''affiliated'' or ''full internalization''),[476] (ii) external (which may also be referred to as ''third party'' or ''full service''), and (iii) hybrid (which may also be referred to as ''remote vendor'').[477] Mutual funds generally tend not to have employees; therefore, internal transfer agent services are not actually provided by the fund. ''Internal'' transfer agents are typically affiliated with the mutual fund complex, or the fund's investment adviser.[478] The main advantage of an internal transfer agent arrangement is that it allows a mutual fund or fund complex to closely monitor the delivery and quality of services provided to securityholders, which may be important to attracting and retaining investors who value service quality.[479] Larger mutual funds or mutual fund complexes may be more inclined to use internal transfer agents than their smaller counterparts because these funds' sponsors may be better able to undertake the costs required to develop and maintain the extensive technology systems and internal workforce needed to provide service to a large number of accounts.[480] External (or third-party) transfer agents are independent from (as opposed to being affiliated with) the mutual fund and its fund complex or investment adviser. While there may be variation from firm to firm, the external model may not require the same capital expenditures by fund sponsors as for internal transfer agent services, and therefore may be viewed as a cost effective alternative to the internal model.[481]

External transfer agents have their own business model, processing and procedural routines, computer systems, and service providers.[482] Because of this independence, the mutual fund or mutual fund complex may have less input or control over how a fund's securityholders are ultimately serviced. For this reason, some mutual funds use a hybrid transfer agent arrangement, whereby an internal transfer agent performs certain services in an effort to maintain control over the quality of the securityholder servicing relationship, and other services are sub-contracted to an external transfer agent.[483] For example, many mutual funds using a hybrid arrangement will use an external transfer agent for core record-keeping functions and an internal transfer agent for securityholder servicing, especially when such servicing involves direct interaction with mutual fund securityholders.[484] As a result, there may be significant variation in services provided, technology resources and capability, and corporate structure and organization among Mutual Fund Transfer Agents.

Mutual Fund Transfer Agents may also have different compensation arrangements than typical Operating Company Transfer Agents, which generally will be compensated on a per securityholder account basis. While Mutual Fund Transfer Agents may also be compensated on a per securityholder account basis, many of them instead receive compensation based on a percentage of a fund's net assets.[485] Mutual Fund Transfer Agent fees are typically the second largest expense borne by mutual funds, exceeded only by the investment management fee.[486]

2. Increased Complexity

As a result of the collective effect of the five factors discussed below, transaction processing for Mutual Fund Transfer Agents may be more complex

[475] *See* 1971 Study of the Securities Industry Hearings, *supra* note 299 (statements of David Hughey, Senior Vice President—Operations, Putnam Management Co., Inc. that the percentage of Mutual Fund holders owning in certificated form dropped from 72 percent in 1956 to 27.5 percent by 1969). It was estimated in 1978 that less than 10% of registered owners of Mutual Fund shares requested certificates. *See, e.g.,* Martin J. Aronstein, *The Decline and Fall of the Stock Certificate in America,* 1. J. Int'l L. 273, 278 (1978), *available at http://scholarship.law.upenn.edu/jil/vol1/iss3/4.*

[476] Mutual funds generally do not have employees. As a result, the Commission understands that transfer agent services that are characterized as being provided ''internally'' are not actually provided by the fund but are provided by personnel from the investment adviser to the mutual fund or by an affiliate of such investment adviser.

[477] *See generally,* ICI, *The Role and Responsibilities of a Mutual Fund Transfer Agent: Workbook,* 4 (2001) (''Mutual Fund Transfer Agent Workbook''); PWC Evolution of the Mutual fund Transfer Agent, *supra* note 460. For a discussion of one mutual fund complex's evaluation of using the internal (''full internalization''), hybrid (''remote vendor''), or external (''full service'') Mutual Fund Transfer Agent models, *see* In the Matter of Smith Barney Fund Management LLC and Citigroup Global Markets, Inc., Exchange Act Release No. 51761 at 4–15 (May 31, 2005).

[478] ''Independent'' and ''affiliated'' are used generally in connection with this discussion and are not intended to refer to any particular definition of those terms in any of the provisions of the federal securities laws or other authorities.

[479] *See, e.g.,* Mutual Fund Industry Handbook, *supra* note 468, at 277 (''In many cases, fund groups that outsource their transfer agent back-office functions perform investor service from their own, internal contact centers. This reflects the widespread belief that the quality of this visible service has competitive implications. The back-office functions, by contrast, must be performed correctly, but they offer little opportunity for the fund to differentiate itself from the competition.'').

[480] *See generally,* Mutual Fund Transfer Agent Workbook, *supra* note 477. We note, however, even among larger mutual funds, it is possible for decisions to vary from firm to firm and for similar size firms to come to different conclusions concerning expected costs and the degree to which the mutual fund should internalize transfer agent services when faced with similar factors.

[481] It is the understanding of the Commission that these capital expenditures to build and maintain transfer agent technology and infrastructure systems may be absent or reduced in the case of an external transfer agent because an external transfer agent may have already made these investments in the past and, to the extent some or all of the cost of those investments may be passed on to transfer agent issuer clients, the full extent of the redistributed cost is unlikely to be borne by a single issuer and is more likely to be diffused across multiple issuers.

[482] In contrast to mutual funds, operating companies with a large number of shareholders rarely use the internal or hybrid models and nearly always use an external transfer agent, although there are exceptions where a public company serves as its own transfer agent, particularly among local utility companies and local banks where the administration to service stockholders as a transfer agent is already in place and where the stockholders are often customers of the company.

[483] *See, e.g., supra* note 479 (discussing internal servicing and quality of service).

[484] *See, e.g.,* Mutual Fund Industry Handbook, *supra* note 468, at 277 (citing ICI, *Mutual Funds and Transfer Agent Billing Practices 1997* (1998) (finding that 87 percent of 483 funds surveyed performed such securityholder servicing ''internally'' (*i.e.,* using personnel from the management company or an affiliate of the management company)).

[485] Fee arrangements may vary from Mutual Fund Transfer Agent agreement to agreement and other fee permutations are possible, for example as an at-cost arrangement between an internal Mutual Fund Transfer Agent and the fund.

[486] *See, e.g.,* Mutual Fund Industry Handbook, *supra* note 468, at 231 (''Transfer agent service is typically the largest component of a fund's expense after investment management.''); H. Kent Baker, Greg Filbeck & Halil Kiymaz, *Mutual Funds and Exchange-Traded Funds: Building Blocks to Wealth,* 406 (2015) (analyzing 2014 data of one Mutual Fund and finding $21 million in transfer agent fees to have been the fund's second largest expense after $65 million in investment management fees).

or involve additional responsibilities as compared to Operating Company Transfer Agents. First, Mutual Fund Transfer Agents receive cash and perform calculations as a part of regular processing of transactions in shares of mutual funds to a greater extent than is involved in the day-to-day work of Operating Company Transfer Agents. As a general matter, unlike publicly traded equity securities, mutual fund securities are redeemable, meaning that investors in mutual fund securities (or their intermediaries) purchase or redeem mutual fund shares directly with the mutual fund itself rather than on the secondary market.[487] Mutual fund securities must be purchased and redeemed at their current net asset value (''NAV'') per share next computed after receipt.[488] Investor orders to purchase mutual fund shares are ultimately received by a Mutual Fund Transfer Agent, regardless of whether the investor's order is submitted directly by the investor or is submitted by an intermediary such as a broker (including where a broker may submit the order via NSCC's Fund/SERV system).[489] After receiving a purchase order, Mutual Fund Transfer Agents calculate the number of shares purchased in some cases (such as where the investor indicates the dollar amount the investor seeks to purchase rather than the number of shares). With respect to purchase orders from investors, Mutual Fund Transfer agents collect the payment for those shares, deposit the payment into the account of the custodian of the mutual fund, issue on behalf of the mutual fund the shares to be purchased, and record the transaction on the master securityholder file of the mutual fund.[490] Mutual Fund Transfer Agents engage in a comparable process when an investor decides to redeem shares in a mutual fund.

Second, Mutual Fund Transfer Agents also play a role that serves to assist in the determination of the appropriate price for an investor's purchase or redemption order (which is based on the NAV per share and any applicable commissions or fees). They do so by coordinating with mutual fund administrators, who commonly perform the main calculations that assist a mutual fund in determining its NAV.[491] The coordination with the mutual fund's administrator is necessary, not only because Mutual Fund Transfer Agents must process purchases and redemptions at current NAV as described above, but because current NAV as calculated by the administrator on behalf of the mutual fund must reflect changes in the number of shares of the mutual fund outstanding pursuant to Investment Company Act Rule 2a–4(a)(3).[492] Because the Mutual Fund Transfer Agent is the entity primarily responsible for keeping track of this information on behalf of the mutual fund, the administrator typically receives this record of changes in the capital stock of the mutual fund from the Mutual Fund Transfer Agent. Because Mutual Fund Transfer Agent transaction processing is price-dependent as described above, if an error is made and later discovered in connection with some aspect of this process, the Mutual Fund Transfer Agent may need to reprocess all of the purchases and redemptions that were affected by the error (''as of'' transaction processing). Both the daily NAV and any corrections are communicated by Mutual Fund Transfer Agents to intermediaries for transaction processing conducted on behalf of beneficial owners of mutual funds.

Third, some mutual funds may provide their investors with options which may add additional complexity to the Mutual Fund Transfer Agent's or intermediary's processing tasks. For example, many mutual funds allow investors to exchange a mutual fund within the same fund complex without having to pay a sales load or other fee for purchasing shares of the new mutual fund. This arrangement may require Mutual Fund Transfer Agents (or intermediaries) to determine if the exchange qualifies for a waiver of the sales charge and to track the total time the investor has been invested in the mutual fund complex. In addition, some mutual funds may offer other services and options, such as systematic withdrawal plans, that may require Mutual Fund Transfer Agents and their intermediaries to keep track of a potentially wide range of securityholder elections, transaction types, and prospectus and business processing rules in CUSIP databases that are utilized for transaction processing.

Fourth, the use of different sales load structures and distribution methods, particularly with respect to redemption of mutual fund securities, as well as other fee payments to intermediaries, also adds complexity in the mutual fund context. For example, for load funds, or funds that charge a sales load to the investor, Mutual Fund Transfer Agents commonly process and distribute related commission payments to intermediaries in connection with sales of mutual fund shares.[493] As part of a distribution strategy, some mutual funds compensate distributors such as broker-dealers with trail commissions that are processed and distributed by the Mutual Fund Transfer Agent, even after completion of a sale.[494] A Mutual Fund Transfer Agent may process redemption fee charges or track relevant information and give effect to sales load discounts (often referred to as breakpoints) for direct investors, often based on the amount invested or intended to be invested. Mutual Fund Transfer Agents also may process and distribute ongoing

[487] *See* Investment Company Act Sections 5(a), 2(a)(32), 15 U.S.C. 80a–5(a), 80a–2(a)(32) (defining open-end companies and redeemable securities, respectively).

[488] *See* Investment Company Act Rule 22c–1 17 CFR 270.22c–1. Under Rule 22c–1, commonly called the ''forward pricing'' rule, an investor who submits an order before the next computed NAV, generally calculated by most funds as of the time when the major U.S. stock exchanges close at 4:00 p.m. Eastern Time, receives that day's price, and an investor who submits an order after the pricing time receives the next day's price. *See generally,* Amendments to Rules Governing Pricing of Mutual Fund Shares, Investment Company Act Release No. 26288 (Dec. 17, 2003), 68 FR 70388 (Dec. 17, 2003) (proposing release).

[489] For additional details regarding Fund/SERV, *see* Exchange Act Release No. 22928 (Feb. 20, 1986), 51 FR 6954 (Feb. 27, 1986) (File No. SR–NSCC–85–09); Exchange Act Release No. 25146 (Nov. 20, 1987), 52 FR 45418 (Nov. 27, 1987) (File No. SR–NSCC–87–08); Exchange Act Release No. 26376 (Dec. 20, 1988), 53 FR 52544 (Dec. 28, 1988) (File No. SR–NSCC–88–08); Exchange Act Release No. 31487 (Nov. 27, 1992), 57 FR 56611 (Nov. 30, 1992) (File No. SR–DTC–92–02).

[490] *See, e.g.,* Exchange Act Release No. 12440 (May 12, 1976), 41 FR 22595 (June 4, 1976) (ICI comment letter (July 19, 1976)) (''The mutual fund transfer agent receives cash for investment in mutual fund shares and pays cash to shareholders for the redemption of outstanding shares.''); Pozen & Hamacher, *supra* note 470 (''The transfer agent is responsible for collecting payment for share purchases and arranging for its deposit into the fund's bank account.'').

[491] The Commission understands that most mutual funds and other investment companies that are required to register with the Commission contract with one service provider for transfer agent services and a different provider for fund ''administration,'' which generally involves services such as calculation of NAV and management fee accruals. In contrast, it is the understanding of the Commission that many private funds (*i.e.,* investment funds not registered with the Commission) use a single service provider for both transfer agent and administration functions.

[492] *See* Investment Company Act Rule 2a–4(a)(3), 17 CFR 270.2a–4(a)(3) (''Changes in the number of outstanding shares of the registered company resulting from distributions, redemptions, and repurchases shall be reflected no later than in the first calculation on the first business day following such change.'').

[493] In addition, if the mutual fund has a contingent deferred sales load (often referred to as a ''back-end load''), transfer agents commonly process and distribute these commissions to distributors in connection with a redemption.

[494] *See* Investment Company Act Rule 12b–1, 17 CFR 270.12b–1.

sub-transfer agency fees to intermediaries.[495]

Fifth, Mutual Fund Transfer Agents traditionally have functioned in a more central role in connection with clearing and settlement of securities transactions than have Operating Company Transfer Agents. With a mutual fund purchase or redemption, there is no clearing corporation involved that serves to novate trades as a central counterparty as in the case of a broker-facilitated trade in an equity security on a national securities exchange (as shown in Figure 1 in Section III.B above) because mutual funds generally are not exchange-traded.[496] As a result of this clearance and settlement environment, Mutual Fund Transfer Agents interact with sub-transfer agents such as broker-dealers, who hold shares on behalf of their beneficial owner customer, similar to the way in which DTC interacts with Operating Company Transfer Agents.[497] Mutual Fund Transfer Agents also maintain on the master securityholder file omnibus positions for intermediaries (on behalf of the intermediaries' beneficial owner-customers), which is similar to the way in which DTC maintains securities accounts of participants, but there is no jumbo Cede & Co. position at DTC in the case of a mutual fund.

3. Compliance and Other Services

Many Mutual Fund Transfer Agents may assist mutual funds with their compliance obligations, not only with respect to general recordkeeping obligations, but also to enable mutual funds to comply with regulations to which operating companies may not be subject in the same way or at all.[498] One such obligation is that mutual funds have various ''client on-boarding'' requirements under federal law [499] and commonly rely upon their Mutual Fund Transfer Agent to do the work that will enable the mutual fund to meet such obligations. For example, mutual funds are required to implement anti-money laundering (AML) programs pursuant to an interim final rule of the Treasury.[500] In addition, mutual funds are required to establish customer identification programs pursuant to a joint rule of the Commission and Treasury.[501] That rule requires, at a minimum, that the mutual fund verify an investor's identity to the extent reasonable and practicable, maintain records of the information used to verify identity, and determine whether the investor appears ''on any list of known or suspected terrorists or terrorist organizations issued by any federal government agency and designated as such by Treasury in consultation with the federal functional regulators.'' [502] While mutual funds bear ultimate responsibility for compliance, as a practical matter, the customer identification processes commonly are carried out by Mutual Fund Transfer Agents for direct investors.[503] In addition, mutual funds are required to report suspicious transactions (''Suspicious Activity Reports'') to the Treasury's Financial Crimes Enforcement Network.[504] Mutual Fund Transfer Agents may assist the mutual fund in filing the Suspicious Activity Reports.

Mutual Fund Transfer Agents may also assist mutual funds in complying with requirements related to the price-dependent nature of mutual fund transaction processing. First, Mutual Fund Transfer Agents may be responsible for monitoring, on behalf of the mutual fund, that intermediaries such as dealers are properly separating orders received from customers before NAV is next computed from those received afterwards and are sending them in separate batches to the Mutual Fund Transfer Agent.[505] As another example, mutual funds are entitled to receive taxpayer identification numbers of beneficial owner customers upon request under shareholder information agreements that mutual funds (other than money market mutual funds and mutual funds that expressly authorize short-term trading) must enter into pursuant to Investment Company Act Rule 22c–2(a)(2) with financial intermediaries who submit orders on behalf of beneficial owner customers.[506] Mutual Fund Transfer Agents commonly assist the mutual fund's review of this taxpayer identification number and related transaction information in order to monitor against trading practices that may dilute the value of the outstanding securities issued by the mutual fund.[507]

4. Broker-Dealer Recordkeeping for Beneficial Owners Who Invest in Mutual Funds

As happens in the operating company space, many securities intermediaries such as broker-dealers and banks perform recordkeeping and processing services for their customers who are beneficial owner investors in mutual funds.[508] A key difference is that

[495] *See supra* Section VII.B for a discussion of sub-transfer agents.

[496] While as discussed above, there is no clearing corporation that serves as central counterparty in mutual fund transactions, there are services provided by NSCC, such as Fund/SERV and Networking. This centralized clearance and settlement platform employs standardized data fields and protocols for mutual fund transaction processing and daily net settlements, through which intermediaries such as brokers may transmit and settle orders with Mutual Fund Transfer Agents. For additional details regarding Fund/SERV, *see supra* note 489.

[497] *See supra* note 113 for definition of sub-transfer agent.

[498] Regarding general recordkeeping obligations, *see* Investment Company Act Rule 31a–1(b)(1), 17 CFR 270.31a–1(b)(1) (requiring current journals detailing sales and redemptions of the investment company's own securities and the trade date).

[499] *See, e.g.,* Bank Secrecy Act Section 5312(a)(2) (including ''investment compan[ies]'' within the definition of ''financial institution''). Transfer agents may also be subject directly to related federal requirements that do not apply solely to ''financial institutions.'' *See, e.g.,* Section 6050I of the Internal Revenue Code, 26 U.S.C. 6050I (requirement to report to Internal Revenue Service receipt of cash in excess of $10,000 in a single or related transaction).

[500] *See* Financial Crimes Enforcement Network, Anti-Money Laundering Programs for Mutual Funds, 67 FR 21117 (Apr. 29, 2002).

[501] 31 CFR 103.131; *see* Customer Identification Programs for Mutual Funds, Investment Company Act Release No. 26031 (Apr. 29, 2003), 68 FR 25131 (May 9, 2003).

[502] *Id.*

[503] *See, e.g.,* Pozen & Hamacher, *supra* note 470 (discussing transfer agent verification of investor identity information as part of the mutual fund share purchase process); *Id.* at 352 (''Funds must take steps to avoid providing a laundry service for criminals with dirty money. As mentioned earlier, transfer agents verify a customer's identity when they open an account, under what are referred to as the *know your customer,* or KYC rules.'') (emphasis in the original); Practising Law Institute, *Mutual Funds and Exchange Traded Funds Regulation* § 1A:3.1 Money Laundering (Clifford A. Kirsch ed., 3rd ed. 2014) (''Most funds accomplish AML compliance through their transfer agents and distributors.'')

[504] 31 CFR 103.15(a)(1); *see* Financial Crimes Enforcement Network; Amendment to the Bank Secrecy Act Regulations—Requirement That Mutual Funds Report Suspicious Transactions, 68 FR 2716 (Jan. 21, 2003); *see also* Guidance, Frequently Asked Questions, Suspicious Activity Reporting Requirements for Mutual Funds, FIN–2006–G013 (Oct. 4, 2006) (authorizing mutual fund to use an agent to file reports but stating the ''mutual fund remains responsible for assuring compliance with the regulation and must monitor performance by the service provider.'')

[505] *See* Compliance Programs of Investment Companies and Investment Advisers, Investment Company Act Release No. 26299 (Dec. 17, 2003) (reliance solely on ''contractual provisions with transfer agents and other intermediaries that obligate those parties to segregate orders received by time of receipt in order to prevent ''late trading'' based on a previously determined price'' would be ''insufficient to meet the requirements of the new rule. Funds should . . . also take affirmative steps to . . . obtain[ ] assurances that those policies and procedures are effectively administered.'').

[506] Investment Company Act Rule 22c–2(a)(2), 17 CFR 270.22c–2(a)(2).

[507] *See id.* (authorizing a Mutual Fund Transfer Agent to enter into the shareholder information agreement on behalf of the mutual fund with the financial intermediary).

[508] *See* Section VII.B for a discussion of the transfer and account maintenance-related services performed by broker-dealers and banks for their beneficial owner customers and related issues. We note that the relationship between fees received by intermediaries for these types of ''sub-transfer

Continued

frequently a mutual fund will compensate the intermediary pursuant to an agreement with the intermediary for the provision of those services to fund investors, typically based on the number of shareholder accounts or a percentage of the net assets of the fund, or some combination thereof. However, most operating companies do not compensate intermediaries for servicing their beneficial owner customers. The oversight and invoicing for these payments is often delegated to the Mutual Fund Transfer Agent,[509] who will commonly process and distribute ongoing sub-transfer agency fees to intermediaries.

Because intermediaries are compensated for providing recordkeeping and processing services for their customers who are beneficial owner investors in mutual funds, many of the issues discussed above in Section V.D.3 are relevant to Mutual Fund Transfer Agents. ''Networking'' of a single investor's account or position potentially gives Mutual Fund Transfer Agents more transparency through to beneficial owners than is available to Operating Company Transfer Agents, because the recordkeeping for such accounts is primarily kept on the Mutual Fund Transfer Agent's system. ''Networking'' is a service provided by NSSC by which Mutual Fund Transfer Agents can also exchange general shareholder account data with intermediaries such as brokers that provide sub-transfer agency services.[510] This service provides for different levels of securityholder account networking between mutual funds and securities intermediaries.[511] Networked accounts are in the name of the intermediary on the master securityholder file but can represent both individual customers and omnibus accounts. Nevertheless, Networking's advantages are less utilized today as many beneficial owner accounts are now held in omnibus accounts that may also be networked. Thus, due in part to the increasing prominence of the omnibus account, Mutual Fund Transfer Agents' ability to look-through to beneficial owners has decreased.

The use of breakpoints historically highlights some of the issues faced by Mutual Fund Transfer Agents that are associated with recordkeeping and processing services provided by intermediaries.[512] A 2003 joint report of the staffs of the Commission, NASD and NYSE, found that ''[t]he dramatic growth in the number of [mutual fund] families, share classes, and, to a lesser extent, customer account types, has increased the complexity of applying breakpoints appropriately.'' [513] The Staff Report also noted that whereas ''in the past, broker-dealers dealt directly with mutual fund transfer agents and disclosed the customer's identity to them, the increasing prominence of omnibus account arrangements and sub-transfer agency services provided to these accounts by intermediaries such as brokers had made the tasks related to the application of breakpoints more challenging.'' [514]

Finally, the Commission understands that there has been a movement to omnibus sub-accounting arrangements over the years for mutual fund shareholders [515] and that this movement has resulted in a fundamental shift in the roles and responsibilities of traditional shareholder servicing and recordkeeping.[516] The Commission is examining the issues or concerns that may arise in connection with the lack of visibility that issuers and transfer agents acting on their behalf may have regarding the records maintained by intermediaries for their customers who are beneficial owners of mutual funds that are being serviced through omnibus and sub-accounting arrangements.

5. Discussion and Request for Comment

Given these developments, as well as the proliferation and growth of registered investment companies, including open-end funds, closed-end funds, UITs [517] and ETFs,[518] the Commission believes it is appropriate to examine the regulation of transfer agents who provide services to registered investment companies.

In particular, the Commission seeks comment regarding the regulation of transfer agents to registered investment companies based on the unique trading, market, asset class, and other relevant characteristics of the registered investment companies they service. Some of the issues posed by these unique characteristics of these registered investment companies are illustrated by the potentially different treatment of UITs and closed-end funds with respect to the Rule 17Ad–4(a)

agent'' services and the 12b–1 fee plan of a mutual fund is beyond the scope of this release.

[509] *See generally,* ICI, *Financial Intermediary Controls and Compliance Assessment Engagements* (2015), *available at https://www.ici.org/pdf/ppr_15_ficca.pdf.* The mutual fund industry has developed a standardized framework, the Financial Intermediary Controls and Compliance Assessment Engagement (FICCA), for intermediary oversight, where fund sponsors are seeking assurances on the effectiveness of the intermediary's control environment. The framework calls for the omnibus account recordkeeper to engage an independent accounting firm to assess its internal controls related to specified activities the intermediary performs for fund shareholder accounts. FICCA is performed under attestation standards issued by the AICPA and the auditor report expresses an opinion on its evaluation of an intermediary's assertion that controls were suitably designed and operating effectively. The framework includes 17 areas of focus, including document retention and recordkeeping, transaction processing, shareholder communications, privacy protection and anti-money laundering. It is the understanding of the Commission that FICCA engagements are voluntary and some intermediary reports may not provide an assessment on all 17 areas of focus.

[510] Data communicated via NSSC Networking may include: (i) Shareholder elections regarding the settlement of cash dividends and capital gains distributions (such as by check or direct deposit), (ii) reinvestment elections, (iii) address changes, (iv) the financial adviser associated with the account, and (v) tax reporting information. *See* Mutual Fund Transfer Agent Workbook, *supra* note 477, at 84.

[511] Intermediary accounts can be networked at three levels (0, 3 and 4), providing different information concerning underlying beneficial owners. In Level 3, the intermediary handles all aspects of the customer relationship and the customer does not interact with the Mutual Fund Transfer Agent. In Level 4, the Mutual Fund Transfer Agent handles all client communications, and customers as well as their intermediary may interact with the Mutual Fund Transfer Agent. Level 0 refers to a bank trust networked account that functions similar to a Level 3 account, and the term also is used when referencing non-networked accounts.

[512] Some mutual funds that charge front-end sales loads will charge lower sales loads for larger investments (*i.e.,* ''breakpoints). For addition information on breakpoints, *see* Final Rule: Disclosure of Breakpoint Discounts by Mutual Fund, Exchange Act Release No. 49817 (June 7, 2004), 69 FR 33262 (June 14, 2004).

[513] Staff Report: Joint SEC/NASD/NYSE Report of Examinations of Broker-Dealers Regarding Discounts on Front-End Sales Charges on Mutual Funds (Mar. 2003), *available at https://www.sec.gov/news/studies/breakpointrep.htm.*

[514] *Id.; see also infra* Section C.4 for additional discussion of Mutual Fund sub-transfer agent issues.

[515] *See generally,* Deloitte Digest on Omnibus Revolution, *supra* note 459; Deloitte, The Omnibus Revolution; managing risk across an increasingly complex service model (2012), *available at http://www.deloitte.com/view/en_US/us/Industries/Private-Equity-Hedge-Funds-Mutual-Funds-Financial-Services/e89659d4db516310VgnVCM3000001c56f00aRCRD.htm.*

[516] *See generally,* PWC Evolution of the Mutual fund Transfer Agent, *supra* note 461; PricewaterhouseCoopers, LLP, Evolution of the mutual fund transfer agent: Embracing the challenges and opportunities (July 2015), *available at http://www.pwc.com/us/en/asset-management/investment-management/publications/mutual-fund-transfer-agent-evolution.html.*

[517] *See supra* note 442.

[518] The first Commission transfer agent rules were adopted in 1977. *See generally, supra* Section IV.A. The advent of ETFs occurred more than a decade later. For examples of some of the earliest ETFs authorized under Commission exemptive orders, *see, e.g.,* SPDR Trust, Series 1, Investment Company Act Release No. 18959 (Sept. 17, 1992) (notice), 19055 (Oct. 26, 1992) (order); Diamonds Trust, Investment Company Act Release No. 22927 (Dec. 5, 1997) (notice), 22979 (Dec. 30, 1997) (order). For a discussion of key characteristics of ETFs, *see* Request for Comment on Exchange-Traded Products, Exchange Act Release No. 75165 (June 12, 2015), 80 FR 34729 (June 17, 2015); Exchange-Traded Funds, Investment Company Act Release No. 28193 (March 11, 2008), 73 FR 14618 (March 18, 2008).

exemptions, despite the many similarities that have existed historically among the secondary market trading characteristics of UITs and closed-end funds. Closed-end funds typically trade in a secondary market and often list on a national securities exchange for trading. By definition under Section 5 of the Investment Company Act, the securities of closed-end funds are not redeemable (*i.e.,* the investor does not have a right to require the fund to redeem the investor's shares in exchange for a proportionate share of the fund's underlying asset or cash equivalent thereof).[519] As a result, transfer agents servicing closed-end funds do not qualify for the Rule 17Ad–4(a) exemption, with respect to closed-end funds.[520] In contrast, transfer agents servicing UITs qualify for the exemption because UIT units are redeemable.[521] Yet, although UIT units are redeemable, because UITs are static trusts, redemptions of the UIT would require the UIT to dilute the corpus of the trust in order to meet redemption requests (whether paid out by the UIT in cash or met by distributions by the UIT of in-kind assets of the UIT). Therefore, just like closed-end funds, in order to provide liquidity to selling shareholders, historically UITs commonly have been traded in a secondary market, typically made up of broker-dealers, but UITs typically do not list their shares on a national securities exchange for trading as closed-end funds often do.[522] Thus, UITs and closed-end funds are treated differently for purposes of Rule 17Ad–4, despite historically having similar trading characteristics.[523]

The Commission also seeks comment with respect to the Rule 17Ad–4(a) exemptions. As discussed above, although Mutual Fund Transfer Agents provide many of the same recordkeeping, transfer, account maintenance, and related services that Operating Company Transfer Agents provide, under Rule 17Ad–4(a) they are exempt from some of the turnaround, processing, performance, and recordkeeping requirements that make up the foundation of the transfer agent rules.[524] One of the primary justifications for the Rule 17Ad–4(a) exemption was that at the time of adoption most equity securities at that time were issued in certificated form, while most mutual fund shares were uncertificated.[525] Thus, the Commission viewed the ''redemption of fund shares'' as being ''significantly different from the transfer of ownership of stocks and bonds on the issuer's records.'' [526] However, today most equity securities are either immobilized at DTC or completely dematerialized and issued in book-entry form, potentially making the processing of securities issued by mutual funds and equity securities issued by operating companies more alike than different and raising the question of whether the Commission should consider amending or eliminating the Rule 17Ad–4 exemption.

Based on these and the other issues and developments discussed in this section and throughout this release, the Commission believes it is appropriate to consider whether new or amended rules governing transfer agents' services and activities with respect to mutual funds and other registered investment companies could be appropriate. Accordingly, the Commission seeks comment on the following:

101. What are the similarities and differences among transfer agents that service equity securities, debt securities, and registered investment company securities? Please explain.

102. Do transfer agents face different risks and challenges depending on the industry segment or asset class they service? Does the level of complexity associated with transaction processing by Mutual Fund Transfer Agents create risks or challenges the Commission should consider addressing? Why or why not? Please explain.

103. Should the Commission address specific issues related to Mutual Fund Transfer Agents and transfer agents that service other registered investment companies? Should the Commission, in regulating transfer agents to registered investment companies, take into account the trading, market, asset class, or other characteristics of the securities or issuers being serviced? What other factors, if any, should be considered and why? Alternatively, should the Commission regulate all transfer agents uniformly, regardless of the industry segment or asset class they service? Why or why not? What data should the Commission consider in making that determination? Please explain.

104. Should the Commission impose additional recordkeeping and disaster recovery requirements for Mutual Fund Transfer Agents? Why or why not?

105. Should the Commission require that transfer agents provide more detailed information on Form TA–2 about the type of issuers they are servicing and the types of work they are performing for those issuers? Why or why not? For example, should Form TA–2 include information regarding whether a transfer agent is servicing investment companies or pension plans? Why or why not? Would this information be helpful to issuers who seek specific skills or experience from their transfer agent? Should Form TA–2 require the disclosure of the name of each issuer serviced during the reporting period? Why or why not? What would be the benefits, costs, or burdens associated with any such requirements? Are there already freely available sources for this information? Please provide empirical data, if any.

106. As noted, transfer agent services for interests in limited partnerships, DRIPS, and redeemable securities of registered investment companies are exempt from certain turnaround rules under Rule 17Ad–4(a). In light of the expanded role of transfer agents in these areas, should the Commission eliminate these exemptions? If so, what costs, burdens, or benefits would accrue to investors, issuers, or the transfer agent industry? If these exemptions are not eliminated, should the Commission add other book-entry forms of ownership to the

[519] While a closed-end fund investor may not have the right to require the fund to redeem the investor's shares, in some cases, a closed-end fund may elect to purchase shares from its investors if they wish to sell their shares. *See also* Investment Company Act Rules 23c–1 through 23c–3, 17 CFR 270.23c–1 through 23c–3.

[520] *See* 17Ad–1–7 Proposing Release, *supra* note 165, at n.14 (''The turnaround rules do apply to registered transfer agents performing transfer agent functions for securities issued by closed-end investment companies.'')

[521] *Id.*

[522] *See* Thomas Harman, Emerging Alternatives to Mutual Funds: Unit Investment Trusts and Other Fixed Portfolio Investment Vehicles, 1987 Duke L.J. 1045, 1046 (1987), available at *http://scholarship.law.duke.edu/dlj/vol36/iss6/4/*; Gould and Lins, Unit Investment Trusts: Structure and Regulation under the Federal Securities Laws, 43 Bus. Law. 1177, 1185 (Aug. 1988); Form N–7 for Registration of Unit Investment Trusts under the Securities Act of 1933 and the Investment Company Act of 1940, Investment Company Act Release No. 15612 at text following n.1 (Mar. 9, 1987), 52 FR 8268 (Mar. 17, 1987); and SEC, Office of Investor Education and Advocacy, Unit Investment Trusts (UITs), *available at http://www.sec.gov/answers/uit.htm.*

[523] With respect to UITs that are not ETFs and that do not serve as separate account vehicles that are used to fund variable annuity and variable life insurance products, broker-dealers have historically maintained a secondary market in UIT units. At present, based on Commission staff analysis of data as of December 2014, the Commission understands that approximately 75% of the assets held in UITs serve as separate account vehicles that are used to fund variable annuity and variable life insurance products, and the sponsors of these UITs do not typically maintain a secondary market in UIT units. *See* Open-End Fund Liquidity Risk Management Programs; Swing Pricing; Re-Opening of Comment Period for Investment Company Reporting Modernization Release, Investment Company Act Release No. 31835, 51–52 (Sept. 22, 2015), 80 FR 62273, 62289 (Oct. 15, 2015).

[524] As noted above, Rule 17Ad–4(a) creates an exemption from Rules 17Ad–2, 17Ad–3, and 17Ad–6(a)(1)–(7) and (11) for interests in limited partnerships, DRIPs, and redeemable securities issued by investment companies registered under Section 8 of the Investment Company Act. *See supra* Section IV.A.2 for additional information regarding Rule 17Ad–4.

[525] *See supra* Section IV.A.2.

[526] Rule 17Ad–1 through 17Ad–7 Adopting Release, *supra* note 145, at 32408; *see also id.* at n.13 (''[t]he amount of certificated fund shares is relatively small, and the amount of transfer agent activity in connection with transferring ownership of certificated shares represents a very small part of a transfer agent's activity with regard to an open-end investment company.'').

list of exemptions, including direct registration system positions, direct purchase plan positions, and employee purchase plans? Why or why not?

107. Are limited partnerships traded today in greater volumes than they were in 1977? Please provide empirical data. If so, do commenters believe the Commission should consider this as a potential basis for eliminating the exemption for transfer agents to limited partnerships in Rule 17Ad–4(a)? Why or why not?

108. In light of increased dematerialization, do commenters believe transfer agent processing of DRIP transactions today is largely similar to the processing of equity and debt securities? Why or why not? If so, do commenters believe the Commission should consider this as a potential basis for eliminating the exemption for transfer agents to DRIPs in Rule 17Ad–4(a)? Why or why not?

109. Transfer agents that service UITs are currently exempt under Rule 17Ad–4(a), but transfer agents that service closed-end funds are not. Should the Commission continue this distinction? Should the Commission apply transfer agent rules to transfer agents that service UITs in the same manner as the rules apply to transfer agents that service closed-end funds on the basis of historical similarities in the secondary market trading of both types of funds? Why or why not? Please explain.

110. Should the Commission amend the current transfer agent rules to explicitly address transfer agents for ETFs? Why or why not? How do transfer agent functions in connection with ETFs differ, if at all, from services transfer agents provide to other types of investment companies? Are there any particular issues unique to transfer agent service of ETFs that raise risks not present with respect to other types of investment companies? Please explain. If Rule 17Ad–4(a) is retained by the Commission in some form and is not proposed to be eliminated, should the Commission amend Rule 17Ad–4(a) to specify explicitly the applicability of its exemption to transfer agents to ETFs? If so, should transfer agents to ETFs be able to avail themselves of the exemption or should the exemption not apply to transfer agents to ETFs similar to the way in which the exemption today does not apply to transfer agents to closed-end funds, which in some cases are traded on national securities exchanges as are ETFs? Why or why not?

111. How are Mutual Fund Transfer Agents compensated today? Do any aspects of the structure or terms of their compensation raise regulatory concerns? Do Mutual Fund Transfer Agent fees based upon the fund's net assets create any conflicts of interest? Why or why not? If so, are there alternative fee structures that would not create conflicts of interest? Do Mutual Fund Transfer Agents provide fee rebates to issuers and, if so, do these raise any issues of regulatory concern? Do the internal and hybrid transfer agent models discussed above raise any special regulatory concerns? Why or why not? Please explain.

112. Should the Commission adjust its regulatory oversight of Mutual Fund Transfer Agents and, if so, how? Should any aspects of the Commission's regulatory regime for registered clearing agencies, including those that act as central securities depositories, apply to Mutual Fund Transfer Agents? Why or why not?

113. Given the increasing volume of transactions and activities facilitated through NSCC as the central clearance and settlement utility for mutual funds and intermediaries, what issues or concerns, if any, should the Commission consider with respect to the various activities conducted through NSCC for mutual fund investors? Please describe.

114. How often do Mutual Fund Transfer Agents serve as fund administrators for the same mutual fund? Does this dual role create conflicts of interest for either the mutual fund or the Mutual Fund Transfer Agent? Does this dual role raise other concerns? If so, please describe.

115. What ancillary information or systems do Mutual Fund Transfer Agents or intermediaries rely on to ensure accurate processing and recordkeeping of mutual fund shares (*e.g.,* master security/CUSIP databases, systems for tracking the age of fund shares for fee processing, cost basis systems for tax reporting)? Should the recordkeeping rules be modified or expanded to address such records? Please explain.

116. Transfer agents currently engage in the processing of ''as of'' transactions, or transactions which correct errors in the purchase or sale of mutual fund shares. What, if anything, differentiates, the ''as of'' transactions from an initial purchase or sale? Should the Commission specifically address ''as of'' transactions in transfer agent rules? Why or why not? Should the Commission adopt rules that govern which party, the mutual fund issuer or the Mutual Fund Transfer Agent, loses or retains profits resulting from processing errors when these errors are corrected by later ''as of'' transactions?

117. Mutual fund transfer agents facilitate the delivery of critical information (*e.g.,* daily fund NAVs, dividend accrual information) to intermediaries for overnight batch processing of beneficial owner transactions. What issues or concerns, if any, should the Commission consider with respect to the timely delivery of such information, and the impacts of potential processing delays and downstream effects, including to investors? Please describe.

118. Should the Commission require that the number of ''as of'' transactions be reported by Mutual Fund Transfer Agents on Form TA–2? Why or why not? Are greater numbers of ''as of'' transactions indicative of potential processing problems at a Mutual Fund Transfer Agent, such as a turnaround backlog or problems with accuracy? Why or why not? Do greater numbers of ''as of'' transactions indicate potentially risky mutual fund trading practices that may dilute the interests of long-term investors in the mutual fund? Why or why not?

119. Does mutual funds' use of intermediaries who act as sub-transfer agents introduce new or additional risks to the prompt and accurate settlement of securities transactions? If so, what are those risks, should the Commission consider addressing those risks, and if so, how? Please explain.

120. Should the Commission propose rules governing how Mutual Fund Transfer Agents oversee sub-transfer agents to mutual funds? Why or why not? If so, what rules should the Commission consider? Why, and what would be the benefits, costs, or other consequences of such rules? Please explain.

121. What oversight functions, if any, do Mutual Fund Transfer Agents typically perform for intermediaries performing sub-transfer agent or sub-accounting services to beneficial owners of mutual fund shares? What are the types of initial versus ongoing due diligence performed? What types of obstacles do Mutual Fund Transfer Agents face in performing the oversight function?

122. What problems, if any, are created by transfer agents' lack of visibility into the identity of beneficial owners and products serviced by intermediaries acting as sub-transfer agents? Please describe. If appropriate, could these issues be addressed solely by the Commission through revisions to the rules governing transfer agents? Would other regulatory changes be necessary, such as changes to the rules under the Investment Company Act or rules for broker-dealers under the 1934 Act (and 1933 Act)? Would other regulators also need to enact rule changes (for example, banking regulators and the Department of Labor for retirement plan recordkeepers) to assist with transparency?

D. Crowdfunding

Pursuant to the Jumpstart Our Business Startups (JOBS) Act (''JOBS Act''), the Commission adopted Regulation Crowdfunding on October 30, 2015.[527] These rules permit an issuer to raise up to $1,000,000 in a crowdfunding offering that is not registered under the Securities Act, subject to, among other things, certain caps on amounts individual investors may invest.[528] Crowdfunding offerings are offerings that are conducted primarily over the internet through registered brokers or a new class of intermediaries, called ''funding portals.'' The JOBS Act and Regulation

[527] *See* Crowdfunding, Securities Act Release No. 9974 (Oct. 30, 2015), 80 FR 71388 (Nov. 16, 2015) (''Crowdfunding Adopting Release''). In addition, pursuant to Section 401 of the JOBS Act, the Commission adopted amendments to Regulation A in March 2015. These amendments included a conditional exemption for securities issued in a Tier 2 offering under Regulation A from the mandatory registration requirements of Section 12(g) of the Exchange Act. One of the conditions of the exemption is that the issuer ''[h]as engaged a transfer agent registered pursuant to Section 17A(c) of the Act to perform the function of a transfer agent with respect to . . . securities'' issued in a Tier 2 offering pursuant to Regulation A. Amendments for Small and Additional Issues Exemptions under the Securities Act (Regulation A), Exchange Act Release No. 74578 14, 249, 285 n. 972 (Mar. 25, 2015), 80 FR 21805, 21809, 21820, 21867, 21879 n. 972 (Apr. 20, 2015), *available at http://www.sec.gov/rules/final/2015/33-9741.pdf.*; Exchange Act Rule 12g5–1(a)(7)(iii),17 CFR 240.12g5–1(a)(7)(iii).

[528] *See* Regulation Crowdfunding Rule 100(a); Crowdfunding Adopting Release, *supra* note 527, at 71389.

Crowdfunding contain provisions that relate directly to transfer agents.

First, Regulation Crowdfunding created an exemption from the record holder count under Section 12(g) of the Exchange Act provided that certain conditions are met. One of these conditions is that ''the issuer . . . has engaged the services of a transfer agent registered with the Commission pursuant to Section 17A of the Exchange Act.'' [529]

Second, under the JOBS Act and new Rule 501 of Regulation Crowdfunding, securities issued in crowdfunding offerings are subject to restrictions on resale for a period of one year, with the exception that they may be resold to other investors under specific conditions prior to the expiration of the holding period.[530] Regulation Crowdfunding does not mandate the use of a restrictive legend on crowdfunding securities certificates or book-entry security positions, but it does require the placement of a legend in the offering statement used in the offering.[531] Because of their experience in handling restricted securities, transfer agents retained by issuers in connection with crowdfunding offerings may be asked to track securities that were issued in crowdfunding offerings and handle issues related to the restrictions on transfer and exemptions thereto.

Third, Rule 301(b) of Regulation Crowdfunding requires intermediaries to have a ''reasonable basis'' for believing that an issuer has established means to keep accurate records of the holders of the securities it would offer and sell through the intermediary's platform.[532] Intermediaries may rely on the representations of the issuer concerning its means of recordkeeping unless the intermediary has reason to question the reliability of those representations.[533] Rule 301(b), however, also provides a safe harbor for compliance for those issuers that use a registered transfer agent.[534]

As a result of these new provisions, transfer agents are likely to be involved in at least some crowdfunding offerings. Accordingly, the Commission seeks comment on the following:

123. What services, if any, do commenters anticipate transfer agents providing for crowdfunding issuers? How do commenters anticipate transfer agents will comply with their recordkeeping, safeguarding, and other requirements in the context of crowdfunding securities? Does the entry of transfer agents into the crowdfunding space pose new or additional risks for the prompt and accurate settlement of securities transactions? What are these risks, should the Commission address them, and, if so, how?

124. Transfer agents have traditionally assessed fees on a per shareholder basis. Do commenters believe transfer agents are likely to impose a per shareholder fee in connection with crowdfunding issuances? If so, is a per-shareholder fee appropriate? If not, what other kinds of fees are likely to be charged, and would they be appropriate?

E. Administration of Issuer Plans

Many transfer agents provide transfer, recordkeeping, administrative, and other services related to certain types of issuer-sponsored plans that provide incentives to the issuer or securityholders in the form of reduced fees and commissions, as well as other benefits. These plans include DRIPs, DSPPs,[535] employee stock purchase plans (''ESPPs''),[536] equity-based incentive compensation plans,[537] odd lot programs,[538] and subscription rights programs (collectively, ''Issuer Plans'').[539] Many transfer agents also help administer employer-sponsored retirement plans (''Retirement Plans).'' The specific services provided will vary depending on the nature of the plan or mutual fund and the agreement between the issuer and agent, but many are similar and can be thought of broadly as ''Plan Administration'' [540] services. Depending on the transfer agent and the specific services provided, some of these activities may raise broker-dealer registration issues. This section discusses these and other issues associated with transfer agents' Plan Administration activities and seeks comment regarding possible regulatory actions regarding those issues.

1. Third Party Administrators

The majority of Plan Administrators that provide services for Retirement Plans (and some Issuer Plans and mutual funds) do not perform statutory transfer agent functions,[541] and therefore may not be required to register as a transfer agent with the Commission or other ARA. Because they are generally hired by the Retirement Plan or other plans rather than the issuer, in this context, Plan Administrators may be referred to as Third-Party Administrators (''TPAs'').[542] It is the Commission staff's understanding that the majority of TPAs are not registered as transfer agents, although some do so voluntarily.

One of the TPA's main responsibilities is acting as an intermediary between benefit plan participants and the plan. For example, TPAs provide various services when enrolling new employees in a company's benefit plan, including recording and processing their enrollment and collecting information about their funding and investing preferences (*e.g.,* fund allocations).

[529] The other conditions are that the issuer is current in its ongoing annual reports required pursuant to Rule 202 of Regulation Crowdfunding and has total assets as of the end of its last fiscal year not in excess of $25 million. *See* Crowdfunding Adopting Release, *supra* note 527, at 330, 662.

[530] Securities Act Section 4A(e) provides that ''Securities issued pursuant to a transaction described in section 4(6) may not be transferred by the purchaser of such securities during the 1-year period beginning on the date of purchase, unless such securities are transferred'' under certain specified conditions. Rule 501(a) of Regulation Crowdfunding provides ''Securities issued in a transaction exempt from registration pursuant to section 4(a)(6) of the Securities Act . . . and in accordance with section 4A of the Securities Act . . . and this part may not be transferred by any purchaser of such securities during the one-year period beginning when the securities were issued in a transaction exempt from registration pursuant to section 4(a)(6) of the Securities Act . . . unless such securities are transferred'' under certain specified conditions, including that the transfer is to the original issuer, to an accredited investor, is part of a registered offering, or to a family member.

[531] *See* Regulation Crowdfunding, Form C, Item 2, General Instruction III; *see also* Crowdfunding Adopting Release, *supra* note 527, at 68–69.

[532] Regulation Crowdfunding Rule 301(b).

[533] *Id.*

[534] *Id.* (''An intermediary will be deemed to have satisfied this requirement if the issuer has engaged the services of a transfer agent that is registered under Section 17A of the Exchange Act . . .'')

[535] DSPPs allow individuals to purchase stock directly from the issuer or its transfer agent, again without going through a broker. Unlike DRIPs, investors do not need to be existing securityholders to participate in DSPPs.

[536] ESPPs allow employees to invest in their employer's securities by purchasing shares directly from the employer (issuer) or its transfer agent, frequently at a discount to the market price.

[537] Equity-based incentive compensation plans for example include plans regarding stock options, restricted stock units, and stock appreciation rights.

[538] Odd-lot program are used by issuers to purchase shares of their own stock back from owners of less than 100 shares (a 100 share block is considered to be a ''round lot''), which may reduce the issuer's transfer agent and other fees by reducing the number of registered stockholders and/or allow small investors to sell their stock without a broker. The Commission staff has provided no-action relief to a transfer agent in connection with its participation in an odd-lot program and charging of fees to investors (that were estimated to be lower than standard broker commissions) without requiring registration of the transfer agent as a broker-dealer. *See* American Transtech Inc., SEC Staff No-Action Letter (Sept. 22, 1985).

[539] Subscription rights programs allow existing stockholders to avoid dilution of their percentage ownership by purchasing enough shares in the issuance to retain at least the same level of percentage ownership.

[540] ''Plan Administration'' and ''Administration,'' as used in this release are not terms of art with a fixed definition. We use them broadly as simplified shorthand to refer to some of the services discussed herein.

[541] *See supra* note 139 and Section IV.A for a description of the specific activities which require registration as a transfer agent under the Exchange Act.

[542] The term ''TPA'' is used here to refer generally to a broad category of ''administrators'' who provide the types of services described herein.

TPAs use this information to generate payroll deduction instructions and transmit these instructions to the participant's payroll or human resources department for processing.

TPAs continue to act as intermediaries between the benefit plan participants and plans after participants enroll in the plan. For example, if participants wish to transfer or reallocate mutual funds within their plan, they submit their request to the TPA, which will process and record these requests and provide the transactional details to the plan trustee or investment manager. Similarly, when participants request a payment, the TPA may send the transaction details to the NSCC, plan trustee, and investment manager, and provide payment instructions to the mutual fund and Mutual Fund Transfer Agent. In addition to processing transactions, TPAs may provide participants with customer service support, activity statements, and other communications.

TPAs may also provide sub-transfer agent services for plans that offer, as investment options of the plan, investment in the shares of mutual funds.[543] In this arrangement, TPAs take orders from investors and perform record consolidation services as sub-transfer agents to the plan. Instead of submitting to mutual funds (and their Mutual Fund Transfer Agents) hundreds or thousands of individual purchase and redemption orders each day in the shares of those mutual funds that have been submitted to the plan (and its TPA) by individual plan participants, TPAs may aggregate and, in some instances, net orders on behalf of the plan to be submitted to a mutual fund.[544] Orders are aggregated by adding all of the purchase and redemption orders for a particular mutual fund and submitting the total purchase order and the total redemption order to the mutual fund.

Once aggregated, TPAs may go a step further and create a single net order by offsetting the purchase and redemption orders against each other. These services allow TPAs to complement the administrative and recordkeeping services they already provide to plans and possibly earn additional fees from mutual fund complexes. They also reduce the amount of transactions that mutual fund complexes (and their Mutual Fund Transfer Agents) need to process. Under this arrangement, the mutual fund often does not know the identity of the plan participants since TPAs, not the mutual funds, are taking the orders directly from the plan participants and submitting orders to the mutual funds on behalf of and generally in the name of the plan.[545] In these situations, the Mutual Fund Transfer Agent would know only the plan, which is the legal owner of the shares of the mutual fund held by the plan for the benefit of its participants.

2. Issuer Plans

Issuers commonly appoint Plan Administrators to administer their Issuer Plans. Depending on the type of security being serviced and the scope of the activities performed, Plan Administrators may be required to register with the Commission or other ARA as a transfer agent.[546] For simplicity and because of the pre-existing relationship, issuers may simply hire their existing transfer agent.

Plan Administrators perform primarily four tasks for these plans. First, they handle communications with investors, including their initial plan registration,[547] often by operating a Web site that allows investors to sign up for and manage their account.

Second, they purchase company shares for the plan,[548] typically on the secondary market, although purchases can also be made through negotiated transactions or from the company itself, for example by using authorized but unissued shares of common stock or shares held in the company's treasury.[549] Some issuers offer investors who participate in their plans discounts on the share price, but there is wide variation in how this is offered.

Third, Plan Administrators maintain custody of purchased shares on the participants' behalf,[550] with the purchased shares typically being registered in the name of the transfer agent's nominee. This could lead to plan participants holding the issuer's shares in two places: Their bank or brokerage firm for the original registered shares, and the Plan Administrator for shares purchased through a plan. To address this, many Plan Administrators allow Plan participants to deposit their original registered shares into the participant's DRIP account for safekeeping at no charge or for a modest fee. Once deposited with the transfer agent, the shares are treated the same way as the other shares in the participant's account.

Finally, Plan Administrators maintain Plan records and send regular account statements and other communications to plan participants. These typically include quarterly account statements and transactional statements after each cash investment, transfer, deposit, withdrawal, or sale. These statements generally show cash dividends and optional cash payments received, the number of shares purchased, the purchase price for the shares, the total number of shares held for the participant, and an accumulation of the transactions for the calendar year to date. In addition, Plan Administrators send plan participants the same communications that are sent to every other securityholder of the company's common stock, including the company's annual report, annual meeting notices, proxy statements, and income tax information for reporting dividends paid by the company.

3. Potential Broker-Dealer Registration Issues

As described above, Plan Administrators, TPAs, and Mutual Fund Transfer Agents all provide some level of transaction execution and order routing services. The specific services may vary depending on the plan or firm, but in general, administrators that provide transaction execution services will handle customer funds and securities and may provide some level of netting, which is the process of offsetting expected deliveries and payments against expected receipts in order to reduce the amount of cash and securities to be moved. For example, some administrators for employer-sponsored retirement plans offset purchase and sale transactions in the

[543] For additional discussion of sub-transfer agent services, *see supra* Section VII.B.

[544] *See, e.g.,* comment letters to Investment Company Act Release No. 26288 (Dec. 11, 2003), 68 FR 70388, 70388–89 (Dec. 17, 2003), available at *http://www.sec.gov/rules/proposed/s72703.shtml.*

[545] *See supra* note 506 and accompanying text for a discussion of Investment Company Act Rule 22c–2, the provision of taxpayer identification numbers to assist mutual funds in complying with rules related to ''forward pricing,'' and transfer agent services that assist mutual funds in complying with Rule 22c–2.

[546] For additional discussion of transfer agent registration requirements, *see supra* Section IV.A.

[547] Many DRIPs require investors to own at least one share registered in their name (as opposed to being held in street name) before they will be allowed to participate in the DRIP.

[548] When investors join a plan, they are typically required to sign a document authorizing the agent to make purchases on their behalf.

[549] Plan Administrators typically purchase shares on or around the dividend payment date, but they may spread out large purchases made on the secondary market over a longer period of time to avoid affecting the share price. When purchasing shares on the secondary markets, the share price is generally determined by averaging the price of all shares purchased for that investment period; when purchased directly from the company, it is based on an average of the high and low or the closing price for the stock as reported by a specified source.

[550] Paper certificates for shares of the company's common stock purchased under the plans will generally not be issued unless requested by the participant. Paper certificates are also issued when a participant no longer wants to participate in the plan.

same target mutual fund by different participants in the plan and submit a net order to the transfer agent of the mutual fund. Netting is a function commonly performed by clearing agencies and may also be performed by broker-dealers for customers holding in street name, but is not among the core functions enumerated in Exchange Act Section 3(a)(25) performed by registered transfer agents. Hence, netting and other execution services may not themselves implicate transfer agent requirements, but nonetheless may trigger broker-dealer regulatory requirements.

The Exchange Act defines a ''broker'' as ''any person engaged in the business of effecting transactions in securities for the account of others'' [551] and requires non-exempt brokers to register with the Commission.[552] ''Effecting securities transactions'' includes, among other things, identifying potential purchasers of securities, soliciting securities transactions, routing or matching orders, handling customer funds or securities, and preparing and sending transaction confirmations (other than on behalf of a broker-dealer that executes the trades).[553] Receiving transaction-based compensation may also indicate that a person is effecting securities transactions for the account of other.[554]

The Commission has brought enforcement actions against transfer agents operating as broker-dealers without registering as such with the Commission. For example, the Commission found that a transfer agent was acting as an unregistered broker-dealer in violation of Exchange Act Section 15(a) when it, among other things: opened accounts for individual retirement account (''IRA'') customers; established an interest bearing depository account to receive IRA customer monies; had a power of attorney to withdraw, deposit and transfer IRA customer funds held by custodial banks, and to purchase assets in the name of the custodian; charged IRA customers a transaction fee when IRA customers made a purchase or sale of securities through a broker-dealer or issuer; prepared periodic account statements for IRA customers; and physically held certain IRA customers' securities in its office vault.[555] Furthermore, a transfer agent that effects securities transactions for investors in connection with administering certain types of Issuer Plans may be engaging in broker activity.[556]

The Commission staff has stated its view that it will not recommend enforcement action where a TPA performs some ''clerical and ministerial'' activities without registering as a broker, subject to the conditions that, among things, the TPA refrain from netting or matching orders.[557] This guidance is consistent with long-standing views on what constitutes broker activity.[558] The Commission also notes that its staff has taken the position in connection with no-action relief that, depending on the facts and circumstances, the performance of some or all of the administrative activities discussed in this section are also performed by entities that have registered with the Commission as brokers for such purposes.[559] Transfer agents that solicit purchase and sale orders, accept orders directly from investors, advertise services directly to investors, and make investment recommendations, also raise broker-dealer registration issues.[560]

4. Discussion and Request for Comment

The Commission is generally requesting comment on whether new rules may be appropriate to bring greater clarity, consistency, and regulatory certainty to Plan Administration and similar activities by entities registered with the Commission solely as transfer agents as well as by entities that may not be registered with the Commission in any capacity.[561] Specifically, the Commission requests comment on the following:

125. Exchange Act Rule 17Ad–9(m) describes various transfer agent functions that are broader than the five statutory functions defined in Exchange Act Section 3(a)(25). Likewise, as discussed in this and other sections, modern transfer agents perform a wide array of services and functions that do not fall within the confines of Section 3(a)(25) and are not otherwise identified or contemplated in the existing transfer agent rules. Should the Commission update the transfer agent rules to address additional transfer agent services and functions that do not fall within the confines of Section 3(a)(25)? Why or why not?

126. Should the Commission impose supervisory obligations on entities engaged in transfer agent activities, such as transfer agents and plan administrators, such as requiring that employees be properly trained, comply with continuing education requirements, and adhere to regulations and company policies? Why or why not?

127. Definitions in Rules 17Ad–1 and 17Ad–9 do not explicitly apply to all types of transactions and functions related to Issuer Plans, investment company securities, restricted securities, and corporate actions, or to all transactions relating to book-entry activity and DRS transactions. For example, the rule does not specify that ''credit'' and ''debit'' include Issuer Plan transactions and book-entry accounts as well as investment company securities transactions. Does the lack of specificity cause difficulties in providing services relating to those areas not specifically enumerated? Why or why not?

128. Does Rule 17Ad–2 create uncertainty concerning the applicability of the rule to activities related to Issuer Plans, investment company securities, restricted securities, and corporate actions? If there is such uncertainty, how does it impact transfer agents' functionality? Are issuers concerned

[551] Exchange Act Section 3(a)(4)(A), 15 U.S.C. 78c(a)(4)(A).

[552] Exchange Act Section 15(a)(1), 15 U.S.C. 78o(a)(1). Exchange Act Section 3(a)(4)(B), 15 U.S.C. 78c(a)(4)(B), provides an exception to the definition of ''broker'' for certain bank activities.

[553] Definition of Terms in and Specific Exemptions for Banks, Savings Associations, and Savings Banks Under Sections 3(a)(4) and 3(a)(5) of the Securities Exchange Act of 1934, Exchange Act Release No. 44921, 66 FR 27760, 2772–3 (May 18, 2001).

[554] *See, e.g., SEC* v. *Margolin,* 1992 WL 279735, at *5 (S.D.N.Y. Sept. 30, 1992) (ruling that Commission had demonstrated a substantial likelihood of success on the merits of its claim that a person was acting as an unregistered broker where the defendant ''provided clearing services'' for many transactions, ''receiv[ed] transaction-based compensation, advertis[ed] for clients, and possess[ed] client funds and securities.'')

[555] In the Matter of Bankers Pension Services, Inc., Exchange Act Release. No. 37567 (Aug. 14, 1996) (settled action). *See also* In the Matter of Transcorp Pension Services, Inc., Exchange Act Release No. 37278 (Jun. 4, 1996) (finding a transfer agent acted an unregistered broker-dealer for engaging in similar conduct).

[556] In the Matter of CIBC Mellon Trust Company, Exchange Act Release No. 51291 (Mar. 2, 2005); In the Matter of Computershare Trust Company of Canada, Exchange Act Release No. 53668 (Apr. 18, 2006).

[557] *See* Universal Pensions, Inc., SEC Staff No-Action Letter 25 (Jan. 30, 1998) (applicant letter noting that ''the SEC staff has previously agreed that broker registration is not required for persons who perform 'clerical and ministerial' services similar to services provided by the TPA.''); *see also* Urratia, Carlos M., SEC Staff No-Action Letter (Aug. 27, 1980); Investment Company Institute, SEC Staff No-Action Letter (June 13, 1973); Applied Financial Systems, SEC Staff No-Action Letter (Sept. 25, 1971); Dreyfus Group Equity Fund, SEC Staff No-Action Letter (June 26, 1971) (''No Action Letters'').

[558] *See generally,* Louis Loss, Joel Seligman, and Troy Paredes, Securities Regulation, § 8(A)(3) (2007); David A. Lipton, Broker-Dealer Regulation, Vol. 15, § 1:6 (2006).

[559] *See, e.g.,* No-Action Letters, *supra* note 557 (regarding condition that the recipients of the letters refrain from executing orders).

[560] *See, e.g., SEC* v. *Deyon,* 977 F. Supp. 510 (D. Me. Aug. 27, 1997) (two unregistered defendants violated Section 15(a) of the Exchange Act by, among other things, soliciting investors by phone and in person); *SEC* v. *Century Inv. Transfer Corp.,* Fed. Sec. L. Rep. (CCH) 93,232 (S.D.N.Y. Oct. 5, 1971) (defendant was engaged in the broker-dealer business by, among other things, advertising in the Wall Street Journal to solicit customers); *SEC* v. *Corporate Relations Group, Inc.,* 2003 WL 25570113 (M.D. Fla. Mar. 28, 2003) (defendant acted as an unregistered broker when it actively sought investors, recommended securities to investors through registered representatives, and provided its broker relations executives with transaction-based compensation for stock sales).

[561] As noted, depending on the type of securities being administered and the scope of administration services being performed, an entity may or may not be required to register with the Commission in the capacity of a transfer agent and/or a broker-dealer.

about impacts on service levels? If so, please describe.

129. The recordkeeping requirements in Rule 17Ad–6 do not specifically include activities associated with investment company securities, Issuer Plans, DRS transactions, paying agent activities, or corporate actions. Are transfer agents applying the rule's recordkeeping requirements to these activities? If not, what would be the additional cost, benefits and/or burdens, if any, in doing so? Please describe.

130. Rule 17Ad–10 does not specifically address activities performed by many transfer agents, such as Plan Administration, paying agent activities, or corporate action recordkeeping. Does this create any obstacles to complying with the rule, such as by creating confusion or uncertainty? Why or why not? Please explain.

131. There are no Commission regulations addressing plan enrollment practices, such as negative consents or automatic enrollments. What risks, if any, arise from these enrollment methods? Should the Commission address any such risks? Why or why not? If, so how?

132. To ensure that transfer agents make and keep comprehensive records relating to all of their activities, should the Commission address records related to Issuer Plan and mutual fund activities? Why or why not? For example, should transfer agents be required to make and maintain records of orders for the purchase or sale of Plan or mutual fund securities in a manner similar to that required of broker-dealers? Why or why not? Should they be required to create and maintain records relating to reconciliations with custodial accounts and order-submitting entities? Should they be required to make and maintain specific records relating to plan participants? Why or why not? Please explain and provide supporting evidence regarding any potential effects. To the extent that any data, records, and/or other information that such rules might require to be made and preserved are prepared and maintained by an outside party on the transfer agent's behalf, should the Commission require that the outside entity file a signed, written undertaking with the Commission to the effect that such records are the property of the transfer agent and will be surrendered promptly on request of the transfer agent and subject to examination by the Commission or other ARA? Why or why not? Please explain and provide supporting evidence regarding any potential effects.

133. Should the Commission amend the rules so that transfer agents performing specific activities are exempt from broker-dealer registration only if they are (i) registered with the Commission as a transfer agent, (ii) limit their activities to those specified in the general rule, and/or (iii) agree to abide by certain other conditions designed to protect investors and limit the risks associated with those activities? Why or why not? Should the Commission require broker-dealer registration for any activities beyond what is permitted or conducted by an entity that is not registered with the Commission as a transfer agent under such an exemption? Why or why not? Please explain and provide supporting evidence regarding any potential effects.

134. Do commenters have any concerns about TPAs who voluntarily register with the Commission as transfer agents, but do not provide statutory transfer agent services as defined by Exchange Act Section 3(a)(25)? Why or why not? Should the Commission prohibit TPAs who do not perform statutory transfer agent functions as defined by Exchange Act Section 3(a)(25) from voluntarily registering with the Commission as transfer agents? Alternatively, should the Commission deny transfer agent registration applications or revoke registrations of TPAs that do not provide statutory transfer agent services as defined by Exchange Act Section 3(a)(25)? Why or why not? Please explain and provide supporting evidence regarding any potential effects.

135. Do commenters have any concerns regarding the activities or business practices of TPAs that are not registered with any federal financial regulator? If so, what actions, if any, should the Commission consider taking to address these concerns? Please explain and provide supporting evidence regarding any potential effects.

136. What risks, if any, do commenters believe are posed by the enrollment and purchase and sale activities of transfer agents with respect to Issuer Plans and registered investment companies? What, if anything, should the Commission do to address such risks and why? For example, would rules focusing on risk management address any risks associated with transfer agents' current role in the purchase and sale of securities? Please explain and provide supporting evidence regarding any potential effects. Are there additional Issuer Plan activities or services provided by transfer agents, Plan Administrators, or other entities that are not described in the release? If so, what are they?

137. Should the Commission conditionally exempt from broker-dealer registration transfer agents that effect orders to purchase or sell securities in connection with their servicing of Issuer Plans? If so, what conditions, if any, should apply to that exemption? Should they be subject to net capital or customer protection requirements to guard against the risks of mishandling investors' funds or securities? What regulations, if any, should the Commission propose to safeguard investor privacy? Does the Issuer Plan business necessitate different books and recordkeeping requirements? If so, how should the Commission amend its books and recordkeeping requirements? Should the Commission's rules require the personnel of Issuer Plan transfer agents who interact with Issuer Plan investors, such as call center representatives, to be subject to registration, licensing, training, or continuing education requirements? Should transfer agents for Issuer Plans be permitted to net customer buy and sell orders? Why or why not, and if so, under what conditions? Should transfer agents be required to hold the funds of Issuer Plan securities in a bank account for the exclusive benefit of investors? Why or why not? Under what circumstances should a transfer agent or its personnel be disqualified from effecting transactions on behalf of Issuer Plans? Should transfer agents be permitted to receive payment for order flow in connection with Issuer Plan transactions? Why or why not? What rules might help to ensure the integrity of the master securityholder file in cases where a transfer agent servicing the Issuer Plan is not the recordkeeping transfer agent?

138. What fees are being charged today by transfer agents directly to investors or indirectly to investors (such as through transaction fees in connection with Plan Administration activities that are comparable to broker commissions or dealer markups)? Should the Commission require transfer agents to clearly and concisely disclose fees charged to the investor? Do fees charged to investors by transfer agents or by sub-transfer agents encourage or deter investor decisions regarding their form of ownership (*e.g.* the investor decision to hold in DRS, the investor decision to request a certificate, or the investor decision to hold in registered versus street name)? If these fees influence investor decision-making, is the aggregate effect on this influence good or bad for: (i) The protection of investors and (ii) continued improvement in the promptness and efficiency of the National C&S System? What is the available evidence?

139. Investors who transact with or through a broker-dealer receive confirmations pursuant to Rule 10b–10. However, investors holding securities positions directly with a transfer agent in DRS, in an Issuer Plan or other program administered by a transfer agent, or in a mutual fund that attracts self-directed investors, do not always receive comparable information from the transfer agent. Should the Commission require transfer agents to provide written communication to a securityholder with details about a transaction within a set time period? Why or why not? Are there other approaches the Commission could consider to ensure that investors are informed about their transactions on a timely basis? If so, please describe.

140. While transfer agents may be authorized by an issuer to assist with the enrollment process for plan participants, it may not be clear whether investors have initiated the enrollment or whether the transfer agent solicited the transaction. Similarly, while transfer agents may assist with securityholder inquiries, it may not be clear whether agents in so doing may, inadvertently or not, solicit securityholders for purchase or sale activities. What controls, if any, do transfer agents put in place to prevent solicitation? Do commenters believe those controls are effective? Why or why not? Should the Commission impose additional or different controls? Why or why not? Please explain.

F. Outsourcing Activities and Non-Qualifying Securities Serviced by a Registered Transfer Agent

As noted, the transfer agent rules established by the Commission are designed not only to ensure that transfer agents meet prescribed performance standards for their core recordkeeping and transfer activities, but to ensure they are regulated appropriately in the

context of the National C&S System [562] and that any problems meeting these performance standards do not negatively impact individual investors or the National C&S System as a whole.[563] Today, some transfer agents maintain offices and provide services outside the United States, and almost all transfer agents provide an array of services, including for non-Qualifying Securities. Other transfer agents may outsource some of their activities or operations to outside entities. For example, some registered transfer agents rely on outside entities to provide data hosting or specific IT services, perform data entry, or provide call center services. While the Commission believes the consistent application of the transfer agent rules to all activities of registered transfer agents is critical to protect investors and promote the safe and efficient functioning of the National C&S System, we also are mindful that applying the transfer agent rules uniformly to all securities serviced by those transfer agents could: (i) Increase costs above those that would be incurred if the transfer agent rules applied only to Qualifying Securities; (ii) create conflicts with the laws of the other jurisdictions in which a transfer agent operates; [564] or (iii) impact transfer agents in other ways.

Accordingly, the Commission seeks comment on the following:

141. What activities do transfer agents outsource, domestically or foreign, and why? Does the outsourcing of these activities present risks or raise other issues? What is the empirical evidence? What regulations, if any, should the Commission impose to address these risks? For example, should the Commission require outsourcing arrangements to be memorialized in a written agreement detailing the allocation of responsibilities? Why or why not? If such a written agreement were required, should the Commission require some or all records associated with the performance of the agreement to be considered records of the registered transfer agent and therefore subject to inspection by the Commission? Why or why not? Should outsourcing arrangements be disclosed in Form TA–2? Why or why not? Should the Commission apply different standards or different rules to transfer agents who use or engage in outsourcing activities? If so, what standards should apply, and why? Please identify any tradeoffs, including any costs and benefits that the Commission should consider. Please also provide supporting empirical evidence, if available.

142. Are there non-U.S. regulations governing transfer agents operating outside the United States that commenters believe the Commission could use as a model for similar regulations in the United States? If so, why, and how do these regulations serve the public interest in the jurisdictions in which they apply? If the Commission were to consider similar regulations, in what ways should such regulations be tailored to operations in the U.S. securities markets? What tradeoffs should the Commission consider in evaluating the alternatives?

143. Should the Commission's transfer agent rules apply with equal force to U.S. and non-U.S. transfer agents (or non-U.S. subsidiaries of U.S.-based transfer agents) that provide transfer-related services for Qualifying Securities? Why or why not?

144. Should the Commission codify existing staff interpretations stating that registered transfer agents that service at least one Qualifying Security must apply all of the transfer agent rules to all securities serviced by that transfer agent, including non-Qualifying Securities? Alternatively, should the Commission provide exemptions regarding non-Qualifying Securities from one or more or from all of the Commission's transfer agent rules? Why or why not? If so, what exemptions would be appropriate, and why? How would any such exemptions protect investor funds and securities, ensure the safe and efficient functioning of the National C&S System, and ensure appropriate oversight by regulators of transfer agents and the entities that perform services on their behalf?

145. Are there technological, legal, policy, or other reasons why a registered transfer agent would not be able to apply the transfer agent rules to all securities serviced by the transfer agent? Why or why not? If so, should the Commission provide exemptions to address such issues, and what should such exemptions provide?

146. Do transfer agents typically have access to or control over records created or held by sub-contractors? [565] If so, are those records part of the records that transfer agents provide to the Commission in response to requests? Why or why not?

147. Do other transfer agent activities, such as operating call centers, present investor protection or other concerns? How are call center employees supervised? How are call center employees trained on applicable federal securities law and legal documents that may govern or affect the issuer, for example policies and procedures of the issuer and, for certain types of issuers, prospectus limitations? Are risks greater if these securityholder services are conducted by offshore call centers?

148. Should the Commission impose additional recordkeeping, processing, and transfer rules on outside entities retained by transfer agents to address concerns that third-party firms may pose a risk to investors and the National C&S System? If so, should those rules apply to foreign firms that are engaged in services for U.S. issuers? Why or why not?

149. As noted, both Reg SDR and Reg SBSR may permit, in certain circumstances, substituted compliance for foreign participants and registrants. Should the Commission take a similar approach to regulating non-U.S. transfer agents? Why or why not?

G. Additional Request for Comment

We are also interested in more generalized concerns related to transfer agents and any other issues that commenters may wish to address relating to transfer agents. For example, we seek comment on how the role of transfer agents may continue to evolve, and what regulatory challenges these changes may pose. Please be as specific as possible in your discussion and analysis of any additional issues. In connection with comments, we also welcome comments that respond to requests for comment or of their own accord, and/or suggest specific amendments or new additions to the transfer agent rules including draft rule text. We also request commenters to provide any specific, detailed data and information related to potential or actual costs and benefits associated with any of the suggested reforms, changes, or amendments discussed throughout this release. Accordingly, the Commission seeks comment on the following:

150. Do the transfer agent rules accomplish the Commission's regulatory objectives of protecting investors, promoting the prompt and accurate clearance and settlement of securities transactions, and evaluating transfer agents' ability to perform their functions properly? Why or why not? Please provide a full explanation.

151. Do the current transfer agent rules adequately address the interests of issuers? If not, in what ways do they not address issuers' interests and should they? Why and in what way?

152. Do the current transfer agent rules adequately address the interests of other market participants? If not, in what ways do they not address those interests and should they? Why and in what way?

153. Some of the original transfer agent rules established metrics-based performance standards designed to measure the transfer and processing of paper certificates. Given the prevalence of electronic transactions, do those metrics-based performance standards adequately address transfer agents' operational capabilities, which now largely depend on systems and technology that did not exist when the original rules were adopted in 1977? Should the Commission rely on a different or additional approach to

[562] *See* Rule 17Ad–1 through 17Ad–7 Adopting Release, *supra* note 145 (noting the importance of avoiding impediments to ''the Commission's efforts to provide necessary or appropriate regulations for transfer agents in the broader context of the establishment of a national system for the prompt and accurate clearance and settlement of securities transactions.'').

[563] *Id.* (Exchange Act Rule 17Ad–3 prohibits transfer agents from taking on new or additional business in certain circumstances where they fail to meet their performance standards over certain time periods, in part, because ''it is not in the public interest or consistent with the protection of investors for a transfer agent which is unable to perform its current obligations in a timely manner to take on additional responsibilities.'')

[564] For example, the privacy laws of some foreign jurisdictions may not permit the fingerprinting required under Rule 17f–1.

[565] Regarding sub-contractor relationships, *see generally,* Section VII.C.1.

regulating transfer agents, such as a risk-based approach focused on the risks associated with specific activities or conduct? Please provide a full explanation.

154. In what ways do the activities performed and services provided by transfer agents differ depending on the type of issuer, asset class, product category, market segment, or other factors the transfer agent is servicing? For example, are there differences in activities, services, or other areas between issuers that act as their own transfer agent and independent transfer agents? If so, what are those differences? Do a transfer agent's processes differ if the transfer agent is servicing debt securities instead of equity securities? If a transfer agent primarily services debt securities, do the transfer agent's processes differ depending on the specific type of debt security being serviced (*e.g.,* corporate, asset-backed, etc.)? Are there differences in services provided, compensation arrangements, or other areas between or among different types of transfer agents? If so, what factors influence or affect those differences? Do transfer agents tend to service one type of issuer, asset class, or market segment to the exclusion of others? If so, what factors influence that focus and why? Please explain.

155. Do commenters believe that transfer agent servicing of debt securities raises different issues or concerns than those raised by servicing of equity securities? Do commenters believe there are specific risks or issues related to transfer agents' servicing of debt issues that are not addressed by existing Commission transfer agent rules? Are there differences in agreements that equity transfer agents enter into with issuers as compared to transfer agency agreements between debt transfer agents and issuers, including differences in services to be provided, methods of compensation, or any other topics?

156. Should the Commission propose different rules for different types of transfer agents depending on the particular issuer type, asset class, or market segment serviced by the transfer agent? Why or why not?

157. What fees do transfer agents assess with respect to processing DRS instructions? How and to whom are such fees assessed? Do commenters believe the Commission should consider regulating such fees in some manner? If so, why and how? Please explain.

158. Do transfer agent fees vary, depending upon the asset class of the security serviced by the transfer agent? If so, how do they vary? To what extent does competition among transfer agents constrain such fees, and what is the evidence? Should the Commission require that any such fees be fair and reasonable? Why or why not? Please provide a full explanation.

159. To what extent are co-transfer agents used in securities processing today? Should the Commission amend its rules with respect to co-transfer agents?

160. What, if any, are the problems in the marketplace today with respect to the role of transfer agents and corporate actions? Should the Commission propose rules governing transfer agent services provided in connection with corporate actions? Why or why not? If so, which types of services provided in connection with corporate actions should the Commission consider regulating?

161. Should the Commission propose rules requiring standardized corporate actions processing as a method to facilitate communications among market participants? Why or why not? If so, what are the primary market issues that such a standardization program is likely to address? Would there be any market issues that such a standardized program would not be able to address? Please explain.

162. What, if any, are the risks posed by transfer agents' role when they serve as: (i) Tender agent; (ii) subscription agent; (iii) conversion agent; or (iv) escrow agent? Do commenters believe rules governing transfer agent services provided in connection with these services would be appropriate? Why or why not? If so, what regulatory action should the Commission consider to address those concerns and why?

163. Do commenters believe there are any concerns that might arise from regulation of the proxy tabulation process generally and the transfer agents' role in the proxy process in particular? If so, what regulatory action, if any, should the Commission consider to address those concerns and why?

164. Is the role that transfer agents play in the proxy process useful for efficient, accurate, and timely communications between issuers and their securityholders? In light of comments previously received by the Commission in connection with its concept release concerning the proxy process, are there additional concerns regarding consolidation in the market? If so, please describe any such concerns.

165. In connection with considerations of transfer agents' role within the National C&S System, do commenters believe the creation of an SRO for transfer agents would be useful or appropriate? Why or why not? If so, what should the scope of the purview of such an SRO be, and what should the SRO be tasked with? Please explain.

166. Do commenters believe the introduction of certain alternatives to the current central securities depository model, such as a modified transfer agent depository, could be beneficial to issuers, securityholders, and/or the National C&S System? Why or why not? Could it co-exist with the current central depository system? Why or why not? What would such a modified depository entail or look like?

167. Some observers have commented that current DTC requirements, such as those related to DRS and FAST, operate as so-called *de facto* regulation of transfer agents by DTC.[566] Is this accurate? If so, do such DTC requirements create inconsistencies and/or conflicts for transfer agents to comply with all rules and requirements? Why or why not? If yes, please describe the inconsistencies and/or conflicts. Should the Commission adopt any of DTC's current requirements or standards that apply to transfer agents who conduct business with DTC as rules? Why or why not? If so, what requirements or standards should be considered, and why?

168. Should the Commission propose any other amendments to the transfer agent rules that are not discussed above? If so, please describe what amendments should be considered and why, including any information on the benefits, risks, and/or burdens of any suggested approach.

169. How might the transfer agent industry continue to evolve in the future, and what challenges might that evolution pose for the regulatory structure? What regulatory issues and other challenges are posed by the industry's increasing concentration and specialization? What does the decline in the number of registered securityholders mean for the industry, and for the regulatory regime? Do commenters believe that, as dematerialization progresses, the role of transfer agents to operating companies will change? If so, will it converge with that of Mutual Fund Transfer Agents? If so, what are the possible implications of this?

170. Are there any other issues that commenters may wish to address relating to transfer agents? Please provide a full explanation.

By the Commission.

December 22, 2015.

Brent Fields,

Secretary.

[FR Doc. 2015–32755 Filed 12–30–15; 8:45 am]

BILLING CODE 8011–01–P

[566] *See* Securities Exchange Act Release No. 60196 (June 30, 2009), 74 FR 33496 (File No. SR–DTC–2006–16) (specifically, comment letter from Martin (Jay) J. McHale, President, U.S. Equity Services, Computershare, Mar. 20, 2008; comment letter from Charles V. Rossi, President, Securities Transfer Association, June 22, 2007; comment letter from Gary N. Nazare, Managing Director, Transfer Agency Services, The Bank of New York, June 29, 2007).

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Part V

Department of Agriculture

Agricultural Marketing Service

7 CFR Parts 900, 1150, 1160, et al.
Exemption of Organic Products From Assessment Under a Commodity Promotion Law; Final Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 900, 1150, 1160, 1205, 1206, 1207, 1208, 1209, 1210, 1212, 1214, 1215, 1216, 1217, 1218, 1219, 1220, 1221, 1222, 1230, 1250, 1260, and 1280

[Document Number AMS–FV–14–0032]

Exemption of Organic Products From Assessment Under a Commodity Promotion Law

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule implements the provisions of section 10004 of the Agricultural Act of 2014 and modifies the organic assessment exemption regulations under 23 Federal marketing orders and 22 research and promotion programs (commodity promotion programs). This rule amends the current regulations to allow persons that produce, handle, market, process, manufacture, feed, or import ''organic'' and ''100 percent organic'' products to be exempt from paying assessments associated with commodity promotion activities, including paid advertising, conducted under a commodity promotion program administered by the Agricultural Marketing Service (AMS), regardless of whether the person requesting the exemption also produces, handles, markets, processes, manufactures, feeds, or imports conventional or nonorganic products. Currently, only persons that exclusively produce and market products certified as 100 percent organic are eligible for an exemption from assessments under commodity promotion programs. This rule expands the exemption to cover all ''organic'' and ''100 percent organic'' products certified under the National Organic Program regardless of whether the person requesting the exemption also produces, handles, markets, processes, manufactures, feeds, or imports conventional or nonorganic products.

DATES: *Effective* February 29, 2016.

FOR FURTHER INFORMATION CONTACT: Barry Broadbent, Senior Marketing Specialist, or Michelle Sharrow, Branch Chief, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938; or email: *Barry.Broadbent@ams.usda.gov,* or *Michelle.Sharrow@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Proposed rule; Published in the **Federal Register** December 16, 2014 (79 FR 75006).

Proposed rule; Extension of comment period; Published in the **Federal Register** January 15, 2015 (80 FR 2060).

Executive Order 12866, Executive Order 13563, and Executive Order 13175

This final rule is being issued by the Department of Agriculture (USDA) with regard to Federal marketing orders in conformance with Executive Orders 12866, 13563, and 13175.

With regard to research and promotion programs, Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This action has been designated as a ''non-significant regulatory action'' under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget has waived the review process.

Additionally, with regard to research and promotion programs, this action has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation will not have substantial and direct effects on Tribal governments and will not have significant Tribal implications.

Executive Order 12988

Agricultural Marketing Agreement Act of 1937

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect.

Beef Promotion and Research Act of 1985

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. Section 11 of the Beef Promotion and Research Act of 1985 (7 U.S.C. 2910) provides that it shall not preempt or supersede any other program relating to beef promotion organized and operated under the laws of the United States or any State.

Commodity Promotion, Research, and Information Act of 1996

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. Section 524 of the Commodity Promotion, Research, and Information Act of 1996 (7 U.S.C. 7423) provides that it shall not affect or preempt any other Federal or State law authorizing promotion or research relating to an agricultural commodity.

Cotton Research and Promotion Act of 1966

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect.

Dairy Production Stabilization Act of 1983

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. Section 4512(a) of the Dairy Production Stabilization Act of 1983 provides that nothing in this Act may be construed to preempt or supersede any other program relating to dairy product promotion organized and operated under the laws of the United States or any State.

Egg Research and Consumer Information Act of 1974

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect.

Fluid Milk Promotion Act of 1990

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect.

Hass Avocado Promotion, Research and Information Act of 2000

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. Section 1212(c) of the Hass Avocado Promotion, Research and Information Act of 2000 (7 U.S.C. 7811) provides that nothing in this Act may be construed to preempt or supersede any program relating to Hass avocado promotion, research, industry information, and consumer information organized and operated under the laws of the United States or of a State.

Mushroom Promotion, Research, and Consumer Information Act of 1990

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. Section 1930 of

the Mushroom Promotion, Research, and Consumer Information Act of 1990 (7 U.S.C. 6109) provides that nothing in this Act may be construed to preempt or supersede any other program relating to mushroom promotion, research, consumer information or industry information organized and operated under the laws of the United States or any State. Popcorn Promotion, Research, and Consumer Information Act of 1996.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. Section 580 of the Popcorn Promotion, Research, and Consumer Information Act (7 U.S.C. 7489) provides that nothing in this Act preempts or supersedes any other program relating to popcorn promotion organized and operated under the laws of the United States or any State.

Potato Research and Promotion Act of 1971

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect.

Pork Promotion, Research and Consumer Information Act of 1985

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. Section 1628 of the Pork Promotion, Research, and Consumer Information Act of 1985 (7 U.S.C. 4817) states that the statute is intended to occupy the field of promotion and consumer education involving pork and pork products and of obtaining funds thereof from pork producers. The regulation of such activity (other than a regulation or requirement relating to a matter of public health or the provision of State or local funds for such activity) that is in addition to or different from the Pork Act may not be imposed by a State.

Soybean Promotion, Research, and Consumer Information Act

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. Additionally, section 1974 of the Soybean Promotion, Research, and Consumer Information Act (7 U.S.C. 6309) provides, with certain exceptions, that nothing in the Soybean Act may be construed to preempt or supersede any other program relating to soybean promotion, research, consumer information, or industry information organized under the laws of the United States or any State. One exception in the Soybean Act concerns assessments collected by Qualified State Soybean Boards (QSSBs). The exception provides that, to ensure adequate funding of the operations of QSSBs under the Soybean Act, no State law or regulation may limit or have the effect of limiting the full amount of assessments that a QSSB in that State may collect, and which is authorized to be credited under the Soybean Act. Another exception concerns certain referenda conducted during specified periods by a State relating to the continuation of a QSSB or State soybean assessment.

Watermelon Research and Promotion Act

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect.

This final rule is issued under the 23 Federal marketing orders and the 22 research and promotion programs established under the following acts: Agricultural Marketing Agreement Act of 1937 (7 U.S.C. 601–674) (AMAA); Beef Promotion and Research Act of 1985 (7 U.S.C. 2901–2911); Commodity Promotion, Research, and Information Act of 1996 (7 U.S.C. 7411–7425); Cotton Research and Promotion Act of 1966 (7 U.S.C. 2101–2118); Dairy Production Stabilization Act of 1983 (7 U.S.C. 4501–4514); Egg Research and Consumer Information Act of 1974 (7 U.S.C. 2701–2718); Fluid Milk Promotion Act of 1990 (7 U.S.C. 6401–6417); Hass Avocado Promotion, Research, and Information Act of 2000 (7 U.S.C. 7801–7813); Mushroom Promotion, Research, and Consumer Information Act of 1990 (7 U.S.C. 6101–6112); Popcorn Promotion, Research, and Consumer Information Act of 1996 (7 U.S.C. 7481–7491); Pork Promotion, Research, and Consumer Information Act of 1985 (7 U.S.C. 4801–4819); Potato Research and Promotion Act of 1971 (7 U.S.C. 2611–2627); Soybean Promotion, Research, and Consumer Information Act (7 U.S.C. 6301–6311); and Watermelon Research and Promotion Act (7 U.S.C. 4901–4916). These acts are collectively referred to as ''commodity promotion laws.''

The preceding acts provide that administrative proceedings must be exhausted before parties may file suit in court. Under those acts, any person subject to an order may file a petition with the Secretary of Agriculture stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. The petitioner is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary will make a ruling on the petition. The acts provide that the district courts of the United States in any district in which the person is an inhabitant, or has his principal place of business, has the jurisdiction to review the Secretary's rule, provided a complaint is filed within 20 days from the date of the entry of the ruling. There are no administrative proceedings that must be exhausted prior to any judicial challenge to the provision of the Beef Promotion and Research Act of 1985.

Background

Section 10004 of the Agricultural Act of 2014 (2014 Farm Bill) (Pub. L. 113–79) amended Section 501 of the Federal Agriculture Improvement and Reform Act of 1996 (FAIR Act) (7 U.S.C. 7401) on February 7, 2014. Section 501 of the FAIR Act establishes certain provisions for generic commodity promotion programs created under the various commodity promotion laws. Section 501 of the FAIR Act was previously amended in May 2002, by Section 10607 of the Farm Security and Rural Investment Act (2002 Farm Bill) (Pub. L. 107–171) to exempt persons that produced and marketed solely 100 percent organic products, and who did not otherwise produce or market any conventional or nonorganic products, from the payment of an assessment for commodity promotion program activities under a commodity promotion law.

Section 10004 of the 2014 Farm Bill subsequently expanded the organic assessment exemption to apply to any agricultural commodity that is certified as ''organic'' or ''100 percent organic'' as defined by the National Organic Program (NOP) (7 CFR part 205). The amendment further requires the Secretary of Agriculture to promulgate regulations concerning the eligibility and compliance procedures necessary to implement the exemption. Consistent with that provision of the 2014 Farm Bill, this final rule amends the organic assessment exemption provisions contained in 23 Federal marketing orders and 22 research and promotion programs to cover all certified ''organic'' or ''100 percent organic'' products of a producer, handler, marketer, processor, manufacturer, feeder, or importer regardless of whether the agricultural commodity subject to the exemption is produced, handled, marketed, processed, manufactured, fed, or imported by a person that also produces, handles, markets, processes, manufactures, feeds, or imports conventional or nonorganic agricultural products, including conventional or

nonorganic agricultural products of the same agricultural commodity as that for which the exemption is claimed.

On December 16, 2014, a proposed rule was published in the **Federal Register** (79 FR 75006) inviting comments on proposed modifications to the organic assessment exemption regulations under 23 Federal marketing orders and 22 research and promotion programs. Interested parties were provided 30 days to comment on the proposed amendments. The comment period initially ended on January 15, 2015. However, at the request of 14 commenters, 11 of which represented a commodity board/committee/council, the comment period was extended to February 17, 2015 (80 FR 2060, published January 15, 2015).

In this final rule, USDA is making revisions to the general regulations affecting the 23 marketing order programs established under the AMAA. In addition, USDA is making similar amendments to the orders, plans and/or regulations of the 22 research and promotion programs administered by AMS. Also, USDA is terminating the existing provisions in § 1209.52 of the mushroom research and promotion order that are not consistent with amendments to the order's organic assessment exemption provisions contained in § 1209.252. The termination of § 1209.52(a)(2) and (a)(3) is authorized by § 1209.71(a) of the order. Lastly, while the existing organic exemption provisions will terminate in § 1209.52 of the order, this rule establishes revised organic exemption provisions in section § 1209.252(a) of the regulations.

Consistent with the provisions of the 2014 Farm Bill, this final rule modifies the current regulatory provisions that exempt organic producers, handlers, first handlers, marketers, processes, manufacturers, feeders, and importers from the payment of commodity promotion program assessments used to fund commodity promotion activities, including paid advertising, under a commodity promotion law.

Summary of Changes From the Proposed Rule

This final rule is different from the proposed rule in a number of respects. The final rule has been revised to improve the clarity of certain provisions, to maintain conformity with the provisions of the FAIR Act, and to establish or promote consistency across all of the commodity promotion programs. The modifications to the proposed rule, as detailed herein, do not substantially alter the regulatory effect of the originally proposed text.

Specifically, this final rule revises the organic assessment exemption eligibility requirements for mushrooms contained in § 1209.252(a) to add clarity and to promote consistency with the organic assessment exemption requirements contained in § 900.700 and the other 21 research and promotion orders, plans, and/or regulations.

In addition, this final rule removes a current provision included in 14 research and promotion orders, plans, and/or regulations (7 CFR parts 1150, 1205, 1207, 1209, 1210, 1216, 1218, 1219, 1220, 1221, 1230, 1250, 1260, and 1280) that addresses the exemption eligibility of products produced and marketed under an organic system plan but not sold, labeled, or represented as organic. The provision was removed to align the modified organic assessment exemption regulations with the FAIR Act.

Lastly, this final rule makes technical, non-substantive changes to the regulatory text to aid clarity and promote uniformity in all of the organic assessment exemption regulations contained herein. This includes repositioning certain paragraphs in § 1212.53 to eliminate potential confusion between the program's minimum quantity and organic assessment exemption procedures.

Summary of Comments

USDA received 731 timely comments from individuals, conventional and organic producers, industry organizations, research and promotion boards/councils, marketing order boards/committees, and organic trade associations. Of those comments, 550 were in favor of the rule, 10 opposed the rule, and 33 did not state a position. USDA determined that 138 of the comments were non-substantive in nature and did not address the merits of the proposed rule.

Fourteen of the comments were submitted by entities requesting an extension of the original comment period. Nine of the fourteen entities that submitted comments requesting an extension submitted additional comments after the comment period extension was granted by USDA.

Of the substantive comments submitted after the comment period extension, 20 were from research and promotion or marketing order boards/councils/committees, 15 were from organic agriculture trade associations, 5 were from agriculture trade associations, and 5 were from large organic handlers.

The comments largely fall into three broad categories. One category addresses issues of eligibility and the application of the FAIR Act. Another category addresses issues concerning the assessment exemption reporting requirements and safeguards. The last category addresses administrative and procedural issues.

Eligibility of Organic Products Entering Conventional Markets: Fourteen of the research and promotion programs' organic assessment exemption regulations currently contain a provision specifying that agricultural commodities produced and marketed under an organic system plan, but not sold, labeled, or represented as organic when the product is sold, shall not disqualify a producer from the organic assessment exemption. Within the provision, the stated reasons for conventional sales of organic products include lack of demand for organic products, isolated use of antibiotics for humane purposes, chemical or pesticide use as the result of State or emergency spray programs, and crops from a buffer area. The provision is currently included in 14 research and promotion orders, plans, and/or regulations, but is absent from the regulations covering the 8 remaining research and promotion programs and from the regulations that cover Federal marketing orders.

The provision was incorporated into the regulations to ensure that incidental non-conformance with the 2002 Farm Bill threshold requirement of ''produces and markets solely 100 percent organic products'' would not disqualify a producer from eligibility for an organic assessment exemption. Without the provision, under a strict interpretation of the 2002 Farm Bill statute, a certified organic producer under the NOP who produced and marketed any products through any conventional marketing channel, for any reason, would be ineligible for an organic assessment exemption. The provision was intended to reconcile administrative inconsistencies between the 2002 Farm Bill language and the intent of Congress in creating the exemption. USDA determined that certain common and acceptable production and marketing practices of NOP certified organic production operations could be allowed without jeopardizing the integrity of the exemption, even if some of those practices led to products entering conventional markets.

Under the provision, organic product produced in excess of demand in the organic market is permitted to enter a conventional market without jeopardizing the entity's organic assessment exemption status. Additionally, it allows product from buffer zones on certified organic production operations that could not otherwise be marketed as organic in an

organic market outlet to enter the conventional market without affecting the entity's organic assessment exemption eligibility. Lastly, it allows product that is subjected to chemicals or pesticides as a result of a State or emergency spray program, and the isolated use of antibiotics for humane purposes, to enter the conventional market without penalty.

In the proposed rule, USDA proposed making modifications to the provision and retaining it in the regulations of the 14 research and promotion programs that currently contain the language.

A number of the commenters submitted comments with regard to the provision as proposed. Several commenters suggested that the provision be expanded to all commodity promotion programs to promote uniformity. A number of other commenters assert that the provision creates a free rider situation when organic product exempt from assessment is allowed to enter the conventional market. They claim that organic product exempt from assessment would have an unfair competitive cost advantage when competing with conventionally produced product in the conventional market. In addition, the commenters asserted that exempt organic product in the conventional market would benefit from commodity promotion programs without having contributed to the cost of the promotion program. The commenters recommended the removal of the provision from the 14 programs that currently contain such language to rectify the inequitable situation moving forward.

After further consideration, with the expansion of the organic assessment exemption eligibility requirements in the 2014 Farm Bill to include split operations, any provision in the organic assessment exemption regulations to make allowances for product entering conventional markets in an effort to preserve an applicant's eligibility for the organic assessment exemption will no longer be necessary moving forward. In addition, if perpetuated, the provision could facilitate an unfair competitive environment and negatively impact conventional producers and marketers.

Therefore, for the reasons discussed above, USDA has removed the aforementioned provision from the 14 research and promotion programs that currently have the language in their orders/plans/regulations. As such, as a result of the modifications contained herein, all product that enters a conventional or non-organic market outlet will be subject to assessment in accordance with the respective commodity promotion program's order, plan, or regulation.

Definition of ''Producer'': All of the orders, plans, and/or regulations covered under this rule define the entities that are subject to the regulatory provisions of the program (*e.g.* producer, handler, marketer, processor, manufacturer, feeder, importer, etc.). Many of those orders/plans/regulations have provisions included in such definitions under which entities may be exempt from regulation and/or the payment of assessments.

A number of commenters recommended amending the definition of ''producer'' (also ''handler,'' ''processor,'' and ''importer'') in each of the orders, plans, and/or regulations covered under this rule for a blanket exclusion of participation from all program activities for entities who receive an organic assessment exemption. The commenters believe that entities that are exempt from the payment of assessments should not be allowed to be appointed board members and vote in referenda.

Currently, eight research and promotion programs specify a minimum quantity of product (referred to as the ''de minimis'' amount) that must be produced, handled, processed, or imported for an entity to be required to pay the commodity promotion assessment (7 CFR parts 1160, 1206, 1207, 1208, 1209, 1210, 1215, and 1221). For those programs, entities that produce, handle, process, or import quantities of product below a specified de minimis amount are, by definition, not required to pay assessments. The other research and promotion programs do not have de minimis as part of the definition of regulated entities, but rather within the assessment section of the programs' regulatory provisions.

Entities that are exempt by definition and/or entities that receive an assessment exemption are ineligible for nomination for board membership and for voting in referenda. While an entity operating below the de minimis level may be exempt from assessment provisions of an order/plan/regulation, all regulated entities are required to maintain reports to carry out the provisions of the program.

The Fluid Milk Promotion Program (7 CFR part 1160) is an example of a research and promotion program that specifies a de minimis amount in the definition. The definition specifically states ''the term fluid milk processor shall not include in each of the respective fiscal periods those persons who process and market not more than 3,000,000 pounds of such fluid milk products during the representative month.'' As such, since the provisions of the program only apply to fluid milk processors, and the definition of fluid milk processor does not include entities that process under 3,000,000 pounds of fluid milk a month, an entity that processes less than 3,000,000 pounds of fluid milk a month is not subject to the assessment provisions of the program, but must still report the quantity of fluid milk processed for the representative month of each fiscal period to verify its regulatory status.

An example of a research and promotion program that specifies a de minimis quantity in its assessment regulation is blueberries. A producer under the Blueberry Promotion, Research, and Information Order (7 CFR part 1218) is defined as ''any person who grows blueberries in the United States for sale in commerce, or a person who is engaged in the business of producing, or causing to be produced for any market, blueberries beyond the person's own family use and having value at first point of sale.'' However, any producer who produces less than 2,000 pounds of blueberries annually, and applies for such exemption, is not required to pay assessments. Blueberry producers who produce less than 2,000 pounds of blueberries however continue to be subject to the reports, books, and recordkeeping requirements in the blueberry order.

Since representation on the commodity promotion program boards is already reserved for regulated entities that financially participate in a commodity promotion program, it is unnecessary to amend program definitions. This includes all exemptions under these programs, including organic exemptions. Under existing procedures for the previous more narrowly defined organic exemption, entities that are exempt from paying assessments as a result of the organic exemption cannot participate in the program. This will not change with the expansion of the organic exemption.

Entities subject to the provisions of an order that produce, handle, market, process, manufacture, feed, or import both organic and conventional or nonorganic products (split operations), and are granted an organic assessment exemption are still subject to assessment on their conventional or nonorganic product. Under those circumstances, with the payment of any amount of an assessment, no matter how small, an entity would be eligible to participate in the program's activities.

USDA notes that the commenters' recommendation could only be applied to the research and promotion programs and not Federal marketing orders, as the

organic assessment exemption for Federal marketing orders only applies to the percentage of the assessment that is allocated to fund marketing promotion activities. As such, even entities exempt from marketing promotion assessments on their organic products will be obligated to pay assessments to fund the order's other operational and administrative expenses. As a result, entities regulated under a marketing order, even if exempt from some percentage of assessment, are eligible to participate in the program.

Based on the above, no changes have been made to the regulations as a result of the comments submitted.

Determination of ''Marketing Promotion Activities'' Under Commodity Promotion Laws:

Under the FAIR Act, a ''commodity promotion law'' is defined as ''a Federal law that provides for the establishment and operation of a promotion program regarding an agricultural commodity that includes a combination of promotion, research, industry information, and/or consumer information activities, is funded by mandatory assessments on producers or processors, and is designed to maintain or expand markets and uses for the commodity'' (7 U.S.C. § 7401(a)). The FAIR Act further establishes that the exemption of certified organic products from commodity promotion program assessments be limited to ''the payment of assessments under a commodity promotion law.''

When the organic assessment exemption was first established as a result of 2002 Farm Bill amendments to the FAIR Act, USDA interpreted the law to apply to all of the activities of all established and future commodity promotion programs created ''under a commodity promotion law,'' as defined. Therefore, USDA amended all of the research and promotion programs' plans, orders, and/or regulations to exempt entities that were solely 100 percent certified organic from payment of the entire amount of a program's assessment.

However, regarding Federal marketing orders, USDA interpreted the FAIR Act to only apply to expenditures directly related to marketing promotion activities under a marketing order. Under 7 U.S.C. 7401(a)(1), the definition of ''commodity promotion law'' specifically narrows the term, as it relates to marketing order programs, to just include ''the marketing promotion provisions under section 8c(6)(I) of the Agricultural Adjustment Act (7 U.S.C. 608c(6)(I)).'' Therefore, in the establishment of the organic assessment exemption regulations for Federal marketing orders in § 900.700(a), USDA defined the term ''marketing promotion'' to mean ''marketing research and development projects, and marketing promotion, including paid advertising, designed to assist, improve, or promote the marketing, distribution, and consumption of the applicable commodity.'' Under § 900.700(d), the organic assessment exemption is not applicable to the portion of assessment that directly funds the other authorized activities of a marketing order, such as minimum quality regulation, mandatory inspection, container requirements, volume control, or production research.

A number of commenters submitted comments regarding the application of the organic assessment exemption to production research. Some of the commenters believe that the assessments allocated to fund production research projects under a research and promotion program should not be subject to an organic assessment exemption. The commenters believe that production research has applicability to all production within a commodity's industry and that organic entities should contribute to the cost along with other entities. In a contrary position, many commenters believe that all research, both production and marketing oriented, has no benefit to the organic industry and that the organic industry should not be expected to fund it. Commenters from both sides of the issue submitted proposed changes to be made to the regulations.

USDA believes that the provisions of the FAIR Act have been properly applied under both Federal marketing orders and research and promotion programs. Therefore, no changes have been made to the regulations as a result of the comments.

Reporting Requirement and Safeguard Issues

Revised Reporting Requirements: All of the Federal marketing orders and research and promotion orders, plans, and/or regulations contain reporting requirements for the administration of the organic assessment exemption. The current application form necessary for obtaining an organic assessment exemption requires, among other things, that the applicant list all of the commodities that an applicant produces, handles, markets, processes, manufacturers, feeds, or imports. The applicant must also certify that all of the commodities listed are certified 100 percent organic, even for commodities other than the commodity for which the exemption is requested. This has been the method employed by USDA to ensure that an operation produced and marketed ''solely 100 percent organic products'' as required by the FAIR Act prior to the 2014 Farm Bill amendment. This requirement translated into a significant amount of the time required by entities to fill out the current organic assessment exemption request form.

The 2014 Farm Bill amendment to the FAIR Act expanded the eligibility criteria for organic assessment exemptions to allow split operations, which are entities that produce, handle, market, process, manufacture, feed, or import organic and conventional or nonorganic products within the same business operation. The FAIR Act amendment renders the current reporting requirement for full disclosure of all commodities produced, handled, marketed, processed, manufactured, fed, or imported by an entity unnecessary moving forward, as an applicant no longer has to show that they are an exclusively organic operation to be granted an organic assessment exemption. As such, the current organic assessment exemption application requirements in the regulations have been revised to remove the requirement that lists all of an entity's commodities on the organic assessment exemption application form.

In addition, as a result of the modified reporting requirements contained in the regulations, the current approved organic assessment exemption request forms, Forms AMS–15 and FV–649, will be modified accordingly. A more detailed discussion regarding the changes to these forms can be found under the Paperwork Reduction Act heading below.

Many commenters supported the reduction in reporting requirements that resulted from this rule. They believed that reducing the paperwork burden on organic entities, many of which are small, would benefit the organic industry. However, while the commenters believed that the reduction in required documentation was a positive step, they recommended abandoning the annual reapplication requirement to reduce further the paperwork burden on organic entities. They suggest only requiring an entity submit an initial application for an organic assessment exemption and, if so granted, making the exemption perpetual. Additionally, several commenters recommended tying the organic assessment exemption to the organic certificate that is issued under the NOP by a USDA-accredited certifying agent to a certified organic operation, thus continuing eligibility for the organic assessment exemption until the applicant either surrenders their exemption rights or ceases to operate

organically. One commenter proposed that greater synergy between the USDA–AMS National Organic Program (AMS–NOP) and the commodity promotion programs could effectuate the accountability necessary for perpetual exemptions moving forward. One option offered by the commenter was the utilization of the AMS–NOP database by commodity promotion programs to safeguard assessment exemptions. Another commenter suggested requiring AMS–NOP to establish, maintain, and provide access to a ''revoked or relinquished list'' of operations that have lost organic certification that Federal marketing orders and research and promotion programs could use to facilitate the monitoring and administration of an exempt entity's perpetual status.

A number of other commenters support increasing the reporting requirements to ensure compliance under the expanded organic assessment exemption. Under the modified provisions effectuated herein, split operations will now be allowed to request and receive organic assessment exemptions. As such, entities with some organic products and some conventional or nonorganic products will be allowed to request an assessment exemption on the organic portion of the products they produce or market. Several commenters recommended increasing the reporting requirements for these split operations to accurately account for the quantity of product that will continue to be subject to assessment. They believe that requiring applicants to disclose both the anticipated quantities of organic product and conventional or nonorganic product that the entity expects to produce, handle, market, process, manufacture, feed, or import will aide in maintaining the integrity of each program.

USDA believes that information collection is an important part of every commodity promotion program in general, and is integral to the oversight of the organic assessment exemption under each of those commodity promotion programs specifically. USDA agrees with the commenters that recommended increasing the information collection regarding the commodity research and promotion programs and will further revise Form AMS–15 accordingly. On the request form, applicants will be required to self-identify split operations and estimate the assessable and non-assessable quantities of product for the year. Specifically, applicants must report the estimated total quantity of product that the applicant expects to produce, handle, market, process, manufacture, feed, or import; the estimated quantity of product that will be certified organic; and the estimated quantity of product that will be conventional or nonorganic.

In addition, if needed, all commodity promotion programs have the ability, within their orders, plans, and/or regulations, to modify their reporting requirements outside the scope of the organic assessment exemption request form. If additional information is deemed necessary to administer a commodity promotion program and ensure its integrity with respect to the organic assessment exemption, the respective board/committee/council could initiate rulemaking to that effect.

USDA also believes that it is necessary to require applicants to submit an application annually for the proper administration of the organic assessment exemption by the boards/committees/councils. The oversight of organic assessment exemptions will necessitate the collection and retention of current and accurate information regarding the exempted entities. Reliance on AMS–NOP to facilitate the collection and dissemination of information needed by the commodity promotion programs to administer the organic assessment exemption, as suggested by commenters, is not practical at this time.

Therefore, in light of the above discussion, Form AMS–15 will be further revised to require the necessary information for commodity research and promotion programs to properly administer the organic assessment exemption. No additional changes will be made to Form FV–649 for Federal marketing orders and no changes will be made to the regulations as proposed.

Safeguard Provisions: All of the Federal marketing orders and research and promotion programs affected by this rule have safeguards built into their regulations to facilitate compliance. The provisions most often employed by commodity promotion programs are reporting requirements, auditing authority, and civil penalties for noncompliance. The combination of these provisions is what would be utilized by the boards/committees/councils to safeguard the organic assessment exemption provisions of a program.

A number of commenters submitted recommendations for safeguarding the organic assessment exemption against abuse. Some commenters suggested mandatory audits of firms that are granted an organic assessment exemption. Other commenters suggested including on the exemption request form explicit detail of the potential penalties for the fraudulent use of an organic assessment exemption (*e.g.* ''The making of any false statement or representation on this form, knowing it to be false, is a violation of Title 18, Section 1001 United States Code, which provides for the penalty of a fine of $10,000 or imprisonment of not more than five years, or both.''). Other recommendations included requiring AMS–NOP to submit information regarding exempt parties to the commodity promotion programs for reconciliation with reports submitted directly by the exempt parties to the program.

USDA will be adding a statement regarding the potential penalties for fraudulent use of an organic assessment exemption language to Form AMS–15 in an effort to make it more consistent with other exemption forms. This is in addition to the other revisions concerning the estimated amount of product produced, handled, marketed, processed, manufactured, fed, or imported with an estimated quantity of organic and conventional or nonorganic product. The other safeguard provisions currently contained in the regulations (recordkeeping, reporting, and audit requirements) are adequate for ensuring compliance in the collection of assessments from conventional or nonorganic entities.

Administrative and Procedural Issues

A number of commenters recommended that the regulations be modified to clearly state that organic producers, handlers, marketers, processors, manufacturers, feeders, and importers that are eligible for an organic assessment exemption are not obligated to apply for one and that they may voluntarily continue to fund a commodity promotion program.

USDA does not believe that the inclusion of a clause of this nature in the regulations, or on any form, is necessary, as an organic assessment exemption requires that an applicant submit an application to become eligible. The default for an entity subject to regulation is to pay assessments on all products produced, handled, marketed, processed, manufactured, fed, or imported, even entities that produced, handled, marketed, processed, manufactured, fed, or imported organic products. Therefore, no changes to the regulations will be made as a result of this recommendation.

Two commenters submitted comments regarding the financial impact that an organic assessment exemption will have on a commodity promotion program's ability to operate. The commenters believe that the

assessment exemption will force programs to cut back on operations or increase assessment rates.

This action has been undertaken in response to a Congressional mandate and is not discretionary. Two commenters recommended that language be added to the organic assessment exemption regulations for each program to specify that the exemption is only from Federal program assessments and that organic entities must still participate in, and pay assessments to, any state and regional commodity promotion programs that may exist.

USDA does not control state or regional commodity promotion programs. Furthermore, USDA does not address such programs in Federal regulations to maintain a clear separation of jurisdictions, authorities, and powers. However, USDA acknowledges that some state and regional commodity promotion programs work in concert with Federal programs. As such, USDA will encourage the boards/committees/councils that oversee the Federal commodity promotion programs to remind entities that request a Federal organic assessment exemptions that there may be state and regional commodity promotion program assessments that are not exempted as part of a Federal program exemption.

One commenter sought confirmation that all future Federal marketing orders and research and promotion programs established after the effective date of this rule would include an organic assessment exemption similar to the provisions contained herein.

Any new Federal marketing order established under the AMAA would be subject to the provisions of § 900.700. In addition, the FAIR Act provides that the organic assessment exemption be applied to any commodity promotion law. The definition of ''commodity promotion law'' in the FAIR Act is extended to ''any other provision of law enacted after April 4, 1996, that provides for the establishment and operation of an agricultural commodity promotion program.'' Therefore, the commenter can reasonably expect that all existing and future commodity promotion programs will have an organic assessment exemption provision similar to that which is contained herein. However, should an organic research and promotion program be established in the future, entities that are currently exempt from payment of commodity promotion program assessments under an organic exemption may be subject to the assessment provisions of an organic research and promotion order.

One commenter stated that the proposed rule did not define, and was not consistent in the use of, the term ''split operation.'' The term ''split operation'' is found in the current regulatory provisions of each order, plan, and/or regulation modified by this rule. The term is used interchangeably throughout this rule to describe an entity that produces, handles, markets, processes, manufactures, feeds, or imports organic products, but also produces, handles, markets, processes, manufactures, feeds, or imports conventional or nonorganic products of the same or different agricultural commodities. USDA does not believe that a separate definition of ''split operation'' is necessary in the regulations.

A commenter questioned the language regarding the eligibility of importers to claim an organic assessment exemption. The commenter recommended adding language to the proposed regulations to reflect that products certified as ''organic'' and ''100 percent organic'' under U.S. equivalency arrangements established under the NOP were also eligible for the exemption. Language to that effect has been added to each of the programs' regulations that assess importers (7 CFR parts 1150, 1205, 1206, 1207, 1208, 1209, 1210, 1212, 1214, 1217, 1218, 1219, 1221, 1222, 1230, and 1260).

One commenter suggested that several of the provisions contained in each the various programs are applied inconsistently. Specifically, the commenter believes that the regulations concerning the timeframe that a commodity promotion program board/committee/council has to approve/disapprove an application, how exempt individuals demonstrate their exemption to other parties, and the effective date of the exemption should be consistent among all programs.

USDA believes that the regulations are as uniform as possible within the unique provisions in each of the various commodity promotion program orders, plans, and/or regulations. Variations in fiscal periods, assessment collection procedures, regulated entities, and other factors specific to a program make it difficult to achieve complete consistency across all programs. Therefore, no changes have been made as a result of these comments.

Three commenters believe that entities that have been granted an organic assessment exemption should be required to disclose their exempt status to the parties that purchase their product. The commenters have observed that the market price of a commodity often has a built in premium to account for payment of an assessment to a commodity promotion program and, by not disclosing an organic entity's exemption status, an unfair economic advantage could occur. To address commenters concerns, AMS will amend the current footnote contained in the Federal milk marketing order Class I price announcement related to the Fluid Milk Promotion Order (7 CFR part 1160). Currently the footnote reads, ''If fluid milk processors market less than 3,000,000 pounds per month of fluid milk products in consumer packages, they are exempt from paying the 20 cents per hundredweight assessment.'' USDA will include new language on the Class I price announcements indicating organic fluid milk processors may be exempt from the fluid milk assessment.

One commenter had concerns about the organic assessment exemption regulations and how they are applied to imported products. The commenter did not feel that the regulations, as proposed, were clear on the issuance of Harmonized Tariff Schedule (HTS) codes for imported products, whether or not U.S. Customs and Border Protection (Customs) would first collect then reimburse the assessment, and how a commodity promotion program board/committee/council would be able to identify and differentiate exempt from non-exempt product. USDA has drafted the regulations to align with current Customs practices. Some agricultural commodities have HTS codes assigned to organically produced product and some do not. As such, some products may be imported under an HTS code that applies the organic assessment exemption directly as the product enters the U.S. and could, therefore, bypass the collection of assessments by Customs. Other commodities may not have an HTS code assigned to organically produced product and the assessment may have to be collected from, and then subsequently reimbursed to, an exempt importer. The procedures for such reimbursements are addressed in each of the research and promotion program plans/orders/regulations.

Therefore, USDA does not believe that the regulations, as proposed, should be changed as a result of this comment. However, the regulations contained herein could be amended in the future to reflect any operational changes from Customs that would make the application of the organic assessment exemption more efficient regarding imported product.

Several commenters expressed concern that extending the organic assessment exemption to split

operations would lead to confusion as to how the exemption will be applied when it coincides with a program's minimum quantity provisions. They believed that some entities may inaccurately apply both exemption provisions and result in an underpayment or nonpayment of assessments.

First, USDA would like to reiterate that the commenters' concerns may only be directed to the provisions of the 22 research and promotion programs, as no Federal marketing order contains a de minimis provision in its definition of ''handler''. Next, the comments only pertain to the 8 programs that have de minimis amounts in their definition of the entities that are subject to the provisions of the order/plan/regulation (7 CFR parts 1160, 1206, 1207, 1208, 1209, 1210, 1215, and 1221). Therefore, with regards to the research and promotion programs with de minimis quantities, USDA would like to clarify how the organic assessment exemption will be applied under each of those programs.

To be eligible for an organic assessment exemption, an entity must first be subject to assessment under an order/plan/regulation. This means that the total quantity of a program commodity that an entity produces, handles, markets, processes, manufactures, feeds or imports is greater than the de minimis amount specified in the definition of entities subject to the provisions of the order/plan/regulation. In determining the total quantity, USDA considers all organic, conventional, and nonorganic product in the aggregate, as the provisions of each order/plan/regulation cover all of the commodity produced, handled, marketed, processed, manufactured, fed, or imported, regardless of production method employed in producing those products.

If an entity is subject to assessment after applying the de minimis amount on a total volume basis, then the quantity of organic product that the entity produces, handles, markets, processes, manufactures, feeds, or imports may be considered for an organic assessment exemption. Should the entity be a split operation, the entity would be obligated to pay assessments on the portion of the entity's product that is conventional or nonorganic, regardless of whether or not the quantity of conventional or nonorganic product is below the de minimis amount after exempting the organic product. Once the threshold for being subject to an order/plan/regulation has been met on a total product basis, the entity is subject to the provisions of the program and must pay assessments on any nonexempt product.

In summary, the determination of whether or not an entity is subject to the provisions of an order/plan/regulation comes before any determination of whether or not the entity may be exempt from any of those provisions, including assessment. Simply put, an entity cannot be exempted from a provision that it is not subject to. Further, the approval of an assessment exemption for some or all of an entity's assessable product under an order/plan/regulation cannot be construed as a reduction in the total quantity of product produced or marketed by that entity. The quantity of product on which an assessment exemption is granted cannot be deducted from the entity's total quantity and retroactively be applied to the de minimis amount established under the order/plan/regulation to determine whether or not the entity is subject to the provisions of that order/plan/regulation.

For example, the de minimis quantity for processors under the Popcorn Promotion, Research, and Consumer Information Order (7 CFR part 1215) is 4 million pounds annually. If a popcorn processor processes 6 million pounds annually, the processor is subject to the provisions of the order and is required to pay assessments on the 6 million pounds. If 4 million pounds of the 6 million pounds total are certified organic, the processor may request an organic assessment exemption on those 4 million pounds. However, the processor must pay the assessment on the remaining 2 million pounds, even though that quantity, by itself, would be below the de minimis quantity in the definition of a popcorn processor. The application of the minimum quantity provisions that determine what is subject to an order/plan/regulation are applied prior to the application of any assessment exemption and are not affected by the same after the fact.

Lastly, several commenters requested a delay, up to 120 days, in the implementation of the revised organic assessment exemption provisions to ensure that the expanded organic exemption provisions are implemented consistently and accurately throughout all Federal marketing orders and research and promotion program boards/committees/councils. USDA has reviewed the remittance and exemption procedures of each commodity promotion program and recognizes that there are differences in the timelines that each commodity promotion program board/committee/council follows. USDA recognizes that an implementation date of 90 to 120 days would be optimal. However, USDA also recognizes the significance of the Farm Bill revisions and has determined that an implementation date of 60 days is appropriate.

Organic Commodity Promotion Order

Section 10004 of the 2014 Farm Bill includes a provision stating that the organic assessment exemption is effective until the date the Secretary issues an organic commodity promotion order under the Commodity Promotion, Research, and Information Act of 1996 (7 U.S.C. 7411–7425). The promulgation of an organic commodity promotion order was also authorized under section 10004 of the 2014 Farm Bill.

The implementation of an organic commodity promotion order would follow the same process as other commodity promotion orders overseen by USDA; the industry submits a proposal for an order that contains analysis, justification, objectives, impact on small businesses, evidence of industry support, and the text of the proposed order. USDA would then review and publish the proposed order in the **Federal Register** for public comment. If, after reviewing the comments, USDA concludes the order has merit and meets legislative intent, a referendum would be announced and conducted. If the program was approved by industry voters, a final rule would be issued to implement the program.

In May 2015, USDA received an industry proposal for an organic commodity promotion order. USDA is currently reviewing the proposal.

Marketing Order Programs

The FAIR Act organic exemption amendment, as enacted by the 2014 Farm Bill, covers 23 marketing order programs established under the AMAA (Florida citrus—7 CFR part 905; Texas citrus—7 CFR part 906; Florida avocados—7 CFR part 915; Washington apricots—7 CFR part 922; Washington sweet cherries—7 CFR part 923; Southeastern California grapes—7 CFR part 925; Oregon/Washington pears—7 CFR part 927; Cranberries grown in the States of Massachusetts, *et al.*—7 CFR part 929; Tart cherries grown in the States of Michigan, *et al.*—7 CFR part 930; California olives—7 CFR part 932; Colorado potatoes—7 CFR part 948; Georgia Vidalia onions—7 CFR part 955; Washington/Oregon Walla Walla onions—7 CFR part 956; Idaho-Eastern Oregon onions—7 CFR part 958; Texas onions—7 CFR part 959; Florida tomatoes—7 CFR part 966; California almonds—7 CFR part 981; Oregon-Washington hazelnuts—7 CFR part 982; California walnuts—7 CFR part 984; Far

West spearmint oil—7 CFR part 985; California dates—7 CFR part 987; California raisins—7 CFR part 989; and California dried prunes—7 CFR part 993).

Federal marketing orders are locally administered by committees made up of producers and/or handlers, and often members of the public. Marketing order regulations, initiated by industry and enforced by USDA, bind the entire industry in the geographical area regulated once they are approved by the Secretary of Agriculture. Marketing orders employ one or more of the following authorities: (1) Maintain the high quality of produce available to the market; (2) standardize packages and containers; (3) regulate the flow of product to market; (4) establish reserve pools for storable commodities; and (5) authorize production research, marketing research and development, and advertising. Each unique marketing order helps to promote orderly marketing for the specific commodity and region covered by the regulation.

The 23 specific marketing order programs listed above allow for market promotion activities designed to assist, improve, or promote the marketing, distribution, or consumption of the commodity covered under each specific marketing order. Some of these programs also authorize market promotion in the form of paid advertising. Promotion activities, including paid advertising, are paid for by assessments levied on handlers regulated under the various Federal marketing orders.

Rules of practice and regulations governing all Federal marketing orders established under the AMAA are contained in 7 CFR part 900 General Regulations. Section 900.700 specifies the criteria for identifying persons eligible to obtain an assessment exemption for marketing promotion activities, including paid advertising; procedures for persons to apply for an exemption; procedures for calculating the assessment exemption; and other procedural details pertaining to the 23 marketing order programs that currently engage in, or have the authority for, marketing promotion, including paid advertising.

Currently under those provisions, only handlers that exclusively handle or market products that are eligible to be labeled ''100 percent organic'' are exempt from the portion of a marketing order assessment applicable to an order's marketing promotion activities, including paid advertising. As such, organic handlers who handle or market any quantity of conventional or nonorganic products in addition to their organic products are not currently able to claim an assessment exemption on any of the products they handle. The 2014 Farm Bill expanded the organic exemption in the FAIR Act to allow all organic handlers to apply for an exemption from assessments on products certified as ''organic'' or ''100 percent organic,'' regardless of whether the handler also handles or markets conventional or nonorganic products.

This final rule modifies the organic assessment exemption eligibility criteria contained in § 900.700. The requirements contained in that section will be revised to allow organic operations that are split operations to apply for and receive an assessment exemption on their certified ''organic'' and ''100 percent organic'' products, whereas such types of operations are explicitly precluded from the organic assessment exemption under the current language. More specifically, the eligibility provisions contained in § 900.700(b) will be modified to include certified organic handlers that maintain split operations. The section will also be amended to provide that exempt handlers must continue to pay assessments associated with any agricultural products that do not qualify for an exemption under that section.

Handlers who wish to claim the assessment exemption on their organic products will continue to be required to submit an application to the board or committee, and subsequently be approved, to qualify for the organic exemption. However, as a result of the revised eligibility requirements contained herein, the specific information that will be collected from applicants will change. Some of the information collection that is currently necessary for the board or committee to administer the organic assessment exemption will no longer be required moving forward (*e.g.* detail of all commodities handled by the entity to ensure it is a 100 percent organic operation). As such, § 900.700(c) will be modified to reflect these changes.

Research and Promotion Programs

The FAIR Act organic exemption amendment contained in the 2014 Farm Bill also covers 22 research and promotion programs established under either freestanding legislation (beef, cotton, dairy, eggs, fluid milk, Hass avocados, mushrooms, popcorn, pork, potatoes, soybeans, and watermelons) or the Commodity Promotion, Research, and Information Act of 1996 (blueberries, Christmas trees, honey, lamb, mangos, paper and paper-based products, peanuts, processed raspberries, softwood lumber, and sorghum).

Wholly funded and operated by industry, the research and promotion programs are charged with creating, maintaining, and expanding markets for the agricultural commodities they represent. While these programs are overseen by AMS, including the review of all financial budgets, marketing plans, and research projects, they are governed by boards and councils made up of industry participants. Producers, handlers, processors, manufacturers, feeders, importers, and/or others in the marketing chain pay assessments to the representative boards and councils to fund each program's activities. Industries voluntarily request the formation of these programs, which allows them to establish, finance, and execute coordinated programs of research, producer and consumer education, and generic commodity promotion to improve, maintain, and develop markets for their respective commodities.

Under this final rule, the eligibility criteria for obtaining an organic assessment exemption, as contained in each of the research and promotion orders, plans, and/or regulations, will be revised. The requirements for such an exemption will be modified to allow split organic operations to apply for and receive an assessment exemption on their certified ''organic'' and ''100 percent organic'' products, whereas such types of operations are explicitly precluded from the assessment exemption under the current provisions in each program. In addition, language will be added to provide that exempt producers, handlers, marketers, processors, manufacturers, feeders, or importers must continue to pay any assessments associated with any agricultural products that do not qualify for an exemption.

Persons who wish to claim the assessment exemption on their organic products will continue to be required to submit an application to the board or council, and subsequently be approved, to qualify for the organic exemption. However, as a result of the revised eligibility requirements contained herein, the specific information that will be collected from applicants will change. Some of the information collection that is currently necessary for the board or council to administer the organic assessment exemption will no longer be required moving forward (*e.g.* detail of all commodities produced, handled, marketed, processed, manufactured, fed, or imported by the entity to ensure it is a 100 percent organic operation). In addition, some

new information will be required of split operations to ensure compliance under the expanded exemption (*e.g.* declaration of split operation; estimated amount of organic product that will be produced, handled, marketed, processed, manufactured, fed, or imported by the split operation; and estimated total quantity of product that will be produced, handled, marketed, processed, manufactured, fed, or imported by the split operation). As such, additional modifications will be made to Form AMS–15, Organic Exemption Request Form, to account for split operations. However, no changes to the section of each order, plan, and/or regulation that specifies the information collection requirements for the organic assessment exemption will be made.

Who is eligible for exemption under a marketing order?

This final rule will modify the eligibility requirements for organic assessment exemptions that are currently in place for marketing order programs. Under this action, persons who are subject to an assessment under a designated marketing order, who maintain a valid organic certificate, and who handle any assessable agricultural commodities that are certified as ''organic'' or ''100 percent organic'' (as defined in the NOP) will be eligible for the organic assessment exemption under amended requirements in part 900.

All of the 23 Federal marketing orders impacted by this rule assess only handlers (*i.e.,* persons that handle the regulated commodity) to fund the operations of the respective programs. Under the current organic assessment exemption regulation, which was promulgated as a result of the provisions in the 2002 Farm Bill that amended the FAIR Act, to qualify for an exemption from a commodity promotion assessment, a person—meaning an individual, group of individuals, corporation, association, cooperative, or other business entity—must ''produce and market'' solely 100 percent organic products, and must not also produce or market any conventional or nonorganic products. For the purpose of that regulation, ''produce'' was defined as to grow or produce food, feed, livestock, or fiber or to receive food, feed, livestock, or fiber and alter that product by means of feeding, slaughtering, or processing. USDA determined that handlers, processors and producers acting as handlers, and importers were also eligible for exemption if any of their activities met the definition of ''produce'' as outlined above. Additionally, the regulation only provided for granting organic assessment exemptions to persons that handle domestic commodities regulated under Federal marketing orders and not importers, as importers regulated under section 608e of the AMAA (7 U.S.C. 608e–1) (section 8e) do not pay assessments. Therefore, importers are not eligible for an organic assessment exemption under part 900.

The 2002 Farm Bill amended the FAIR Act to make organic assessment exemptions available to any person that ''produces and markets'' organic products, should they also conform to certain other criteria. This rule will incorporate the broadened eligibility criteria established by the 2014 Farm Bill amendment to the FAIR Act into the regulations. Importers of commodities covered by section 8e of the Agricultural Marketing Agreement Act of 1937 will remain ineligible for an exemption as importers do not pay assessments under marketing order programs.

In addition, the FAIR Act amendment also expanded eligibility to cover split organic operations. The requirement that operations be ''solely'' 100 percent organic was replaced with the requirement that operations maintain a ''valid organic certificate'' issued under the Organic Foods Production Act of 1990 (7 U.S.C. 6501–6522) (OFPA) and the NOP. Handlers who handle certified ''organic'' and/or ''100 percent organic'' products will qualify for an organic assessment exemption regardless of whether the commodity subject to the exemption is handled by a person that also handles conventional or nonorganic agricultural products of the same commodity as that for which the exemption is claimed.

Examples

For all examples, assume that the person handles or markets a commodity regulated under a marketing order, is otherwise obligated to pay assessments under that order, and that 60 percent of the marketing order's budgeted expenses are attributed to market promotion activities, including paid advertising:

- A handler who handles all of their volume as certified ''organic'' or ''100 percent organic'' product (received from certified organic producers), and maintains a valid organic certificate under the NOP, will be eligible for an organic assessment exemption. The handler will be exempt from 100 percent of the portion of the marketing order assessment attributed to marketing promotion activities (60 percent). The handler will be obligated to pay 40 percent of the assessment rate on 100 percent of the product handled. The assessment calculation will be: Quantity handled × 40 percent of the assessment rate.
- A handler who handles 20 percent of their volume as certified ''organic'' or ''100 percent organic'' product (received from certified organic producers) and maintains a valid organic certificate under the NOP will be eligible for an organic assessment exemption. The handler will be exempt from the portion of the marketing order assessment attributed to marketing promotion activities (60 percent) on the quantity of the products handled that are organic (20 percent). Conversely, the handler will be obligated to pay 40 percent of the assessment rate on 20 percent of the product handled and 100 percent of the assessment rate on 80 percent of the product handled. The assessment calculation will be: (Quantity handled × 20 percent × 40 percent of the assessment rate) + (quantity handled × 80 percent × assessment rate).
- A handler who handles 20 percent of their volume as ''organic'' or ''100 percent organic'' received from certified organic producers, but does NOT maintain a valid organic certificate under the NOP, will NOT be eligible for any exemption of their marketing order assessments as they do not have proper certification. The handler will be obligated to pay 100 percent of the assessment associated with the quantity of product handled.
- An importer who imports a commodity that is subject to import regulation under section 8e will NOT be eligible for an exemption from marketing order assessments as importers are not obligated to pay assessments under a marketing order or the import regulations.

Who is eligible for exemption under a research and promotion program?

Just as for Federal marketing orders, this final rule will modify the eligibility requirements for organic assessment exemptions that are currently in place for research and promotion programs. Under this proposed action, persons who are subject to an assessment under a designated research and promotion program, who maintain a valid organic certificate, and who handle any assessable agricultural commodities that are certified as ''organic'' or ''100 percent organic'' (as defined in the NOP) will be eligible for an organic assessment exemption under amended requirements contained in each of the programs' respective orders, plans, and/or regulations. Persons who are importing organic products in compliance with a U.S. equivalency arrangement established by AMS–NOP

pursuant to OFPA and the NOP regulations will also be eligible for an organic assessment exemption.

For the 22 research and promotion programs currently enacted, 16 assess producers, 2 assess handlers, 2 assess manufacturers, 2 assess processors, and 16 assess importers. Under the provisions for each of the respective programs, some also assess other entities, in addition to the named classes, including exporters, feeders, and seed stock producers. Any of the entities obligated to pay assessments under one of the aforementioned programs is eligible for an organic assessment exemption.

Under the current regulation, organic assessment exemptions are available to any person who ''produces or markets solely 100 percent organic products'' and conforms to certain requirements. As mentioned previously, the recent amendment to the FAIR Act expands the organic assessment exemption eligibility to any person that ''produces, handles, markets, or imports'' organic products under a ''valid organic certificate'' issued under the OFPA and the NOP. This final rule will remove the ''solely 100 percent organic'' requirement currently in the regulations and allow split operations to request an organic assessment exemption for all products that qualify as certified ''organic'' and ''100 percent organic.'' Also, just as for Federal marketing orders, ''person'' will continue to mean any individual, group of individuals, corporation, association, cooperative, or other business entity engaged in any of the aforementioned activities.

Examples

For all examples, assume that the person produces, handles, processes, or imports a commodity regulated under a research and promotion program and is otherwise obligated to pay assessments under that order:

- A producer who maintains a valid organic certificate under the NOP and markets 100 percent of the products they produce as certified ''organic'' or ''100 percent organic'' will be eligible for an organic exemption on 100 percent of the quantity produced.
- A handler who maintains a valid organic certificate under the NOP and handles 20 percent of the products they handle as certified ''organic'' or ''100 percent organic'' products will be eligible for an organic exemption on 20 percent of the total quantity they handle. Conversely, the handler will continue to be obligated to pay the full assessment on the 80 percent of the total quantity they handle that is not ''organic'' or ''100 percent organic.'' The assessment calculation will be: Quantity produced × 80 percent × assessment rate.
- A producer who has a split operation (50 percent organic and 50 percent conventional or nonorganic) with the combined total of production above the de minimis amount and maintains a valid organic certificate under NOP for the 50 percent organic product will be eligible for an exemption on the organic portion, but must pay on the 50 percent conventional or nonorganic portion—even though the remaining conventional or nonorganic portion is below the de minimis amount.
- A processor who processes 20 percent of their volume as ''organic'' or ''100 percent organic'' products received from certified organic producers, but does NOT maintain a valid organic certificate under the NOP, will NOT be eligible for any exemption of their assessment obligation as they are NOT a certified handling operation. The processor will be obligated to pay 100 percent of the assessment associated with the quantity of product they processed and marketed.
- An importer who maintains a valid organic certificate under the NOP and markets the products that they import as organic products, but the producers of the products are NOT certified under the NOP, will be eligible for an organic assessment exemption if the product is certified as ''organic'' or ''100 percent organic'' under a U.S. equivalency arrangement established under the NOP.

Final Regulatory Flexibility Act Analysis

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), AMS is required to examine the impact of this final rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Accordingly, AMS has considered the economic impact of this action on small entities and has prepared this final regulatory flexibility analysis.

Analysis of Marketing Order Programs

Marketing orders issued pursuant to the AMAA, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

Assessments under marketing order programs are paid by the handlers regulated under each of the Federal marketing orders. There are approximately 950 handlers regulated under the 23 Federal marketing orders with market promotion authority (there are 28 marketing orders total—5 do not have authority for market promotion activities). Currently, only 10 entities handle or market solely 100 percent organic products and claim exemptions from paying assessments for market promotion activities, including paid advertising, under the assessment exemption regulations contained in § 900.700. USDA believes that as many as 20 percent of the entities handling agricultural products under the various marketing orders (approximately 190 firms) may handle some quantity of organic products, but do not qualify for an assessment exemption under the current regulations.

Small agricultural service firms are defined by the Small Business Administration (SBA) as those having annual receipts of less than $7,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000 (13 CFR 121.201). All of the entities currently approved for an organic assessment exemption under the marketing order programs would be classified by SBA as small agricultural service firms. In addition, although the exact number of potential applicants is unknown, USDA believes that many of the entities that will become eligible for an organic assessment exemption as a result of this action may also be classified as small firms under the SBA classification.

As previously mentioned, Section 501 of the FAIR Act was amended by the 2002 Farm Bill to exempt persons that produced and marketed solely 100 percent organic products, and were not split operations, from the payment of an assessment for commodity promotion activities under a commodity promotion law. The amendment required the Secretary to promulgate regulations with regard to the eligibility and compliance of such organic assessment exemptions. AMS subsequently added § 900.700 to the General Regulations (7 CFR part 900) governing Federal marketing orders to establish the criteria and procedure for obtaining an organic assessment exemption.

On February 7, 2014, the FAIR Act was again amended by the 2014 Farm Bill to broaden the eligibility criteria for receiving an organic assessment exemption under a commodity promotion program. Specifically, the 2014 Farm Bill amendment to the FAIR Act exempts persons that produce, handle, market, or import products certified as ''organic'' or ''100 percent organic'' from payment of assessments under a commodity promotion program. The exemption applies regardless of

whether a producer, handler, marketer, or importer also produces, handles, markets, or imports conventional or nonorganic products. The statute further requires the Secretary to promulgate regulations under each of the commodity promotion programs to implement the amendment.

As required, USDA is amending the general regulations that will affect 23 of the 28 Federal marketing orders that have authority for market promotion, including paid advertising. These amendments modify the current provisions and broaden the eligibility for organic handling operations to become exempt from paying assessments on the certified ''organic'' and ''100 percent organic'' products that they handle, regardless of whether the handler is a split operation.

The 23 marketing order programs affected by this final rule allow for promotion activities designed to assist, improve, and promote the marketing, distribution, or consumption of the commodities covered under the marketing orders. Some of the orders also include authority for paid advertising. Expenses necessary to administer the programs are paid for by assessments levied on handlers regulated under the various marketing orders. Market promotion activities, including paid advertising, are only one component of each marketing order's regulatory scheme. The assessment exemption for organic products only applies to the portion of a marketing order assessment that is associated with market promotion activities, including paid advertising. All handlers subject to regulation under a marketing order are obligated to pay the portion of the assessment that is not directly related to market promotion, including paid advertising. This includes handlers who are granted an organic assessment exemption.

Under this final rule, § 900.700 is amended to broaden the criteria for persons eligible to obtain an assessment exemption for marketing promotion, including paid advertising; streamline the procedure for applying for an exemption; modify the procedure for calculating the assessment exemption; and revise other procedural details necessary to effectuate the 2014 Farm Bill amendment. These changes will allow more handlers to qualify for an organic assessment exemption than are presently eligible under the current regulations.

Regarding the impact on affected entities under a marketing order, this final rule will impose minimal incurred costs in filing the exemption application and in maintaining records needed to verify the applicant's exemption status during the period that the entity is exempt. Under the revised regulations, applicants will still be required to submit an application for exemption on Form FV–649 and receive approval from the applicable board or committee to obtain the assessment exemption. However, the eligibility criteria has been broadened and the amount of documentation required of an applicant has been reduced, thus reducing the burden on entities who wish to participate. Applicants will continue to submit one application annually. The annual burden associated with requests for organic assessment exemptions for all of the marketing order industries is estimated to total 47.5 hours (190 applicants × 15 minutes) (see the Paperwork Reduction Act section below for greater explanation of the information collection and recordkeeping burden).

The total estimated cost burden associated with the information collection is estimated to be $712, or $3.75 per applicant. The total cost was estimated by multiplying the expected burden hours associated with the organic exemption application (47.5 hours) by $15.00 per hour, a sum deemed reasonable should an applicant be compensated for their time.

During the 2012–2013 marketing season, assessments for all Federal marketing orders totaled approximately $89,700,000. Of that amount, about $58,300,000 (or 65 percent) was made available for marketing promotion activities, including paid advertising. While there is not enough information to generate a reasonable estimate, USDA believes about two percent, on average, of the total assessments are for commodities that are certified organic. Thus, assessments on organic commodities might have totaled as much as $1,794,000 (2 percent of $89,700,000). That total might be reduced moving forward by $1,166,000 (65 percent of $1,794,000—the portion of the assessments made available for marketing activities) if all of the approximately 190 handlers that USDA believes may be eligible were to apply to the respective board or committee and be approved for an organic assessment exemption under the revised regulations.

There are approximately 10 handlers that are approved for organic assessment exemptions under the current regulation, with a total exempted amount of approximately $135,000. The current exemption averages approximately $13,500 per handler. Based on the estimate that 190 handlers might be exempt from assessments under the proposed criteria, and an estimated $1,166,000 of potential exemptions, USDA estimates that exempted organic handlers may average $6,136 in decreased assessments. This amount is less than half of the current average. However, the revised eligibility requirements are expected to attract more handlers than under the current regulations. Many of those handlers may be small entities or may only handle a small percentage of organic products relative to the total amount of product handled.

There is some variation among the 23 marketing orders on the percent of assessments used for market promotion activities, including paid advertising. Thus, the actual reduction in assessments will differ among the various marketing orders. In fact, the amounts allocated for marketing promotion activities as a percentage of the total marketing order budgets range from less than 5 percent to almost 95 percent. As such, the financial impact of this rule to each handler individually, and to each of the 23 distinct marketing order programs collectively, cannot be accurately estimated. However, several of the affected marketing order programs do expect to see large reductions in assessment revenue moving forward. The Oregon-Washington Fresh Pear Committee anticipates a $362,718 reduction in assessments (approximately 3.8 percent of total assessments), the California Almond Board expects a reduction of $298,000 (approximately 0.5 percent), and the California Raisin Administrative Committee expects a reduction of $180,000 (approximately 3.5 percent) as a result of the expanded eligibility for organic assessment exemptions. These boards and committees will have to adjust programs and reduce budgeted expenses accordingly.

Since this action has the potential to exempt agricultural handling entities from assessments, AMS believes that this rule will have a net beneficial economic impact on exempted firms. The additional burden associated with the additional information collection will be more than offset by reduced assessment obligations. The benefits for this final rule are not expected to be disproportionately greater or less for smaller entities than for larger entities regulated under any of the 23 marketing order programs.

Analysis of Research and Promotion Programs

Research and promotion programs established under the various commodity promotion acts, and the rules and regulations issued thereunder,

are like marketing orders in that they are uniquely brought about through group action of essentially small entities acting on their own behalf.

Producers, handlers, processors, manufacturers, importers, exporters, feeders, and seed stock producers pay assessments to the national boards and councils that administer the various commodity research and promotion programs, or in some cases to other parties designated by a board or council to collect assessments. The number of entities paying assessments under each of the research and promotion programs varies considerably. For example, the mango program receives assessments from approximately 198 handlers and importers, while the beef program receives assessments from nearly 1 million producers and 125 importers.

As mentioned previously, small agricultural service firms are defined by the SBA as those having annual receipts of less than $7,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000. Many of the handlers, importers, manufacturers, exporters, feeders, and seed stock producers currently approved for organic assessment exemptions under the research and promotion programs would be classified by SBA as small agricultural service firms. In addition, most of the producers currently approved for exemptions would also be classified as small agricultural producers. The exact number and size of the potential applicants that will be eligible for an assessment exemption as a result of this action is not known. The current and estimated number of respondents filing exemption claims appears later in this discussion; however, USDA believes that many of the entities that will become eligible for an organic assessment exemption under the regulation changes contained herein may also be classified as small firms and/or small producers under the SBA classification.

This final rule was initiated as a result of amendments to the FAIR Act contained in the 2014 Farm Bill. This rule modifies the organic assessment exemption regulations established under each of the 22 research and promotion programs to revise the eligibility criteria for obtaining an organic assessment exemption. As revised, the regulations provide that entities that produce, handle, market, process, manufacture, feed, or import organic products may be exempt from the payment of an assessment under a commodity promotion law with respect to any agricultural commodity that is certified as ''organic'' or ''100 percent organic'' under the NOP. The exemption will apply to the certified ''organic'' or ''100 percent organic'' products regardless of whether the agricultural commodity subject to the exemption is produced, handled, marketed, processed, manufactured, fed, or imported by a person that also produces, handles, markets, processes, manufactures, feeds, or imports conventional agricultural products. This is a change from the previous regulations, which only allowed organic assessment exemptions for organic operations that produced and marketed solely products that were ''100 percent organic'' as defined under the OFPA and were not split operations.

Under the previous regulations, eligible producers, handlers, marketers, processors, manufacturers, exporters, feeders, and importers that wished to be exempted from assessment on their certified organic products must have first submitted a request for exemption to the appropriate board or council on Form AMS–15. This provision does not change as a result of this final rule. However, this action does change the information collection requirements for requesting an organic assessment exemption to reflect the revised eligibility criteria and will necessitate modifying Form AMS–15 to reflect the changes established by this rule. The modified form will continue to be required under the revised regulations to assist the board or council in the effective administration of the exemption and to ensure compliance with the exemption requirements.

In preparing this final regulatory flexibility analysis, AMS has attempted to identify the entities that will be affected by this final rule and examine the potential impact on such entities. AMS has determined that this action will have little negative impact on entities subject to research and promotion programs. Further, the changes will only impose minimal costs incurred in the filing of the exemption request and in maintaining records needed to verify the applicant's exemption status during the period that the entity is exempt. Under the revised regulations, the required information collection burden will be about the same for entities who wish to initiate or perpetuate an organic assessment exemption. Applicants will continue to be required to submit one application annually.

All of the entities paying assessments to the research and promotion programs are eligible to take advantage of the rule changes contained herein, provided the parties elect to apply and otherwise comply with the exemption requirements as specified under each of the individual orders.

Approximately 1,493 entities are currently approved for organic assessment exemptions under the 22 research and promotion programs. Organic assessment exemptions for the past year were approximately $1,400,000 for all of the programs in aggregate. In 2013, it is estimated that the dairy promotion and research program had the largest number of exemptions, with 1,150 producers exempt, and the highest dollar amount, with nearly 1 million dollars of assessment exemptions. Participation in the other programs varied. Ten of the 22 research and promotion programs currently do not have any entities approved for organic assessment exemptions.

The estimated number of respondents filing exemption claims with the boards or councils after implementation of the changes to the regulations is anticipated as follows:

	Current	Estimated
Beef	30	2,966
Blueberries	8	204
Christmas trees	0	0
Cotton	0	no estimate
Dairy	1,150	1,823
Eggs	0	20
Fluid milk	0	11
Hass avocados	230	771
Honey	2	327
Lamb	3	7
Mangos	3	75
Mushrooms	7	246

	Current	Estimated
Paper and Paper-based Packaging	0	0
Peanuts	0	85
Popcorn	0	170
Pork	5	18
Potatoes	6	904
Raspberries	0	232
Softwood lumber	0	0
Sorghum	10	10
Soybeans	39	1,930
Watermelons	0	412
Totals	1,493	10,211

No respondents are expected from among Christmas tree, paper and paper-based packaging, or softwood lumber entities, given the nature of their industries. In addition, several of the programs exempt smaller entities from assessment—fluid milk processors processing less than 3 million pounds; egg producers owning 75,000 or fewer hens; raspberry producers producing less than 20,000 pounds; mushroom producers producing less than 500,000 pounds; honey first handlers handling less than 250,000 pounds; popcorn processors processing less than 4 million pounds; blueberry producers producing less than 2,000 pounds; and sorghum importers importing less than 1,000 bushels of grain or 5,000 tons of silage. More new respondents would be expected under those programs if the smaller entities were not already exempt based on minimum quantities.

Under the revised regulations, the annual burden related to submitting requests for organic assessment exemptions for all of the entities covered under the 22 research and promotion programs is estimated to total 2,552.75 hours (10,211 entities × 15 minutes) (see the Paperwork Reduction Act section for more detail). The total financial burden associated with the information collection for all industries covered by the programs is estimated to be $38,291.25, or $3.75 per applicant. The total cost was estimated by multiplying the expected burden hours associated with the exemption application (2,552.75 hours) by $15.00 per hour, a sum deemed reasonable should an applicant be compensated for their time.

This final rule will allow eligible producers, handlers, first handlers, marketers, processors, manufacturers, importers, exporters, feeders, and importers to request an exemption from paying assessments on products certified as ''organic'' or ''100 percent organic.'' This action revises the organic exemption eligibility criteria under each of the research and promotion programs, thereby making the exemption available to more entities. The revised eligibility criteria are expected to increase the total number of participants as well as the total amount of organic assessment exemptions under each of the programs. The estimated total in organic assessment exemption amounts expected to result from revising the eligibility requirements are as follows:

Beef	$2,400,000
Blueberries	no estimate
Christmas trees	0
Cotton	no estimate
Dairy	4,190,000
Eggs	742,500
Fluid milk	4,530,000
Hass avocados	850,000
Honey	no estimate
Lamb	114,000
Mangos	no estimate
Mushrooms	132,655
Paper and Paper-based packaging	0
Peanuts	6,517
Popcorn	no estimate
Pork	111,000
Potatoes	no estimate
Raspberries	no estimate
Softwood lumber	0
Sorghum	122,500
Soybeans	427,800
Watermelons	no estimate
Total	$13,626,972

There are no estimated assessment exemption amounts for the Christmas tree, paper and paper-based-packaging, or softwood lumber programs given the nature of these industries. Some boards and councils were able to estimate the number of organic production and marketing operations within their industries; however, based upon current data, there is not enough information to generate a reasonable estimate of the potential dollar amount of organic assessment exemptions reported as ''no estimate.'' The boards and councils that reported ''no estimate'' generally represent programs that estimated small percentages of participation amongst their industries. As a result of this action, some of the boards and councils listed above may have to adjust programs or reduce budgeted expenses in response to organic assessment exemptions.

Since this action has the potential to exempt agricultural production, handling, and marketing entities from assessments, this rule will have an additional burden associated with the additional information collection, which will be more than offset by reduced assessment obligations. The benefits for this action are not expected to be disproportionately greater or less for small producers, handlers, or marketers than for larger entities regulated under any of the 22 research and promotion programs.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements have been previously approved by the Office of Management and Budget (OMB) under 23 Federal marketing order programs (7 CFR parts 905, 906, 915, 922, 923, 925, 927, 929, 930, 932, 948, 955, 956, 958, 959, 966, 981, 982, 984, 985, 987, 989, and 993) and 22 research and promotion programs (7 CFR parts 1150, 1160, 1205, 1206, 1207, 1208, 1209, 1210, 1212, 1214, 1215, 1216, 1217, 1218, 1219, 1220, 1221, 1222, 1230, 1250, 1260, and 1280). Upon publication of this final rule, AMS will submit a Justification for Change to OMB for the AMS–15 Exemption Application Form for Research and Promotion Programs, OMB No. 0581–0093 National Research, Promotion and Consumer Information Programs. AMS will also submit a Justification for Change to OMB for the FV–649 Exemption Application Form for Marketing Orders, OMB No. 0581–0216 Fruit and Vegetable Marketing Orders Certified Organic Handler Marketing Promotion Assessment Exemption under 23 Federal Marketing Orders. The Justification for Change will request approval for an increase in

number of respondents and an increase in burden hours for these two forms.

After consideration of all relevant material presented, including information submitted by the commenters and other information, it is hereby found that this rule, as hereinafter set forth, is consistent with and will effectuate the declared policy of the previously referenced commodity promotion laws, the 2014 Farm Bill, and the FAIR Act.

List of Subjects

7 CFR Part 900

Administrative practice and procedure, Freedom of information, Marketing agreements, Reporting and recordkeeping requirements.

7 CFR Part 1150

Dairy products, Reporting and recordkeeping requirements, Research.

7 CFR Part 1160

Milk, Reporting and recordkeeping requirements.

7 CFR Part 1205

Advertising, Agricultural research, Cotton, Marketing agreements, Reporting and recordkeeping requirements.

7 CFR Part 1206

Administrative practice and procedure, Advertising, Consumer information, Agricultural research, Mango, Marketing agreements, Reporting and recordkeeping requirements.

7 CFR Part 1207

Advertising, Agricultural Research, Potatoes, Reporting and recordkeeping requirements.

7 CFR Part 1208

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreements, Raspberries, Reporting and recordkeeping requirements.

7 CFR Part 1209

Administrative practice and procedure, Advertising, Agricultural research, Mushrooms, Reporting and recordkeeping requirements.

7 CFR Part 1210

Administrative practice and procedure, Advertising, Agricultural research, Reporting and recordkeeping requirements, Watermelons.

7 CFR Part 1212

Administrative practice and procedure, Advertising, Agricultural research, Reporting and recordkeeping requirements.

7 CFR Part 1214

Administrative practice and procedure, Advertising, Christmas trees, Marketing agreements, Reporting and recordkeeping requirements.

7 CFR Part 1215

Administrative practice and procedures, Advertising, Agricultural research, Popcorn, Reporting and recordkeeping requirements.

7 CFR Part 1216

Administrative practice and procedure, Advertising, Agricultural research, Peanuts, Reporting and recordkeeping requirements.

7 CFR Part 1217

Administrative practice and procedure, Advertising, Marketing agreements, Reporting and recordkeeping requirements, Softwood lumber.

7 CFR Part 1218

Administrative practice and procedure, Advertising, Agricultural Research, Blueberries, Reporting and recordkeeping requirements.

7 CFR Part 1219

Administrative practice and procedure, Advertising, Agricultural research, Avocados, Reporting and recordkeeping requirements.

7 CFR Part 1220

Administrative practice and procedure, Advertising, Agricultural research, Reporting and recordkeeping requirements, Soybeans.

7 CFR Part 1221

Administrative practice and procedure, Advertising, Agricultural research, Consumer information, Marketing agreements, Reporting and recordkeeping requirements, Sorghum.

7 CFR Part 1222

Administrative practice and procedure, Advertising, Labeling, Marketing agreements, Reporting and recordkeeping requirements.

7 CFR Part 1230

Administrative practice and procedure, Advertising, Agricultural research, Meat and meat products, Reporting and recordkeeping requirements.

7 CFR Part 1250

Administrative practice and procedure, Advertising, Agricultural research, Eggs and egg products, Reporting and recordkeeping requirements.

7 CFR Part 1260

Administrative practice and procedure, Advertising, Agricultural research, Imports, Meat and meat products, Reporting and recordkeeping requirements.

7 CFR Part 1280

Administrative practice and procedure, Advertising, Agricultural research, Meat and meat products, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR parts 900, 1150, 1160, 1205, 1206, 1207, 1208, 1209, 1210, 1212, 1214, 1215, 1216, 1217, 1218, 1219, 1220, 1221, 1222, 1230, 1250, 1260, and 1280 are amended as follows:

PART 900—GENERAL REGULATIONS

■ 1. The authority citation for 7 CFR part 900 continues to read as follows:

Authority: 7 U.S.C. 601–674 and 7 U.S.C. 7401.

■ 2. Revise § 900.700 to read as follows:

§ 900.700 Exemption from assessments.

(a) This section specifies criteria for identifying persons eligible to obtain an exemption from the portion of the assessment used to fund marketing promotion activities under a marketing order and the procedures for applying for such an exemption under 7 CFR parts 905, 906, 915, 922, 923, 925, 927, 929, 930, 932, 948, 955, 956, 958, 959, 966, 981, 982, 984, 985, 987, 989, 993, and such other parts (included in 7 CFR parts 905 through 998) covering marketing orders for fruits, vegetables, and specialty crops as may be established or amended to include market promotion. For the purposes of this section, the term ''assessment period'' means fiscal period, fiscal year, crop year, or marketing year as defined under these parts; the term ''marketing promotion'' means marketing research and development projects or marketing promotion, including paid advertising designed to assist, improve, or promote the marketing, distribution, or consumption of the applicable commodity.

(b) A handler who operates under an approved National Organic Program (7 CFR part 205) (NOP) organic handling system plan and is subject to assessments under a part or parts specified in paragraph (a) of this section may be exempt from the portion of the assessment applicable to marketing promotion, including paid advertising, provided that:

(1) Only agricultural commodities certified as ''organic'' or ''100 percent organic'' (as defined in the NOP) are eligible for exemption;

(2) The exemption shall apply to all certified ''organic'' or ''100 percent organic'' (as defined in the NOP) products of a handler regardless of whether the agricultural commodity subject to the exemption is handled by a person that also handles conventional or nonorganic agricultural products of the same agricultural commodity as that for which the exemption is claimed;

(3) The handler maintains a valid certificate of organic operation as issued under the Organic Foods Production Act of 1990 (7 U.S.C. 6501–6522)(OFPA) and the NOP regulations issued under OFPA (7 CFR part 205);

(4) Any handler so exempted shall continue to be obligated to pay assessments under such part or parts specified that are associated with any agricultural products that do not qualify for an exemption under this section; and

(5) For exempted products, any handler so exempted shall be obligated to pay the portion of the assessment associated with the other authorized activities under such part or parts other than marketing promotion, including paid advertising.

(c) *Assessment exemption application.* (1) To be exempt from paying assessments for these purposes under a part or parts listed in paragraph (a) of this section, the handler shall submit an application to the board or committee established under the applicable part or parts prior to or during the assessment period. This application, Form FV–649, ''Certified Organic Handler Application for Exemption from Market Promotion Assessments Paid Under Federal Marketing Orders,'' shall include:

(i) The date, applicable committee or board, and Federal marketing order number;

(ii) The applicant's full name, company name, address, telephone and fax numbers, and email address;

(iii) Certification that the applicant maintains a valid certificate of organic operation under the OFPA and the NOP;

(iv) Certification that the applicant handles or markets organic products eligible to be labeled ''organic'' or ''100 percent organic'' under the NOP;

(v) Certification that the applicant is otherwise subject to assessments under the Federal marketing order program for which the exemption is requested;

(vi) The number of organic certified producers for whom they handle or market product (including the applicant);

(vii) A requirement that the applicant attach a copy of their certificate of organic operation and all applicable producer certificates of organic operation issued by a USDA-accredited certifying agent under the OFPA and the NOP;

(viii) Certification, as evidenced by signature and date, that all information provided by the applicant is true; and

(ix) Such other information as the committee or board may require, with the approval of the Secretary.

(2) The handler shall file the application with the committee or board, prior to or during the applicable assessment period, and annually thereafter, as long as the handler continues to be eligible for the exemption. If the person complies with the requirements of this section and is eligible for an assessment exemption, the committee or board will approve the exemption request and provide written notification of such to the applicant within 30 days. If the application is disapproved, the committee or board will provide written notification of the reason(s) for such disapproval within the same timeframe.

(3) The exemption will apply at the beginning of the next assessable period following notification of approval of the assessment exemption, in writing, by the committee or board.

(d) *Assessment exemption calculation.* (1) The applicable assessment rate for any handler approved for an exemption shall be computed by dividing the committee's or board's estimated non-marketing promotion expenditures by the committee's or board's estimated total expenditures approved by the Secretary and applying that percentage to the assessment rate applicable to all persons for the assessment period. The modified assessment rate shall then be applied to the quantity of certified ''organic'' or ''100 percent organic'' products handled under an approved organic assessment exemption as provided in paragraph (c)(2) of this section. Products handled not subject to an approved organic assessment exemption shall be assessed at the assessment rate applicable to all persons for the assessment period. The committee's or board's estimated non-marketing promotion expenditures shall exclude the direct costs of marketing promotion and the portion of committee's or board's administrative and overhead costs (*e.g.,* salaries, supplies, printing, equipment, rent, contractual expenses, and other applicable costs) to support and administer the marketing promotion activities.

(2) If a committee or board does not plan to conduct any market promotion activities in a fiscal year, the committee or board may submit a certification to that effect to the Secretary, and as long as no assessments for such fiscal year are used for marketing promotion projects, or the administration of projects are funded by a previous fiscal period's assessments, the committee or board may assess all handlers, regardless of their organic status, the full assessment rate applicable to the assessment period.

(3) For each assessment period, the Secretary shall review the portion of the assessment rate applicable to marketing promotion for persons eligible for an exemption and, if appropriate, approve the assessment rate.

(4) When the requirements of this section for exemption no longer apply to a handler, the handler shall inform the committee or board within 30 days and pay the full assessment on all remaining assessable product for all committee or board assessments from the date the handler no longer is eligible to the end of the assessment period.

(5) Within 30 days following the applicable assessment period, the committee or board shall re-compute the applicable assessment rate for handlers exempt under this section based on the actual expenditures incurred during the applicable assessment period. The Secretary shall review, and if appropriate, approve any change in the portion of the assessment rate for market promotion applicable to exempt handlers, and authorize adjustments for any overpayments or collection of underpayments.

PART 1150—DAIRY PROMOTION PROGRAM

■ 3. The authority citation for 7 CFR part 1150 continues to read as follows:

Authority: 7 U.S.C. 4501–4514 and 7 U.S.C. 7401.

■ 4. In § 1150.157, remove paragraph (i), redesignate paragraph (j) as paragraph (i), and revise paragraphs (a), (b), (c), (d), (e), (g), and newly redesignated paragraph (i) to read as follows:

§ 1150.157 Assessment exemption.

(a) A producer described in § 1150.152(a)(1) and (2) who operates under an approved National Organic Program (7 CFR part 205) (NOP) organic production system plan may be exempt from the payment of assessments under this part, provided that:

(1) Only agricultural products certified as ''organic'' or ''100 percent organic'' (as defined in the NOP) are eligible for exemption;

(2) The exemption shall apply to all certified ''organic'' or ''100 percent organic'' (as defined in the NOP) products of the producer regardless of whether the agricultural commodity subject to the exemption is produced by a person that also produces conventional or nonorganic agricultural products of the same agricultural commodity as that for which the exemption is claimed;

(3) The producer maintains a valid certificate of organic operation as issued under the Organic Foods Production Act of 1990 (7 U.S.C. 6501–6522) (OFPA) and the NOP regulations issued under OFPA (7 CFR part 205); and

(4) Any producer so exempted shall continue to be obligated to pay assessments under this part that are associated with any agricultural products that do not qualify for an exemption under this section.

(b) To apply for exemption under this section, a producer subject to assessments pursuant to § 1150.152(a)(1) and (2) shall submit a request to the Board on an *Organic Exemption Request Form* (Form AMS–15) at any time during the year initially, and annually thereafter on or before July 1, for as long as the producer continues to be eligible for the exemption.

(c) A producer request for exemption shall include the following:

(1) The applicant's full name, company name, address, telephone and fax numbers, and email address;

(2) Certification that the applicant maintains a valid organic certificate issued under the OFPA and the NOP;

(3) Certification that the applicant produces organic products eligible to be labeled ''organic'' or ''100 percent organic'' under the NOP;

(4) A requirement that the applicant attach a copy of their certificate of organic operation issued by a USDA-accredited certifying agent under the OFPA and the NOP;

(5) Certification, as evidenced by signature and date, that all information provided by the applicant is true; and

(6) Such other information as may be required by the Board, with the approval of the Secretary.

(d) If a producer complies with the requirements of this section, the Board will grant an assessment exemption and issue a Certificate of Exemption to the producer within 30 days. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

(e) A producer approved for exemption under this section shall provide a copy of the Certificate of Exemption to each person responsible for remitting assessments to the Board on behalf of the producer pursuant to § 1150.152(a).

* * * * *

(g) An importer who imports products that are eligible to be labeled as ''organic'' or ''100 percent organic'' under the NOP, or certified as ''organic'' or ''100 percent organic'' under a U.S. equivalency arrangement established under the NOP, may be exempt from the payment of assessments on those products. Such importer may submit documentation to the Board and request an exemption from assessment on certified ''organic'' or ''100 percent organic'' dairy products on an *Organic Exemption Request Form* (Form AMS–15) at any time initially, and annually thereafter on or before July 1, as long as the importer continues to be eligible for the exemption. This documentation shall include the same information required of producers in paragraph (c) of this section. If the importer complies with the requirements of this section, the Board will grant the exemption and issue a Certificate of Exemption to the importer. The Board will also issue the importer an alphanumeric number valid for 1 year from the date of issue. This alphanumeric number should be entered by the importer on the CBP entry documentation. Any line item entry of ''organic'' or ''100 percent organic'' dairy products bearing this alphanumeric number assigned by the Board will not be subject to assessments. Any importer so exempted shall continue to be obligated to pay assessments under this part that are associated with any imported agricultural products that do not qualify for an exemption under this section.

* * * * *

(i) An importer who is exempt from payment of assessments under paragraph (g) of this section shall be eligible for reimbursement of assessments collected by the CBP on certified ''organic'' or ''100 percent organic'' dairy products and may apply to the Secretary for a reimbursement. The importer would be required to submit satisfactory proof to the Secretary that the importer paid the assessment on exempt organic products.

PART 1160—FLUID MILK PROMOTION PROGRAM

■ 5. The authority citation for 7 CFR part 1160 continues to read as follows:

Authority: 7 U.S.C. 6401–6417 and 7 U.S.C. 7401.

■ 6. In § 1160.215, revise paragraphs (b) through (e) to read as follows:

§ 1160.215 Assessment exemption.

* * * * *

(b) A fluid milk processor described in § 1160.211(a) who operates under an approved National Organic Program (7 CFR part 205) (NOP) organic handling system plan may be exempt from the payment of assessments under this part, provided that:

(1) Only agricultural products certified as ''organic'' or ''100 percent organic'' (as defined in the NOP) are eligible for exemption;

(2) The exemption shall apply to all certified ''organic'' or ''100 percent organic'' (as defined in the NOP) products of a fluid milk processor regardless of whether the agricultural commodity subject to the exemption is processed by a person that also processes conventional or nonorganic agricultural products of the same agricultural commodity as that for which the exemption is claimed;

(3) The fluid milk processor maintains a valid certificate of organic operation as issued under the Organic Foods Production Act of 1990 (7 U.S.C. 6501–6522)(OFPA) and the NOP regulations issued under OFPA (7 CFR part 205); and

(4) Any fluid milk processor so exempted shall continue to be obligated to pay assessments under this part that are associated with any agricultural products that do not qualify for an exemption under this section.

(c) To apply for an assessment exemption, a fluid milk processor described in § 1160.211(a) shall submit a request to the Board on an *Organic Exemption Request Form* (Form AMS–15) at any time during the year initially, and annually thereafter on or before July 1, for as long as the processor continues to be eligible for the exemption.

(d) A fluid milk processor request for exemption shall include the following information:

(1) The applicant's full name, company name, address, telephone and fax numbers, and email address;

(2) Certification that the applicant maintains a valid organic certificate issued under the OFPA and the NOP;

(3) Certification that the applicant processes organic products eligible to be labeled ''organic'' or ''100 percent organic'' under the NOP;

(4) A requirement that the applicant attach a copy of their certificate of organic operation issued by a USDA-accredited certifying agent under the OFPA and the NOP;

(5) Certification, as evidenced by signature and date, that all information provided by the applicant is true; and

(6) Such other information as may be required by the Board, with the approval of the Secretary.

(e) If a fluid milk processor complies with the requirements of this section, the Board will grant an assessment exemption and issue a Certificate of Exemption to the processor within 30 days. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

* * * * *

PART 1205—COTTON RESEARCH AND PROMOTION

■ 7. The authority citation for 7 CFR part 1205 continues to read as follows:

Authority: 7 U.S.C. 2101–2118.

■ 8. In § 1205.519, revise paragraphs (a), (b), (c), (d), (e), (f), and (h) to read as follows:

§ 1205.519 Organic exemption.

(a) A producer who operates under an approved National Organic Program (7 CFR part 205) (NOP) organic production system plan may be exempt from the payment of assessments under this part, provided that:

(1) Only agricultural products certified as ''organic'' or ''100 percent organic'' (as defined in the NOP) are eligible for exemption;

(2) The exemption shall apply to all certified ''organic'' or ''100 percent organic'' (as defined in the NOP) products of a producer regardless of whether the agricultural commodity subject to the exemption is produced by a person that also produces conventional or nonorganic agricultural products of the same agricultural commodity as that for which the exemption is claimed;

(3) The producer maintains a valid certificate of organic operation as issued under the Organic Foods Production Act of 1990 (7 U.S.C. 6501–6522) (OFPA) and the NOP regulations issued under the OFPA (7 CFR part 205); and

(4) Any producer so exempted shall continue to be obligated to pay assessments under this part that are associated with any agricultural products that do not qualify for an exemption under this section.

(b) To apply for an exemption under this section, an eligible cotton producer shall submit a request for exemption to the Board on an *Organic Exemption Request Form* (Form AMS–15) at any time initially, and annually thereafter on or before the beginning of the crop year, as long as the producer continues to be eligible for the exemption.

(c) A producer request for exemption shall include the following:

(1) The applicant's full name, company name, address, telephone and fax numbers, and email address;

(2) Certification that the applicant maintains a valid certificate of organic operation issued under the OFPA and the NOP;

(3) Certification that the applicant produces and/or imports organic products eligible to be labeled ''organic'' or ''100 percent organic'' under the NOP;

(4) A requirement that the applicant attach a copy of their certificate of organic operation issued by a USDA-accredited certifying agent under the OFPA and the NOP;

(5) Certification, as evidenced by signature and date, that all information provided by the applicant is true; and

(6) Such other information as may be required by the Board, with the approval of the Secretary.

(d) If a producer complies with the requirements of this section, the Board will grant an assessment exemption and issue a Certificate of Exemption to the producer within 30 days. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

(e) A producer approved for exemption under this section shall provide a copy of the Certificate of Exemption to each handler to whom the producer sells cotton. The handler shall maintain records showing the exempt producer's name and address and the exemption number assigned by the Board.

(f) An importer who imports products that are eligible to be labeled as ''organic'' or ''100 percent organic'' under the NOP, or certified as ''organic'' or ''100 percent organic'' under a U.S. equivalency arrangement established under the NOP, may be exempt from the payment of assessments on those products. Such importer may submit documentation to the Board and request an exemption from assessment on certified ''organic'' or ''100 percent organic'' cotton and cotton products on an *Organic Exemption Request Form* (Form AMS–15) at any time initially, and annually thereafter, as long as the importer continues to be eligible for the exemption. This documentation shall include the same information required of producers in paragraph (c) of this section. If the importer complies with the requirements of this section, the Board will grant the exemption and issue a Certificate of Exemption to the importer. The Board will also issue the importer an alphanumeric number valid for 1 year from the date of issue. This alphanumeric number should be entered by the importer on the Customs entry documentation. Any line item entry of ''organic'' or ''100 percent organic'' cotton and cotton products bearing this alphanumeric number assigned by the Board will not be subject to assessments. Any importer so exempted shall continue to be obligated to pay assessments under this part that are associated with any imported agricultural products that do not qualify for an exemption under this section.

* * * * *

(h) An importer who is exempt from payment of assessments under paragraph (f) of this section shall be eligible for reimbursement of assessments collected by Customs on certified ''organic'' or ''100 percent organic'' cotton and cotton products and may apply to the Secretary for a reimbursement. The importer would be required to submit satisfactory proof to the Secretary that the importer paid the assessment on exempt organic products.

PART 1206—MANGO PROMOTION, RESEARCH, AND INFORMATION

■ 9. The authority citation for 7 CFR part 1206 continues to read as follows:

Authority: 7 U.S.C. 7411–7425 and 7 U.S.C. 7401.

■ 10. In § 1206.202, revise paragraphs (a), (b), (c), (d), and (e) and add paragraph (g) to read as follows:

§ 1206.202 Exemption for organic mangos.

(a) A first handler who operates under an approved National Organic Program (7 CFR part 205) (NOP) organic handling system plan may be exempt from the payment of assessments under this part, provided that:

(1) Only agricultural products certified as ''organic'' or ''100 percent organic'' (as defined in the NOP) are eligible for exemption;

(2) The exemption shall apply to all certified ''organic'' or ''100 percent organic'' (as defined in the NOP) products handled by the first handler regardless of whether the agricultural commodity subject to the exemption is handled by a person that also handles conventional or nonorganic agricultural products of the same agricultural commodity as that for which the exemption is claimed;

(3) The first handler maintains a valid certificate of organic operation as issued under the Organic Foods Production Act of 1990 (7 U.S.C. 6501–6522) (OFPA) and the NOP regulations issued under OFPA (7 CFR part 205); and

(4) Any first handler so exempted shall continue to be obligated to pay assessments under this part that are

associated with any agricultural products that do not qualify for an exemption under this section.

(b) To apply for exemption under this section, an eligible first handler shall submit a request for exemption to the Board on an *Organic Exemption Request Form* (Form AMS–15) at any time initially, and annually thereafter on or before the beginning of the fiscal period, as long as the first handler continues to be eligible for the exemption.

(c) A first handler request for exemption shall include the following:

(1) The applicant's full name, company name, address, telephone and fax numbers, and email address;

(2) Certification that the applicant maintains a valid certificate of organic operation issued under the OFPA and the NOP;

(3) Certification that the applicant handles organic products eligible to be labeled ''organic'' or ''100 percent organic'' under the NOP;

(4) A requirement that the applicant attach a copy of their certificate of organic operation issued by a USDA-accredited certifying agent under the OFPA and the NOP;

(5) Certification, as evidenced by signature and date, that all information provided by the applicant is true; and

(6) Such other information as may be required by the Board, with the approval of the Secretary.

(d) If a first handler complies with the requirements of this section, the Board will grant an assessment exemption and issue a Certificate of Exemption to the first handler within 30 days. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

(e) An importer who imports products that are eligible to be labeled as ''organic'' or ''100 percent organic'' under the NOP, or certified as ''organic'' or ''100 percent organic'' under a U.S. equivalency arrangement established under the NOP, shall be exempt from the payment of assessments on those products. Such importer may submit documentation to the Board and request an exemption from assessment on certified ''organic'' or ''100 percent organic'' mangos on an *Organic Exemption Request Form* (Form AMS–15) at any time initially, and annually thereafter on or before the beginning of the fiscal period, as long as the importer continues to be eligible for exemption. This documentation shall include the same information required of first handlers in paragraph (c) of this section. If the importer complies with the requirements of this section, the Board will grant the exemption and issue a Certificate of Exemption to the importer within the applicable timeframe. If Customs collects the assessment on exempt product that is identified as ''organic'' by a number in the Harmonized Tariff Schedule, the Board must reimburse the exempt importer the assessments paid upon receipt of such assessments from Customs. For all other exempt organic product for which Customs collects the assessment, the importer may apply to the Board for a reimbursement of assessments paid, and the importer must submit satisfactory proof to the Board that the importer paid the assessment on exempt organic product. Any importer so exempted shall continue to be obligated to pay assessments under this part that are associated with any imported agricultural products that do not qualify for an exemption under this section.

* * * * *

(g) An importer who is exempt from payment of assessments under paragraph (e) of this section shall be eligible for reimbursement of assessments collected by the CBP on certified ''organic'' or ''100 percent organic'' mangos and may apply to the Secretary for a reimbursement. The importer would be required to submit satisfactory proof to the Secretary that the importer paid the assessment on exempt organic products.

PART 1207—POTATO RESEARCH AND PROMOTION PLAN

■ 11. The authority citation for 7 CFR part 1207 continues to read as follows:

Authority: 7 U.S.C. 2611–2627 and 7 U.S.C. 7401.

■ 12. In § 1207.514, revise paragraphs (a), (b), (c), (d), (e), and (f), and remove paragraph (h) to read as follows:

§ 1207.514 Exemption for organic potatoes.

(a) A producer who operates under an approved National Organic Program (7 CFR part 205) (NOP) organic production system plan may be exempt from the payment of assessments under this part, provided that:

(1) Only agricultural products certified as ''organic'' or ''100 percent organic'' (as defined in the NOP) are eligible for exemption;

(2) The exemption shall apply to all certified ''organic'' or ''100 percent organic'' (as defined in the NOP) products of a producer regardless of whether the agricultural commodity subject to the exemption is produced by a person that also produces conventional or nonorganic agricultural products of the same agricultural commodity as that for which the exemption is claimed;

(3) The producer maintains a valid certificate of organic operation as issued under the Organic Foods Production Act of 1990 (7 U.S.C. 6501–6522)(OFPA) and the NOP regulations issued under OFPA (7 CFR part 205); and

(4) Any producer so exempted shall continue to be obligated to pay assessments under this part that are associated with any agricultural products that do not qualify for an exemption under this section.

(b) To apply for exemption under this section, the producer shall submit a request to the Board on an *Organic Exemption Request Form* (Form AMS–15) at any time during the year initially, and annually thereafter on or before July 1, for as long as the producer continues to be eligible for the exemption.

(c) The producer request for exemption shall include the following:

(1) The applicant's full name, company name, address, telephone and fax numbers, and email address;

(2) Certification that the applicant maintains a valid certificate of organic operation issued under the OFPA and the NOP;

(3) Certification that the applicant produces organic products eligible to be labeled ''organic'' or ''100 percent organic'' under the NOP;

(4) A requirement that the applicant attach a copy of their certificate of organic operation issued by a USDA-accredited certifying agent under the OFPA and the NOP;

(5) Certification, as evidenced by signature and date, that all information provided by the applicant is true; and

(6) Such other information as may be required by the Board, with the approval of the Secretary.

(d) If a producer complies with the requirements of this section, the Board will grant an assessment exemption and issue a Certificate of Exemption to the producer within 30 days. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

(e) A producer approved for exemption under this section shall provide a copy of the Certificate of Exemption to each handler to whom the producer sells potatoes. The handler shall maintain records showing the exempt producer's name and address and the exemption number assigned by the Board.

(f) An importer who imports products that are eligible to be labeled as ''organic'' or ''100 percent organic'' under the NOP, or certified as ''organic'' or ''100 percent organic'' under a U.S.

equivalency arrangement established under the NOP, shall be exempt from the payment of assessments on those products. Such importer may submit documentation to the Board and request an exemption from assessment on certified ''organic'' or ''100 percent organic'' potatoes, potato products, and seed potatoes on an *Organic Exemption Request Form* (Form AMS–15) at any time initially, and annually thereafter on or before July 1, as long as the importer continues to be eligible for the exemption. This documentation shall include the same information required of producers in paragraph (c) of this section. If the importer complies with the requirements of this section, the Board will grant the exemption and issue a Certificate of Exemption to the importer. If Customs collects the assessment on exempt product that is identified as ''organic'' by a number in the Harmonized Tariff Schedule, the Board must reimburse the exempt importer the assessments paid upon receipt of such assessments from Customs. For all other exempt organic product for which Customs collects the assessment, the importer may apply to the Board for a reimbursement of assessments paid, and the importer must submit satisfactory proof to the Board that the importer paid the assessment on exempt organic product. Any importer so exempted shall continue to be obligated to pay assessments under this part that are associated with any imported agricultural products that do not qualify for an exemption under this section.

* * * * *

PART 1208—PROCESSED RASPBERRY PROMOTION, RESEARCH, AND INFORMATION ORDER

■ 13. The authority citation for 7 CFR part 1208 continues to read as follows:

Authority: 7 U.S.C. 7411–7425; 7 U.S.C. 7401.

■ 14. In § 1208.53, revise paragraph (d) to read as follows:

§ 1208.53 Exemption and reimbursement procedures.

* * * * *

(d) *Organic exemption.* (1) A producer of raspberries for processing who operates under an approved National Organic Program (7 CFR part 205) (NOP) organic production system plan may be exempt from the payment of assessments under this part, provided that:

(i) Only agricultural products certified as ''organic'' or ''100 percent organic'' (as defined in the NOP) are eligible for exemption;

(ii) The exemption shall apply to all certified ''organic'' or ''100 percent organic'' (as defined in the NOP) products of a producer regardless of whether the agricultural commodity subject to the exemption is produced by a person that also produces conventional or nonorganic agricultural products of the same agricultural commodity as that for which the exemption is claimed;

(iii) The producer maintains a valid certificate of organic operation as issued under the Organic Foods Production Act of 1990 (7 U.S.C. 6501–6522) (OFPA) and the NOP regulations issued under OFPA (7 CFR part 205); and

(iv) Any producer so exempted shall continue to be obligated to pay assessments under this part that are associated with any agricultural products that do not qualify for an exemption under this section.

(2) To apply for exemption under this section, an eligible producer shall submit a request to the Council on an *Organic Exemption Request Form* (Form AMS–15) at any time during the year initially, and annually thereafter on or before the beginning of the fiscal period, for as long as the producer continues to be eligible for the exemption.

(3) A producer request for exemption shall include the following:

(i) The applicant's full name, company name, address, telephone and fax numbers, and email address;

(ii) Certification that the applicant maintains a valid certificate of organic operation issued under the OFPA and the NOP;

(iii) Certification that the applicant produces organic products eligible to be labeled ''organic'' or ''100 percent organic'' under the NOP;

(iv) A requirement that the applicant attach a copy of their certificate of organic operation provided by a USDA-accredited certifying agent under the OFPA and the NOP;

(v) Certification, as evidenced by signature and date, that all information provided by the applicant is true; and

(vi) Such other information as may be required by the Council, with the approval of the Secretary.

(4) If a producer complies with the requirements of this section, the Council will grant an assessment exemption and issue a Certificate of Exemption to the producer within 30 days. If the application is disapproved, the Council will notify the applicant of the reason(s) for disapproval within the same timeframe.

(5) An importer who imports products that are eligible to be labeled as ''organic'' or ''100 percent organic'' under the NOP, or certified as ''organic'' or ''100 percent organic'' under a U.S. equivalency arrangement established under the NOP, may be exempt from the payment of assessments on those products. Such importer may submit documentation to the Council and request an exemption from assessment on certified ''organic'' or ''100 percent organic'' processed raspberries on an *Organic Exemption Request Form* (Form AMS–15) at any time initially, and annually thereafter on or before the beginning of the fiscal period, as long as the importer continues to be eligible for the exemption. This documentation shall include the same information required of a producer in paragraph (d)(3) of this section. If the importer complies with the requirements of this section, the Council will grant the exemption and issue a Certificate of Exemption to the importer within the applicable timeframe. If Customs collects the assessment on exempt product that is identified as ''organic'' by a number in the Harmonized Tariff Schedule, the Council must reimburse the exempt importer the assessments paid upon receipt of such assessments from Customs. For all other exempt organic product for which Customs collects the assessment, the importer may apply to the Council for a reimbursement of assessments paid, and the importer must submit satisfactory proof to the Council that the importer paid the assessment on exempt organic product. Any importer so exempted shall continue to be obligated to pay assessments under this part that are associated with any imported agricultural products that do not qualify for an exemption under this section.

* * * * *

PART 1209—MUSHROOM PROMOTION, RESEARCH, AND CONSUMER INFORMATION ORDER

■ 15. The authority citation for 7 CFR part 1209 continues to read as follows:

Authority: 7 U.S.C. 6101–6112 and 7 U.S.C. 7401.

■ 16. In § 1209.52, revise paragraph (a) to read as follows:

§ 1209.52 Exemption from assessment.

(a) The following persons shall be exempt from assessments under this part:

(1) A person who produces or imports, on average, 500,000 pounds or less of mushrooms annually shall be exempt from assessments under this part.

(2) [Reserved]

* * * * *

■ 17. In § 1209.252,

■ a. Revise the section heading;

■ b. Redesignate paragraph (a)(2) as paragraph (a)(3);

■ c. Add new paragraph (a)(2); and

■ d. Revise newly redesignated paragraph (a)(3).

The revision and addition read as follows:

§ 1209.252 Exemptions and exemption procedures.

(a) * * *

(2) In addition to the exemption provided for in § 1209.52, a producer or importer who operates under an approved National Organic Program (7 CFR part 205) (NOP) organic production or handling system plan may be exempt from the payment of assessments under this part, provided that:

(i) Only agricultural products certified as ''organic'' or ''100 percent organic'' (as defined in the NOP) are eligible for exemption;

(ii) The exemption shall apply to all certified ''organic'' or ''100 percent organic'' (as defined in the NOP) products of a producer or importer regardless of whether the agricultural commodity subject to the exemption is produced or imported by a person that also produces or imports conventional or nonorganic agricultural products of the same agricultural commodity as that for which the exemption is claimed;

(iii) The producer or importer maintains a valid certificate of organic operation as issued under the Organic Foods Production Act of 1990 (7 U.S.C. 6501–6522)(OFPA) and the NOP regulations issued under OFPA (7 CFR part 205); and

(iv) Any producer or importer so exempted shall continue to be obligated to pay assessments under this part that are associated with any agricultural products that do not qualify for an exemption under this section.

(3) To apply for an exemption for organic mushrooms:

(i) An eligible mushroom producer shall submit a request for exemption to the Council on an *Organic Exemption Request Form* (Form AMS–15) at any time initially, and annually thereafter on or before January 1, as long as the producer continues to be eligible for the exemption.

(ii) A producer request for exemption shall include the following:

(A) The applicant's full name, company name, address, telephone and fax numbers, and email address;

(B) Certification that the applicant maintains a valid certificate of organic operation issued under the OFPA and the NOP;

(C) Certification that the applicant produces organic products eligible to be labeled ''organic'' or ''100 percent organic'' under the NOP;

(D) A requirement that the applicant attach a copy of their certificate of organic operation issued by a USDA-accredited certifying agent under the OFPA and the NOP;

(E) Certification, as evidenced by signature and date, that all information provided by the applicant is true; and

(F) Such other information as may be required by the Council, with the approval of the Secretary.

(iii) If a producer complies with the requirements of this section, the Council will grant an assessment exemption and issue a Certificate of Exemption to the producer within 30 days. If the application is disapproved, the Council will notify the applicant of the reason(s) for disapproval within the same timeframe.

(iv) An eligible mushroom importer shall submit a request for exemption from assessment on imported certified ''organic'' or ''100 percent organic'' mushrooms, or mushrooms certified as ''organic'' or ''100 percent organic'' under a U.S. equivalency arrangement established under the NOP, on an *Organic Exemption Request Form* (Form AMS–15) at any time initially, and annually thereafter on or before January 1, as long as the importer continues to be eligible for the exemption. This documentation shall include the same information required of producers in paragraph (a)(4)(ii) of this section. If the importer complies with the requirements of this section, the Council will grant the exemption and issue a Certificate of Exemption to the importer. If Customs collects the assessment on exempt product that is identified as ''organic'' by a number in the Harmonized Tariff Schedule, the Council must reimburse the exempt importer the assessments paid upon receipt of such assessments from Customs. For all other exempt organic product for which Customs collects the assessment, the importer may apply to the Council for a reimbursement of assessments paid, and the importer must submit satisfactory proof to the Council that the importer paid the assessment on exempt organic product. Any importer so exempted shall continue to be obligated to pay assessments under this part that are associated with any imported agricultural products that do not qualify for an exemption under this section.

(v) The exemption will apply immediately following the issuance of the Certificate of Exemption.

* * * * *

PART 1210—WATERMELON RESEARCH AND PROMOTION PLAN

■ 18. The authority citation for 7 CFR part 1210 continues to read as follows:

Authority: 7 U.S.C. 4901–4916 and 7 U.S.C. 7401.

■ 19. In § 1210.516, revise paragraphs (a), (b), (c), (d), and (f) and remove paragraph (h) to read as follows:

§ 1210.516 Exemption for organic watermelons.

(a) A producer or handler who operates under an approved National Organic Program (7 CFR part 205) (NOP) organic production or handling system plan may be exempt from the payment of assessments under this part, provided that:

(1) Only agricultural products certified as ''organic'' or ''100 percent organic'' (as defined in the NOP) are eligible for exemption;

(2) The exemption shall apply to all certified ''organic'' or ''100 percent organic'' (as defined in the NOP) products of a producer or handler regardless of whether the agricultural commodity subject to the exemption is produced or handled by a person that also produces or handles conventional or nonorganic agricultural products of the same agricultural commodity as that for which the exemption is claimed;

(3) The producer or handler maintains a valid certificate of organic operation as issued under the Organic Foods Production Act of 1990 (7 U.S.C. 6501–6522)(OFPA) and the NOP regulations issued under the OFPA (7 CFR part 205); and

(4) Any producer or handler so exempted shall continue to be obligated to pay assessments under this part that are associated with any agricultural products that do not qualify for an exemption under this section.

(b) To apply for exemption under this section, an eligible producer or handler shall submit a request to the Board on an *Organic Exemption Request Form* (Form AMS–15) at any time during the year initially, and annually thereafter on or before January 1, for as long as the producer or handler continues to be eligible for the exemption.

(c) The request for exemption shall include the following:

(1) The applicant's full name, company name, address, telephone and fax numbers, and email address;

(2) Certification that the applicant maintains a valid certificate of organic

operation issued under the OFPA and the NOP;

(3) Certification that the applicant produces or handles organic products eligible to be labeled ''organic'' or ''100 percent organic'' under the NOP;

(4) A requirement that the applicant attach a copy of their certificate of organic operation issued by a USDA-accredited certifying agent under the OFPA and the NOP;

(5) Certification, as evidenced by signature and date, that all information provided by the applicant is true; and

(6) Such other information as may be required by the Board, with the approval of the Secretary.

(d) If a producer or handler complies with the requirements of this section, the Board will grant an assessment exemption and issue a Certificate of Exemption to the producer or handler within 30 days. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

* * * * *

(f) An importer who imports products that are eligible to be labeled as ''organic'' or ''100 percent organic'' under the NOP, or certified as ''organic'' or ''100 percent organic'' under a U.S. equivalency arrangement established under the NOP, may be exempt from the payment of assessments on those products. Such importer may submit documentation to the Board and request an exemption from assessment on certified ''organic'' or ''100 percent organic'' watermelons on an *Organic Exemption Request Form* (Form AMS–15) at any time initially, and annually thereafter on or before January 1, as long as the importer continues to be eligible for the exemption. This documentation shall include the same information required of producers in paragraph (c) of this section. If the importer complies with the requirements of this section, the Board will grant the exemption and issue a Certificate of Exemption to the importer. If Customs collects the assessment on exempt product that is identified as ''organic'' by a number in the Harmonized Tariff Schedule, the Board must reimburse the exempt importer the assessments paid upon receipt of such assessments from Customs. For all other exempt organic product for which Customs collects the assessment, the importer may apply to the Board for a reimbursement of assessments paid, and the importer must submit satisfactory proof to the Board that the importer paid the assessment on exempt organic product. Any importer so exempted shall continue to be obligated to pay assessments under this part that are associated with any imported agricultural products that do not qualify for an exemption under this section.

* * * * *

PART 1212—HONEY PACKERS AND IMPORTERS RESEARCH, PROMOTION, CONSUMER EDUCATION AND INDUSTRY INFORMATION ORDER

■ 20. The authority citation for 7 CFR part 1212 continues to read as follows:

Authority: 7 U.S.C. 7411–7425; 7 U.S.C. 7401.

■ 21. In § 1212.53,

■ a. Redesignate paragraph (b) as paragraph (c) and paragraph (c) as paragraph (b); and

■ b. Revise newly redesignated paragraph (c) and paragraphs (e) and (g).

The revisions read as follows:

§ 1212.53 Exemption from assessment.

* * * * *

(c) A first handler or importer who operates under an approved National Organic Program (7 CFR part 205) (NOP) organic handling system plan may be exempt from the payment of assessments under this part, provided that:

(1) Only agricultural products certified as ''organic'' or ''100 percent organic'' (as defined in the NOP), or certified as ''organic'' or ''100 percent organic'' under a U.S. equivalency arrangement established under the NOP, are eligible for exemption;

(2) The exemption shall apply to all certified ''organic'' or ''100 percent organic'' (as defined in the NOP) products of a first handler or importer regardless of whether the agricultural commodity subject to the exemption is handled or imported by a person that also handles or imports conventional or nonorganic agricultural products of the same agricultural commodity as that for which the exemption is claimed;

(3) The first handler or importer maintains a valid certificate of organic operation as issued under the Organic Foods Production Act of 1990 (7 U.S.C. 6501–6522) (OFPA) and the NOP regulations issued under OFPA (7 CFR part 205); and

(4) Any first handler or importer so exempted shall continue to be obligated to pay assessments under this part that are associated with any agricultural products that do not qualify for an exemption under this section.

(5) Persons eligible for an organic assessment exemption as provided this section may apply for such an exemption by submitting a request to the Board on an *Organic Exemption Request Form* (Form AMS–15) at any time during the year initially, and annually thereafter on or before January 1, as long as the first handler or importer continues to be eligible for the exemption.

(i) A first handler or importer request for exemption shall include the following:

(A) The applicant's full name, company name, address, telephone and fax numbers, and email address;

(B) Certification that the applicant maintains a valid certificate of organic operation issued under the OFPA and the NOP;

(C) Certification that the applicant handles or imports organic products eligible to be labeled ''organic'' or ''100 percent organic'' under the NOP;

(D) A requirement that the applicant attach a copy of their certificate of organic operation issued by a USDA-accredited certifying agent under the OFPA and the NOP;

(E) Certification, as evidenced by signature and date, that all information provided by the applicant is true; and

(F) Such other information as may be required by the Board, with the approval of the Secretary.

(ii) Upon receipt of an application, the Board shall determine whether an exemption may be granted and issue a Certificate of Exemption to the first handler or importer within 30 calendar days. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe. It is the responsibility of the first handler or importer to retain a copy of the certificate of exemption.

* * * * *

(e) Exempt importers shall be eligible for reimbursement of assessments collected by Customs.

(1) Importers exempt under paragraph (a) of this section must apply to the Board for reimbursement of any assessment paid. No interest will be paid on the assessment collected by Customs. Requests for reimbursement must be submitted to the Board within 90 days of the last day of the calendar year the honey or honey products were imported.

(2) If Customs collects the assessment on exempt product under paragraph (b) of this section that is identified as ''organic'' by a number in the Harmonized Tariff Schedule, the Board must reimburse the exempt importer the assessments paid upon receipt of such assessments from Customs. For all other exempt organic product for which Customs collects the assessment, the importer may apply to the Board for a

reimbursement of assessments paid, and the importer must submit satisfactory proof to the Board that the importer paid the assessment on exempt organic product.

* * * * *

(g) Any person who desires an exemption from assessments for a subsequent calendar year shall reapply to the Board for a certificate of exemption.

* * * * *

PART 1214—CHRISTMAS TREE PROMOTION, RESEARCH, AND INFORMATION ORDER

■ 22. The authority citation for 7 CFR part 1214 continues to read as follows:

Authority: 7 U.S.C. 7411–7425; 7 U.S.C. 7401.

■ 23. In § 1214.53, revise paragraph (c) to read as follows:

§ 1214.53 Exemption from and refunds of assessments.

* * * * *

(c) *Organic.* (1) A producer who domestically produces Christmas trees under an approved National Organic Program (7 CFR part 205) (NOP) organic production system plan may be exempt from the payment of assessments under this part, provided that:

(i) Only agricultural products certified as ''organic'' or ''100 percent organic'' (as defined in the NOP) are eligible for exemption;

(ii) The exemption shall apply to all certified ''organic'' or ''100 percent organic'' (as defined in the NOP) products of a producer regardless of whether the agricultural commodity subject to the exemption is produced by a person that also produces conventional or nonorganic agricultural products of the same agricultural commodity as that for which the exemption is claimed;

(iii) The producer maintains a valid certificate of organic operation as issued under the Organic Foods Production Act of 1990 (7 U.S.C. 6501–6522) (OFPA) and the NOP regulations issued under OFPA (7 CFR part 205); and

(iv) Any producer so exempted shall continue to be obligated to pay assessments under this part that are associated with any agricultural products that do not qualify for an exemption under this section.

(2) To apply for exemption under this section, an eligible producer shall submit a request to the Board on an *Organic Exemption Request Form* (Form AMS–15) at any time during the year initially, and annually thereafter on or before the start of the fiscal period, for as long as the producer continues to be eligible for the exemption.

(3) A producer request for exemption shall include the following:

(i) The applicant's full name, company name, address, telephone and fax numbers, and email address;

(ii) Certification that the applicant maintains a valid certificate of organic operation issued under the OFPA and the NOP;

(iii) Certification that the applicant produces organic products eligible to be labeled ''organic'' or ''100 percent organic'' under the NOP;

(iv) A requirement that the applicant attach a copy of their certificate of organic operation issued by a USDA-accredited certifying agent;

(v) Certification, as evidenced by signature and date, that all information provided by the applicant is true; and

(vi) Such other information as may be required by the Board, with the approval of the Secretary.

(4) If a producer complies with the requirements of this section, the Board will grant an assessment exemption and issue a Certificate of Exemption to the producer within 30 days. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

(5) An importer who imports Christmas trees that are eligible to be labeled as ''organic'' or ''100 percent organic'' under the NOP, or certified as ''organic'' or ''100 percent organic'' under a U.S. equivalency arrangement established under the NOP, may be exempt from the payment of assessments. Such importer may submit documentation to the Board and request an exemption from assessment on certified ''organic'' or ''100 percent organic'' Christmas trees on an *Organic Exemption Request Form* (Form AMS–15) at any time initially, and annually thereafter on or before the beginning of the fiscal period, as long as the importer continues to be eligible for the exemption. This documentation shall include the same information required of a producer in paragraph (c)(3) of this section. If the importer complies with the requirements of this section, the Board will grant the exemption and issue a Certificate of Exemption to the importer within the applicable timeframe. Any importer so exempted shall continue to be obligated to pay assessments under this part that are associated with any imported agricultural products that do not qualify for an exemption under this section.

(6) If Customs collects the assessment on exempt product under paragraph (c)(5) of this section that is identified as ''organic'' by a number in the Harmonized Tariff Schedule, the Board must reimburse the exempt importer the assessments paid upon receipt of such assessments from Customs. For all other exempt organic product for which Customs collects the assessment, the importer may apply to the Board for a reimbursement of assessments paid, and the importer must submit satisfactory proof to the Board that the importer paid the assessment on exempt organic product.

(7) The exemption will apply immediately following the issuance of the Certificate of Exemption.

PART 1215—POPCORN PROMOTION, RESEARCH, AND CONSUMER INFORMATION

■ 24. The authority citation for 7 CFR part 1215 continues to read as follows:

Authority: 7 U.S.C. 7481–7491 and 7 U.S.C. 7401.

■ 25. In § 1215.52, revise paragraph (b) to read as follows:

§ 1215.52 Exemption from assessment.

* * * * *

(b) Persons that operate under an approved National Organic Program (7 CFR part 205) (NOP) organic handling system plan may be exempt from the payment of assessments under this part, provided that:

(1) Only agricultural products certified as ''organic'' or ''100 percent organic'' (as defined in the NOP) are eligible for exemption;

(2) The exemption shall apply to all certified ''organic'' or ''100 percent organic'' (as defined in the NOP) products of a processor regardless of whether the agricultural commodity subject to the exemption is processed by a person that also processes conventional or nonorganic agricultural products of the same agricultural commodity as that for which the exemption is claimed;

(3) The processor maintains a valid certificate of organic operation as issued under the Organic Foods Production Act of 1990 (7 U.S.C. 6501–6522) (OFPA) and the NOP regulations issued under OFPA (7 CFR part 205); and

(4) Any processor so exempted shall continue to be obligated to pay assessments under this part that are associated with any agricultural products that do not qualify for an exemption under this section.

* * * * *

■ 26. In § 1215.300:

■ a. Revise paragraph (b);

■ b. Redesignate paragraphs (c) through (f) as paragraphs (d) through (g), respectively;

■ c. Add new paragraph (c); and
■ d. Revise newly redesignated paragraph (d).

The revisions and addition read as follows:

§ 1215.300 Exemption procedures.

* * * * *

(b) Persons eligible for an organic assessment exemption as provided in § 1215.52(b) may apply for such an exemption by submitting a request to the Board on an *Organic Exemption Request Form* (Form AMS–15) at any time during the year initially, and annually thereafter on or before January 1, as long as the processor continues to be eligible for the exemption.

(c) A processor request for exemption shall include the following:

(1) The applicant's full name, company name, address, telephone and fax numbers, and email address;

(2) Certification that the applicant maintains a valid certificate of organic operation issued under the OFPA and the NOP;

(3) Certification that the applicant processes organic products eligible to be labeled ''organic'' or ''100 percent organic'' under the NOP;

(4) A requirement that the applicant attach a copy of their certificate of organic operation issued by a USDA-accredited certifying agent under the OFPA and the NOP;

(5) Certification, as evidenced by signature and date, that all information provided by the applicant is true; and

(6) Such other information as may be required by the Board, with the approval of the Secretary.

(d) Upon receipt of an application, the Board shall determine whether an exemption may be granted and issue a Certificate of Exemption to the processor within 30 calendar days. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

* * * * *

PART 1216—PEANUT PROMOTION, RESEARCH, AND INFORMATION ORDER

■ 27. The authority citation for 7 CFR part 1216 continues to read as follows:

Authority: 7 U.S.C. 7411–7425 and 7 U.S.C. 7401.

■ 28. In § 1216.56, revise paragraphs (a), (b), (c), and (d) and remove paragraph (g) to read as follows:

§ 1216.56 Exemption for organic peanuts.

(a) A producer who operates under an approved National Organic Program (7 CFR part 205) (NOP) organic production system plan may be exempt from the payment of assessments under this part, provided that:

(1) Only agricultural products certified as ''organic'' or ''100 percent organic'' (as defined in the NOP) are eligible for exemption;

(2) The exemption shall apply to all certified ''organic'' or ''100 percent organic'' (as defined in the NOP) products of a producer regardless of whether the agricultural commodity subject to the exemption is produced by a person that also produces conventional or nonorganic agricultural products of the same agricultural commodity as that for which the exemption is claimed;

(3) The producer maintains a valid certificate of organic operation as issued under the Organic Foods Production Act of 1990 (7 U.S.C. 6501–6522) (OFPA) and the NOP regulations issued under OPFA (7 CFR part 205); and

(4) Any producer so exempted shall continue to be obligated to pay assessments under this part that are associated with any agricultural products that do not qualify for an exemption under this section.

(b) In order to apply for this exemption, an eligible peanut producer shall submit a request to the Board on an *Organic Exemption Request Form* (Form AMS–15) at any time during the year initially, and annually thereafter on or before August 1, for as long as the producer continues to be eligible for the exemption.

(c) A producer request for exemption shall include the following:

(1) The applicant's full name, company name, address, telephone and fax numbers, and email address;

(2) Certification that the applicant maintains a valid organic certificate issued under the OFPA and the NOP;

(3) Certification that the applicant produces organic products eligible to be labeled ''organic'' or ''100 percent organic'' under the NOP;

(4) A requirement that the applicant attach a copy of their certificate of organic operation issued by a USDA-accredited certifying agent under the OFPA and the NOP;

(5) Certification, as evidenced by signature and date, that all information provided by the applicant is true; and

(6) Such other information as may be required by the Board, with the approval of the Secretary.

(d) If a producer complies with the requirements of this section, the Board will grant an assessment exemption and issue a Certificate of Exemption to the producer within 30 days. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

* * * * *

PART 1217—SOFTWOOD LUMBER RESEARCH, PROMOTION, CONSUMER EDUCATION AND INDUSTRY INFORMATION ORDER

■ 29. The authority citation for 7 CFR part 1217 continues to read as follows:

Authority: 7 U.S.C. 7411–7425; 7 U.S.C. 7401.

■ 30. In § 1217.53, revise paragraph (d) to read as follows:

§ 1217.53 Exemption from assessment.

* * * * *

(d) *Organic.* (1) A domestic manufacturer of softwood lumber products who operates under an approved National Organic Program (7 CFR part 205) (NOP) organic handling system plan may be exempt from the payment of assessments under this part, provided that:

(i) Only agricultural products certified as ''organic'' or ''100 percent organic'' (as defined in the NOP) are eligible for exemption;

(ii) The exemption shall apply to all certified ''organic'' or ''100 percent organic'' (as defined in the NOP) products of a manufacturer regardless of whether the agricultural commodity subject to the exemption is manufactured by a person that also manufactures conventional or nonorganic agricultural products of the same agricultural commodity as that for which the exemption is claimed;

(iii) The manufacturer maintains a valid certificate of organic operation as issued under the Organic Foods Production Act of 1990 (7 U.S.C. 6501–6522) (OFPA) and the NOP regulations issued under OFPA (7 CFR part 205); and

(iv) Any manufacturer so exempted shall continue to be obligated to pay assessments under this part that are associated with any agricultural products that do not qualify for an exemption under this section.

(2) To apply for exemption under this section, an eligible manufacturer shall submit a request to the Board on an *Organic Exemption Request Form* (Form AMS–15) at any time during the year initially, and annually thereafter on or before the start of the fiscal year, for as long as the manufacturer continues to be eligible for the exemption.

(3) A manufacturer request for exemption shall include the following:

(i) The applicant's full name, company name, address, telephone and fax numbers, and email address;

(ii) Certification that the applicant maintains a valid certificate of organic operation issued under the OFPA and the NOP;

(iii) Certification that the applicant manufactures organic products eligible to be labeled ''organic'' or ''100 percent organic'' under the NOP;

(iv) A requirement that the applicant attach a copy of their certificate of organic operation issued by a USDA-accredited certifying agent under the OFPA and the NOP;

(v) Certification, as evidenced by signature and date, that all information provided by the applicant is true; and

(vi) Such other information as may be required by the Board, with the approval of the Secretary.

(4) If a manufacturer complies with the requirements of this section, the Board will grant an assessment exemption and issue a Certificate of Exemption to the manufacturer within 30 calendar days. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

(5) An importer who imports softwood lumber that is eligible to be labeled as ''organic'' or ''100 percent organic'' under the NOP, or certified as ''organic'' or ''100 percent organic'' under a U.S. equivalency arrangement established under the NOP, may be exempt from the payment of assessments. Such importer may submit documentation to the Board and request an exemption from assessment on certified ''organic'' or ''100 percent organic'' softwood lumber on an *Organic Exemption Request Form* (Form AMS–15) at any time initially, and annually thereafter on or before the beginning of the fiscal year, as long as the importer continues to be eligible for the exemption. This documentation shall include the same information required of a manufacturer in paragraph (d)(3) of this section. If the importer complies with the requirements of this section, the Board will grant the exemption and issue a Certificate of Exemption to the importer within the applicable timeframe. Any importer so exempted shall continue to be obligated to pay assessments under this part that are associated with any imported agricultural products that do not qualify for an exemption under this section.

(6) If Customs collects the assessment on exempt product under paragraph (d)(5) of this section that is identified as ''organic'' by a number in the Harmonized Tariff Schedule, the Board must reimburse the exempt importer the assessments paid upon receipt of such assessments from Customs. For all other exempt organic product for which Customs collects the assessment, the importer may apply to the Board for a reimbursement of assessments paid, and the importer must submit satisfactory proof to the Board that the importer paid the assessment on exempt organic product.

(7) The exemption will apply immediately following the issuance of a Certificate of Exemption.

PART 1218—BLUEBERRY PROMOTION, RESEARCH, AND INFORMATION ORDER

■ 31. The authority citation for 7 CFR part 1218 continues to read as follows:

Authority: 7 U.S.C. 7411–7425 and 7 U.S.C. 7401.

■ 32. In § 1218.53:
■ a. Revise paragraphs (c) and (d);
■ b. Remove paragraph (g);
■ c. Redesignate paragraphs (h) through (k) as paragraphs (i) through (l), respectively;
■ d. Redesignate paragraphs (e) and (f) as paragraphs (g) and (h), respectively;
■ e. Add new paragraphs (e) and (f); and
■ f. Revise newly redesignated paragraphs (g) and (j).

The revisions and additions read as follows:

§ 1218.53 Exemption procedures.

* * * * *

(c) A producer who operates under an approved National Organic Program (7 CFR part 205) (NOP) organic production system plan may be exempt from the payment of assessments under this part, provided that:

(1) Only agricultural products certified as ''organic'' or ''100 percent organic'' (as defined in the NOP) are eligible for exemption;

(2) The exemption shall apply to all certified ''organic'' or ''100 percent organic'' (as defined in the NOP) products of a producer regardless of whether the agricultural commodity subject to the exemption is produced by a person that also produces conventional or nonorganic agricultural products of the same agricultural commodity as that for which the exemption is claimed;

(3) The producer maintains a valid certificate of organic operation as issued under the Organic Foods Production Act of 1990 (7 U.S.C. 6501–6522) (OFPA) and the NOP regulations issued under OFPA (7 CFR part 205); and

(4) Any producer so exempted shall continue to be obligated to pay assessments under this part that are associated with any agricultural products that do not qualify for an exemption under this section.

(d) To apply for exemption under this section, a producer shall submit a request to the Council on an *Organic Exemption Request Form* (Form AMS–15) at any time during the year initially, and annually thereafter on or before January 1, for as long as the producer continues to be eligible for the exemption.

(e) A producer request for exemption shall include the following:

(1) The applicant's full name, company name, address, telephone and fax numbers, and email address;

(2) Certification that the applicant maintains a valid certificate of organic operation issued under the OFPA and the NOP;

(3) Certification that the applicant produces organic products eligible to be labeled ''organic'' or ''100 percent organic'' under the NOP;

(4) A requirement that the applicant attach a copy of their certificate of organic operation issued by a USDA-accredited certifying agent under the OFPA and the NOP;

(5) Certification, as evidenced by signature and date, that all information provided by the applicant is true; and

(6) Such other information as may be required by the Council, with the approval of the Secretary.

(f) If a producer complies with the requirements of this section, the Council will grant an assessment exemption and issue a Certificate of Exemption to the producer within 30 days. If the application is disapproved, the Council will notify the applicant of the reason(s) for disapproval within the same timeframe.

(g) An importer who imports products that are eligible to be labeled as ''organic'' or ''100 percent organic'' under the NOP, or certified as ''organic'' or ''100 percent organic'' under a U.S. equivalency arrangement established under the NOP, may be exempt from the payment of assessments on those products. Such importer may submit documentation to the Council and request an exemption from assessment on certified ''organic'' or ''100 percent organic'' blueberries on an *Organic Exemption Request Form* (Form AMS–15) at any time initially, and annually thereafter on or before January 1, as long as the importer continues to be eligible for the exemption. This documentation shall include the same information required of producers in paragraph (e) of this section. If the importer complies with the requirements of this section, the Council will grant the exemption and issue a Certificate of Exemption to the importer. If Customs and Border Protection (Customs) collects the assessment on exempt product that is identified as ''organic'' by a number in the Harmonized Tariff Schedule, the

Council must reimburse the exempt importer the assessments paid upon receipt of such assessments from Customs. For all other exempt organic product for which Customs collects the assessment, the importer may apply to the Council for a reimbursement of assessments paid, and the importer must submit satisfactory proof to the Council that the importer paid the assessment on exempt organic product. Any importer so exempted shall continue to be obligated to pay assessments under this part that are associated with any imported agricultural products that do not qualify for an exemption under this section.

* * * * *

(j) Importers who are exempt from payment of assessments shall be eligible for reimbursement of assessments collected by Customs and may apply to the Council for a reimbursement of such assessments paid. No interest will be paid on assessments collected by Customs. Requests for reimbursement shall be submitted to the Council within 90 days of the last day of the year the blueberries were actually imported.

* * * * *

PART 1219—HASS AVOCADO PROMOTION, RESEARCH, AND INFORMATION

■ 33. The authority citation for 7 CFR part 1219 continues to read as follows:

Authority: 7 U.S.C. 7801–7813 and 7 U.S.C. 7401.

■ 34. In § 1219.202, revise paragraphs (a), (b), (c), (d), and (f) and remove paragraph (h) to read as follows:

§ 1219.202 Exemption for organic Hass avocados.

(a) A producer who operates under an approved National Organic Program (7 CFR part 205) (NOP) organic production system plan may be exempt from the payment of assessments under this part, provided that:

(1) Only agricultural products certified as ''organic'' or ''100 percent organic'' (as defined in the NOP) are eligible for exemption;

(2) The exemption shall apply to all certified ''organic'' or ''100 percent organic'' (as defined in the NOP) products of a producer regardless of whether the agricultural commodity subject to the exemption is produced by a person that also produces conventional or nonorganic agricultural products of the same agricultural commodity as that for which the exemption is claimed;

(3) The producer maintains a valid certificate of organic operation as issued under the Organic Foods Production Act of 1990 (7 U.S.C. 6501–6522) (OFPA) and the NOP regulations issued under OFPA (7 CFR part 205); and

(4) Any producer so exempted shall continue to be obligated to pay assessments under this part that are associated with any agricultural products that do not qualify for an exemption under this section.

(b) To apply for exemption under this section, an eligible Hass avocado producer shall submit a request to the Board on an *Organic Exemption Request Form* (Form AMS–15) at any time during the year initially, and annually thereafter on or before November 1, for as long as the producer continues to be eligible for the exemption.

(c) A producer request for exemption shall include the following:

(1) The applicant's full name, company name, address, telephone and fax numbers, and email address;

(2) Certification that the applicant maintains a valid certificate of organic operation issued under the OFPA and the NOP;

(3) Certification that the applicant produces organic products eligible to be labeled ''organic'' or ''100 percent organic'' under the NOP;

(4) A requirement that the applicant attach a copy of their certificate of organic operation issued by a USDA-accredited certifying agent under the OFPA and the NOP;

(5) Certification, as evidenced by signature and date, that all information provided by the applicant is true; and

(6) Such other information as may be required by the Board, with the approval of the Secretary.

(d) If a producer complies with the requirements of this section, the Board will grant an assessment exemption and issue a Certificate of Exemption to the producer within 30 days. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

* * * * *

(f) An importer who imports products that are eligible to be labeled as ''organic'' or ''100 percent organic'' under the NOP, or certified as ''organic'' or ''100 percent organic'' under a U.S. equivalency arrangement established under the NOP, may be exempt from the payment of assessments on those products. Such importer may submit documentation to the Board and request an exemption from assessment on certified ''organic'' or ''100 percent organic'' Hass avocados on an *Organic Exemption Request Form* (Form AMS–15) at any time initially, and annually thereafter on or before November 1, as long as the importer continues to be eligible for the exemption. This documentation shall include the same information required of producers in paragraph (c) of this section. If the importer complies with the requirements of this section, the Board will grant the exemption and issue a Certificate of Exemption to the importer. If Customs collects the assessment on exempt product that is identified as ''organic'' by a number in the Harmonized Tariff Schedule, the Board must reimburse the exempt importer the assessments paid upon receipt of such assessments from Customs. For all other exempt organic product for which Customs collects the assessment, the importer may apply to the Board for a reimbursement of assessments paid, and the importer must submit satisfactory proof to the Board that the importer paid the assessment on exempt organic product. Any importer so exempted shall continue to be obligated to pay assessments under this part that are associated with any imported agricultural products that do not qualify for an exemption under this section.

* * * * *

PART 1220—SOYBEAN PROMOTION, RESEARCH, AND CONSUMER INFORMATION

■ 35. The authority citation for 7 CFR part 1220 continues to read as follows:

Authority: 7 U.S.C. 6301–6311 and 7 U.S.C. 7401.

■ 36. In § 1220.302, revise paragraphs (a), (b), (c), and (d) and remove paragraph (g) to read as follows:

§ 1220.302 Exemption.

(a) A producer who operates under an approved National Organic Program (7 CFR part 205) (NOP) organic production system plan may be exempt from the payment of assessments under this part, provided that:

(1) Only agricultural products certified as ''organic'' or ''100 percent organic'' (as defined in the NOP) are eligible for exemption;

(2) The exemption shall apply to all certified ''organic'' or ''100 percent organic'' (as defined in the NOP) products of a producer regardless of whether the agricultural commodity subject to the exemption is produced by a person that also produces conventional or nonorganic agricultural products of the same agricultural commodity as that for which the exemption is claimed;

(3) The producer maintains a valid certificate of organic operation as issued

under the Organic Foods Production Act of 1990 (7 U.S.C. 6501–6522) (OFPA) and the NOP regulations issued under OFPA (7 CFR part 205); and

(4) Any producer so exempted shall continue to be obligated to pay assessments under this part that are associated with any agricultural products that do not qualify for an exemption under this section.

(b) To apply for an exemption under this section, the producer shall submit a request to the Board on an *Organic Exemption Request Form* (Form AMS–15) at any time during the year initially, and annually thereafter on or before January 1, for as long as the producer continues to be eligible for the exemption.

(c) A producer request for exemption shall include the following:

(1) The applicant's full name, company name, address, telephone and fax numbers, and email address;

(2) Certification that the applicant maintains a valid certificate of organic operation issued under the OFPA and the NOP;

(3) Certification that the applicant produces organic products eligible to be labeled ''organic'' or ''100 percent organic'' under the NOP;

(4) A requirement that the applicant attach a copy of their certificate of organic operation issued by a USDA-accredited certifying agent under the OFPA and the NOP;

(5) Certification, as evidenced by signature and date, that all information provided by the applicant is true; and

(6) Such other information as may be required by the Board, with the approval of the Secretary.

(d) If a producer complies with the requirements of this section, the Board will grant an assessment exemption and issue a Certificate of Exemption to the producer within 30 days. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

* * * * *

PART 1221—SORGHUM PROMOTION, RESEARCH, AND INFORMATION ORDER

■ 37. The authority citation for 7 CFR part 1221 continues to read as follows:

Authority: 7 U.S.C. 7411–7425 and 7 U.S.C. 7401.

■ 38. In § 1221.117, revise paragraphs (g), (h), (i), and (j) and remove paragraph (m) to read as follows:

§ 1221.117 Exemptions.

* * * * *

(g) A producer or importer who operates under an approved National Organic Program (7 CFR part 205) (NOP) organic production or handling system plan may be exempt from the payment of assessments under this part, provided that:

(1) Only agricultural products certified as ''organic'' or ''100 percent organic'' (as defined in the NOP), or certified as ''organic'' or ''100 percent organic'' under a U.S. equivalency arrangement established under the NOP, are eligible for exemption;

(2) The exemption shall apply to all certified ''organic'' or ''100 percent organic'' (as defined in the NOP) products of a producer or importer regardless of whether the agricultural commodity subject to the exemption is produced or imported by a person that also produces or imports conventional or nonorganic agricultural products of the same agricultural commodity as that for which the exemption is claimed;

(3) The producer or importer maintains a valid certificate of organic operation as issued under the Organic Foods Production Act of 1990 (7 U.S.C. 6501–6522) (OFPA) and the NOP regulations issued under OFPA (7 CFR part 205); and

(4) Any producer or importer so exempted shall continue to be obligated to pay assessments under this part that are associated with any agricultural products that do not qualify for an exemption under this section.

(h) To apply for an exemption under this section, the applicant shall submit a request to the Board on an *Organic Exemption Request Form* (Form AMS–15) at any time during the year initially, and annually thereafter on or before January 1, for as long as the producer or importer continues to be eligible for the exemption.

(i) A producer or importer request for exemption shall include the following:

(1) The applicant's full name, company name, address, telephone and fax numbers, and email address;

(2) Certification that the applicant maintains a valid certificate of organic operation issued under the OFPA and the NOP;

(3) Certification that the applicant produces or imports organic products eligible to be labeled ''organic'' or ''100 percent organic'' under the NOP;

(4) A requirement that the applicant attach a copy of their certificate of organic operation issued by a USDA-accredited certifying agent under the OFPA and the NOP;

(5) Certification, as evidenced by signature and date, that all information provided by the applicant is true; and

(6) Such other information as may be required by the Board, with the approval of the Secretary.

(j) If the applicant complies with the requirements of this section, the Board will grant an assessment exemption and issue a Certificate of Exemption to the producer or importer within 30 days. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

* * * * *

PART 1222—PAPER AND PAPER-BASED PACKAGING PROMOTION, RESEARCH AND INFORMATION ORDER

■ 39. The authority citation for 7 CFR part 1222 continues to read as follows:

Authority: 7 U.S.C. 7411–7425; 7 U.S.C. 7401.

■ 40. In § 1222.53, revise paragraph (b) to read as follows:

§ 1222.53 Exemption from assessment.

* * * * *

(b) *Organic.* (1) A manufacturer who operates under an approved National Organic Program (7 CFR part 205) (NOP) organic handling system plan may be exempt from the payment of assessments under this part, provided that:

(i) Only agricultural products certified as ''organic'' or ''100 percent organic'' (as defined in the NOP) are eligible for exemption;

(ii) The exemption shall apply to all certified ''organic'' or ''100 percent organic'' (as defined in the NOP) products of a manufacturer regardless of whether the agricultural commodity subject to the exemption is manufactured by a person that also manufactures conventional or nonorganic agricultural products of the same agricultural commodity as that for which the exemption is claimed;

(iii) The manufacturer maintains a valid certificate of organic operation as issued under the Organic Foods Production Act of 1990 (7 U.S.C. 6501–6522) (OFPA) and the NOP regulations issued under OFPA (7 CFR part 205); and

(iv) Any manufacturer so exempted shall continue to be obligated to pay assessments under this part that are associated with any agricultural products that do not qualify for an exemption under this section.

(2) To apply for exemption under this section, an eligible manufacturer shall submit a request to the Board on an *Organic Exemption Request Form* (Form AMS–15) at any time during the year

initially, and annually thereafter on or before the start of the fiscal year, as long as the manufacturer continues to be eligible for the exemption.

(3) A manufacturer request for exemption shall include the following:

(i) The applicant's full name, company name, address, telephone and fax numbers, and email address;

(ii) Certification that the applicant maintains a valid certificate of organic operation issued under the OFPA and the NOP;

(iii) Certification that the applicant manufactures organic products eligible to be labeled ''organic'' or ''100 percent organic'' under the NOP;

(iv) A requirement that the applicant attach a copy of their certificate of organic operation issued by a USDA-accredited certifying agent under the OFPA and the NOP;

(v) Certification, as evidenced by signature and date, that all information provided by the applicant is true; and

(vi) Such other information as may be required by the Board, with the approval of the Secretary.

(4) If a manufacturer complies with the requirements of this section, the Board will grant an assessment exemption and issue a Certificate of Exemption to the manufacturer within 30 calendar days. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

(5) An importer who imports paper and paper-based packaging that is eligible to be labeled as ''organic'' or ''100 percent organic'' under the NOP, or certified as ''organic'' or ''100 percent organic'' under a U.S. equivalency arrangement established under the NOP, may be exempt from the payment of assessments. Such importer may submit documentation to the Board and request an exemption from assessment on certified ''organic'' or ''100 percent organic'' paper and paper-based packaging on an *Organic Exemption Request Form* (Form AMS–15) at any time initially, and annually thereafter on or before the beginning of the fiscal year, as long as the importer continues to be eligible for the exemption. This documentation shall include the same information required of a manufacturer in paragraph (b)(3) of this section. If the importer complies with the requirements of this section, the Board will grant the exemption and issue a Certificate of Exemption to the importer within the applicable timeframe. Any importer so exempted shall continue to be obligated to pay assessments under this part that are associated with any imported agricultural products that do not qualify for an exemption under this section.

(6) If Customs collects the assessment on exempt product under paragraph (b)(5) of this section that is identified as ''organic'' by a number in the Harmonized Tariff Schedule, the Board must reimburse the exempt importer the assessments paid upon receipt of such assessments from Customs. For all other exempt organic product for which Customs collects the assessment, the importer may apply to the Board for a reimbursement of assessments paid, and the importer must submit satisfactory proof to the Board that the importer paid the assessment on exempt organic product.

(7) The exemption will apply immediately following the issuance of a Certificate of Exemption.

PART 1230—PORK PROMOTION, RESEARCH, AND CONSUMER INFORMATION

■ 41. The authority citation for 7 CFR part 1230 continues to read as follows:

Authority: 7 U.S.C. 4801–4819 and 7 U.S.C. 7401.

■ 42. In § 1230.102, revise paragraphs (a), (b), (c), (d), (g), and (i) to read as follows:

§ 1230.102 Exemption.

(a) A producer who operates under an approved National Organic Program (7 CFR part 205) (NOP) organic production system plan may be exempt from the payment of assessments under this part, provided that:

(1) Only agricultural products certified as ''organic'' or ''100 percent organic'' (as defined in the NOP) are eligible for exemption;

(2) The exemption shall apply to all certified ''organic'' or ''100 percent organic'' (as defined in the NOP) products of a producer regardless of whether the agricultural commodity subject to the exemption is produced by a person that also produces conventional or nonorganic agricultural products of the same agricultural commodity as that for which the exemption is claimed;

(3) The producer maintains a valid certificate of organic operation as issued under the Organic Foods Production Act of 1990 (7 U.S.C. 6501–6522) (OFPA) and the NOP regulations issued under OFPA (7 CFR part 205); and

(4) Any producer so exempted shall continue to be obligated to pay assessments under this part that are associated with any agricultural products that do not qualify for an exemption under this section.

(b) To apply for exemption under this section, a producer shall submit a request to the Board on an *Organic Exemption Request Form* (Form AMS–15) at any time during the year initially, and annually thereafter on or before January 1, for as long as the producer continues to be eligible for the exemption.

(c) A producer request for exemption shall include the following:

(1) The applicant's full name, company name, address, telephone and fax numbers, and email address;

(2) Certification that the applicant maintains a valid certificate of organic operation issued under the OFPA and the NOP;

(3) Certification that the applicant produces organic products eligible to be labeled ''organic'' or ''100 percent organic'' under the NOP;

(4) A requirement that the applicant attach a copy of their certificate of organic operation issued by a USDA-accredited certifying agent under the OFPA and the NOP;

(5) Certification, as evidenced by signature and date, that all information provided by the applicant is true; and

(6) Such other information as may be required by the Board, with the approval of the Secretary.

(d) If a producer complies with the requirements of this section, the Board will grant an assessment exemption and issue a Certificate of Exemption to the producer within 30 days. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

* * * * *

(g) An importer who imports products that are eligible to be labeled as ''organic'' or ''100 percent organic'' under the NOP, or certified as ''organic'' or ''100 percent organic'' under a U.S. equivalency arrangement established under the NOP, may be exempt from the payment of assessments on those products. Such importer may submit documentation to the Board and request an exemption from assessment on certified ''organic'' or ''100 percent organic'' porcine animals or pork and pork products on an *Organic Exemption Request Form* (Form AMS–15) at any time initially, and annually thereafter on or before January 1, as long as the importer continues to be eligible for the exemption. This documentation shall include the same information required of producers in paragraph (c) of this section. If the importer complies with the requirements of this section, the Board will grant the exemption and issue a Certificate of Exemption to the

importer. The Board will also issue the importer an alphanumeric number valid for 1 year from the date of issue. This alphanumeric number should be entered by the importer on the Customs entry documentation. Any line item entry of ''organic'' or ''100 percent organic'' porcine animals or pork and pork products bearing this alphanumeric number assigned by the Board will not be subject to assessments. Any importer so exempted shall continue to be obligated to pay assessments under this part that are associated with any imported agricultural products that do not qualify for an exemption under this section.

* * * * *

(i) An importer who is exempt from payment of assessments under paragraph (g) of this section shall be eligible for reimbursement of assessments collected by Customs on certified ''organic'' or ''100 percent organic'' porcine animals or pork and pork products and may apply to the Secretary for a reimbursement. The importer would be required to submit satisfactory proof to the Secretary that the importer paid the assessment on exempt organic products.

PART 1250—EGG RESEARCH AND PROMOTION

■ 43. The authority citation for 7 CFR part 1250 continues to read as follows:

Authority: 7 U.S.C. 2701–2718 and 7 U.S.C. 7401.

■ 44. In § 1250.530, revise paragraph (b) to read as follows:

§ 1250.530 Certification of exempt producers.

* * * * *

(b) *Organic Production.* (1) A producer who operates under an approved National Organic Program (7 CFR part 205) (NOP) organic production system plan may be exempt from the payment of assessments under this part, provided that:

(i) Only agricultural products certified as ''organic'' or ''100 percent organic'' (as defined in the NOP) are eligible for exemption;

(ii) The exemption shall apply to all certified ''organic'' or ''100 percent organic'' (as defined in the NOP) products of a producer regardless of whether the agricultural commodity subject to the exemption is produced by a person that also produces conventional or nonorganic agricultural products of the same agricultural commodity as that for which the exemption is claimed;

(iii) The producer maintains a valid certificate of organic operation as issued under the Organic Foods Production Act of 1990 (7 U.S.C. 6501–6522)(OFPA) and the NOP regulations issued under OFPA (7 CFR part 205); and

(iv) Any producer so exempted shall continue to be obligated to pay assessments under this part that are associated with any agricultural products that do not qualify for an exemption under this section.

(2) To apply for exemption under this section, a producer shall submit a request to the Board on an *Organic Exemption Request Form* (Form AMS–15) at any time during the year initially, and annually thereafter on or before January 1, for as long the producer continues to be eligible for the exemption.

(3) A producer request for exemption shall include the following:

(i) The applicant's full name, company name, address, telephone and fax numbers, and email address;

(ii) Certification that the applicant maintains a valid certificate of organic operation issued under the OFPA and the NOP;

(iii) Certification that the applicant produces organic products eligible to be labeled ''organic'' or ''100 percent organic'' under the NOP;

(iv) A requirement that the applicant attach a copy of their certificate of organic operation issued by a USDA-accredited certifying agent under the OFPA and the NOP;

(v) Certification, as evidenced by signature and date, that all information provided by the applicant is true; and

(vi) Such other information as may be required by the Board, with the approval of the Secretary.

(4) If a producer complies with the requirements of this section, the Board will grant an assessment exemption and issue a Certificate of Exemption to the producer within 30 days. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

(5) The producer shall provide a copy of the Certificate of Exemption to each handler to whom the producer sells eggs. The handler shall maintain records showing the exempt producer's name and address and the exemption number assigned by the Board.

(6) The exemption will apply at the first reporting period following the issuance of the Certificate of Exemption.

* * * * *

PART 1260—BEEF PROMOTION AND RESEARCH

■ 45. The authority citation for 7 CFR part 1260 continues to read as follows:

Authority: 7 U.S.C. 2901–2911 and 7 U.S.C. 7401.

■ 46. In § 1260.302, revise paragraphs (a), (b), (c), (d), (g), and (i) to read as follows:

§ 1260.302 Organic exemption.

(a) A producer who operates under an approved National Organic Program (7 CFR part 205) (NOP) organic production system plan may be exempt from the payment of assessments under this part, provided that:

(1) Only agricultural products certified as ''organic'' or ''100 percent organic'' (as defined in the NOP) are eligible for exemption;

(2) The exemption shall apply to all certified ''organic'' or ''100 percent organic'' (as defined in the NOP) products of a producer regardless of whether the agricultural commodity subject to the exemption is produced by a person that also produces conventional or nonorganic agricultural products of the same agricultural commodity as that for which the exemption is claimed;

(3) The producer maintains a valid certificate of organic operation as issued under the Organic Foods Production Act of 1990 (7 U.S.C. 6501–6522) (OFPA) and the NOP regulations issued under OFPA (7 CFR part 205); and

(4) Any producer so exempted shall continue to be obligated to pay assessments under this part that are associated with any agricultural products that do not qualify for an exemption under this section.

(b) To apply for exemption under this section, a producer shall submit a request to the Board or QSBC on an *Organic Exemption Request Form* (Form AMS–15) at any time during the year initially, and annually thereafter on or before January 1, for as long as the producer continues to be eligible for the exemption.

(c) A producer request for exemption shall include the following:

(1) The applicant's full name, company name, address, telephone and fax numbers, and email address;

(2) Certification that the applicant maintains a valid certificate of organic operation issued under the OFPA and the NOP;

(3) Certification that the applicant produces organic products eligible to be labeled ''organic'' or ''100 percent organic'' under the NOP;

(4) A requirement that the applicant attach a copy of their certificate of organic operation issued by a USDA-accredited certifying agent under the OFPA and the NOP;

(5) Certification, as evidenced by signature and date, that all information provided by the applicant is true; and

(6) Such other information as may be required by the Board, with the approval of the Secretary.

(d) If a producer complies with the requirements of this section, the Board or QSBC will grant an assessment exemption and issue a Certificate of Exemption to the producer within 30 days. If the application is disapproved, the Board or QSBC will notify the applicant of the reason(s) for disapproval within the same timeframe.

* * * * *

(g) An importer who imports products that are eligible to be labeled as ''organic'' or ''100 percent organic'' under the NOP, or certified as ''organic'' or ''100 percent organic'' under a U.S. equivalency arrangement established under the NOP, may be exempt from the payment of assessments on those products. Such importer may submit documentation to the Board and request an exemption from assessment on certified ''organic'' or ''100 percent organic'' cattle or beef and beef products on an *Organic Exemption Request Form* (Form AMS–15) at any time initially, and annually thereafter on or before January 1, as long as the importer continues to be eligible for the exemption. This documentation shall include the same information required of producers in paragraph (c) of this section. If the importer complies with the requirements of this section, the Board will grant the exemption and issue a Certificate of Exemption to the importer. The Board will also issue the importer an alphanumeric number valid for 1 year from the date of issue. This alphanumeric number should be entered by the importer on the Customs entry documentation. Any line item entry of ''organic'' or ''100 percent organic'' cattle or beef and beef products bearing this alphanumeric number assigned by the Board will not be subject to assessments. Any importer so exempted shall continue to be obligated to pay assessments under this part that are associated with any imported agricultural products that do not qualify for an exemption under this section.

* * * * *

(i) An importer who is exempt from payment of assessments under paragraph (g) of this section shall be eligible for reimbursement of assessments collected by Customs on certified ''organic'' or ''100 percent organic'' cattle or beef and beef products and may apply to the Secretary for a reimbursement. The importer would be required to submit satisfactory proof to the Secretary that the importer paid the assessment on exempt organic products.

PART 1280—LAMB PROMOTION, RESEARCH, AND INFORMATION ORDER

■ 47. The authority citation for 7 CFR part 1280 continues to read as follows:

Authority: 7 U.S.C. 7411–7425 and 7 U.S.C. 7401.

■ 48. In § 1280.406, revise paragraphs (a), (b), (c), and (d) and remove paragraph (h) to read as follows:

§ 1280.406 Exemption.

(a) A producer, seed stock producer, feeder, handler, or exporter who operates under an approved National Organic Program (7 CFR part 205) (NOP) organic production or handling system plan may be exempt from the payment of assessments under this part, provided that:

(1) Only agricultural products certified as ''organic'' or ''100 percent organic'' (as defined in the NOP) are eligible for exemption;

(2) The exemption shall apply to all certified ''organic'' or ''100 percent organic'' (as defined in the NOP) products of a producer, handler, or exporter regardless of whether the agricultural commodity subject to the exemption is produced, handled, or exported by a person that also produces, handles, or exports conventional or nonorganic agricultural products of the same agricultural commodity as that for which the exemption is claimed;

(3) The producer, handler, or exporter maintains a valid certificate of organic operation as issued under the Organic Foods Production Act of 1990 (7 U.S.C. 6501–6522) (OFPA) and the NOP regulations issued under OFPA (7 CFR part 205); and

(4) Any person so exempted shall continue to be obligated to pay assessments under this part that are associated with any agricultural products that do not qualify for an exemption under this section.

(b) To apply for exemption under this section, the person shall submit a request to the Board on an *Organic Exemption Request Form* (Form AMS–15) at any time during the year initially, and annually thereafter on or before January 1, for as long as the producer continues to be eligible for the exemption.

(c) The request for exemption shall include the following:

(1) The applicant's full name, company name, address, telephone and fax numbers, and email address;

(2) Certification that the applicant maintains a valid certificate of organic operation issued under the OFPA and the NOP;

(3) Certification that the applicant produces, handles, or exports organic products eligible to be labeled ''organic'' or ''100 percent organic'' under the NOP;

(4) A requirement that the applicant attach a copy of their certificate of organic operation issued by a USDA-accredited certifying agent under the OFPA and the NOP;

(5) Certification, as evidenced by signature and date, that all information provided by the applicant is true; and

(6) Such other information as may be required by the Board, with the approval of the Secretary.

(d) If a person complies with the requirements of this section, the Board will grant an assessment exemption and issue a Certificate of Exemption to the applicant within 30 days. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

* * * * *

Dated: December 21, 2015.

Rex A. Barnes,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2015–32517 Filed 12–30–15; 8:45 am]

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